



Federal Register

8-31-06

Vol. 71 No. 169

Thursday

Aug. 31, 2006

Pages 51713-51972



The **FEDERAL REGISTER** (ISSN 0097-6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see www.archives.gov.

The seal of the National Archives and Records Administration authenticates the **Federal Register** as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** www.gpoaccess.gov/nara, available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at gpoaccess@gpo.gov. The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday-Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is \$749 plus postage, or \$808, plus postage, for a combined **Federal Register**, **Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is \$165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register**, including postage, is based on the number of pages: \$11 for an issue containing less than 200 pages; \$22 for an issue containing 200 to 400 pages; and \$33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for \$3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see bookstore.gpo.gov.

There are no restrictions on the republication of material appearing in the **Federal Register**.

How To Cite This Publication: Use the volume number and the page number. Example: 71 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche 202-512-1800
Assistance with public subscriptions 202-512-1806

General online information 202-512-1530; 1-888-293-6498

Single copies/back copies:

Paper or fiche 202-512-1800
Assistance with public single copies 1-866-512-1800
(Toll-Free)

FEDERAL AGENCIES

Subscriptions:

Paper or fiche 202-741-6005
Assistance with Federal agency subscriptions 202-741-6005

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, September 12, 2006
9:00 a.m.-Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



Contents

Federal Register

Vol. 71, No. 169

Thursday, August 31, 2006

Agriculture Department

See Animal and Plant Health Inspection Service

See Forest Service

Air Force Department

NOTICES

Patent licenses; non-exclusive, exclusive, or partially exclusive:
Hybrid Plastics, Inc., 51806

Alcohol, Tobacco, Firearms, and Explosives Bureau

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51852–51856

Animal and Plant Health Inspection Service

RULES

Plant-related quarantine, domestic:
Gypsy moth, 51713

Centers for Disease Control and Prevention

NOTICES

Meetings:
National Institute for Occupational Safety and Health—
Personal Protective Technology Laboratory, 51829–
51830

Children and Families Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51830
Grant and cooperative agreement awards:
Institute for American Values, 51830–51831
Grants and cooperative agreements; availability, etc.:
Child abuse and neglect; research priorities (FY 2006–
2008), 51831–51833

Coast Guard

RULES

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Lower Colorado River, Laughlin, NV, 51754–51756
Regattas and marine parades:
Cambridge Offshore Challenge, 51756–51758
Chesapeakeman Ultra Triathlon, 51752–51754

PROPOSED RULES

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Colorado River, Parker, AZ, 51788–51790

NOTICES

Meetings:
Great Lakes Ballast Water Conference and Regional Waterways Management Forum, 51841

Commerce Department

See Industry and Security Bureau

See International Trade Administration

See National Institute of Standards and Technology

See National Oceanic and Atmospheric Administration

Commission of Fine Arts

NOTICES

Meetings; Sunshine Act, 51806

Community Development Financial Institutions Fund

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51887–51888

Comptroller of the Currency

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51888–51891

Customs and Border Protection Bureau

RULES

Merchandise, special classes:
Ethnological material from Cyprus; emergency import restrictions, 51724–51726

Defense Department

See Air Force Department

See Navy Department

NOTICES

Meetings:
Defense Policy Board Advisory Committee, 51806

Drug Enforcement Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51856

Education Department

NOTICES

Meetings:
Safe and Drug-Free Schools and Communities Advisory Committee, 51807
Student Financial Assistance Advisory Committee, 51807–51808

Employment and Training Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51858–51859

Energy Department

See National Nuclear Security Administration

NOTICES

Meetings:
Environmental Management Site-Specific Advisory Board—
Idaho National Laboratory, 51809–51810
Paducah Gaseous Diffusion Plant, KY, 51809

Environmental Protection Agency

RULES

Air quality implementation plans; approval and promulgation; various States:
Connecticut, 51761–51766
Nevada, 51766–51767

PROPOSED RULES

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
New Jersey, 51790–51792

Air quality implementation plans; approval and promulgation; various States:

Connecticut, 51792–51793

Nevada, 51793–51796

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51810–51812

Privacy Act; systems of records, 51812–51816

Toxic and hazardous substances control:

Asbestos-containing materials in schools; State waiver requests—

Kentucky; correction, 51816–51817

Executive Office for Immigration Review

NOTICES

Practice and procedure:

Detained aliens; briefing deadline extensions, 51856–51857

Federal Aviation Administration

RULES

Commercial space transportation:

Miscellaneous changes, 51968–51972

Federal Communications Commission

NOTICES

Common carrier services:

Wireless telecommunications services—

1.4 GHz band licenses auction; competitive bidding procedures, 51817–51822

FM broadcast construction permits auction;

competitive bidding procedures, 51822–51827

Federal Deposit Insurance Corporation

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51888–51891

Federal Election Commission

NOTICES

Special elections; filing dates:

Ohio, 51827–51828

Federal Reserve System

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51828–51829, 51888–51891

Federal Trade Commission

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51888–51891

Fine Arts Commission

See Commission of Fine Arts

Fish and Wildlife Service

RULES

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Arctic Village sheep management area; seasonal adjustments, 51758–51760

Migratory bird hunting:

Seasons, limits, and shooting hours; establishment, etc., 51930–51965

Food and Drug Administration

RULES

Animal drugs, feeds, and related products:

Gentamicin sulfate intrauterine solution, 51727

Food for human consumption:

Food labeling—

Trans fatty acids in nutrition labeling, nutrient content claims, and health claims, 51726–51727

NOTICES

Meetings:

Anti-Infective Drugs Advisory Committee, 51833

Forest Service

RULES

Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):

Arctic Village sheep management area; seasonal adjustments, 51758–51760

NOTICES

Meetings:

Resource Advisory Committees—

Custer County, 51797

Willamette Provincial Advisory Committee, 51797

Health and Human Services Department

See Centers for Disease Control and Prevention

See Children and Families Administration

See Food and Drug Administration

See National Institutes of Health

Homeland Security Department

See Coast Guard

See Customs and Border Protection Bureau

Housing and Urban Development Department

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51841–51842

Meetings:

Multifamily rental project and health care facility closing documents, 51842–51844

Indian Affairs Bureau

NOTICES

Liquor and tobacco sale or distribution ordinance:

Pawnee Nation of Oklahoma, 51844–51848

Industry and Security Bureau

RULES

Export administration regulations:

Commerce Control List—

Libya and Iraq; designations as state sponsors of terror; revisions, 51714–51724

Interior Department

See Fish and Wildlife Service

See Indian Affairs Bureau

See Land Management Bureau

See Minerals Management Service

See National Park Service

Internal Revenue Service

RULES

Income taxes:

MACRS property and computer software; special depreciation allowance, 51727–51748

NOTICES

Meetings:

Taxpayer Advocacy Panels, 51891

International Trade Administration**NOTICES**

Antidumping:

- Oil country tubular goods, other than drill pipe from—
Korea, 51797–51802

International Trade Commission**NOTICES**

Import investigations:

- Bearings from—
Various countries, 51850

Justice Department

See Alcohol, Tobacco, Firearms, and Explosives Bureau

See Drug Enforcement Administration

See Executive Office for Immigration Review

See Justice Programs Office

See Prisons Bureau

NOTICES

Pollution control; consent judgments:

- Howard McKenzie, et al., 51850–51851
- Mallinckrodt, et al., 51851
- Puerto Rico Aqueduct and Sewer Authority, 51851
- Sherwin-Williams Co., et al., 51851–51852

Justice Programs Office**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 51857

Labor Department

See Employment and Training Administration

NOTICES

Agency information collection activities; proposals, submissions, and approvals, 51857–51858

Land Management Bureau**NOTICES**

Alaska Native claims selection:

- Hee-yea-lingde Corp., 51848

Environmental statements; notice of intent:

- Sunrise Powerlink Project, San Diego and Imperial Counties, CA, 51848–51849

Minerals Management Service**RULES**

Royalty management:

- Service of official correspondence; control information procedures, 51749–51752

National Aeronautics and Space Administration**RULES**

Grant and Cooperative Agreement Handbook:

- Resource sharing requirements, 51713–51714

National Council on Disability**NOTICES**

Meetings:

- International Watch Advisory Committee, 51859

National Credit Union Administration**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 51888–51891

National Highway Traffic Safety Administration**RULES**

Motor vehicle safety standards:

Occupant crash protection—

- Belted frontal barrier crash test; maximum test speed and phase-in schedule, 51768–51779

National Institute of Standards and Technology**NOTICES**

Meetings:

- Advanced Technology Visiting Committee, 51802
- Information Security and Privacy Advisory Board, 51802–51803
- Malcolm Baldrige National Quality Award Judges Panel, 51803

National Institutes of Health**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 51833–51834

Inventions, Government-owned; availability for licensing, 51834–51838

Meetings:

- National Cancer Institute, 51838
- National, Heart, Lung, and Blood Institute, 51840–51841
- National Institute of Mental Health, 51839–51840
- National Institute on Aging, 51839
- National Institute on Deafness and Other Communication Disorders, 51838–51840

National Nuclear Security Administration**NOTICES**

Environmental statements; availability, etc.:

- Los Alamos National Laboratory, NM; continued operation, 51810

National Oceanic and Atmospheric Administration**RULES**

Fishery and conservation management:

- Northeastern United States fisheries—
Northeast multispecies, 51779–51784

Fishery conservation and management:

- Alaska; fisheries of Exclusive Economic Zone—
Pollock, 51785
- Shallow water species; closure to vessels using trawl gear in Gulf of Alaska, 51784–51785

NOTICES

Meetings:

- U.S. Atlantic Swordfish Fishery, 51803–51804
- Reports and guidance documents; availability, etc.:
Western Alaska Community Development Quota Program, 51804–51806

National Park Service**NOTICES**

Native American human remains, funerary objects; inventory, repatriation, etc.:

- Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA; correction, 51849–51850

Navy Department**NOTICES**

Meetings:

- Marine Corps University Board of Visitors, 51806–51807

Nuclear Regulatory Commission**PROPOSED RULES**

Rulemaking petitions:

Hee, Terrence O.; denied, 51786–51788

NOTICES

Environmental statements; availability, etc.:

Taylor Technology, Inc., 51859–51861

Reports and guidance documents, availability, etc.:

Order imposing fingerprinting and criminal history check requirements for access to safeguards information, 51861–51864

Personnel Management Office**NOTICES**

Excepted service; positions placed or revoked, 51864–51867

Pipeline and Hazardous Materials Safety Administration**PROPOSED RULES**

Hazardous materials:

Transportation—

Harmonization with UN Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's technical instructions, 51894–51928

Prisons Bureau**RULES**

Organization, functions, and authority delegations:

Central Office et al.; addresses removed from rules, 51748–51749

Saint Lawrence Seaway Development Corporation**NOTICES**

Meetings:

Advisory Board, 51885

Securities and Exchange Commission**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 51867–51869

Meetings; Sunshine Act, 51877

Self-regulatory organizations; proposed rule changes:

Municipal Securities Rulemaking Board, 51877–51879
National Association of Securities Dealers, Inc., 51879–51882

New York Stock Exchange LLC, 51882–51883

Applications, hearings, determinations, etc.:

Claymore Exchange-Traded Fund Trust, et al., 51869–51876

Lebenthal Funds, Inc., et al., 51876–51877

State Department**NOTICES**

Meetings:

Industry Advisory Panel, 51883

International Telecommunication Advisory Committee, 51884

Transformational Diplomacy Advisory Committee, 51884

Surface Transportation Board**NOTICES**

Rail carriers:

Declaratory order petitions—

DesertXpress Enterprises, LLC, 51885–51886

Railroad services abandonment:

BNSF Railway Co., 51886

Thrift Supervision Office**NOTICES**

Agency information collection activities; proposals, submissions, and approvals, 51888–51891

Transportation Department

See Federal Aviation Administration

See National Highway Traffic Safety Administration

See Pipeline and Hazardous Materials Safety Administration

See Saint Lawrence Seaway Development Corporation

See Surface Transportation Board

NOTICES

Aviation proceedings:

Agreements filed; weekly receipts, 51884–51885

Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 51885

Treasury Department

See Community Development Financial Institutions Fund

See Comptroller of the Currency

See Internal Revenue Service

See Thrift Supervision Office

RULES

Merchandise, special classes:

Ethnological material from Cyprus; emergency import restrictions, 51724–51726

Veterans Affairs Department**NOTICES**

Meetings:

Clinical Science Research and Development Service

Cooperative Studies Scientific Merit Review Board, 51891–51892

Separate Parts In This Issue**Part II**

Transportation Department, Pipeline and Hazardous Materials Safety Administration, 51894–51928

Part III

Interior Department, Fish and Wildlife Service, 51930–51965

Part IV

Transportation Department, Federal Aviation Administration, 51968–51972

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents

LISTSERV electronic mailing list, go to <http://listserv.access.gpo.gov> and select Online mailing list

archives, FEDREGTOC-L, Join or leave the list (or change

settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR

30151713

10 CFR**Proposed Rules:**

4051786

14 CFR

40451968

41351968

42051968

127451713

15 CFR

73451714

73851714

74051714

74251714

74651714

74851714

75051714

75251714

76451714

77251714

77451714

19 CFR

1251724

21 CFR

10151726

52951727

26 CFR

151727

28 CFR

50351748

30 CFR

21851749

24151749

29051749

33 CFR

100 (2 documents)51752,

51756

16551754

Proposed Rules:

16551788

36 CFR

24251758

40 CFR

52 (2 documents)51761,

51766

Proposed Rules:

52 (2 documents)51792,

51793

6251790

49 CFR

57151768

58551768

Proposed Rules:

17151894

17251894

17351894

17551894

17651894

17851894

18051894

50 CFR

2051930

10051758

64851779

679 (2 documents)51784,

51785

Rules and Regulations

Federal Register

Vol. 71, No. 169

Thursday, August 31, 2006

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2006–0029]

Gypsy Moth Generally Infested Areas; Ohio, West Virginia, and Wisconsin

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Adoption of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the gypsy moth regulations by adding one county in Ohio, one county in West Virginia, and two counties in Wisconsin to the list of generally infested areas based on the detection of infestations of gypsy moth in those counties. As a result of the interim rule, the interstate movement of regulated articles from those areas is restricted. The interim rule was necessary to prevent the artificial spread of the gypsy moth to noninfested States.

DATES: Effective on August 31, 2006, we are adopting as a final rule the interim rule that became effective on April 28, 2006.

FOR FURTHER INFORMATION CONTACT: Dr. Weyman Fussell, Program Manager, Pest Detection and Management Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–5705.

SUPPLEMENTARY INFORMATION:

Background

The gypsy moth, *Lymantria dispar* (Linnaeus), is a destructive pest of forest and shade trees. The gypsy moth regulations (contained in 7 CFR 301.45 through 301.45–12 and referred to below as the regulations) restrict the interstate movement of regulated

articles from generally infested areas to prevent the artificial spread of the gypsy moth.

In an interim rule¹ effective and published in the **Federal Register** on April 28, 2006 (71 FR 25063–25064, Docket No. APHIS–2006–0029), we amended the regulations by adding one county in Ohio, one county in West Virginia, and two counties in Wisconsin to the list of generally infested areas in § 301.45–3.

Comments on the interim rule were required to be received on or before June 27, 2006. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived its review under Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

■ Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 71 FR 25063–25064 on April 28, 2006.

Done in Washington, DC, this 25th day of August 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–7308 Filed 8–30–06; 8:45 am]

BILLING CODE 3410–34–P

¹ To view the interim rule, go to <http://www.regulations.gov>, click on the “Advanced Search” tab, and select “Docket Search.” In the Docket ID field, enter APHIS–2006–0029, then click on “Submit.” Clicking on the Docket ID link in the search results page will produce a list of all documents in the docket.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1274

RIN 2700–AD28

NASA Grant and Cooperative Agreement Handbook—Resource Sharing Requirements

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant Handbook section, “Resource Sharing Requirements” to add the word percent behind the blanks and add a place to identify the share dollars for the funding and non-cash contributions by both parties.

DATES: *Effective Date:* This final rule is effective August 31, 2006.

FOR FURTHER INFORMATION CONTACT: Jamiel C. Commodore, NASA, Office of Procurement, Contract Management Division; (202) 358–0302; e-mail: Jamiel.C.Commodore@nasa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The NASA Grant Handbook at § 1274.904 identifies how NASA and a Cooperative Agreement recipient will share in providing the resources necessary to perform a cooperative agreement. Currently, the provision contains two blanks that do not identify the unit of measure associated with the blanks and does not provide a space for the associated dollar amounts. This final rule makes the corrective editorial changes.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the changes merely make editorial corrections to existing coverage in the Grant Handbook.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of

Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 14 CFR Part 1274

Grant programs—science and technology.

Tom Luedtke,

Assistant Administrator for Procurement.

■ Accordingly, 14 CFR part 1274 is amended as follows:

■ 1. The authority citation for 14 CFR part 1274 continues to read as follows:

Authority: 31 U.S.C. 6301 to 6308; 42 U.S.C. 2451 *et seq.*

PART 1274—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS

■ 2. Amend § 1274.904 by revising paragraph (a), redesignating paragraph (b) as (c), and adding new paragraph (b) to read as follows:

§ 1274.904 Resource Sharing Requirements.

Resource Sharing Requirements

AUGUST 2006

* * * * *

(a) NASA and the Recipient will share in providing the resources necessary to perform the agreement. NASA funding and non-cash contributions (personnel, equipment, facilities, etc.) and the dollar value of the Recipient's cash and/or non-cash contribution will be on a __ percent (NASA)—__ percent (Recipient) basis. Criteria and procedures for the allowability and allocability of cash and non-cash contributions shall be governed by FAR Parts 30 and 31, and NFS Parts 1830 and 1831.

(b) The funding and non-cash contributions by both parties are represented by the following dollar amounts:

Government Share _____
 Recipient Share _____
 Total Amount _____

(c) The Recipient's share shall not be charged to the Government under this Agreement or under any other contract, grant, or cooperative agreement, except to the extent that the Recipient's contribution may be allowable IR&D costs pursuant to FAR 31.205-18(e).

[FR Doc. 06-7362 Filed 8-30-06; 8:45 am]

BILLING CODE 7510-01-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 734, 738, 740, 742, 746, 748, 750, 752, 764, 772 and 774

[Docket No. 060816218-6218-01]

RIN 0694-AD81

Implementation in the Export Administration Regulations of the United States' Rescission of Libya's Designation as a State Sponsor of Terrorism and Revisions Applicable to Iraq

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Interim final rule with request for comments.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to implement the June 30, 2006 rescission of Libya's designation as a state sponsor of terrorism. The rescission followed the President's May 15, 2006 submission of a report to Congress certifying that Libya had not provided any support for international terrorism during the preceding six months and that Libya had provided assurances that it would not support future acts of international terrorism. To implement the rescission, BIS amends the EAR by removing Libya from the list of terrorist supporting countries in Country Group E:1, and by making other conforming amendments and related revisions throughout the EAR. In particular, Libya is added to Country Group D:1 and remains in Country Groups D:2, D:3, and D:4.

This rule also revises the EAR to reflect the fact that in October 2004 the United States rescinded Iraq's designation as a state sponsor of terrorism. As a result of the rescission of this designation, BIS may no longer control for anti-terrorism (AT) reasons items covered by eight export control classification numbers (ECCNs) for which BIS previously required a license for export or reexport to Iraq, or for transfer within Iraq. Note that BIS now controls these items for regional stability (RS) reasons and continues to require a license for their export or reexport to Iraq, or transfer within Iraq. This rule also amends the EAR to delete all references to Iraq's status as a Designated State Sponsor of Terrorism.

DATES: This rule is effective August 31, 2006. Comments must be received October 2, 2006.

ADDRESSES: Written comments on this rule may be sent to the Federal

eRulemaking Portal: <http://www.regulations.gov>, or by e-mail to publiccomments@bis.doc.gov. Include RIN 0694-AD81 in the subject line of the message. Comments may be submitted by mail or hand delivery to Sheila Quarterman, Office of Exporter Services, Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th & Pennsylvania Avenue, NW., Room 2705, Washington, DC 20230, ATTN: RIN 0694-AD81; or by fax: 202-482-3355.

Send comments regarding the collection of information to David Rostker, Office of Management and Budget (OMB), by e-mail to David_Rostker@omb.eop.gov, or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT: Joan Roberts, Director, Foreign Policy Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Department of Commerce, P.O. Box 273, Washington, DC 20044; Telephone: (202) 482-4252, or E-mail: jroberts@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the June 30, 2006 rescission of Libya's designation as a state sponsor of terrorism. This action is the latest in a series of steps taken by the U.S. Government to reflect the improvement in the bilateral relationship since Libya's announcement in December 2003 that it was renouncing terrorism and giving up its weapons of mass destruction programs. In recognition of these actions, on April 23, 2004, the President terminated the application of the Iran-Libya Sanctions Act with respect to Libya allowing the resumption of most commercial activities with Libya. Concurrent with the President's action, the Department of the Treasury's Office of Foreign Assets Control (OFAC) published a General License implementing the President's action. On April 29, 2004, BIS published an amendment to the EAR that allowed for the licensing and authorization of the export or reexport of dual-use items to Libya. On March 22, 2005, BIS published a second amendment to the EAR on Libya that established a review policy and licensing procedure for items illegally exported or reexported to Libya prior to the end of the comprehensive embargo ("installed base" items). The installed based provisions, as set forth in section 764.7, continue in effect. On November 16, 2005, BIS published a third

amendment to the EAR for Libya that allowed for the export of certain items controlled only for anti-terrorism (AT) reasons to be exported to U.S. Persons in Libya under a new license exception (License Exception USPL).

On May 15, 2006, the President submitted a report to Congress certifying that Libya had not provided any support for international terrorism during the preceding six months and that Libya had provided assurances that it would not support future acts of international terrorism. In light of the report, on June 30, 2006, the U.S. Government rescinded Libya's designation as a state sponsor of terrorism. To implement the rescission, BIS amends the EAR by removing Libya from the list of terrorist supporting countries in Country Group E:1, and by making other conforming amendments and related revisions throughout the EAR. In particular, Libya is added to Country Group D:1 and remains in Country Groups D:2, D:3, and D:4.

The specific amendments that implement this change in U.S. policy toward Libya and the revisions applicable to Iraq are described below.

Libya Overview

The new Libya export licensing policy significantly reduces the level of U.S. Government controls over commercial exports to Libya, which is consistent with Libya's removal from the list of Designated State Sponsors of Terrorism. BIS, however, retains restrictions on the export of multilaterally-controlled items and other sensitive items to Libya.

Revised License Requirements for Exports and Reexports to Libya

Items for Which Export License Requirements are Generally Lifted

Under this rule, items subject to the EAR but not listed on the Commerce Control List (15 CFR part 774) (CCL) (*i.e.*, EAR99 items) will generally not be subject to license requirements for export or reexport to Libya except pursuant to the end-user and end-use controls set forth in part 744 of the EAR. In addition, items controlled only for anti-terrorism (AT) reasons on the CCL will no longer be subject to a licensing requirement for export or reexport to Libya, except for the end-use and end-user requirements noted above.

Also, the *de minimis* rules applicable to Libya are amended to reflect Libya's removal from Country Group E:1. Reexports of items to Libya from abroad are subject to the EAR only when U.S.-origin controlled content in such items exceeds 25% instead of the 10% that applies to Country Group E:1 countries.

Items for Which Export License Requirements Will Be Retained

This rule retains license requirements for the export or reexport to Libya of items on the multilateral export control regime lists (the Wassenaar Arrangement, the Nuclear Suppliers' Group, the Australia Group and the Missile Technology Control Regime) and items controlled for Crime Control (CC) or Regional Stability (RS) reasons. These license requirements are set forth in part 742 of the EAR and are reflected in the relevant columns of the Country Chart in Supplement No. 1 to part 738 of the EAR. Certain categories of items that are controlled for reasons not included on the Country Chart (*e.g.*, encryption (EI), short supply (SS), and Chemical Weapons (CW)) also require a license for export or reexport to Libya.

Revised Licensing Policy for Libya

BIS will review license applications for exports or reexports to Libya on a case-by-case basis pursuant to applicable licensing policies set forth in parts 742, 744, or elsewhere in the EAR.

Items Controlled for Chemical and Biological Weapons (CB) Reasons

License applications for CB-controlled exports and reexports to Libya will be reviewed on a case-by-case basis consistent with the licensing policy set forth in part 742.2 of the EAR.

Items Controlled for Nuclear Nonproliferation (NP) Reasons

License applications for NP-controlled exports and reexports to Libya will be reviewed on a case-by-case basis consistent with the licensing policy set forth in part 742.3 of the EAR. Applications for exports and reexports to civil-end users and end-uses will generally be approved.

Items Controlled for National Security (NS) Reasons

License applications for NS-controlled exports and reexports to Libya will be reviewed on a case-by-case basis consistent with the licensing policy set forth in part 742.4 of the EAR. Applications for exports and reexports to civil end-users and end-uses will generally be approved.

Items Controlled for Missile Technology (MT) Reasons

License applications for MT-controlled exports and reexports to Libya will be reviewed on a case-by-case basis consistent with the licensing policy set forth in part 742.5 of the EAR.

Items Controlled for Regional Stability (RS) Reasons

License applications for RS-controlled exports and reexports to Libya will be reviewed on a case-by-case basis consistent with the licensing policy set forth in part 742.6 of the EAR.

Items Controlled for Crime Control (CC) Reasons

License applications for CC-controlled exports and reexports to Libya will be reviewed favorably on a case-by-case basis consistent with the licensing policy set forth in part 742.7 of the EAR.

As a result of the rescission of Libya's designation as a state sponsor of terrorism, Libya will also be an eligible destination for special comprehensive licenses as described in part 752 of the EAR.

License Exceptions Available for Libya

License Exceptions Available Generally to Group D Countries

This rule removes Libya from Country Group E:1, found in Supplement 1 to part 740 of the EAR. It adds Libya to Country Group D:1. Libya remains in Country Groups D:2, D:3, and D:4. As a result of Libya's inclusion in Country Groups D:1 through D:4, the following License Exceptions may be available, in whole or in part: CIV, APP, TMP, RPL, GOV, GFT, TSU, BAG, AVS, ENC and KMI. A specific transaction is eligible for a License Exception only if it satisfies all of the terms and conditions of the relevant License Exception and is not excluded by any of the restrictions that apply to all License Exceptions, as set forth in section 740.2 (Restrictions on all License Exceptions) and elsewhere in the EAR.

Expanded License Exception Availability

This rule adds Libya to Computer Tier 3 for exports or reexports of high performance computers under License Exception Computers (APP) in section 740.7 of the EAR. Additionally, foreign nationals from Libya are now eligible to receive without a license "development" and "production" technology and source code for computers with an adjusted peak performance (APP) of less than or equal to 0.1 Weighted TeraFLOPS (WT) and "use" technology and source code for computers with an APP of less than or equal to 0.75 WT under License Exception APP subject to the Foreign National Review requirements of section 740.7(d)(4).

This rule also removes License Exception USPL (section 740.19) from the EAR. This License Exception was

established to allow for the export or reexport of certain items controlled for AT reasons only to U.S. persons in Libya. With the lifting of AT controls on Libya, this License Exception has been rendered irrelevant.

Overview of Iraq Revisions

This rule also makes revisions to the EAR to reflect the October 2004 rescission of Iraq's designation as a state sponsor of terrorism. Under the terms of the revisions, items covered by eight export control classification numbers (ECCNs) which previously required a license for export or reexport to Iraq, or transfer within Iraq, for anti-terrorism (AT) reasons now require a license for export or reexport to Iraq, or transfer within Iraq, for regional stability (RS) reasons. This change affects the following ECCNs: 0B999 (Specific processing equipment such as hot cells and glove boxes suitable for use with radioactive materials), 0D999 (Specific software for neutronic calculations, radiation transport calculations and hydrodynamic calculations/modeling), 1B999 (Specific processing equipment such as electrolytic cells for fluorine production and particle accelerators), 1C992 (Commercial charges containing energetic materials, n.e.s.), 1C995 (Certain mixtures and testing kits), 1C997 (Ammonium Nitrate), 1C999 (Specific Materials, n.e.s.) and 6A992 (Optical Sensors, not controlled by 6A002). BIS has retained a licensing requirement for these items for RS reasons to reflect the U.S. Government's position that they could contribute to military capabilities within Iraq and in the region in a manner destabilizing to the region and contrary to the foreign policy interests of the United States. This rule also amends the EAR to delete all references to Iraq's former status as a Designated State Sponsor of Terrorism.

This action is taken after consultation with the Secretary of State. This rule imposes new export controls for foreign policy reasons. Consistent with section 6 of the Export Administration Act of 1979, as amended, 50 U.S.C. app. §§ 2401–2420 (2000) (the Act), a foreign policy report was submitted to Congress on August 17, 2006, notifying Congress of the imposition of new controls.

Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 3, 2006, (71 Fed. Reg. 44551 (August 7, 2006)), has continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (2000)) (IEEPA). BIS

continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. This interim rule has been determined to be not significant for the purposes of Executive Order 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This regulation involves collections previously approved by the OMB under control numbers 0694–0088, “Multi-Purpose Application,” which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. This rule is expected to result in a decrease in license applications. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden to David Rostker, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States (*see* 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

However, because of the importance of the issues raised by these regulations, this rule is being issued in interim form and BIS will consider comments in the development of the final regulations. Accordingly, the Department of

Commerce (the Department) encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close October 2, 2006. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form.

Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be available for public inspection.

The Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce, displays these public comments on BIS's Freedom of Information Act (FOIA) Web site at <http://www.bis.doc.gov/foia>. This office does not maintain a separate public inspection facility. If you have technical difficulties accessing this Web site, please call BIS's Office of Administration at (202) 482–0637 for assistance.

List of Subjects

15 CFR Part 734, 740, 748, 750 and 752

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Parts 738 and 772

Exports.

15 CFR Part 746

Exports, Reporting and recordkeeping requirements.

15 CFR Parts 742 and 774

Exports, Foreign trade.

15 CFR Part 764

Administrative practice and procedure, Exports, Law enforcement, Penalties.

■ Accordingly, parts 734, 738, 740, 742, 746, 748, 750, 752, 764, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–799) are amended as follows:

PART 734—[AMENDED]

■ 1. The authority citation for 15 CFR part 734 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp. p. 219; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of October 25, 2005, 70 FR 62027 (October 27, 2005); Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

§ 734.4 [Amended]

■ 2. Section 734.4 is amended by revising the phrase “Cuba, Iran, Libya, North Korea, Sudan, and Syria” in paragraph (a)(1) to read “Cuba, Iran, North Korea, Sudan, and Syria.”

PART 738—[AMENDED]

■ 3. The authority citation for 15 CFR part 738 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 et seq.; 22 U.S.C. 287c; 22 U.S.C. 3201 et seq.; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p.

228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 4. Supplement No. 1 to part 738 is amended

■ A. By removing the “X” in AT column 1 in the entry for “Libya”; and

■ B. By revising the footnote to the Country Chart to read as follows:

* * * * *

Supplement No. 1 to Part 738—Commerce Country Chart

¹ This country is subject to sanctions implemented by the United Nations Security Council. See § 746.3 for license requirements for exports and reexports to Iraq or transfer within Iraq, as well as regional stability licensing requirements not included in the Country Chart. See § 746.8 for license requirements for exports and reexports to Rwanda.

PART 740—[AMENDED]

■ 5. The authority citation for 15 CFR part 740 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; Sec. 901–911, Pub. L. 106–387; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 6. Section 740.7 is amended

■ A. By revising the phrase “Cuba, Iran, Libya, North Korea, Sudan, or Syria,” in paragraph (b)(2)(i) to read “Cuba, Iran, North Korea, Sudan, or Syria,”;

■ B. By removing the phrase “Libya,” in paragraph (b)(2)(ii); and

■ C. By revising paragraph (d)(1) to read as follows:

§ 740.7 Computers (APP).

* * * * *

(d) Computer Tier 3 destinations—(1) Eligible destinations. Eligible destinations under paragraph (d) of this section are Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia & Herzegovina, Cambodia, China (People’s Republic of), Comoros, Croatia, Djibouti, Egypt, Georgia, India, Iraq, Israel, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lebanon, Libya, Macau, Macedonia (The Former Yugoslav Republic of), Mauritania, Moldova, Mongolia, Morocco, Oman, Pakistan, Qatar, Russia, Serbia and Montenegro, Saudi Arabia, Tajikistan, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Vanuatu, Vietnam, and Yemen.

* * * * *

■ 7. Section 740.15 is amended by revising paragraph (d)(5) to read as follows:

§ 740.15 Aircraft and vessels (AVS).

* * * * *

(d) * * *

(5) No vessels may be exported or reexported under this License Exception to a country in Country Group E:1.

§ 740.19 [Removed]

■ 8. Section 740.19 is removed.

■ 9. Supplement No. 1 to part 740 is amended:

■ A. By revising the entry for Libya in the table to Country Group D; and

■ B. By removing Libya from Country Group E.

Supplement No. 1 to Part 740—Country Groups

* * * * *

COUNTRY GROUP D

Country	[D:1] National Security	[D:2] Nuclear	[D:3] Chemical and biological	[D:4] Missile technology
Libya	X	X	X	X

* * * * *

PART 742—[AMENDED]

■ 10. The authority citation for 15 CFR part 742 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; 18 U.S.C. 2510 et seq.; 22 U.S.C. 3201 et seq.; 42 U.S.C. 2139a; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; Sec. 1503, Pub. L. 108–11, 117 Stat. 559; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3

CFR, 1993 Comp., p. 608; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of October 25, 2005, 70 FR 62027 (October 27, 2005); Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 11. Section 742.1 is amended by revising paragraph (d) to read as follows:

§ 742.1 Introduction.

* * * * *

(d) Anti-terrorism Controls on Cuba, Iran, North Korea, Sudan and Syria. Commerce maintains anti-terrorism controls on Cuba, Iran, North Korea, Syria and Sudan under section 6(a) of the Export Administration Act. Items controlled under section 6(a) to Iran, Syria, Sudan, and North Korea are described in §§ 742.8, 742.9, 742.10, and

742.19, respectively, and in Supplement No. 2 to part 742. Commerce also maintains controls under section 6(j) of the EAA to Cuba, Iran, North Korea, Sudan and Syria. Items controlled to these countries under EAA section 6(j) are also described in Supplement 2 to part 742. The Secretaries of Commerce and State are required to notify appropriate Committees of the Congress 30 days before issuing a license for an item controlled under section 6(j) to Cuba, North Korea, Iran, Sudan or Syria. As noted in paragraph (c) of this section, if you are exporting or reexporting to Cuba or Iran you should review part 746 of the EAR, Embargoes and Other Special Controls.

* * * * *

■ 12. Section 742.6 is amended by adding paragraphs (a)(3) and (b)(4) to read as follows:

§ 742.6 Regional stability.

(a) * * *

(3) As indicated on the CCL, a license is required for the export or reexport to Iraq or transfer within Iraq of the following items controlled for RS reasons on the CCL: 0B999, 0D999, 1B999, 1C992, 1C995, 1C997, 1C999 and 6A992. The Commerce Country Chart is not designed to determine RS licensing requirements for these ECCNs.

(b) * * *

(4) See § 746.3(b) of the EAR for the applicable licensing policies for items controlled for RS reasons to Iraq.

* * * * *

§ 742.20 [Removed]

■ 13–14. Section 742.20 is removed.

■ 15. Supplement No. 1 to part 742 is amended by revising paragraphs (5), (7), (8) and (11) to read as follows:

Supplement No. 1 to Part 742—Nonproliferation of Chemical and Biological Weapons

* * * * *

(5) The contract sanctity date for exports to Iran or Syria of potassium hydrogen fluoride, ammonium hydrogen fluoride, sodium fluoride, sodium bifluoride, phosphorus pentasulfide, sodium cyanide, triethanolamine, diisopropylamine, sodium sulfide, and N,N-diethylethanolamine is December 12, 1989.

* * * * *

(7) The contract sanctity date for exports to all destinations (except Iran or Syria) of 2-chloroethanol and triethanolamine is January 15, 1991. For exports of 2-chloroethanol to Iran or Syria, paragraph (1) of this Supplement applies. For exports of triethanolamine to Iran or Syria, paragraph (5) of this Supplement applies.

* * * * *

(8) The contract sanctity date for exports to all destinations (except Iran or Syria) of

chemicals controlled by ECCN 1C350 is March 7, 1991, except for applications to export the following chemicals: 2-chloroethanol, dimethyl methylphosphonate, dimethyl phosphite (dimethyl hydrogen phosphite), phosphorus oxychloride, phosphorus trichloride, thiodiglycol, thionyl chloride triethanolamine, and trimethyl phosphite. (See also paragraphs (6) and (7) of this Supplement.) For exports to Iran or Syria, see paragraphs (1) through (6) of this Supplement.

* * * * *

(11) The contract sanctity date for reexports of chemicals controlled under ECCN 1C350 is March 7, 1991, except that the contract sanctity date for reexports of these chemicals to Iran or Syria is December 12, 1989.

* * * * *

■ 16. Supplement No. 2 to part 742 is amended;

■ A. By removing the Note to Paragraph (b)(1);

■ B. By removing paragraphs (c)(1)(v), (4)(v), (5)(v), (6)(v), (7)(v), (8)(v), (10)(v), (11)(v), (12)(v), (13)(v), (14)(v), (15)(iii), (16)(v), (17)(v), (18)(v), (19)(v), (22)(v), (23)(v), (24)(v), (25)(vi), (26)(i)(D), (27)(v), (28)(v), (29)(v), (30)(v), (31)(v), (32)(v), (33)(v), (34)(v), (35)(v), (36)(v), (37)(v), (38)(v), (39)(i)(E), (39)(ii)(E), (40)(v), (41)(v), (42)(v), (43)(v), and (44)(v);

■ C. By removing the phrase, “Libya,” in paragraph (c)(2);

■ D. By removing the phrase, “Libya,” in paragraph (c)(3); and

■ E. By revising paragraph (a), paragraph (b)(1), paragraph (b)(3) introductory text, and paragraph (b)(3)(ii) to read as set forth below; and

■ F. By revising the first two sentences of paragraph (c) introductory text to read as set forth below.

Supplement No. 2 to Part 742—Anti-Terrorism Controls: Iran, North Korea, Syria and Sudan: Contract Sanctity Dates and Related Policies

* * * * *

(a) *Terrorist-supporting countries.* The Secretary of State has designated Cuba, Iran, North Korea, Sudan and Syria as countries whose governments have repeatedly provided support for acts of international terrorism under section 6(j) of the Export Administration Act (EAA).

(b) * * *

(1) On December 28, 1993, the Secretary of State determined that the export to Cuba, Iran, North Korea, Sudan, or Syria of items described in paragraphs (c)(1) through (c)(5) of this Supplement, if destined to military, police, intelligence or other sensitive end-users, are controlled under EAA section 6(j). Therefore, the 30-day advance Congressional notification requirement applies to the export or reexport of these items to sensitive end-users in any of these countries.

* * * * *

(3) Items controlled for anti-terrorism reasons under section 6(a) to Iran, North Korea, Sudan and Syria are:

* * * * *

(ii) The following items to all end-users: for Iran, items in paragraphs (c)(6) through (c)(44) of this Supplement; for North Korea, items in paragraph (c)(6) through (c)(45) of this Supplement; for Sudan, items in paragraphs (c)(6) through (c)(14) and (c)(16) through (c)(44) of this Supplement; and for Syria, items in paragraphs (c)(6) through (c)(8), (c)(10) through (c)(14), (c)(16) through (c)(19), and (c)(22) through (c)(44) of this Supplement.

(c) The license requirements and licensing policies for items controlled for anti-terrorism reasons to Iran, Syria, Sudan, and North Korea are generally described in §§ 742.8, 742.9, 742.10, and 742.19 of this part, respectively. This Supplement provides guidance on licensing policies for Iran, North Korea, Syria, and Sudan and related contract sanctity dates that may be available for transactions benefiting from pre-existing contracts involving Iran, Syria, and Sudan.

* * * * *

PART 746—[AMENDED]

■ 17. The authority citation for 15 CFR part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c; Sec 1503, Pub. L. 108–11,117 Stat. 559; 22 U.S.C. 6004; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 12854, 58 FR 36587, 3 CFR 1993 Comp., p. 614; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 13222, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2005, 71 FR 44551 (August 7, 2006).

■ 18. Section 746.3 is amended by revising paragraph (a)(3) to read as follows:

§ 746.3 Iraq.

* * * * *

(a) * * *

(3) A license is required for the export or reexport to Iraq or transfer within Iraq of items on the Commerce Control List controlled for RS reasons under the following ECCNs: 0B999, 0D999, 1B999, 1C992, 1C995, 1C997, 1C999 and 6A992.

* * * * *

PART 748—[AMENDED]

■ 19. The authority citation for 15 CFR part 748 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

Supplement No. 2 to Part 748 [Amended]

■ 20. Supplement No. 2 to part 748 is amended by revising the phrase “Cuba, Iran, Libya, North Korea, Sudan, and Syria” in paragraph (c)(2) to read “Cuba, Iran, North Korea, Sudan, and Syria.”

PART 750—[AMENDED]

■ 21. The authority citation for 15 CFR part 750 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; Sec. 1503, Pub.L. 108–11, 117 Stat. 559; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Presidential Determination 2003–23 of May 7, 2003, 68 FR 26459, May 16, 2003; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 22. Section 750.4 is amended by revising paragraph (b)(6)(i) to read as follows:

§ 750.4 Procedures for processing license applications.

* * * * *

(b) * * *
(6) * * *

(i) *Designated countries.* The following countries have been designated by the Secretary of State as terrorist-supporting countries: Cuba, Iran, North Korea, Sudan, and Syria.

* * * * *

PART 752—[AMENDED]

■ 23. The authority citation for 15 CFR part 752 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13020, 61 FR 54079, 3 CFR, 1996 Comp., p. 219; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 24. Section 752.4 is amended by revising paragraph (a)(1) to read as follows:

§ 752.4 Eligible countries.

(a) * * *
(1) Cuba, Iran, Iraq, North Korea, Sudan, and Syria.

* * * * *

PART 764—[AMENDED]

■ 25. The authority citation for 15 CFR part 764 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

§ 764.7 [Amended]

■ 26. Section 764.7 is amended by removing the parenthetical phrase “(e.g. § 742.20 of the EAR)” from paragraph (b)(4).

PART 772—[AMENDED]

■ 27. The authority citation for 15 CFR part 772 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 28. The definition of *Countries supporting international terrorism* in § 772.1 and paragraph (a) introductory text of the definition for *U.S. Person* in § 772.1 are revised to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Countries supporting international terrorism. In accordance with § 6(j) of the Export Administration Act of 1979, as amended (EAA), the Secretary of State has determined that the following countries’ governments have repeatedly provided support for acts of international terrorism: Cuba, Iran, North Korea, Sudan, and Syria.

* * * * *

U.S. Person. (a) For purposes of §§ 744.6, 744.10, 744.11, 744.12, 744.13 and 744.14 of the EAR, the term U.S. person includes:

* * * * *

PART 774—[AMENDED]

■ 29. The authority citation for 15 CFR part 774 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; Sec. 901–911, Pub. L. 106–387; Sec. 221, Pub. L. 107–56; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 3, 2006, 71 FR 44551 (August 7, 2006).

■ 30. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0—Nuclear Materials, Facilities, and Equipment (and Misc. Items), Export Control Classification Number (ECCN) 0B999 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 0—Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items)

* * * * *

0B999 Specific processing equipment, as follows (see List of Items Controlled).

License Requirements

Reason for Control: AT, RS

Control(s) *Country Chart*

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT license requirements for this entry. See § 742.19 of the EAR for additional information. RS applies to entire entry. A license is required for items controlled by this entry for export or reexport to Iraq or transfer within Iraq for regional stability reasons. The Commerce Country Chart is not designed to determine RS license requirements for this entry. See §§ 742.6 and 746.3 of the EAR for additional information.

* * * * *

■ 31. In Supplement No. 1 to part 774 (the Commerce Control List), Category 0 “Nuclear Materials, Facilities, and Equipment (and Misc. Items), Export Control Classification Number (ECCN) 0D999 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

Category 0—Nuclear Materials, Facilities, and Equipment (and Miscellaneous Items)

* * * * *

0D999 Specific Software, as follows (see List of Items Controlled)

License Requirements

Reason for Control: AT, RS

Control(s) *Country Chart*

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT license requirements for this entry. See § 742.19 of the EAR for additional information. RS applies to entire entry. A license is required for items controlled by this entry for export or reexport to Iraq or transfer within Iraq for regional stability reasons. The Commerce Country Chart is not designed to determine RS license requirements for this entry. See §§ 742.6 and 746.3 of the EAR for additional information.

* * * * *

■ 32. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms and Toxins, Export Control Classification Number (ECCN) 1B999 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 1—Materials, Chemicals, Microorganisms and Toxins

* * * * *

1B999 Specific processing equipment, n.e.s., as follows (see List of Items Controlled)

License Requirements

Reason for Control: AT, RS

Control(s) Country Chart

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT license requirements for this entry. See § 742.19 of the EAR for additional information. RS applies to entire entry. A license is required for items controlled by this entry for export or reexport to Iraq or transfer within Iraq for regional stability reasons. The Commerce Country Chart is not designed to determine RS license requirements for this entry. See §§ 742.6 and 746.3 of the EAR for additional information.

* * * * *

■ 33. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms and Toxins, Export Control Classification Number (ECCN) 1C350 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 1—Materials, Chemicals, Microorganisms and Toxins

* * * * *

1C350 Chemicals that may be used as precursors for toxic chemical agents.

License Requirements

Reason for Control: CB, CW, AT

Control(s)	Country chart
CB applies to entire entry ...	CB Column 2.

CW applies to 1C350 .b, and .c. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required, for CW reasons, to export or reexport Schedule 2 chemicals and mixtures identified in 1C350.b to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR). A license is required, for CW reasons, to export Schedule 3 chemicals and mixtures identified in 1C350.c to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country has been obtained by the exporter prior to export. A license is required, for CW reasons, to reexport Schedule 3 chemicals and mixtures identified in 1C350.c from a State not Party to the CWC to any other State not Party to the CWC. (See § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons. See § 745.2 of the EAR for End-Use Certificate requirements that apply to exports of Schedule 3 chemicals to countries not listed in Supplement No. 2 to part 745 of the EAR.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C350. A license is required, for AT reasons, to export or reexport items controlled by 1C350 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for export controls on Syria.) License Requirement Notes

1. *Sample Shipments:* Subject to the following requirements and restrictions, a license is not required for sample shipments when the cumulative total of these shipments does not exceed a 55-gallon container or 200 kg of a single chemical to any one consignee during a calendar year. A consignee that receives a sample shipment under this exclusion may not resell, transfer, or reexport the sample shipment, but may use the sample shipment for any other legal purpose unrelated to chemical weapons.

a. *Chemicals Not Eligible:*

A. [RESERVED]

B. *CWC Schedule 2 chemicals (States not Party to the CWC).* No CWC Schedule 2 chemical or mixture identified in 1C350.b is eligible for sample shipment to *States not Party to the CWC* (destinations not listed in Supplement No. 2 to part 745 of the EAR) without a license.

b. *Countries Not Eligible:* Countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR are not eligible to receive sample shipments of any chemicals controlled by this ECCN without a license.

c. *Sample shipments that require an End-Use Certificate for CW reasons:* No CWC Schedule 3 chemical or mixture identified in 1C350.c is eligible for sample shipment to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR) without a license, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export (see § 745.2 of the EAR for End-Use Certificate requirements).

d. *Sample shipments that require a license for reasons set forth elsewhere in the EAR:* Sample shipments, as described in this Note 1, may require a license for reasons set forth elsewhere in the EAR. See, in particular, the end-use/end-user restrictions in part 744 of the EAR, and the restrictions that apply to embargoed countries in part 746 of the EAR.

e. *Quarterly report requirement.* The exporter is required to submit a quarterly written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled “Report of Sample Shipments of Chemical Precursors” at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee’s name and address, and the date exported. The report must be sent to the U.S. Department of Commerce, Bureau of Industry and Security, P.O. Box 273, Washington, DC

20044, Attn: “Report of Sample Shipments of Chemical Precursors”.

2. *Mixtures:*

a. Mixtures that contain precursor chemicals identified in ECCN 1C350, in concentrations that are below the levels indicated in 1C350.b through .d, are controlled by ECCN 1C395 or 1C995 and are subject to the licensing requirements specified in those ECCNs.

b. A license is not required for mixtures controlled under this ECCN when the controlled chemical in the mixture is a normal ingredient in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

Note to Mixtures: Calculation of concentrations of AG-controlled chemicals:

a. *Exclusion.* No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. *Percent Weight Calculation.* When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents.

3. *Compounds.* Compounds created with any chemicals identified in this ECCN 1C350 may be shipped NLR (No License Required), without obtaining an End-Use Certificate, unless those compounds are also identified in this entry or require a license for reasons set forth elsewhere in the EAR.

4. *Testing Kits:* Certain medical, analytical, diagnostic, and food testing kits containing small quantities of chemicals identified in this ECCN 1C350, are excluded from the scope of this ECCN and are controlled under ECCN 1C395 or 1C995. (Note that replacement reagents for such kits are controlled by this ECCN 1C350 if the reagents contain one or more of the precursor chemicals identified in 1C350 in concentrations equal to or greater than the control levels for mixtures indicated in 1C350.)

Technical Notes: 1. For purposes of this entry, a “mixture” is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

2. The scope of this control applicable to Hydrogen Fluoride (see 1C350.d.7 in the List of Items Controlled) includes its liquid, gaseous, and aqueous phases, and hydrates.

* * * * *

■ 34. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms and Toxins, Export Control Classification Number (ECCN) 1C355 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 1—Materials, Chemicals, Microorganisms and Toxins

* * * * *

1C355 Chemical Weapons Convention (CWC) Schedule 2 and 3 chemicals and families of chemicals not controlled by ECCN 1C350 or by the Department of State under the ITAR.

License Requirements

Reason for Control: CW, AT
Control(s).

CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required to export or reexport CWC Schedule 2 chemicals and mixtures identified in 1C355.a to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR). A license is required to export CWC Schedule 3 chemicals and mixtures identified in 1C355.b to States not Party to the CWC, unless an End-Use Certificate issued by the government of the importing country is obtained by the exporter, prior to export. A license is required to reexport CWC Schedule 3 chemicals and mixtures identified in 1C355.b from a State not Party to the CWC to any other State not Party to the CWC. (See § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.) AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C355. A license is required, for AT reasons, to export or reexport items controlled by 1C355 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742 of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for export controls on Syria.)

License Requirements Notes

1. *Mixtures:*

a. Mixtures containing toxic and precursor chemicals identified in ECCN 1C355, in concentrations that are below the control levels indicated in 1C355.a and .b, are controlled by ECCN 1C995 and are subject to the license requirements specified in that ECCN.

b. Mixtures containing chemicals identified in this entry are not controlled by ECCN 1C355 when the controlled chemical is a normal ingredient in consumer goods packaged for retail sale for personal use or packaged for individual use. Such consumer goods are classified as EAR99.

Note to mixtures: Calculation of concentrations of CW-controlled chemicals:

a. *Exclusion.* No chemical may be added to the mixture (solution) for the sole purpose of circumventing the Export Administration Regulations;

b. *Percent Weight Calculation.* When calculating the percentage, by weight, of components in a chemical mixture, include all components of the mixture, including those that act as solvents.

2. *Compounds:* Compounds created with any chemicals identified in this ECCN 1C355 may be shipped NLR (No License Required), without obtaining an End-Use Certificate,

unless those compounds are also identified in this entry or require a license for reasons set forth elsewhere in the EAR.

Technical Notes: For purposes of this entry, a "mixture" is defined as a solid, liquid or gaseous product made up of two or more components that do not react together under normal storage conditions.

* * * * *

■ 35. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms and Toxins, Export Control Classification Number (ECCN) 1C395 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 1—Materials, Chemicals, Microorganisms and Toxins

* * * * *

1C395 Mixtures and medical, analytical, diagnostic, and food testing kits not controlled by ECCN 1C350, as follows (See List of Items Controlled).

License Requirements

Reason for Control: CB, CW, AT
Control(s).

CB applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CB reasons in 1C395. A license is required, for CB reasons, to export or reexport mixtures controlled by 1C395.a and test kits controlled by 1C395.b to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR).

CW applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for CW reasons. A license is required for CW reasons, as follows, to States not Party to the CWC (destinations not listed in Supplement No. 2 to part 745 of the EAR): (1) Exports and reexports of mixtures controlled by 1C395.a, (2) exports and reexports of test kits controlled by 1C395.b that contain CWC Schedule 2 chemicals controlled by ECCN 1C350, (3) exports of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals controlled by ECCN 1C350, except that a license is not required, for CW reasons, to export test kits containing CWC Schedule 3 chemicals if an End-Use Certificate issued by the government of the importing country is obtained by the exporter prior to export, and (4) reexports from States not Party to the CWC of test kits controlled by 1C395.b that contain CWC Schedule 3 chemicals. (See § 742.18 of the EAR for license requirements and policies for toxic and precursor chemicals controlled for CW reasons.)

AT applies to entire entry. The Commerce Country Chart is not designed to determine licensing requirements for items controlled for AT reasons in 1C395. A license is required, for AT reasons, to export or reexport items controlled by 1C395 to a country in Country Group E:1 of Supplement No. 1 to part 740 of the EAR. (See part 742

of the EAR for additional information on the AT controls that apply to Iran, North Korea, Sudan, and Syria. See part 746 of the EAR for additional information on the comprehensive trade sanctions that apply to Cuba and Iran. See Supplement No. 1 to part 736 of the EAR for information on export controls that apply to Syria.)

License Requirements Notes

1. 1C395.b does not control mixtures that contain precursor chemicals identified in ECCN 1C350.b or .c in concentrations below the control levels for mixtures indicated in 1C350.b or .c. 1C395.a and 1C995.a.1 and a.2.a control such mixtures, unless they are consumer goods, as described in License Requirements Note 2 of this ECCN.

2. This ECCN does not control mixtures when the controlled chemicals are normal ingredients in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

* * * * *

■ 36. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms and Toxins, Export Control Classification Number (ECCN) 1C992 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 1—Materials, Chemicals, Microorganisms and Toxins

* * * * *

1C992 Commercial charges and devices containing energetic materials, n.e.s. and nitrogen trifluoride in a gaseous state.

License Requirements

Reason for Control: AT, RS

<i>Control(s)</i>	<i>Country chart</i>
AT applies to entire entry	AT Column 1.

RS applies to entire entry. A license is required for items controlled by this entry for export or reexport to Iraq and transfer within Iraq for regional stability reasons. The Commerce Country Chart is not designed to determine RS license requirements for this entry. See §§ 742.6 and 746.3 of the EAR for additional information.

* * * * *

■ 37. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms and Toxins, Export Control Classification Number (ECCN) 1C995 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 1—Materials, Chemicals, Microorganisms and Toxins
* * * * *

1C995 Mixtures not controlled by ECCN 1C350, ECCN 1C355 or ECCN 1C395 that contain chemicals controlled by ECCN 1C350 or ECCN 1C355 and medical, analytical, diagnostic, and food testing kits not controlled by ECCN 1C350 or ECCN 1C395 that contain chemicals controlled by ECCN 1C350.d, as follows (see List of Items Controlled).

License Requirements

Reason for Control: AT, RS

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

RS applies to entire entry. A license is required for items controlled by this entry for export or reexport to Iraq or transfer within Iraq for regional stability reasons. The Commerce Country Chart is not designed to determine RS license requirements for this entry. See §§ 742.6 and 746.3 of the EAR for additional information.

License Requirement Notes

1. This ECCN does not control mixtures containing less than 0.5% of any single toxic or precursor chemical controlled by ECCN 1C350.b, .c, or .d or ECCN 1C355 as unavoidable by-products or impurities. Such mixtures are classified as EAR99.

2. 1C995.c does not control mixtures that contain precursor chemicals identified in 1C350.d in concentrations below the levels for mixtures indicated in 1C350.d. 1C995.a.2.b controls such mixtures, unless they are consumer goods as described in License Requirements Note 3 of this ECCN.

3. This ECCN does not control mixtures when the controlled chemicals are normal ingredients in consumer goods packaged for retail sale for personal use. Such consumer goods are classified as EAR99.

* * * * *

■ 38. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms and Toxins, Export Control Classification Number (ECCN) 1C997 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 1—Materials, Chemicals, Microorganisms and Toxins

* * * * *

1C997 Ammonium nitrate, including fertilizers and fertilizer blends containing more than 15% by weight ammonium nitrate, except liquid fertilizers (containing any amount of ammonium nitrate) or dry fertilizers containing less than 15% by weight ammonium nitrate.

License Requirements

Reason for Control: AT, RS

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

RS applies to entire entry. A license is required for items controlled by this entry for export or reexport to Iraq or transfer within Iraq for regional stability reasons. The Commerce Country Chart is not designed to determine RS license requirements for this entry. See §§ 742.6 and 746.3 of the EAR for additional information.

* * * * *

■ 39. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, Microorganisms and Toxins, Export Control Classification Number (ECCN) 1C999 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 1—Materials, Chemicals, Microorganisms and Toxins

* * * * *

1C999 Specific materials, n.e.s., as follows (see List of Items Controlled).

License Requirements

Reason for Control: AT, RS

AT applies to entire entry. A license is required for items controlled by this entry to North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine AT license requirements for this entry. See § 742.19 of the EAR for additional information. RS applies to entire entry. A license is required for items controlled by this entry for export or reexport to Iraq or transfer within Iraq for regional stability reasons. The Commerce Country Chart is not designed to determine RS license requirements for this entry. See §§ 742.6 and 746.3 of the EAR for additional information.

* * * * *

■ 40. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2A994 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 2—Materials Processing

* * * * *

2A994 Portable electric generators and specially designed parts.

License Requirements

Reason for Control: AT Control(s).

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran and North Korea. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part

746 of the EAR for additional information on Cuba and Iran. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

■ 41. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2D994 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 2—Materials Processing

* * * * *

2D994 “Software” specially designed for the “development” or “production” of portable electric generators controlled by 2A994.

License Requirements

Reason for Control: AT Control(s).

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba and Iran. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

■ 42. In Supplement No. 1 to part 774 (the Commerce Control List), Category 2—Materials Processing, Export Control Classification Number (ECCN) 2E994 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 2—Materials Processing

* * * * *

2E994 “Technology” for the “use” of portable electric generators controlled by 2A994.

License Requirements

Reason for Control: AT Control(s).

AT applies to entire entry. A license is required for items controlled by this entry to Cuba, Iran and North Korea for anti-terrorism reasons. The Commerce Country Chart is not designed to determine licensing requirements for this entry. See part 746 of the EAR for additional information on Cuba and Iran. See § 742.19 of the EAR for additional information on North Korea.

* * * * *

■ 43. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A991 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 3—Electronics

* * * * *

3A991 Electronic devices and components not controlled by 3A001.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

License Requirements Notes

1. Microprocessors with a “Composite Theoretical Performance” (“CTP”) below 550 MTOPS listed in subparagraphs (a)(2) or (a)(3) of this entry may be shipped NLR (No License Required) when destined to North Korea, provided restrictions set forth in other sections of the EAR (e.g., end-use restrictions), do not apply. See “Information on How to Calculate “Composite Theoretical Performance” (“CTP”)” at the end of Category 3.

2. See 744.17 of the EAR for additional license requirements for commodities classified as 3A991.a.1.

* * * * *

■ 44. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A992 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 3—Electronics

* * * * *

3A992 General purpose electronic equipment not controlled by 3A002.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

* * * * *

■ 45. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3B992 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 3—Electronics

* * * * *

3B992 Equipment not controlled by 3B002 for the inspection or testing of electronic components and materials, and specially designed components and accessories thereof.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

* * * * *

■ 46. In Supplement No. 1 to part 774 (the Commerce Control List), Category 4—Computers, Export Control Classification Number (ECCN) 4A994 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 4—Computers

* * * * *

4A994 Computers, “electronic assemblies”, and related equipment not controlled by 4A001 or 4A003, and specially designed components therefore.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

* * * * *

■ 47. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and “Information Security”—Telecommunications, Export Control Classification Number (ECCN) 5A991 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 5—Telecommunications and “Information Security”

* * * * *

5A991 Telecommunication equipment, not controlled by 5A001.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

* * * * *

■ 48. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and “Information Security”—Information Security, Export Control Classification Number (ECCN) 5A992 is amended by

revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 5—Telecommunications and “Information Security”

* * * * *

5A992 Equipment not controlled by 5A002.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to 5A992.a	AT Column 1.
AT applies to 5A992.b	AT Column 2.

* * * * *

■ 49. In Supplement No. 1 to part 774 (the Commerce Control List), Category 5—Telecommunications and “Information Security”—Information Security, Export Control Classification Number (ECCN) 5D992 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 5—Telecommunications and “Information Security”

* * * * *

5D992 “Information Security” “software” not controlled by 5D002.

License Requirements

Reason for Control: AT

Control(s)	Country chart
AT applies to 5D992.a.1 and .b.1.	AT Column 1.
AT applies to 5D992.a.2, b.2 and c.	AT Column 2.

* * * * *

■ 50. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A992 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 6—Sensors and Lasers

* * * * *

6A992 Optical Sensors, not controlled by 6A002

License Requirements

Reason for Control: AT, RS

Control(s)	Country chart
AT applies to entire entry	AT Column 1.

RS applies to entire entry. A license is required for items controlled by this entry for export or reexport to Iraq or transfer within Iraq for regional stability reasons. The Commerce Country Chart is not designed to determine RS license requirements for this entry. See §§ 742.6 and 746.3 of the EAR for additional information.

* * * * *

■ 51. In Supplement No. 1 to part 774 (the Commerce Control List), Category 9—Propulsion Systems, Space Vehicles and Related Equipment, Export Control Classification Number (ECCN) 9A990 is amended by revising the License Requirements section to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

Category 9—Propulsion Systems, Space Vehicles and Related Equipment

* * * * *

9A990 Diesel engines, n.e.s., and tractors and specially designed parts therefore, n.e.s.

License Requirements

Reason for Control: AT

<i>Control(s)</i>	<i>Country chart</i>
AT applies to entire entry except 9A990.a.	AT Column 1.
AT applies to 9A990.a only	AT Column 2.

* * * * *

Dated: August 25, 2006.

Matthew S. Borman,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 06–7255 Filed 8–30–06; 8:45 am]
BILLING CODE 3510–33–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 12

[CBP Dec. 06–22]

RIN 1505–AB72

Import Restrictions on Byzantine Ecclesiastical and Ritual Ethnological Material From Cyprus

AGENCY: Customs and Border Protection, Department of Homeland Security; Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Bureau of Customs and Border Protection (CBP) regulations by reflecting that the bilateral agreement

between Cyprus and the U.S. to impose certain import restrictions on archaeological material from Cyprus has been amended to include import restrictions which had been previously imposed on an emergency basis for certain Byzantine period ecclesiastical and ritual ethnological material.

DATES: *Effective Date:* These regulations are effective on September 4, 2006.

FOR FURTHER INFORMATION CONTACT: For legal aspects, George F. McCray, Esq., Chief, Intellectual Property Rights and Restricted Merchandise Branch, (202) 572–8710. For operational aspects, Michael Craig, Chief, Other Government Agencies Branch, (202) 344–1684.

SUPPLEMENTARY INFORMATION:

Background

Since the passage of the Cultural Property Implementation Act (19 U.S.C. 2601 *et seq.*), import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed either as a result of requests for emergency protection received from those nations or pursuant to bilateral agreements between the U.S. and other countries.

Pursuant to Article 9 of the 1970 Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, and Sec. 303(a)(3) of the Convention on Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), a State Party to the 1970 UNESCO Convention, may request that the U.S. Government impose import restrictions on certain categories of archaeological and/or ethnological material the pillage of which, if alleged, jeopardizes the national cultural patrimony.

Import Restrictions Imposed on an Emergency Basis

On March 4, 1999, and in response to the determination that an emergency condition applies with respect to certain Byzantine ecclesiastical and ritual ethnological material from Cyprus, the U.S. Government made the determination that emergency import restrictions be imposed. Accordingly, on April 12, 1999, the former United States Customs Service published Treasury Decision (T.D.) 99–35 in the **Federal Register** (64 FR 17529), which amended 19 CFR 12.104g(b) to indicate the imposition of these emergency import restrictions. In that Treasury Decision, a list designating the types of ethnological materials covered by these restrictions for a five-year period, is set forth.

These emergency import restrictions were later extended by CBP Dec. 03–25 for an additional three-year period. (See 68 FR 51903, August 29, 2003). These emergency import restrictions are scheduled to expire on September 4, 2006.

Import Restrictions Imposed Pursuant to Bilateral Agreement

Pursuant to the provisions of the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention, codified into U.S. law as the Convention on Cultural Property Implementation Act (Pub. L. 97–446, 19 U.S.C. 2601 *et seq.*), the United States entered into a bilateral agreement with Cyprus on July 16, 2002, concerning the imposition of import restrictions on archeological material originating in Cyprus and representing the pre-Classical and Classical periods. On July 19, 2002, the former United States Customs Service published T.D. 02–37 in the **Federal Register** (67 FR 47447), which amended 19 CFR 12.104g(a) to indicate the imposition of these restrictions and included a list designating the types of archaeological material covered by the restrictions. The articles that were subject to emergency restrictions in 1999 were not included in the original list designated pursuant to the bilateral agreement.

Amended Bilateral Agreement

Since the emergency import restrictions on the Byzantine materials is due to expire on September 4, 2006, the Republic of Cyprus requested, through diplomatic channels, that the Byzantine materials that have been protected by the emergency action continue to be protected in the future by amending the existing bilateral agreement.

After reviewing the findings and recommendations of the Cultural Property Advisory Committee, the Assistant Secretary for Educational and Cultural Affairs, United States Department of State, concluded that the cultural heritage of Cyprus continues to be in jeopardy from the pillage of certain Byzantine ecclesiastical and ritual ethnological materials ranging in date from approximately the 4th century A.D. through approximately the 15th century A.D. from Cyprus.

On August 11, 2006, the Republic of Cyprus and the U.S. Government amended the bilateral agreement of July 16, 2002, pursuant to the provisions of 19 U.S.C. 2602 and Article 4(b) of the agreement, by including the list of Byzantine ecclesiastical and ritual ethnological material that were protected pursuant to the emergency

action in the list of articles protected in the bilateral agreement. Please note that this amended bilateral agreement will expire on July 19, 2007, unless extended by the State Parties.

Regulatory Action

Accordingly, CBP is amending 19 CFR 12.104g(b) to remove the above-referenced Byzantine materials from Cyprus from the list of import restrictions imposed by emergency action, and to reference these materials under the listing of cultural property (§ 12.104g(a)) protected pursuant to bilateral agreement.

Lists of Protected Designated Articles

The Designated List of articles that are otherwise protected pursuant to the bilateral agreement on archeological material originating in Cyprus and representing the pre-Classical and Classical periods ranging approximately from the 8th millennium B.C. to 330 A.D. is found in T.D. 02–37.

The Designated List of Byzantine Ecclesiastical and Ritual Ethnological Material from Cyprus which is now encompassed within the bilateral agreement is set forth below.

List of Ecclesiastical and Ritual Ethnological Material From Cyprus Representing the Byzantine Period

Ecclesiastical and ritual ethnological material from Cyprus representing the Byzantine period dating from approximately the 4th century A.D. through the 15th century A.D., includes the categories listed below. The following list is representative only.

I. Metal

A. Bronze

Ceremonial objects include crosses, censers (incense burners), rings, and buckles for ecclesiastical garments. The objects may be decorated with engraved or modeled designs or Greek inscriptions. Crosses, rings and buckles are often set with semi-precious stones.

B. Lead

Lead objects date to the Byzantine period and include ampulla (small bottle-shaped forms) used in religious observance.

C. Silver and Gold

Ceremonial vessels and objects used in ritual and as components of church treasure. Ceremonial objects include censers (incense burners), book covers, liturgical crosses, archbishop's crowns, buckles, and chests. These are often decorated with molded or incised geometric motifs or scenes from the Bible, and encrusted with semi-precious

or precious stones. The gems themselves may be engraved with religious figures or inscriptions. Church treasure may include all of the above, as well as rings, earrings, and necklaces (some decorated with ecclesiastical themes) and other implements (*e.g.*, spoons).

II. Wood

Artifacts made of wood are primarily those intended for ritual or ecclesiastical use during the Byzantine period. These include painted icons, painted wood screens (iconstasis), carved doors, crosses, painted wooded beams from churches or monasteries, thrones, chests and musical instruments. Religious figures (Christ, the Apostles, the Virgin, and others) predominate in the painted and carved figural decoration. Ecclesiastical furniture and architectural elements may also be decorated with geometric or floral designs.

III. Ivory and Bone

Ecclesiastical and ritual objects of ivory and bone boxes, plaques, pendants, candelabra, stamp rings, crosses. Carved and engraved decoration includes religious figures, scenes from the Bible, and floral and geometric designs.

IV. Glass

Ecclesiastical objects such as lamps and ritual vessels.

V. Textiles—Ritual Garments

Ecclesiastical garments and other ritual textiles from the Byzantine period. Robes, vestments and altar clothes are often of a fine fabric and richly embroidered in silver and gold. Embroidered designs include religious motifs and floral and geometric designs.

VI. Stone

A. Wall Mosaics

Dating to the Byzantine period, wall mosaics are found in ecclesiastical buildings. These generally portray images of Christ, Archangels, and the Apostles in scenes of Biblical events. Surrounding panels may contain animal, floral, or geometric designs.

B. Floor Mosaics

Floor mosaics from ecclesiastical contexts. Examples include the mosaics at Nea Paphos, Kourion, Kouklia, Chrysopolitissa Basilica and Campanopetra Basilica. Floor mosaics may have animal, floral, geometric designs, or inscriptions.

VII. Frescoes/Wall Paintings

Wall paintings from the Byzantine period religious structures (churches,

monasteries, chapels, *etc.*) Like the mosaics, wall paintings generally portray images of Christ, Archangels, and the Apostles in scenes of Biblical events. Surrounding paintings may contain animal, floral, or geometric designs.

More information on import restrictions can be obtained from the International Cultural Property Protection Web site (<http://exchanges.state.gov/culprop>).

Inapplicability of Notice and Delayed Effective Date

This amendment involves a foreign affairs function of the United States and is, therefore, being made without notice or public procedure (5 U.S.C. 553(a)(1)). In addition, CBP has determined that such notice or public procedure would be impracticable and contrary to the public interest because the action being taken is essential to avoid interruption of the application of the existing import restrictions (5 U.S.C. 553(b)(B)). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in Executive Order 12866.

Signing Authority

This regulation is being issued in accordance with 19 CFR 0.1(a)(1).

List of Subjects in 19 CFR Part 12

Cultural property, Customs duties and inspection, Imports, Prohibited merchandise.

Amendment to CBP Regulations

■ For the reasons set forth above, part 12 of Title 19 of the Code of Federal Regulations (19 CFR part 12), is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

■ 1. The general authority citation for part 12 and the specific authority citation for § 12.104g continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

* * * * *

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;
* * * * *

■ 2. In § 12.104g, paragraph (a), the entry for Cyprus in the table of list of

agreements imposing import restrictions on described articles of cultural property of State Parties is revised to read as follows:

§ 12.104g Specific items or categories designated by agreements or emergency actions.

(a) * * *

State party	Cultural property	Decision No.
* * * * *	* * * * *	* * * * *
Cyprus	Archaeological Material of pre-Classical and Classical periods ranging approximately from the 8th millennium B.C. to 330 A.D. and ecclesiastical and ritual ethnological material representing the Byzantine period ranging from approximately the 4th century A.D. through approximately the 15th century A.D.	T.D. 02–37, as amended by CBP Dec. 06–22.
* * * * *	* * * * *	* * * * *

* * * * *
■ 3. In § 12.104g, paragraph (b), the table of the list of agreements imposing emergency import restrictions on described articles of cultural property of State Parties is amended by removing the entry for Cyprus, but by retaining the table headings.

Approved: August 25, 2006.

Deborah J. Spero,
Acting Commissioner, Bureau of Customs and Border Protection.

Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 06–7266 Filed 8–30–06; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 1994P–0036] (Formerly 94P–0036)

Nutrition Labeling of Dietary Supplements; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending its nutrition labeling of dietary supplements regulations. This action is being taken to ensure the accuracy of FDA’s regulations.

DATES: This rule is effective August 31, 2006.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS–810), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1784, FAX: 301–

436–2639, or e-mail: Susan.Thompson@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 11, 2003 (68 FR 41434), FDA published a final rule entitled “Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims” (the *trans* fat rule). Among other things, the final rule amended § 101.36(b)(2)(i) (21 CFR 101.36(b)(2)(i)) by incorporating “trans fat” as a dietary ingredient that must be declared in the nutrition label of a dietary supplement when it is present in a dietary supplement in quantitative amounts by weight that exceed the amount that can be declared as zero in nutrition labeling of foods in accordance with § 101.9(c) (21 CFR 101.9(c)). Other than the addition of “trans fat” to the list of dietary ingredients subject to the requirements in § 101.36(b)(2)(i) (21 CFR 101.36(b)(2)(i)), no other changes to that section were proposed or finalized.

However, in making this revision, requirements for dietary ingredients set forth in § 101.36(b)(2)(i) that were not affected by the addition of the term “trans fat” in that section were inadvertently deleted. The text of the requirements that were inadvertently removed from this section was “Calories from saturated fat and polyunsaturated fat, monounsaturated fat, soluble fiber, insoluble fiber, sugar alcohol, and other carbohydrate may be declared, but they shall be declared when a claim is made about them. Any other vitamins or minerals listed in § 101.9(c)(8)(iv) or (c)(9) may be declared, but they shall be declared when they are added to the product for purposes of supplementation, or when a claim is made about them. Any (b)(2)-dietary ingredients that are not present, or that are present in amounts that can be declared as zero in § 101.9(c), shall not be declared (e.g., amounts

corresponding to less than 2 percent of the RDI for vitamins and minerals). Protein shall not be declared on labels of products that, other than ingredients added solely for technological reasons, contain only individual amino acids.” Accordingly, because this regulation is not currently accurate, FDA is publishing this amendment to § 101.36(b)(2)(i) to ensure that it complete and accurate by restoring to the regulation the text of the requirements that were inadvertently deleted as a consequence of the revision introduced by the *trans* fat rule.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

PART 101—FOOD LABELING

■ 1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371; 42 U.S.C. 243, 264, 271.

■ 2. In § 101.36, revise paragraph (b)(2)(i) to read as follows:

§ 101.36 Nutrition labeling of dietary supplements.

* * * * *

(b) * * *
(2) * * *

(i) The (b)(2)-dietary ingredients to be declared, that is, total calories, calories from fat, total fat, saturated fat, *trans* fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium and iron, shall be declared when they are present in a dietary supplement in quantitative amounts by weight that exceed the amount that can be declared as zero in nutrition labeling of foods in accordance with § 101.9(c). Calories from saturated fat and polyunsaturated fat, monounsaturated fat, soluble fiber, insoluble fiber, sugar alcohol, and other carbohydrate may be declared, but they

shall be declared when a claim is made about them. Any other vitamins or minerals listed in § 101.9(c)(8)(iv) or (c)(9) may be declared, but they shall be declared when they are added to the product for purposes of supplementation, or when a claim is made about them. Any (b)(2)-dietary ingredients that are not present, or that are present in amounts that can be declared as zero in § 101.9(c), shall not be declared (e.g., amounts corresponding to less than 2 percent of the RDI for vitamins and minerals). Protein shall not be declared on labels of products that, other than ingredients added solely for technological reasons, contain only individual amino acids.

* * * * *

Dated: August 25, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06-7306 Filed 8-30-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs; Gentamicin Sulfate Intrauterine Solution

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Sparhawk Laboratories, Inc. The ANADA provides for use of a generic gentamicin sulfate solution as an intrauterine infusion for the control of bacterial metritis and as an aid in improving conception in mares.

DATES: This rule is effective August 31, 2006.

FOR FURTHER INFORMATION CONTACT: John K. Harshman, Center for Veterinary Medicine (HFV-104), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-827-0169, e-mail: john.harshman@fda.hhs.gov.

SUPPLEMENTARY INFORMATION: Sparhawk Laboratories, Inc., 12340 Santa Fe Trail Dr., Lenexa, KS 66215, filed ANADA 200-395 for the use of Gentamicin Sulfate Solution for the control of bacterial infections of the uterus (metritis) and as an aid in improving conception in mares with uterine

infections caused by bacteria sensitive to gentamicin. Sparhawk Laboratories, Inc.'s gentamicin sulfate solution is approved as a generic copy of Schering-Plough Animal Health Corp.'s GENTOCIN (gentamicin sulfate) solution veterinary, approved under NADA 46-724. The ANADA is approved as of July 31, 2006, and the regulations in 21 CFR 529.1044a are amended to reflect the approval and a current format. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA-305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801-808.

List of Subjects in 21 CFR Part 529

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 529 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Revise § 529.1044a to read as follows:

§ 529.1044a Gentamicin sulfate intrauterine solution.

(a) *Specifications.* Each milliliter of solution contains 50 or 100 milligrams gentamicin sulfate.

(b) *Sponsors.* See Nos. 000010, 000061, 000856, 057561, 058005, 059130, and 061623 in § 510.600(c) of this chapter.

(c) *Conditions of use in horses—(1) Amount.* Infuse 2 to 2.5 grams per day for 3 to 5 days during estrus.

(2) *Indications for use.* For control of bacterial infections of the uterus (metritis) and as an aid in improving conception in mares with uterine infections caused by bacteria sensitive to gentamicin.

(3) *Limitations.* Do not use in horses intended for human consumption. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: August 11, 2006.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 06-7307 Filed 8-30-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9283]

RIN 1545-BB57

Special Depreciation Allowance

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final regulations relating to the depreciation of property subject to section 168 of the Internal Revenue Code (MACRS property) and the depreciation of computer software subject to section 167. Specifically, these final regulations provide guidance regarding the additional first year depreciation allowance provided by sections 168(k) and 1400L(b) for certain MACRS property and computer software. The regulations reflect changes to the law made by the Job Creation and Worker Assistance Act of 2002, the Jobs and Growth Tax Relief Reconciliation Act of 2003, the Working Families Tax Relief Act of 2004, the American Jobs Creation Act of 2004, and the Gulf Opportunity Zone Act of 2005.

DATES: *Effective Dates:* These regulations are effective August 31, 2006.

Applicability Dates: For dates of applicability, see §§ 1.167(a)-14(e), 1.168(d)-1(d), 1.168(d)-1T(d), 1.168(k)-1(g), 1.169-3(g), and 1.1400L(b)-1(g).

FOR FURTHER INFORMATION CONTACT: Douglas Kim, (202) 622-3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1. On September 8, 2003, the IRS and Treasury Department published temporary regulations (TD 9091) in the **Federal Register** (68 FR 52986) relating to the additional first year depreciation deduction provisions of sections 168(k) and 1400L(b) of the Internal Revenue Code (Code). On the same date, the IRS published a notice of proposed rulemaking (REG-157164-02) cross-referencing the temporary regulations in the **Federal Register** (68 FR 53008). On March 1, 2004, the temporary regulations (TD 9091) were amended by the temporary regulations (TD 9115) published by the IRS and Treasury Department in the **Federal Register** (69 FR 9529) relating to the depreciation of property acquired in a like-kind exchange or as a result of an involuntary conversion, and the notice of proposed rulemaking (REG-157164-02) was amended by the notice of proposed rulemaking (REG-106590-00, REG-138499-02) published by the IRS in the **Federal Register** (69 FR 9560) cross-referencing TD 9115. No public hearing was requested or held. Several comments responding to the notice of proposed rulemaking (REG-157164-02) were received. After consideration of all the comments, the proposed regulations (REG-157164-02) as amended by this Treasury decision are adopted as final, and the corresponding temporary regulations (TD 9091) are removed. The revisions are discussed below. Additionally, minor changes are made to the temporary regulations (TD 9115) to reflect the proper cites of the final regulations.

Section 1400N(d), which was added to the Code by section 101(a) of the Gulf Opportunity Zone Act of 2005, Public Law 109-135 (119 Stat. 2577), generally allows a 50-percent additional first year depreciation deduction (GO Zone additional first year depreciation deduction) for qualified Gulf Opportunity Zone property. Notice 2006-67 (2006-33 I.R.B. 248) provides guidance with respect to the GO Zone additional first year depreciation deduction. Because Notice 2006-67 contains citations to the temporary regulations under section 168(k) (TD 9091), the IRS intends to update Notice 2006-67 to change these citations to this Treasury decision.

Explanation of Provisions

Section 167 allows as a depreciation deduction a reasonable allowance for the exhaustion, wear, and tear of property used in a trade or business or held for the production of income. The

depreciation allowable for tangible, depreciable property placed in service after 1986 generally is determined under section 168 (MACRS property). The depreciation allowable for computer software that is placed in service after August 10, 1993, and is not an amortizable section 197 intangible is determined under section 167(f)(1).

Section 168(k)(1) allows a 30-percent additional first year depreciation deduction for qualified property acquired after September 10, 2001, and, in most cases, placed in service before January 1, 2005. Section 168(k)(4) allows a 50-percent additional first year depreciation deduction for 50-percent bonus depreciation property acquired after May 5, 2003, and, in most cases, placed in service before January 1, 2005. Section 1400L(b) allows a 30-percent additional first year depreciation deduction for qualified New York Liberty Zone property (Liberty Zone property) acquired after September 10, 2001, and placed in service before January 1, 2007 (January 1, 2010, in the case of qualifying nonresidential real property and residential rental property).

The final regulations provide the requirements that must be met for depreciable property to qualify for the additional first year depreciation deduction provided by sections 168(k) and 1400L(b). Further, the final regulations instruct taxpayers how to determine the additional first year depreciation deduction and the amount of depreciation otherwise allowable for eligible depreciable property. Unless specifically stated, references to the temporary regulations are to TD 9091.

Property Eligible for the Additional First Year Depreciation Deduction

The final regulations retain the rules contained in the temporary regulations providing that depreciable property must meet four requirements to be qualified property under section 168(k)(2) (property for which the 30-percent additional first year depreciation deduction is allowable) or 50-percent bonus depreciation property under section 168(k)(4) (property for which the 50-percent additional first year depreciation deduction is allowable). These requirements are: (1) The depreciable property must be of a specified type; (2) the original use of the depreciable property must commence with the taxpayer after September 10, 2001, for qualified property or after May 5, 2003, for 50-percent bonus depreciation property; (3) the depreciable property must be acquired by the taxpayer within a specified time period; and (4) the depreciable property

must be placed in service by a specified date.

Several commentators questioned whether these requirements must be met in the year in which the depreciable property is placed in service by the taxpayer. The statute is clear that additional first year depreciation is allowed in the taxable year in which qualified property or 50 percent bonus depreciation property is placed in service by the taxpayer for use in its trade or business or for production of income. Therefore, only property that meets all of these requirements in the year in which placed in service by the taxpayer for use in its trade or business or for production of income is allowed additional first year depreciation in the year the property is placed in service by the taxpayer for use in its trade or business or for production of income. In response to this comment, the final regulations state more explicitly that all of the requirements must be met in the first taxable year in which the property is subject to depreciation by the taxpayer whether or not depreciation deductions are allowable.

Property of a Specified Type

The final regulations retain the rules contained in the temporary regulations providing that qualified property or 50-percent bonus depreciation property must be one of the following: (1) MACRS property that has a recovery period of 20 years or less; (2) computer software as defined in, and depreciated under, section 167(f)(1); (3) water utility property as defined in section 168(e)(5) and depreciated under section 168; or (4) qualified leasehold improvement property depreciated under section 168.

The final regulations also retain the rules contained in the temporary regulations providing that qualified property or 50-percent bonus depreciation property does not include: (1) Property excluded from the application of section 168 as a result of section 168(f); (2) property that is required to be depreciated under the alternative depreciation system of section 168(g) (ADS); (3) any class of property for which the taxpayer elects not to deduct the 30-percent or 50-percent additional first year depreciation; or (4) qualified New York Liberty Zone leasehold improvement property as defined in section 1400L(c).

Property is required to be depreciated under the ADS if the property is described under section 168(g)(1)(A) through (D) or if other provisions of the Code require depreciation for the property to be determined under the ADS (for example, section 263A(e)(2)(A) or section 280F(b)(1)). A commentator

questioned whether depreciable property held by taxpayers that made the election under section 263A(d)(3) should be excluded from eligibility for the additional first year depreciation deduction. Section 263A(e)(2)(A) provides that if a taxpayer (or a related person) makes an election under section 263A(d)(3) (relating to an election not to apply section 263A to any plant produced in any farming business carried on by the taxpayer), the ADS applies to all property of the taxpayer used predominantly in the farming business and placed in service in any taxable year during which any such election is in effect. Section 168(k) does not exclude property for which the section 263A(d)(3) election was made from the application of section 168(k)(2)(D)(i), which provides that property required to be depreciated under the ADS is not qualified property and 50-percent bonus depreciation property. For this reason, the final regulations do not adopt the suggestion that depreciable property held by taxpayers that made the election under section 263A(d)(3) is eligible for the additional first year depreciation deduction. Another commentator requested clarification as to whether the reference to "property described in section 263A(e)(2)(A)" in § 1.168(k)-1T(b)(2)(ii)(A)(2) includes only property held by a taxpayer that has made an election under section 263A(d)(3). In response to this comment, the final regulations clarify that if the taxpayer (or a related person) has made the election under section 263A(d)(3), the property described in section 263A(e)(2)(A) is not eligible for the additional first year depreciation deduction.

Original Use

The final regulations clarify and make conforming changes to the original use rules in the temporary regulations in several respects. First, a commentator inquired whether the rule providing that the cost of reconditioned or rebuilt property acquired by the taxpayer does not satisfy the original use requirement also applies to self-constructed property. A few commentators inquired whether the 20-percent test for determining whether property is reconditioned or rebuilt applies to self-constructed property. The IRS and Treasury Department intended that these rules apply to the cost of any reconditioned or rebuilt property, whether the taxpayer originally acquired the property or self-constructed the property. Accordingly, the final regulations clarify that the cost of reconditioned or rebuilt property

does not satisfy the original use requirement and that the 20-percent test applies to acquired or self-constructed property.

Second, *Example 2* of § 1.168(k)-1T(b)(3)(v) provides that property held primarily for sale to customers in the ordinary course of a person's business (inventory) does not constitute a use for purposes of the original use requirement. A commentator noted that this rule is not in the operative rules of the temporary regulations. In response to this comment, the final regulations make the rule explicit and provide that if a person initially acquires new property and holds the property as inventory and a taxpayer subsequently acquires the property from the person for use primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. The final regulations also provide that if a taxpayer initially acquires new property and holds the property as inventory and then subsequently withdraws the property from inventory and uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. In both situations, the final regulations provide that the original use of the property by the taxpayer commences on the date on which the taxpayer uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income.

A commentator questioned whether *Example 2* in § 1.168(k)-1T(b)(3)(v) is the appropriate place to resolve the issue of the tax treatment of demonstrator automobiles for depreciation and other purposes when the issue may have a potential broader scope and significance that may continue to arise long after the additional first year depreciation under section 168(k) has ceased to be available. The IRS and Treasury Department believe that this example illustrates only the concept that if property is held by a person as inventory and then sold to a taxpayer for use in the taxpayer's trade or business, the taxpayer is the original user of the property, and, therefore, that this example is in the appropriate place.

Third, the final regulations retain the special rules contained in the temporary regulations for certain sale-leaseback transactions and syndication transactions. A commentator suggested that the title of § 1.168(k)-1T(b)(3)(iii)(B), "Syndication transaction," should be changed in the

final regulations to reflect that this rule, by its terms, can apply to any sale of property within three months after the date on which it is placed in service, regardless of whether that sale constitutes a syndication. The final regulations adopt this suggestion and modify the titles of, and make conforming changes to, the applicable paragraphs. Similar changes also are made to the paragraphs relating to the placed-in-service date requirement.

Fourth, the final regulations modify the provision in the temporary regulations to implement section 403(a) of the Working Families Tax Relief Act of 2004, (Pub. L. 108-311, 118 Stat. 1166) (October 4, 2004) (WFTRA) and section 337 of the American Jobs Creation Act of 2004 (Pub. L. 108-357, 118 Stat. 1418) (October 22, 2004) (AJCA). Section 403(a) of the WFTRA amended section 168(k) by adding the provision in section 168(k)(2)(E)(iii). Section 403(f) of the WFTRA provides that this amendment is effective as if included in the provisions of the Job Creation and Worker Assistance Act of 2002 (Pub. L. 107-147, 116 Stat. 21) (March 9, 2002) (JCWAA). Section 337(a) of the AJCA amended the syndication transaction provision in section 168(k)(2)(E)(iii)(II) by adding at the end the following: "(or, in the case of multiple units of property subject to the same lease, within 3 months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months)." Section 337(b) of the AJCA provides that this amendment is effective for property sold after June 4, 2004.

Fifth, if property placed in service by a person is sold and leased back within three months, and a syndication transaction occurs within three months after the sale-leaseback, a commentator questioned whether the purchaser of the property in the syndication transaction is considered the original user of the property and whether the property is treated as having been placed in service by the purchaser in the syndication transaction. Pursuant to §§ 1.168(k)-1T(b)(3)(iii)(C) and (5)(ii)(C), the purchaser of the property in the syndication transaction is considered the original user of the property and the property is treated as having been placed in service by the purchaser in the syndication transaction. The final regulations retain this rule and provide an example illustrating both the original use and the placed in service aspects of this situation.

Finally, the final regulations retain the rule contained in the temporary regulations providing that if, in the ordinary course of its business, a taxpayer sells fractional interests in qualified property or 50-percent bonus depreciation property to unrelated third parties, each first fractional owner of the property is considered as the original user of its proportionate share of the property. A commentator questioned whether the rule requiring the sale to be to unrelated third parties means that the purchasers must be unrelated to the seller, the purchasers must be unrelated to each other, or both. The IRS and Treasury Department intended that the purchasers be unrelated to the seller. Accordingly, the final regulations clarify this point.

A commentator questioned whether there are circumstances when the placed-in-service year of property is before the taxable year of original use. Pursuant to § 1.46-3(d)(1)(ii), property is considered placed in service in the taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity. Original use begins when new property is placed in service. Consequently, the placed-in-service year of new property cannot be before the taxable year in which original use of the property occurs.

Acquisition of Property

The final regulations modify the acquisition dates in the temporary regulations to reflect section 405 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135, 119 Stat. 2577) (December 21, 2005) (GOZA). Section 405(a)(1) of the GOZA amended section 168(k)(4)(B)(ii) to provide that 50-percent bonus depreciation property is property (I) acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before May 6, 2003, or (II) acquired by the taxpayer pursuant to a written binding contract which was entered into after May 5, 2003, and before January 1, 2005. Section 405(b) provides that this amendment is effective as if included in section 201 of the Jobs and Growth Tax Relief and Reconciliation Act of 2003 (Pub. L. 108-27, 117 Stat. 752) (May 28, 2003).

Binding Contracts

The final regulations also modify in three respects the rules contained in the temporary regulations defining a

binding contract. First, the temporary regulations provide that if a contract provides for a full refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation by the seller, the contract is not considered binding. A commentator suggested that this rule should apply to a breach or cancellation by the buyer, not the seller. However, the IRS and Treasury Department believe that this rule relates to a breach or cancellation by either party. Accordingly, the final regulations provide that if a contract provides for a full refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation, the contract is not considered binding.

Second, with respect to a contract subject to a condition, the temporary regulations provide that a contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding notwithstanding the fact that insubstantial terms remain to be negotiated by the parties to the contract. A commentator questioned whether this rule implies that a contract that imposes significant obligations will not be treated as binding if substantial terms remain to be negotiated. The IRS and Treasury Department believe that this implication was not intended. As a consequence, the final regulations clarify this rule by providing that a contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding notwithstanding the fact that certain terms remain to be negotiated by the parties to the contract.

Third, with respect to a supply agreement, a commentator suggested that the existence of agreed pricing terms should not be relevant in determining whether or not a supply agreement is a binding contract, except to the extent that their absence causes the contract not to be enforceable under local law. The commentator further suggested that if the existence of pricing terms is considered relevant to the result in the example of the operative rule and in some of the examples that illustrate the application of the rule, that requirement should be stated in the operative rule, and if not relevant, the references to pricing terms should be deleted. Pricing terms are not relevant in determining whether a supply agreement is a binding contract for purposes of these regulations. Accordingly, the final regulations adopt the suggestion by eliminating the reference to agreed pricing terms in the example of the operative rule. While the examples that illustrate the application of the rule continue to contain the

agreed price as a fact, the conclusions in these examples depend upon only whether or not the quantity and the design specification of the property to be purchased are specified.

Self-Constructed Property

With respect to self-constructed property, the final regulations clarify the rules in the temporary regulations in several respects. First, with respect to property described in section 168(k)(2)(B) (longer production period property) or section 168(k)(2)(C) (certain aircraft), the final regulations clarify that if a taxpayer enters into a written binding contract after September 10, 2001, and before January 1, 2005, with another person to manufacture, construct, or produce such property and the manufacture, construction, or production begins after December 31, 2004, the taxpayer has acquired the property pursuant to a written binding contract entered into after September 10, 2001, and before January 1, 2005 (for qualified property) or after May 5, 2003, and before January 1, 2005 (for 50-percent bonus depreciation property).

Second, a commentator asked whether the rules in the temporary regulations providing for when construction begins are intended also to apply to manufacture and production because self-constructed property can be manufactured, constructed, or produced for purposes of the additional first year depreciation deduction. The IRS and Treasury Department intended these rules to apply to manufacture, construction, or production. Accordingly, the final regulations make this clarification.

Third, the temporary regulations provide that construction of property begins when physical work of a significant nature begins and the determination of when physical work of a significant nature begins depends on the facts and circumstances. The temporary regulations also provide that physical work of a significant nature will not be considered to begin before the taxpayer incurs or pays more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities). Several commentators questioned whether this 10-percent test is a safe harbor. The preamble to the temporary regulations (68 FR 52987) states that the 10-percent test is a safe harbor. Consequently, the final regulations are clarified to provide that the 10-percent test is a safe harbor. Further, when another party manufactures, constructs, or produces property for the taxpayer, the final regulations clarify that the safe harbor test must be met by the taxpayer. Thus,

under the final regulations, a taxpayer can determine when manufacture, construction, or production of the property begins either (1) by using the 10 percent safe harbor or (2) by using its own facts and circumstances.

Fourth, the final regulations retain the rules contained in the temporary regulations relating to components of self-constructed property. One of these rules is that if the binding contract to acquire a component is entered into, or the manufacture, construction, or production of a component begins, after September 10, 2001, for qualified property, or after May 5, 2003, for 50-percent bonus depreciation property, and before January 1, 2005, but the manufacture, construction, or production of the larger self-constructed property begins after December 31, 2004, the component qualifies for the additional first year depreciation deduction (assuming all other requirements are met) but the larger self-constructed property does not. In the case of a self-constructed component that is to be incorporated into a larger self-constructed property, some commentators noted that the applicability of this rule is limited. Specifically, one commentator stated that if the 10 percent test mentioned in the preceding paragraph is not a safe harbor test, then the only case in which self-constructed components could qualify for the additional first year depreciation deduction is one in which the taxpayer's pre-January 1, 2005, costs are 10 percent or less of the total cost of the larger self-constructed property (but more than 10 percent of the total cost of the component). Another commentator stated that a self-constructed component that is to be incorporated into a larger self-constructed property may not be placed in service before the larger self-constructed property. The IRS and Treasury Department agree that the rule has limited applicability. The rule applies when the larger self-constructed property is property that is manufactured, constructed, or produced by the taxpayer for its own use and that is described in section 168(k)(2)(B) (longer production period property) or section 168(k)(2)(C) (certain aircraft) and, therefore, the property is eligible for the extended placed-in-service date of January 1, 2006.

Disqualified Transactions

The final regulations clarify the disqualified transaction rules in the temporary regulations to reflect section 403(a) of the WFTRA. This section amended section 168(k) by adding section 168(k)(2)(E)(iv), which provides

limitations related to users and related parties (disqualified transactions). Section 168(k)(2)(E)(iv) provides that the term *qualified property* does not include any property if: (I) the user of such property (as of the date on which the property is originally placed in service) or a person that is related (within the meaning of section 267(b) or 707(b)) to such user or to the taxpayer had a written binding contract in effect for the acquisition of the property at any time on or before September 10, 2001; or (II) in the case of property manufactured, constructed, or produced for such user's or person's own use, the manufacture, construction, or production of the property began at any time on or before September 10, 2001. Section 403(f) of the WFTRA provides that this amendment is effective as if included in the provisions of the JCWAA.

Finally, the IRS and Treasury Department decided to add new examples to illustrate the above rules. Further, in *Example 10* of § 1.168(k)-1T(b)(4)(v), a commentator inquired whether the taxpayer (S) is considered to be self-constructing the property, acquiring the property, or both. The IRS and Treasury Department intended to have the taxpayer both self-constructing and acquiring the property. The final regulations make this clarification.

A commentator questioned whether the result in *Example 10* of § 1.168(k)-1T(b)(4)(v) also would apply if before September 11, 2001, a partnership began construction of a power plant for its own use, then after September 10, 2001, and before completion of the plant, there is a technical termination of the partnership under section 708(b)(1)(B), and then subsequently the new partnership incurred additional expenditures to complete the construction of the power plant and placed the power plant in service before January 1, 2005. Assuming the terminated partnership and the new partnership are not related parties, the new partnership is considered to have acquired the uncompleted power plant and completed the construction of the power plant and, thus, the result in *Example 10* of § 1.168(k)-1T(b)(4)(v) will apply to the new partnership in this case. While the additional first year depreciation deduction for Liberty Zone property requires the property to be acquired by purchase, the same result would apply because for purposes of that requirement, § 1.1400L(b)-1T(c)(5)(ii) treats the new partnership as acquiring the property by purchase and the final regulations retain this rule.

Placed-in-Service Date

The final regulations retain the rule contained in the temporary regulations providing, pursuant to section 168(k)(2)(A)(iv) and section 168(k)(4)(B)(iii), that qualified property or 50-percent bonus depreciation property is property that is placed in service by the taxpayer before January 1, 2005. The temporary regulations also provide that property described in section 168(k)(2)(B) (longer production period property) must be placed in service before January 1, 2006. The final regulations modify this extended placed-in-service date requirement in two respects. First, the final regulations reflect that the extended placed-in-service date of before January 1, 2006, also applies to property described in section 168(k)(2)(C) (certain aircraft), which was added to section 168(k) by section 336 of the AJCA. Second, the final regulations reflect that the extended placed-in-service date of before January 1, 2006, is extended for one year to before January 1, 2007, for property to which Announcement 2006-29 (2006-19 IRB 879) applies. Announcement 2006-29 applies to property described in section 168(k)(2)(B) or (C) that is either placed in service by the taxpayer or manufactured by a person in the Gulf Opportunity (GO) Zone, the Rita GO Zone, or the Wilma GO Zone, provided the taxpayer was unable to meet the December 31, 2005, placed-in-service date deadline for such property as a result of Hurricane Katrina, Hurricane Rita, or Hurricane Wilma.

Qualified Leasehold Improvement Property

The final regulations retain the rules contained in the temporary regulations relating to qualified leasehold improvement property. The temporary regulations provide that qualified leasehold improvement property means any improvement, which is section 1250 property, to an interior portion of a building that is nonresidential real property if, among other things, the improvement is made under or pursuant to a lease by the lessee (or any sublessee) of the interior portion, or by the lessor of that interior portion. A commentator questioned whether this rule means an improvement that is permitted or required by a lease. The IRS and Treasury Department believe that the improvement must be made under or pursuant to a lease, regardless of whether the improvement is permitted or required under the lease.

Computation of Additional First Year Depreciation Deduction and Otherwise Allowable Depreciation

The final regulations retain the rules contained in the temporary regulations for determining the amount of the additional first year depreciation deduction and otherwise allowable depreciation deduction. In addition, the final regulations clarify that the additional first year depreciation deduction generally is allowable in the first taxable year in which the qualified property or 50-percent bonus depreciation property is placed in service by the taxpayer for use in its trade or business or for the production of income.

Election Not To Claim Additional First Year Depreciation Deduction

With respect to the election not to claim the additional first year depreciation deduction, the final regulations retain the rules contained in the temporary regulations for making this election and for defining what is a class of property for purposes of the election. For any class of property that is qualified property, a taxpayer may elect out of the 30-percent additional first year depreciation deduction for any class of qualified property. For any class of property that is 50-percent bonus depreciation property, a taxpayer may elect either to deduct the 30-percent, instead of the 50-percent, additional first year depreciation or to deduct no additional first year depreciation. A commentator asked whether a taxpayer with 50-percent bonus depreciation property must make two elections to elect not to deduct any additional first year depreciation. The final regulations clarify that only one election is needed to elect not to deduct both the 30-percent and 50-percent additional first year depreciation for 50-percent bonus depreciation property.

If a taxpayer elects not to deduct any additional first year depreciation for a class of property, another commentator asked whether the depreciation adjustments under section 56 apply to property included in such class for purposes of computing the taxpayer's alternative minimum taxable income. The non-applicability of the depreciation adjustments under section 56 provided by section 168(k)(2)(G) applies only to qualified property or 50-percent bonus depreciation property. If a taxpayer elects not to deduct any additional first year depreciation for a class of property, the property included in such class is not qualified property or 50-percent bonus depreciation property. Accordingly, the final regulations

provide that if a taxpayer elects not to deduct any additional first year depreciation for a class of property, the depreciation adjustments under section 56 apply to that property for purposes of computing the taxpayer's alternative minimum taxable income.

The final regulations also include the procedures provided by section 3.04 of Rev. Proc. 2002-33 (2002-1 C.B. 963) for revoking an election not to deduct the additional first year depreciation for a class of property. These procedures provide that this election is revocable only with the prior written consent of the Commissioner of Internal Revenue and, to seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling. However, the final regulations also provide an automatic 6-month extension from the due date of the taxpayer's Federal tax return (excluding extensions) for the placed-in-service year to revoke the election, provided the taxpayer timely filed its Federal tax return for the placed-in-service year.

Liberty Zone Property

Generally, the requirements for determining the eligibility of property for the additional first year depreciation deduction for Liberty Zone property provided by section 1400L(b) are similar to the requirements for the 30-percent additional first year depreciation deduction for qualified property provided by section 168(k)(1) in the final regulations. The final regulations made several changes to the temporary regulations with respect to the Liberty Zone property, which are discussed below.

The final regulations retain the rule contained in the temporary regulations providing that Liberty Zone property includes the same property that is described as qualified property or 50-percent bonus depreciation property for purposes of section 168(k). In addition, Liberty Zone property includes nonresidential real property or residential rental property to the extent such property rehabilitates real property damaged, or replaces real property destroyed or condemned, as a result of the terrorist attacks of September 11, 2001. Real property is considered to have been destroyed or condemned only if an entire building or structure was destroyed or condemned as a result of the terrorist attacks of September 11, 2001. Property is treated as replacing destroyed or condemned property if, as part of an integrated plan, the property replaces real property that is included in a continuous area that includes real property destroyed or condemned. A commentator noted that the temporary

regulations simply reiterate the statute but do not define the word *continuous*. The IRS and Treasury Department believe that the common meaning of *continuous* applies.

The temporary regulations define *real property* as a building or its structural components, or other tangible real property except: (1) Property described in section 1245(a)(3)(B) (relating to depreciable property used as an integral part of a specified activity or as a specified facility); (2) property described in section 1245(a)(3)(D) (relating to a single purpose agricultural or horticultural structure); and (3) property described in section 1245(a)(3)(E) (relating to storage facility used in connection with the distribution of petroleum or any primary product of petroleum). A commentator suggested that these exclusions to the definition of real property should be deleted in the final regulations. As a result of this definition, nonresidential real property or residential rental property that rehabilitates or replaces any of the excluded properties that were damaged, destroyed, or condemned, is not eligible for the Liberty Zone additional first year depreciation deduction. For this reason, the IRS and Treasury Department agree. Accordingly, the final regulations provide that real property is a building or its structural components, or other tangible real property.

The temporary regulations provide that Liberty Zone property does not include property that is described as qualified property or 50-percent bonus depreciation property for purposes of section 168(k), or property that is described in § 1.168(k)-1T(b)(2)(ii). The property described in § 1.168(k)-1T(b)(2)(ii) is property that is: (1) Described in section 168(f); (2) required to be depreciated under the alternative depreciation system; (3) included in any class of property for which the taxpayer elects out of the additional first year depreciation deduction under section 168(k); or (4) qualified Liberty Zone leasehold improvement property. Instead of providing a cross-reference to § 1.168(k)-1(b)(2)(ii), the final regulations list the property that is described in § 1.168(k)-1(b)(2)(ii) with one modification to the exclusion for property that is included in any class of property for which the taxpayer elects out of the additional first year depreciation deduction under section 168(k). In this regard, a commentator stated that while section 1400L(b)(2)(C)(iv) provides that the election out rules for purposes of section 1400L(b) are to be similar to the election out rules under section 168(k), section 1400L(b)(2)(C)(iv) does not mean

that the same election must be made with respect to both sections 168(k) and 1400L(b). Accordingly, the commentator suggested that a taxpayer be permitted to elect not to apply section 168(k) to its property of a particular class of property to the extent that such property is not located within the Liberty Zone, while still being entitled to the benefits of section 1400L(b) for its property of the same class that is located within the Liberty Zone. The IRS and Treasury Department agree with this suggestion. Accordingly, the final regulations make clear that Liberty Zone property is not property included in any class of property for which the taxpayer elects out of the additional first year depreciation deduction under section 1400L(b).

The final regulations retain the rule contained in the temporary regulations providing that Liberty Zone property is property that is acquired by the taxpayer by purchase after September 10, 2001, but only if no written binding contract for the acquisition of the property was in effect before September 10, 2001. The term *by purchase* is defined in section 179(d) and § 1.179-4(c). The final regulations also retain the rule contained in the temporary regulations providing that the new partnership resulting from a technical termination under section 708(b)(1)(B) or a transferee in section 168(i)(7) transactions is deemed to acquire the depreciable property by purchase. A commentator suggested that the rule should apply only if the old transferor partnership had itself acquired the property by purchase, as the mere existence of a technical termination does not provide sufficient reason to deem the statutory purchase requirement to have been met. The final regulations do not adopt this suggestion. The rule is the result of the rules provided in the temporary regulations regarding the additional first year depreciation deduction under sections 168(k) and 1400L(b) that allow the new partnership resulting from a technical termination to be entitled to the additional first year depreciation deduction for eligible property that was placed in service by the terminated partnership during the taxable year of termination. As a result, the IRS and Treasury Department determined that the rule should not be changed.

The final regulations also retain the rules contained in the temporary regulations for electing not to deduct the Liberty Zone additional first year depreciation deduction for a class of property. In addition, the final regulations for this election include provisions similar to those previously

discussed relating to the alternative minimum tax and the revocation of the election with respect to the election not to deduct the additional first year depreciation deduction under section 168(k).

Special Rules

Similar to the temporary regulations, the final regulations provide special rules for the following situations: (1) Qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service and disposed of in the same taxable year; (2) redetermination of basis of qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (3) recapture of additional first year depreciation for purposes of section 1245 and section 1250; (4) a certified pollution control facility that is qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (5) like-kind exchanges and involuntary conversions of qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (6) a change in use of qualified property, 50-percent bonus depreciation property, or Liberty Zone property; (7) the computation of earnings and profits; (8) the increase in the limitation of the amount of depreciation for passenger automobiles; and (9) the step-up in basis due to a section 754 election. For some of these situations, the final regulations modify or clarify the rules contained in the temporary regulations. In addition, the final regulations provide rules for two new situations: the rehabilitation credit under section 47 and the computation of depreciation for purposes of section 514(a)(3).

Property Placed in Service and Disposed of in the Same Taxable Year

With respect to qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service and disposed of in the same taxable year, the final regulations retain the rules contained in the temporary regulations. In general, the regulations provide that the additional first year depreciation deduction is not allowed. If qualified property or 50-percent bonus depreciation property is placed in service and disposed of by a taxpayer in the same taxable year and then, in a subsequent taxable year, is reacquired and again placed in service by the taxpayer, a commentator inquired whether the additional first year depreciation deduction is allowable in the subsequent taxable year. Because the property is used property in the subsequent taxable year, the additional first year depreciation deduction is not

allowable for the property in the subsequent taxable year. Accordingly, in this situation, the final regulations clarify that the additional first year depreciation deduction is not allowable for the property in the subsequent taxable year.

The temporary regulations provide two exceptions to the general rule. First, the additional first year depreciation deduction is allowable for qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service by a terminated partnership in the same taxable year in which a technical termination of the partnership occurs. In this case, the new partnership, and not the terminated partnership, claims the additional first year depreciation deduction. Second, the additional first year depreciation deduction is allowable for qualified property, 50-percent bonus depreciation property, or Liberty Zone property placed in service by a transferor in the same taxable year in which the property is transferred in a transaction described in section 168(i)(7). In this case, the additional first year depreciation deduction for the transferor's taxable year in which the property is placed in service is allocated between the transferor and the transferee on a monthly basis. The allocation shall be made in accordance with the rules in § 1.168(d)-1(b)(7)(ii) for allocating the depreciation deduction between the transferor and the transferee. If the transferee has a different taxable year than the transferor, a commentator questioned whether the allocation of the additional first year depreciation deduction would be made between the transferor and the transferee in accordance with the above rules. Because the allocation rules in § 1.168(d)-1(b)(7)(ii) cover this situation, the IRS and Treasury Department did not modify the rule in the final regulations.

Redetermination of Basis

The final regulations also retain the rules contained in the temporary regulations with respect to a redetermination of basis of qualified property, 50-percent bonus depreciation property, or Liberty Zone property (for example, due to a contingent purchase price or a discharge of indebtedness). These rules apply to a redetermination of the unadjusted depreciable basis of the property occurring before January 1, 2005 (January 1, 2006, for the extended placed-in-service date property) for qualified property or 50-percent bonus depreciation property, or before January 1, 2007 (January 1, 2010, in the case of nonresidential real property and

residential rental property) for Liberty Zone property. A commentator suggested that the rules should be expanded to include redeterminations of basis occurring on or after these dates. The commentator pointed out that the rule results in additional first year depreciation not being allowable for additional purchase price paid on or after January 1, 2005, with respect to qualified property or 50-percent bonus depreciation property acquired before 2005. The final regulations do not adopt this suggestion. While the current rule may be unfavorable when, for example, a redetermination of basis results in an increase of basis on or after January 1, 2005, for qualified property or 50-percent bonus depreciation property acquired before 2005, the current rule may be favorable when, for example, a redetermination of basis results in a decrease of basis on or after January 1, 2005, with respect to qualified property or 50-percent bonus depreciation property acquired before 2005. Further, the IRS and Treasury Department limited the rules to redeterminations occurring before the dates mentioned above to be consistent with the dates on which property must be placed in service to be eligible for the additional first year depreciation deduction. For this reason, the IRS and Treasury Department determined not to change the rule in the final regulations.

In the case of a redetermination of basis that results in a decrease in basis, a commentator noted that the operative rule provides that the taxpayer includes in the taxpayer's income the excess additional first year depreciation deduction previously claimed for the qualified property, the 50-percent bonus depreciation property, or the Liberty Zone property but the example illustrating the application of this rule allows the taxpayer to reduce current year depreciation deductions by the amount of the excess additional first year depreciation deduction previously claimed for the qualified property, the 50-percent bonus depreciation property, or Liberty Zone property. Because the IRS and Treasury Department recognize that the lump-sum inclusion in income approach provided in the operative rule of the temporary regulation may adversely affect real estate investment trusts and similar entities, the final regulations provide that the excess additional first year depreciation deduction offsets the amount otherwise allowable for depreciation for the taxable year. Even if the amount of the offset exceeds the amount otherwise allowable for depreciation for the taxable year, the taxpayer takes into

account a negative depreciation deduction in computing taxable income.

The final regulations retain the rule contained in the temporary regulations providing that, for purposes of the redetermination of basis rules: (1) an increase in basis occurs in the taxable year an amount is taken into account under section 461; and (2) a decrease in basis occurs in the taxable year an amount is taken into account under section 451. A commentator questioned whether because the event in question is giving rise to a basis adjustment, rather than to an item of income or deduction, it is appropriate for the rule to tie the timing of the adjustment to accounting method rules concerning the timing of income and deductions. The commentator also noted that one apparent effect of applying the accounting method rules is to override the basis reduction rule of section 1017(a) as illustrated in *Example 2* of § 1.168(k)-1T(f)(2)(iv). The IRS and Treasury Department did not intend to change the section 1017(a) rules. While the IRS and Treasury Department continue to believe that the current rule is appropriate, the final regulations have been modified for cases in which the Code, the regulations under the Code, or other published guidance expressly provides an exception to such rule (for example, section 1017(a)). Therefore, *Example 2* of § 1.168(k)-1T(f)(2)(iv) in the final regulations reflects the basis adjustment rules of section 1017(a).

Like-Kind Exchanges and Involuntary Conversions

With respect to MACRS property or computer software acquired in a like-kind exchange under section 1031 or as a result of an involuntary conversion under section 1033, the final regulations change the rules contained in the temporary regulations (TD 9091 as amended by TD 9115) in several respects. First, the final regulations modify the scope of this provision to include property described in section 168(k)(2)(C) (certain aircraft), which was added to section 168(k) by section 336 of the AJCA, and to include property to which Announcement 2006-29 (2006-19 IRB 879) applies if the time of replacement is after September 10, 2001, and before January 1, 2007. As previously noted, Announcement 2006-29 applies to property described in section 168(k)(2)(B) or (C) that is either placed in service by the taxpayer or manufactured by a person in the Gulf Opportunity (GO) Zone, the Rita GO Zone, or the Wilma GO Zone, provided the taxpayer was unable to meet the December 31, 2005, placed-in-service date deadline for such property as a

result of Hurricane Katrina, Hurricane Rita, or Hurricane Wilma. Similar changes also are made to the paragraph relating to the computation of the additional first year depreciation deduction for MACRS property or computer software acquired in a like-kind exchange or as a result of an involuntary conversion.

A commentator inquired whether the rules should be expanded to include exchanged or involuntarily converted property that is subject to former section 168 (the accelerated cost recovery system or ACRS) or that is pre-1981 depreciation property. The current rules apply only to exchanged or involuntarily converted property that is MACRS property in order to conform with § 1.168(i)-6T (relating to depreciation of property acquired in like-kind exchanges or as a result of involuntary conversions). Accordingly, the IRS and Treasury Department believe that this issue is outside the scope of these regulations and should be addressed when the temporary regulations under § 1.168(i)-6T are finalized.

Second, the temporary regulations define the time of replacement as the later of when the acquired MACRS property or acquired computer software is placed in service, or the time of disposition of the exchanged or involuntarily converted property. A commentator expressed concern that in the case of an involuntary conversion under section 1033, the final regulations may confer an unintended benefit in the case of taxpayers who acquired property prior to September 11, 2001, in order to replace property that was ultimately requisitioned or condemned after September 10, 2001, but as to which the threat or imminence of condemnation existed prior to that date. The IRS and Treasury Department acknowledge that the rule confers a benefit under such circumstances, but continue to believe that the rule is appropriate. Additionally, the IRS and Treasury Department decided to provide rules in the final regulations to address how the additional first year depreciation deduction is treated when § 1.168(i)-6T(d)(4) applies. Section 1.168(i)-6T(d)(4) applies when, in an involuntary conversion, a taxpayer acquires and places in service acquired MACRS property before the time of disposition of the involuntarily converted MACRS property. If the time of disposition of the involuntarily converted MACRS property is after December 31, 2004, or, in the case of property described in section 168(k)(2)(B) or (C), after December 31, 2005 (or after December 31, 2006, in the

case of property described in section 168(k)(2)(B) or (C) to which Announcement 2006–29 applies), the final regulations provide that the time of replacement is when the acquired MACRS property is placed in service, provided the threat or imminence of requisition or condemnation of the converted property existed prior to January 1, 2005, or, in the case of property described in section 168(k)(2)(B) or (C), existed before January 1, 2006 (or existed before January 1, 2007, in the case of property described in section 168(k)(2)(B) or (C) to which Announcement 2006–29 applies). In this case, the final regulations also modify the income inclusion rule in § 1.168(i)–6T(d)(4) to allow the additional first year depreciation deduction on the remaining carryover basis of the acquired MACRS property that is qualified property, 50-percent bonus depreciation property, or Liberty Zone property.

Third, the final regulations clarify the rules contained in the temporary regulations relating to the computation of the additional first year depreciation deduction for property described in section 168(k)(2)(B) (longer production period property) and for alternative minimum tax purposes. In both cases, the temporary regulations provide a cross-reference to § 1.168(k)–1T(d) (computation of depreciation deduction for qualified property or 50-percent bonus depreciation property). A commentator suggested that the purpose of the reference to § 1.168(k)–1T(d) should be clarified. The final regulations adopt this suggestion by deleting the cross-reference and providing rules for computing the additional first year depreciation deduction for property described in section 168(k)(2)(B) (longer production period property) and for alternative minimum tax purposes.

Also, a commentator questioned whether the rule that the additional first year depreciation is calculated separately with respect to the carryover basis and the excess basis is appropriate, and suggested that the rule should be simplified by eliminating the requirement of separate calculations. The IRS and Treasury Department believe that the rule is appropriate because it conforms with § 1.168(i)–6T, which requires separate calculations of depreciation for the carryover basis and the excess basis.

Fourth, the final regulations clarify the rules contained in the temporary regulations relating to exchanged or involuntarily converted MACRS property or exchanged or involuntarily

converted computer software that is placed in service and disposed of in an exchange or involuntary conversion in the same taxable year. In this case, the temporary regulations provide that the additional first year depreciation deduction is not allowable for the exchanged or involuntarily converted MACRS property or the exchanged or involuntarily converted computer software if the MACRS property or computer software is placed in service and disposed of in an exchange or involuntary conversion in the same taxable year. A commentator suggested that the final regulations clarify that the reference in the above rule to the MACRS property or computer software that is placed in service and disposed of in the same taxable year is the exchanged or involuntarily converted MACRS property or exchanged or involuntarily converted computer software. The final regulations adopt this suggestion.

Finally, a new example is added and the facts in several of the examples are clarified to reflect that the acquired property must be new property in order to meet the original use requirement and, therefore, qualify for the additional first year depreciation deduction.

Change in Use

The final regulations retain the rules contained in the temporary regulations providing when the use of qualified property, 50-percent bonus depreciation property, or Liberty Zone property changes in the hands of the same taxpayer during the placed-in-service year or a subsequent taxable year. One of these rules provide that if property is acquired by a taxpayer for personal use and, during a subsequent taxable year, is converted by the taxpayer from personal use to business or income-producing use, the additional first year depreciation deduction is allowable for the property in the taxable year the property is converted to business or income-producing use (assuming all the requirements for the additional first year depreciation deduction are met). Another rule provides that if depreciable property is not qualified property, 50-percent bonus depreciation property, or Liberty Zone property in the placed-in-service year, the additional first year depreciation deduction is not allowable for the property even if a change in the use of the property subsequent to the placed-in-service year results in the property being qualified property, 50-percent bonus depreciation property, or Liberty Zone property in the taxable year of the change in use. A commentator questioned whether these two rules are

inconsistent. The commentator further noted that under § 1.167(a)–11(e)(1)(i), property that is ready for use in a personal activity is considered to be placed in service. The IRS and Treasury Department do not believe that the two rules are inconsistent. Property is eligible for the additional first year depreciation deduction if in the first year in which the property is subject to depreciation, the property meets all the requirements to qualify for the additional first year depreciation deduction. In the case of property that changes from personal use to a business or income-producing use, the first year such property is subject to depreciation is the year of conversion to business or income-producing use. But in the case of property that changes from a depreciable use not eligible for the additional first year depreciation deduction to a depreciable use that is eligible for the additional first year depreciation deduction, such property did not meet the requirements to qualify for the additional first year depreciation deduction in the first year in which the property is subject to depreciation.

Earnings and Profits

The final regulations retain the rule contained in the temporary regulations providing that the additional first year depreciation deduction is not allowable for purposes of computing earnings and profits. A commentator suggested that because this provision interprets section 312(k), the regulations under section 312 should include a cross-reference to the regulations under section 168(k). The IRS and Treasury Department agree and, accordingly, the final regulations adopt this suggestion.

280F(a)(1) Limitation

The final regulations also retain the rules contained in the temporary regulations providing the increase in the limitation under section 280F(a)(1) of the amount of depreciation for certain passenger automobiles that are qualified property or 50-percent bonus depreciation property. A commentator had three inquiries about this increase in the limitation under section 280F(a)(1). First, the commentator asked whether the increase in the limitation can be taken as a section 179 expense. The increase in the limitation under section 280F(a)(1) that is provided in the final regulations may be taken as a section 179 expense. Second, the commentator asked whether the increase in the limitation of amount of depreciation for certain passenger automobiles needs to be prorated in a short taxable year. Because the additional first year depreciation

deduction is not prorated for a short taxable year, the increase in the limitation under section 280F(a)(1) that is provided in the final regulations also is not prorated. Third, when calculating depreciation for an asset with less than 100 percent business use, the commentator asked whether the business use percentage is applied to the increase in the limitation of amount of depreciation for certain passenger automobiles. If a taxpayer's business use of the automobile is less than 100 percent, the business use percentage is applied to the automobile's depreciation deduction, including the additional first year depreciation deduction, for the taxable year. The IRS and Treasury Department believe that these issues are outside the scope of these regulations and, accordingly, the final regulations do not address these issues.

Section 754 Election

Finally, the final regulations retain the rules contained in the temporary regulations relating to any increase in basis of qualified property, 50-percent bonus depreciation property, or Liberty Zone property due to a section 754 election. Under these rules, such increase in basis generally is not eligible for the additional first year depreciation deduction. However, if qualified property, 50-percent bonus depreciation property, or Liberty Zone property is placed in service by a partnership in the taxable year the partnership terminates under section 708(b)(1)(B), any increase of basis of the qualified property, 50-percent bonus depreciation property, or Liberty Zone property due to a section 754 election is eligible for the additional first year depreciation deduction. A commentator requested that we expand this terminating partnership rule to any increase in basis due to a section 754 election that arises before or during the placed-in-service year of the property. The IRS and Treasury Department decided not to do so. The rule for a termination of a partnership under section 708(b)(1)(B) was made to be consistent with the special rule allowing the new partnership, instead of the terminated partnership, to claim the additional first year depreciation deduction for property placed in service during the taxable year of termination and contributed by the terminated partnership to a new partnership. The IRS and Treasury Department believe that these rules should not be expanded to cover any other situations.

A commentator also suggested that we clarify the regulation to provide that any increase in basis due to a section 754 election that arises before or during the year in which the qualified property, 50-

percent bonus depreciation property, or Liberty Zone property is placed in service will be taken into account for the additional first year depreciation deduction. The IRS and Treasury Department did not adopt this suggestion in the final regulations. The additional first year depreciation deduction rules provide for the accelerated recovery of a taxpayer's cost of qualified property, 50-percent bonus depreciation property, or Liberty Zone property. Many basis increases resulting from a section 754 election bear no relation whatsoever to the cost of qualified property, 50-percent bonus depreciation property, or Liberty Zone property. For example, if a partnership with a section 754 election in effect made a liquidating distribution of high-basis property to a partner with low basis in his partnership interest, the basis of the partnership's undistributed property would be increased under section 734(b) by an amount equal to the decrease in basis to the distributed property under section 732(b). The amount of the section 734(b) basis increase allocable to qualified property under section 755 would have no correlation to the taxpayer's cost of the property. The IRS and Treasury Department believe that the rules regarding any basis increase due to a section 754 election should remain limited to those provided in the temporary regulations.

Rehabilitation Credit

Several commentators asked whether property that is qualified property, 50-percent bonus depreciation property, or Liberty Zone property qualifies for the rehabilitation credit under section 47. Section 47 allows a rehabilitation credit for qualified rehabilitation expenditures for certain buildings. Section 47(c)(2) defines the term *qualified rehabilitation expenditure* as meaning, in general, any amount properly chargeable to capital account for property for which depreciation is allowable under section 168 and that is nonresidential real property, residential rental property, real property that has a class life of more than 12.5 years, or an addition or improvement thereof. However, a qualified rehabilitation expenditure does not include any expenditure with respect to which the taxpayer does not use the straight line method over a recovery period determined under section 168(c) or (g). Because the additional first year depreciation deduction is not a straight line method, the IRS and Treasury Department have decided to provide in the final regulations that if qualified rehabilitation expenditures (as defined

in section 47(c)(2) and § 1.48-12(c)) are qualified property, 50-percent bonus depreciation property, or Liberty Zone property, the taxpayer may claim the additional first year depreciation deduction for the unadjusted depreciable basis of the qualified rehabilitation expenditures and may claim the rehabilitation credit (provided the requirements of section 47 are met) for the remaining basis of the qualified rehabilitation expenditures (unadjusted depreciable basis less the additional first year depreciation deduction allowed or allowable, whichever is greater) provided the taxpayer depreciates the remaining adjusted depreciable basis of such expenditures using the straight line method over a recovery period determined under section 168(c) or (g). The taxpayer may also claim the rehabilitation credit for the portion of the basis of the qualified rehabilitated building that is attributable to the qualified rehabilitation expenditures if the taxpayer elects not to deduct the additional first year depreciation for the class of property that includes the qualified rehabilitated expenditures.

Depreciation Under Section 514(a)(3)

Finally, a few commentators questioned whether a tax-exempt partner in a partnership that has debt-financed property may take advantage of the additional first year depreciation deduction. In computing under section 512 the unrelated business taxable income for any taxable year, section 514 provides the rules for determining the amount of unrelated business taxable income related to debt-financed property. Under section 514(a)(3), the deductions allowable with respect to each debt-financed property is the sum of the deductions under chapter 1 of the Code that are directly connected with the debt-financed property or the income therefrom, except that if the debt-financed property is depreciable property, the allowance must be computed only by use of the straight-line method. The final regulations provide that the additional first year depreciation deduction is not allowable for purposes of section 514(a)(3).

Changes in Method of Accounting

The IRS and Treasury Department intend to issue administrative guidance providing procedures for automatic consent for taxpayers that wish to seek a change in method of accounting to comply with these final regulations.

Effective Date

In general, the final regulations apply to qualified property or Liberty Zone

property acquired by a taxpayer after September 10, 2001, and for 50-percent bonus depreciation property acquired by a taxpayer after May 5, 2003. Modifications to § 1.168(k)-1(b)(3)(iii)(B) and (5)(ii)(B) relating to syndication and other lease transactions that provide a special rule for multiple units of property subject to the same lease apply to property sold after June 4, 2004.

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 and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking was previously submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Douglas H. Kim, Office of Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority for part 1 continues to read, in part, as follows:

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

■ **Par. 2.** Section 1.48-12 is amended by adding a new sentence at the end of paragraph (a)(2)(i) and adding a new sentence at the end of paragraph (c)(8)(i) to read as follows:

§ 1.48-12 Qualified rehabilitated building; expenditures incurred after December 31, 1981.

- (a) * * *
(2) * * *

(i) * * * The last sentence of paragraph (c)(8)(i) of this section applies to qualified rehabilitation expenditures that are qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to qualified rehabilitation expenditures that are 50 percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003.

* * * * *

(c) * * *

(8) * * *

(i) * * * However, see § 1.168(k)-1(f)(10) if the qualified rehabilitation expenditures are qualified property or 50-percent bonus depreciation property under section 168(k) and see § 1.1400L(b)-1(f)(9) if the qualified rehabilitation expenditures are qualified New York Liberty Zone property under section 1400L(b).

* * * * *

■ **Par. 3.** Section 1.167(a)-14 is amended by revising paragraphs (b)(1), (e)(2), and (e)(3) to read as follows:

§ 1.167(a)-14 Treatment of certain intangible property excluded from section 197.

* * * * *

(b) * * * (1) *In general.* The amount of the deduction for computer software described in section 167(f)(1) and § 1.197-2(c)(4) is determined by amortizing the cost or other basis of the computer software using the straight line method described in § 1.167(b)-1 (except that its salvage value is treated as zero) and an amortization period of 36 months beginning on the first day of the month that the computer software is placed in service. Before determining the amortization deduction allowable under this paragraph (b), the cost or other basis of computer software that is section 179 property, as defined in section 179(d)(1)(A)(ii), must be reduced for any portion of the basis the taxpayer properly elects to treat as an expense under section 179. In addition, the cost or other basis of computer software that is qualified property under section 168(k)(2) or § 1.168(k)-1, 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1, or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1, must be reduced by the amount of the additional first year depreciation deduction allowed or allowable, whichever is greater, under section 168(k) or section 1400L(b) for the computer software. If costs for developing computer software that the taxpayer properly elects to defer under

section 174(b) result in the development of property subject to the allowance for depreciation under section 167, the rules of this paragraph (b) will apply to the unrecovered costs. In addition, this paragraph (b) applies to the cost of separately acquired computer software if the cost to acquire the software is separately stated and the cost is required to be capitalized under section 263(a).

* * * * *

(e) * * *

(2) *Change in method of accounting.* See § 1.197-2(l)(4) for rules relating to changes in method of accounting for property to which § 1.167(a)-14 applies. However, see § 1.168(k)-1(g)(4) or 1.1400L(b)-1(g)(4) for rules relating to changes in method of accounting for computer software to which the third sentence in § 1.167(a)-14(b)(1) applies.

(3) *Qualified property, 50-percent bonus depreciation property, qualified New York Liberty Zone property, or section 179 property.* This section also applies to computer software that is qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to computer software that is 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003. This section also applies to computer software that is section 179 property placed in service by a taxpayer in a taxable year beginning after 2002 and before 2010.

§ 1.167(a)-14T [Removed]

■ **Par. 4.** Section 1.167(a)-14T is removed.

■ **Par. 5.** Section 1.168(d)-1 is amended by revising paragraph (d)(2) to read as follows:

§ 1.168(d)-1 Applicable conventions—half-year and mid-quarter convention.

* * * * *

(d) * * *

(2) *Qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property.* This section also applies to qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003.

* * * * *

■ **Par. 6.** In § 1.168(d)-1T, paragraphs (b)(3)(ii) and (d)(2) are amended as follows:

■ 1. The last sentence in paragraph (b)(3)(ii) is amended by removing the language “§ 1.168(k)–1T(f)(1)” and adding “§ 1.168(k)–1(f)(1)” in its place.

■ 2. The last sentence in paragraph (b)(3)(ii) is amended by removing the language “§ 1.1400L(b)–1T(f)(1)” and adding “§ 1.1400L(b)–1(f)(1)” in its place.

■ 3. Paragraph (d)(2) is revised. The revision reads as follows:

§ 1.168(d)–1T Applicable conventions—half-year and mid-quarter conventions (temporary).

* * * * *

(d) * * *

(2) *Qualified property, 50-percent bonus depreciation property, or qualified New York Liberty Zone property.* For further guidance, see § 1.168(d)–1(d)(2).

* * * * *

■ **Par. 7.** Section 1.168(i)–6T is amended by adding a new sentence at the end of paragraph (d)(4) to read as follows:

§ 1.168(i)–6T Like-kind exchanges and involuntary conversions (temporary).

* * * * *

(d) * * *

(4) * * * However, see § 1.168(k)–1(f)(5)(v) for replacement MACRS property that is qualified property or 50-percent bonus depreciation property and § 1.1400L(b)–1(f)(5) for replacement MACRS property that is qualified New York Liberty Zone property.

* * * * *

■ **Par. 8.** Section 1.168(k)–0T is redesignated as § 1.168(k)–0 and newly designated § 1.168(k)–0 is amended as follows:

■ 1. The word “temporary” is removed from the section heading.

■ 2. The introductory text and the table of contents heading are revised.

■ 3. The entries for § 1.168(k)–1(b)(3)(ii)(A) and (B) are added.

■ 4. The entries for § 1.168(k)–1(b)(3)(iii), (iii)(B), and (iii)(C) are revised.

■ 5. The entry for § 1.168(k)–1(b)(4)(iii)(B) is revised.

■ 6. The entries for § 1.168(k)–1(b)(4)(iii)(B)(1) and (2) are added.

■ 7. The entries for § 1.168(k)–1(b)(5)(ii), (ii)(B), and (ii)(C) are revised.

■ 8. The entry for § 1.168(k)–1(b)(5)(v) is added.

■ 9. The entries for § 1.168(k)–1(e)(6), (7), (7)(i), and (7)(ii) are added.

■ 10. The entries for § 1.168(k)–1(f)(5)(iii)(C) and (D) are added.

■ 11. The entry for § 1.168(k)–1(f)(5)(v) is redesignated as § 1.168(k)–1(f)(5)(vi).

■ 12. The entries for § 1.168(k)–1(f)(5)(v), (v)(A), and (v)(B) are added.

■ 13. The entries for § 1.168(k)–1(f)(10) and (11) are added.

■ 14. The entries for § 1.168(k)–1(g)(5) and (6) are added.

The additions and revisions read as follows:

§ 1.168(k)–0 Table of contents.

This section lists the headings that appear in § 1.168(k)–1.

§ 1.168(k)–1 Additional first year depreciation deduction.

* * * * *

(b) * * *

(3) * * *

(ii) * * *

(A) Personal use to business or income-producing use.

(B) Inventory to business or income-producing use.

(iii) Sale-leaseback, syndication, and certain other transactions.

* * * * *

(B) Syndication transaction and certain other transactions.

(C) Sale-leaseback transaction followed by a syndication transaction and certain other transactions.

* * * * *

(4) * * *

(iii) * * *

(B) When does manufacture, construction, or production begin.

(1) In general.

(2) Safe harbor.

* * * * *

(5) * * *

(ii) Sale-leaseback, syndication, and certain other transactions. * * *

(B) Syndication transaction and certain other transactions.

(C) Sale-leaseback transaction followed by a syndication transaction and certain other transactions.

* * * * *

(v) Example.

* * * * *

(e) * * *

(6) Alternative minimum tax.

(7) Revocation.

(i) In general.

(ii) Automatic 6-month extension.

* * * * *

(f) * * *

(5) * * *

(iii) * * *

(C) Property having a longer production period.

(D) Alternative minimum tax.

* * * * *

(v) Acquired MACRS property or acquired computer software that is acquired and placed in service before disposition of involuntarily converted MACRS property or involuntarily converted computer software.

(A) Time of replacement.

(B) Depreciation of acquired MACRS property or acquired computer software.

* * * * *

(10) Coordination with section 47.

(11) Coordination with section 514(a)(3).

(g) * * *

(5) Revisions to paragraphs (b)(3)(ii)(B) and (b)(5)(ii)(B).

(6) Rehabilitation credit.

■ **Par. 9.** Section 1.168(k)–1T is redesignated as § 1.168(k)–1 and newly designated § 1.168(k)–1 is amended as follows:

■ 1. The word “temporary” is removed from the section heading.

■ 2. Paragraph (a)(2)(iii) is revised.

■ 3. Paragraph (a)(2)(iv) is amended by removing the language “§ 1.168(k)–1T(a)(2)(iii)” and adding “§ 1.168(k)–1(a)(2)(iii)” in its place.

■ 4. Paragraph (b)(1) is revised.

■ 5. Paragraph (b)(2)(i)(A) is amended by removing the language “§ 1.168(k)–1T(a)(2)(ii)” and adding “§ 1.168(k)–1(a)(2)(ii)” in its place.

■ 6. Paragraphs (b)(2)(ii)(A)(2), (b)(3)(i), and (b)(3)(ii) are revised.

■ 7. The heading of paragraph (b)(3)(iii) is revised.

■ 8. Paragraphs (b)(3)(iii)(B) and (C) are revised.

■ 9. The first and second sentences of paragraph (b)(3)(iv) are revised.

■ 10. Paragraph (b)(3)(v) is amended by revising the fourth sentence in *Example 4* and by adding new *Example 5*.

■ 11. Paragraph (b)(4)(i)(B) is revised.

■ 12. The last sentences of paragraphs (b)(4)(ii)(A), (B), and (D) are revised.

■ 13. Paragraph (b)(4)(iii)(A) is amended by adding a new sentence at the end.

■ 14. Paragraphs (b)(4)(iii)(B) and (b)(4)(iv)(A) are revised.

■ 15. Paragraph (b)(4)(v) is amended by revising the third sentence in *Example 10*, by adding a sentence at the end of *Example 11*, and by adding Examples 12, 13, and 14.

■ 16. Paragraph (b)(5)(i) is revised.

■ 17. The heading of paragraph (b)(5)(ii) is revised.

■ 18. Paragraphs (b)(5)(ii)(B) and (C) are revised.

■ 19. Paragraph (b)(5)(v) is added.

■ 20. Paragraph (d)(1)(i) is revised.

■ 21. Paragraph (d)(1)(ii) is amended by removing the language “§ 1.168(k)–1T(a)(2)(iii)” and adding “§ 1.168(k)–1(a)(2)(iii)” in its place.

■ 22. Paragraphs (d)(1)(iii) and (e)(1)(ii)(B) are revised.

■ 23. Paragraphs (e)(6) and (e)(7) are added.

■ 24. Paragraph (f)(1)(i) is amended by adding a new sentence at the end.

■ 25. The introductory text of paragraph (f)(2) is revised.

■ 26. Paragraph (f)(2)(ii) and the introductory text of paragraph (f)(2)(iii) are revised.

■ 27. Paragraph (f)(2)(iv) is amended by revising *Example 2*.

■ 28. Paragraph (f)(5)(i) is revised.

■ 29. Paragraphs (f)(5)(ii)(F) and (f)(5)(ii)(J)(2) are revised.

- 30. Paragraphs (f)(5)(ii)(K) and (L) are added.
- 31. Paragraph (f)(5)(iii)(A) is revised.
- 32. The last sentence of paragraph (f)(5)(iii)(B) is revised.
- 33. Paragraphs (f)(5)(iii)(C) and (D) are added.
- 34. Paragraph (f)(5)(v) is redesignated as paragraph (f)(5)(vi) and newly designated paragraph (f)(5)(vi) is amended by revising paragraph (i) in *Examples 1, 3, 4, and 5*, and by adding new *Example 6*.
- 35. New paragraph (f)(5)(v) is added.
- 36. Paragraphs (f)(10) and (11) are added.
- 37. Paragraph (g)(1) is revised.
- 38. The last sentence in paragraph (g)(3)(ii) is removed.
- 39. Paragraphs (g)(5) and (6) are added.

The additions and revisions read as follows:

§ 1.168(k)-1 Additional first year depreciation deduction.

(a) * * *

(2) * * *

(iii) *Unadjusted depreciable basis* is the basis of property for purposes of section 1011 without regard to any adjustments described in section 1016(a)(2) and (3). This basis reflects the reduction in basis for the percentage of the taxpayer's use of property for the taxable year other than in the taxpayer's trade or business (or for the production of income), for any portion of the basis the taxpayer properly elects to treat as an expense under section 179 or section 179C, and for any adjustments to basis provided by other provisions of the Internal Revenue Code and the regulations thereunder (other than section 1016(a)(2) and (3)) (for example, a reduction in basis by the amount of the disabled access credit pursuant to section 44(d)(7)). For property subject to a lease, see section 167(c)(2).

(b) *Qualified property or 50-percent bonus depreciation property*—(1) *In general.* Qualified property or 50-percent bonus depreciation property is depreciable property that meets all the following requirements in the first taxable year in which the property is subject to depreciation by the taxpayer whether or not depreciation deductions for the property are allowable:

- (i) The requirements in § 1.168(k)-1(b)(2) (description of property);
- (ii) The requirements in § 1.168(k)-1(b)(3) (original use);
- (iii) The requirements in § 1.168(k)-1(b)(4) (acquisition of property); and
- (iv) The requirements in § 1.168(k)-1(b)(5) (placed-in-service date).

(2) * * *

(ii) * * *

(A) * * *

(2) Required to be depreciated under the alternative depreciation system of section 168(g) pursuant to section 168(g)(1)(A) through (D) or other provisions of the Internal Revenue Code (for example, property described in section 263A(e)(2)(A) if the taxpayer (or any related person as defined in section 263A(e)(2)(B)) has made an election under section 263A(d)(3), or property described in section 280F(b)(1)).

* * * * *

(3) * * *

(i) *In general.* For purposes of the 30-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer after September 10, 2001. For purposes of the 50-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(3) if the original use of the property commences with the taxpayer after May 5, 2003. Except as provided in paragraphs (b)(3)(iii) and (iv) of this section, original use means the first use to which the property is put, whether or not that use corresponds to the use of the property by the taxpayer. Thus, additional capital expenditures incurred by a taxpayer to recondition or rebuild property acquired or owned by the taxpayer satisfies the original use requirement. However, the cost of reconditioned or rebuilt property does not satisfy the original use requirement. The question of whether property is reconditioned or rebuilt property is a question of fact. For purposes of this paragraph (b)(3)(i), property that contains used parts will not be treated as reconditioned or rebuilt if the cost of the used parts is not more than 20 percent of the total cost of the property, whether acquired or self-constructed.

(ii) *Conversion to business or income-producing use*—(A) *Personal use to business or income-producing use.* If a taxpayer initially acquires new property for personal use and subsequently uses the property in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is considered the original user of the property. If a person initially acquires new property for personal use and a taxpayer subsequently acquires the property from the person for use in the taxpayer's trade or business or for the taxpayer's production of income, the taxpayer is not considered the original user of the property.

(B) *Inventory to business or income-producing use.* If a taxpayer initially

acquires new property and holds the property primarily for sale to customers in the ordinary course of the taxpayer's business and subsequently withdraws the property from inventory and uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. If a person initially acquires new property and holds the property primarily for sale to customers in the ordinary course of the person's business and a taxpayer subsequently acquires the property from the person for use primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income, the taxpayer is considered the original user of the property. For purposes of this paragraph (b)(3)(ii)(B), the original use of the property by the taxpayer commences on the date on which the taxpayer uses the property primarily in the taxpayer's trade or business or primarily for the taxpayer's production of income.

(iii) *Sale-leaseback, syndication, and certain other transactions.* * * *

(B) *Syndication transaction and certain other transactions.* If new property is originally placed in service by a lessor (including by operation of paragraph (b)(5)(ii)(A) of this section) after September 10, 2001 (for qualified property), or after May 5, 2003 (for 50-percent bonus depreciation property), and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor (or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and the user of the property after the last sale during the three-month period remains the same as when the property was originally placed in service by the lessor, the purchaser of the property in the last sale during the three-month period is considered the original user of the property.

(C) *Sale-leaseback transaction followed by a syndication transaction and certain other transactions.* If a sale-leaseback transaction that satisfies the requirements in paragraph (b)(3)(iii)(A) of this section is followed by a transaction that satisfies the requirements in paragraph (b)(3)(iii)(B) of this section, the original user of the property is determined in accordance with paragraph (b)(3)(iii)(B) of this section.

(iv) *Fractional interests in property.* If, in the ordinary course of its business, a taxpayer sells fractional interests in property to third parties unrelated to the taxpayer, each first fractional owner of the property is considered as the original user of its proportionate share of the property. Furthermore, if the taxpayer uses the property before all of the fractional interests of the property are sold but the property continues to be held primarily for sale by the taxpayer, the original use of any fractional interest sold to a third party unrelated to the taxpayer subsequent to the taxpayer's use of the property begins with the first purchaser of that fractional interest.

* * * (v) * * *

Example 4. * * * On June 1, 2003, G sells to I, an unrelated party to G, the remaining unsold 3/8 fractional interests in the aircraft.

Example 5. On September 1, 2001, JJ, an equipment dealer, buys new tractors that are held by JJ primarily for sale to customers in the ordinary course of its business. On October 15, 2001, JJ withdraws the tractors from inventory and begins to use the tractors primarily for producing rental income. The holding of the tractors by JJ as inventory does not constitute a "use" for purposes of the original use requirement and, therefore, the original use of the tractors commences with JJ on October 15, 2001, for purposes of paragraph (b)(3) of this section. However, the tractors are not eligible for the additional first year depreciation deduction because JJ acquired the tractors before September 11, 2001.

(4) * * * (i) * * *

(B) *50-percent bonus depreciation property.* For purposes of the 50-percent additional first year depreciation deduction, depreciable property will meet the requirements of this paragraph (b)(4) if the property is—

(1) Acquired by the taxpayer after May 5, 2003, and before January 1, 2005, but only if no written binding contract for the acquisition of the property was in effect before May 6, 2003; or

(2) Acquired by the taxpayer pursuant to a written binding contract that was entered into after May 5, 2003, and before January 1, 2005.

(ii) * * *

(A) * * * If the contract provided for a full refund of the purchase price in lieu of any damages allowable by law in the event of breach or cancellation, the contract is not considered binding.

(B) * * * A contract that imposes significant obligations on the taxpayer or a predecessor will be treated as binding notwithstanding the fact that certain terms remain to be negotiated by the parties to the contract.

* * * * *

(D) * * * For example, if the provisions of a supply or similar agreement state the design specifications of the property to be purchased, a purchase order under the agreement for a specific number of assets is treated as a binding contract.

* * * * *

(iii) * * *

(A) * * * If a taxpayer enters into a written binding contract (as defined in paragraph (b)(4)(ii) of this section) after September 10, 2001, and before January 1, 2005, with another person to manufacture, construct, or produce property described in section 168(k)(2)(B) (longer production period property) or section 168(k)(2)(C) (certain aircraft) and the manufacture, construction, or production of this property begins after December 31, 2004, the acquisition rule in paragraph (b)(4)(i)(A)(2) or (b)(4)(i)(B)(2) of this section is met.

(B) *When does manufacture, construction, or production begin—*(1) *In general.* For purposes of paragraph (b)(4)(iii) of this section, manufacture, construction, or production of property begins when physical work of a significant nature begins. Physical work does not include preliminary activities such as planning or designing, securing financing, exploring, or researching. The determination of when physical work of a significant nature begins depends on the facts and circumstances. For example, if a retail motor fuels outlet or other facility is to be constructed on-site, construction begins when physical work of a significant nature commences at the site; that is, when work begins on the excavation for footings, pouring the pads for the outlet, or the driving of foundation pilings into the ground. Preliminary work, such as clearing a site, test drilling to determine soil condition, or excavation to change the contour of the land (as distinguished from excavation for footings) does not constitute the beginning of construction. However, if a retail motor fuels outlet or other facility is to be assembled on-site from modular units manufactured off-site and delivered to the site where the outlet will be used, manufacturing begins when physical work of a significant nature commences at the off-site location.

(2) *Safe harbor.* For purposes of paragraph (b)(4)(iii)(B)(1) of this section, a taxpayer may choose to determine when physical work of a significant nature begins in accordance with this paragraph (b)(4)(iii)(B)(2). Physical work of a significant nature will not be considered to begin before the taxpayer incurs (in the case of an accrual basis

taxpayer) or pays (in the case of a cash basis taxpayer) more than 10 percent of the total cost of the property (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching). When property is manufactured, constructed, or produced for the taxpayer by another person, this safe harbor test must be satisfied by the taxpayer. For example, if a retail motor fuels outlet or other facility is to be constructed for an accrual basis taxpayer by another person for the total cost of \$200,000 (excluding the cost of any land and preliminary activities such as planning or designing, securing financing, exploring, or researching), construction is deemed to begin for purposes of this paragraph (b)(4)(iii)(B)(2) when the taxpayer has incurred more than 10 percent (more than \$20,000) of the total cost of the property. A taxpayer chooses to apply this paragraph (b)(4)(iii)(B)(2) by filing an income tax return for the placed-in-service year of the property that determines when physical work of a significant nature begins consistent with this paragraph (b)(4)(iii)(B)(2).

* * * * *

(iv) *Disqualified transactions—*(A) *In general.* Property does not satisfy the requirements of this paragraph (b)(4) if the user of the property as of the date on which the property was originally placed in service (including by operation of paragraphs (b)(5)(ii), (iii), and (iv) of this section), or a related party to the user or to the taxpayer, acquired, or had a written binding contract (as defined in paragraph (b)(4)(ii) of this section) in effect for the acquisition of the property at any time before September 11, 2001 (for qualified property), or before May 6, 2003 (for 50-percent bonus depreciation property). In addition, property manufactured, constructed, or produced for the use by the user of the property or by a related party to the user or to the taxpayer does not satisfy the requirements of this paragraph (b)(4) if the manufacture, construction, or production of the property for the user or the related party began at any time before September 11, 2001 (for qualified property), or before May 6, 2003 (for 50-percent bonus depreciation property).

* * * * *

(v) * * *

Example 10. * * * Between May 6, 2003, and June 30, 2003, S, a calendar-year taxpayer, began construction, and incurred another \$1,200,000 to complete the construction, of the power plant and, on August 1, 2003, S placed the power plant in service. * * *

Example 11. * * * In addition, the sale-leaseback rules in paragraphs (b)(3)(iii)(A) and (b)(5)(ii)(A) of this section do not apply because the equipment was originally placed in service by T before September 11, 2001.

Example 12. On July 1, 2001, KK began constructing property for its own use. KK placed this property in service on September 15, 2001. On October 15, 2001, KK sells the property to LL, an unrelated party, and leases the property back from LL in a sale-leaseback transaction. Pursuant to paragraph (b)(4)(iv) of this section, the property does not qualify for the additional first year depreciation deduction because the property was constructed for KK, the user of the property, and that construction began prior to September 11, 2001.

Example 13. On June 1, 2004, MM decided to construct property described in section 168(k)(2)(B) for its own use. However, one of the component parts of the property had to be manufactured by another person for MM. On August 15, 2004, MM entered into a written binding contract with NN to acquire this component part of the property for \$100,000. The manufacture of the component part commenced on September 1, 2004, and MM received the completed component part on February 1, 2005. The cost of this component part is 9 percent of the total cost of the property to be constructed by MM. MM began constructing the property described in section 168(k)(2)(B) on January 15, 2005, and placed this property (including all component parts) in service on November 1, 2005. Pursuant to paragraph (b)(4)(iii)(C)(2) of this section, the self-constructed component part of \$100,000 manufactured by NN for MM is eligible for the additional first year depreciation deduction (assuming all other requirements are met) because the manufacturing of the component part began after September 10, 2001, and before January 1, 2005, and the property described in section 168(k)(2)(B), the larger self-constructed property, was placed in service by MM before January 1, 2006. However, pursuant to paragraph (b)(4)(iii)(A) of this section, the cost of the property described in section 168(k)(2)(B) (excluding the cost of the self-constructed component part of \$100,000 manufactured by NN for MM) is not eligible for the additional first year depreciation deduction because construction of the property began after December 31, 2004.

Example 14. On December 1, 2004, OO entered into a written binding contract (as defined in paragraph (b)(4)(ii) of this section) with PP to manufacture an aircraft described in section 168(k)(2)(C) for use in OO's trade or business. PP begins to manufacture the aircraft on February 1, 2005. OO places the aircraft in service on August 1, 2005. Pursuant to paragraph (b)(4)(iii)(A) of this section, the aircraft meets the requirements of paragraph (b)(4)(i)(B)(2) of this section because the aircraft was acquired by OO pursuant to a written binding contract entered into after May 5, 2003, and before January 1, 2005.

(5) *Placed-in-service date*—(i) *In general.* Depreciable property will meet the requirements of this paragraph (b)(5) if the property is placed in service by

the taxpayer for use in its trade or business or for production of income before January 1, 2005, or, in the case of property described in section 168(k)(2)(B) or (C), is placed in service by the taxpayer for use in its trade or business or for production of income before January 1, 2006 (or placed in service by the taxpayer for use in its trade or business or for production of income before January 1, 2007, in the case of property described in section 168(k)(2)(B) or (C) to which section 105 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109–135, 119 Stat. 2577) applies (for further guidance, see Announcement 2006–29 (2006–19 I.R.B. 879) and § 601.601(d)(2)(ii)(b) of this chapter).

(ii) *Sale-leaseback, syndication, and certain other transactions.* * * *

(B) *Syndication transaction and certain other transactions.* If qualified property is originally placed in service after September 10, 2001, or 50-percent bonus depreciation property is originally placed in service after May 5, 2003, by a lessor (including by operation of paragraph (b)(5)(ii)(A) of this section) and is sold by the lessor or any subsequent purchaser within three months after the date the property was originally placed in service by the lessor (or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months), and the user of the property after the last sale during this three-month period remains the same as when the property was originally placed in service by the lessor, the property is treated as originally placed in service by the purchaser of the property in the last sale during the three-month period but not earlier than the date of the last sale.

(C) *Sale-leaseback transaction followed by a syndication transaction and certain other transactions.* If a sale-leaseback transaction that satisfies the requirements in paragraph (b)(5)(ii)(A) of this section is followed by a transaction that satisfies the requirements in paragraph (b)(5)(ii)(B) of this section, the placed-in-service date of the property is determined in accordance with paragraph (b)(5)(ii)(B) of this section.

(v) *Example.* The application of this paragraph (b)(5) is illustrated by the following example:

Example. On September 15, 2004, QQ acquired and placed in service new

equipment. This equipment is not described in section 168(k)(2)(B) or (C). On December 1, 2004, QQ sells the equipment to RR and leases the equipment back from RR in a sale-leaseback transaction. On February 15, 2005, RR sells the equipment to TT subject to the lease with QQ. As of February 15, 2005, QQ is still the user of the equipment. The sale-leaseback transaction of December 1, 2004, between QQ and RR satisfies the requirements of paragraph (b)(5)(ii)(A) of this section. The sale transaction of February 15, 2005, between RR and TT satisfies the requirements of paragraph (b)(5)(ii)(B) of this section. Consequently, pursuant to paragraph (b)(5)(ii)(C) of this section, the equipment is treated as originally placed in service by TT on February 15, 2005. Further, pursuant to paragraph (b)(3)(iii)(C) of this section, TT is considered the original user of the equipment. Accordingly, the equipment is not eligible for the additional first year depreciation deduction.

* * * * *

(d) * * *
(1) * * * (i) *In general.* Except as provided in paragraph (f) of this section, the additional first year depreciation deduction is allowable in the first taxable year in which the qualified property or 50-percent bonus depreciation property is placed in service by the taxpayer for use in its trade or business or for the production of income. Except as provided in paragraph (f)(5) of this section, the allowable additional first year depreciation deduction for qualified property is determined by multiplying the unadjusted depreciable basis (as defined in § 1.168(k)–1(a)(2)(iii)) of the qualified property by 30 percent. Except as provided in paragraph (f)(5) of this section, the allowable additional first year depreciation deduction for 50-percent bonus depreciation property is determined by multiplying the unadjusted depreciable basis (as defined in § 1.168(k)–1(a)(2)(iii)) of the 50-percent bonus depreciation property by 50 percent. Except as provided in paragraph (f)(1) of this section, the 30-percent or 50-percent additional first year depreciation deduction is not affected by a taxable year of less than 12 months. See paragraph (f)(1) of this section for qualified property or 50-percent bonus depreciation property placed in service and disposed of in the same taxable year. See paragraph (f)(5) of this section for qualified property or 50-percent bonus depreciation property acquired in a like-kind exchange or as a result of an involuntary conversion.

* * * * *

(iii) *Alternative minimum tax.* The 30-percent or 50-percent additional first year depreciation deduction is allowed for alternative minimum tax purposes for the taxable year in which the qualified property or the 50-percent

bonus depreciation property is placed in service by the taxpayer. In general, the 30-percent or 50-percent additional first year depreciation deduction for alternative minimum tax purposes is based on the unadjusted depreciable basis of the property for alternative minimum tax purposes. However, see paragraph (f)(5)(iii)(D) of this section for qualified property or 50-percent bonus depreciation property acquired in a like-kind exchange or as a result of an involuntary conversion.

* * * * *

(e) * * *

(1) * * *

(ii) * * *

(B) Not to deduct both the 30-percent and the 50-percent additional first year depreciation. If this election is made, no additional first year depreciation deduction is allowable for the class of property.

* * * * *

(6) *Alternative minimum tax.* If a taxpayer makes an election specified in paragraph (e)(1) of this section for a class of property, the depreciation adjustments under section 56 and the regulations under section 56 apply to the property to which that election applies for purposes of computing the taxpayer's alternative minimum taxable income.

(7) *Revocation of election*—(i) *In general.* Except as provided in paragraph (e)(7)(ii) of this section, an election specified in paragraph (e)(1) of this section, once made, may be revoked only with the written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling.

(ii) *Automatic 6-month extension.* If a taxpayer made an election specified in paragraph (e)(1) of this section for a class of property, an automatic extension of 6 months from the due date of the taxpayer's Federal tax return (excluding extensions) for the placed-in-service year of the class of property is granted to revoke that election, provided the taxpayer timely filed the taxpayer's Federal tax return for the placed-in-service year of the class of property and, within this 6-month extension period, the taxpayer (and all taxpayers whose tax liability would be affected by the election) files an amended Federal tax return for the placed-in-service year of the class of property in a manner that is consistent with the revocation of the election.

(f) * * *

(1) * * *

(i) * * * Also if qualified property or 50-percent bonus depreciation property

is placed in service and disposed of during the same taxable year and then reacquired and again placed in service in a subsequent taxable year, the additional first year depreciation deduction is not allowable for the property in the subsequent taxable year.

* * * * *

(2) *Redetermination of basis.* If the unadjusted depreciable basis (as defined in § 1.168(k)-1(a)(2)(iii)) of qualified property or 50-percent bonus depreciation property is redetermined (for example, due to contingent purchase price or discharge of indebtedness) before January 1, 2005, or, in the case of property described in section 168(k)(2)(B) or (C), is redetermined before January 1, 2006 (or redetermined before January 1, 2007, in the case of property described in section 168(k)(2)(B) or (C) to which section 105 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135, 119 Stat. 2577) applies (for further guidance, see Announcement 2006-29 (2006-19 I.R.B. 879) and § 601.601(d)(2)(ii)(b) of this chapter)), the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property is redetermined as follows:

* * * * *

(ii) *Decrease in basis.* For the taxable year in which a decrease in basis of qualified property or 50-percent bonus depreciation property occurs, the taxpayer shall reduce the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property by the excess additional first year depreciation deduction previously claimed for the qualified property or the 50-percent bonus depreciation property. If, for such taxable year, the excess additional first year depreciation deduction exceeds the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property, the taxpayer shall take into account a negative depreciation deduction in computing taxable income. The excess additional first year depreciation deduction for qualified property is determined by multiplying the amount of the decrease in basis for this property by 30 percent. The excess additional first year depreciation deduction for 50-percent bonus depreciation property is determined by multiplying the amount of the decrease in basis for this property by 50 percent. For purposes of this paragraph (f)(2)(ii), the 30-percent additional first year depreciation deduction applies to the decrease in basis if the underlying property is qualified property and the 50-percent

additional first year depreciation deduction applies to the decrease in basis if the underlying property is 50-percent bonus depreciation property. Also, if the taxpayer establishes by adequate records or other sufficient evidence that the taxpayer claimed less than the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property before the decrease in basis or if the taxpayer claimed more than the additional first year depreciation deduction allowable for the qualified property or the 50-percent bonus depreciation property before the decrease in basis, the excess additional first year depreciation deduction is determined by multiplying the amount of the decrease in basis by the additional first year depreciation deduction percentage actually claimed by the taxpayer for the qualified property or the 50-percent bonus depreciation property, as applicable, before the decrease in basis. To determine the amount to reduce the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property for the excess depreciation previously claimed (other than the additional first year depreciation deduction) resulting from the decrease in basis of the qualified property or the 50-percent bonus depreciation property, the amount of the decrease in basis of the qualified property or the 50-percent bonus depreciation property must be adjusted by the excess additional first year depreciation deduction that reduced the total amount otherwise allowable as a depreciation deduction (as determined under this paragraph) and the remaining decrease in basis of—

(A) Qualified property or 50-percent bonus depreciation property (except for computer software described in paragraph (b)(2)(i)(B) of this section) reduces the amount otherwise allowable as a depreciation deduction over the recovery period of the qualified property or the 50-percent bonus depreciation property, as applicable, remaining as of the beginning of the taxable year in which the decrease in basis occurs, and using the same depreciation method and convention of the qualified property or 50-percent bonus depreciation property, as applicable, that applies in the taxable year in which the decrease in basis occurs. If, for any taxable year, the reduction to the amount otherwise allowable as a depreciation deduction (as determined under this paragraph (f)(2)(ii)(A)) exceeds the total amount otherwise allowable as a depreciation

deduction for all of the taxpayer's depreciable property, the taxpayer shall take into account a negative depreciation deduction in computing taxable income; and

(B) Computer software (as defined in paragraph (b)(2)(i)(B) of this section) that is qualified property or 50-percent bonus depreciation property reduces the amount otherwise allowable as a depreciation deduction over the remainder of the 36-month period (the useful life under section 167(f)(1)) as of the beginning of the first day of the month in which the decrease in basis occurs. If, for any taxable year, the reduction to the amount otherwise allowable as a depreciation deduction (as determined under this paragraph (f)(2)(ii)(B)) exceeds the total amount otherwise allowable as a depreciation deduction for all of the taxpayer's depreciable property, the taxpayer shall take into account a negative depreciation deduction in computing taxable income.

(iii) *Definition.* Except as otherwise expressly provided by the Internal Revenue Code (for example, section 1017(a)), the regulations under the Internal Revenue Code, or other guidance published in the Internal Revenue Bulletin (see § 601.601(d)(2)(ii)(b) of this chapter), for purposes of this paragraph (f)(2):

* * * * *

(iv) * * *

Example 2. (i) On May 15, 2002, DD, a calendar-year taxpayer, purchased and placed in service qualified property that is 5-year property at a cost of \$400,000. To purchase the property, DD borrowed \$250,000 from Bank2. On May 15, 2003, Bank2 forgives \$50,000 of the indebtedness. DD makes the election provided in section 108(b)(5) to apply any portion of the reduction under section 1017 to the basis of the depreciable property of the taxpayer. DD depreciates the 5-year property placed in service in 2002 using the optional depreciation table that corresponds with the general depreciation system, the 200-percent declining balance method, a 5-year recovery period, and the half-year convention.

(ii) For 2002, DD is allowed a 30-percent additional first year depreciation deduction of \$120,000 (the unadjusted depreciable basis of \$400,000 multiplied by .30). In addition, DD's depreciation deduction allowable for 2002 for the remaining adjusted depreciable basis of \$280,000 (the unadjusted depreciable basis of \$400,000 reduced by the additional first year depreciation deduction of \$120,000) is \$56,000 (the remaining adjusted depreciable basis of \$280,000 multiplied by the annual depreciation rate of .20 for recovery year 1).

(iii) For 2003, DD's deduction for the remaining adjusted depreciable basis of \$280,000 is \$89,600 (the remaining adjusted depreciable basis of \$280,000 multiplied by

the annual depreciation rate .32 for recovery year 2). Although Bank2 forgave the indebtedness in 2003, the basis of the property is reduced on January 1, 2004, pursuant to sections 108(b)(5) and 1017(a) under which basis is reduced at the beginning of the taxable year following the taxable year in which the discharge of indebtedness occurs.

(iv) For 2004, DD's deduction for the remaining adjusted depreciable basis of \$280,000 is \$53,760 (the remaining adjusted depreciable basis of \$280,000 multiplied by the annual depreciation rate .192 for recovery year 3). However, pursuant to paragraph (f)(2)(ii) of this section, DD must reduce the amount otherwise allowable as a depreciation deduction for 2004 by the excess depreciation previously claimed for the \$50,000 decrease in basis of the qualified property. Consequently, DD must reduce the amount of depreciation otherwise allowable for 2004 by the excess additional first year depreciation of \$15,000 (the decrease in basis of \$50,000 multiplied by .30). Also, DD must reduce the amount of depreciation otherwise allowable for 2004 by the excess depreciation attributable to the remaining decrease in basis of \$35,000 (the decrease in basis of \$50,000 reduced by the excess additional first year depreciation of \$15,000). The reduction in the amount of depreciation otherwise allowable for 2004 for the remaining decrease in basis of \$35,000 is \$19,999 (the remaining decrease in basis of \$35,000 multiplied by .5714, which is equal to 1/remaining recovery period of 3.5 years at January 1, 2004, multiplied by 2). Accordingly, assuming the qualified property is the only depreciable property owned by DD, for 2004, DD's total depreciation deduction allowable for the qualified property is \$18,761 (\$53,760 minus \$15,000 minus \$19,999).

* * * * *

(5) * * * (i) *Scope.* The rules of this paragraph (f)(5) apply to acquired MACRS property or acquired computer software that is qualified property or 50-percent bonus depreciation property at the time of replacement provided the time of replacement is after September 10, 2001, and before January 1, 2005, or, in the case of acquired MACRS property or acquired computer software that is qualified property, or 50-percent bonus depreciation property, described in section 168(k)(2)(B) or (C), the time of replacement is after September 10, 2001, and before January 1, 2006 (or the time of replacement is after September 10, 2001, and before January 1, 2007, in the case of property described in section 168(k)(2)(B) or (C) to which section 105 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135, 119 Stat. 2577) applies (for further guidance, see Announcement 2006-29 (2006-19 I.R.B. 879) and § 601.601(d)(2)(ii)(b) of this chapter)).

(ii) * * *

(F) Except as provided in paragraph (f)(5)(v) of this section, the *time of replacement* is the later of—

(1) When the acquired MACRS property or acquired computer software is placed in service; or

(2) The time of disposition of the exchanged or involuntarily converted property.

* * * * *

(J) * * *

(2) Any portion of the basis the taxpayer properly elects to treat as an expense under section 179 or section 179C;

* * * * *

(K) *Year of disposition* is the taxable year that includes the time of disposition.

(L) *Year of replacement* is the taxable year that includes the time of replacement.

(iii) * * * (A) *In general.* Assuming all other requirements of section 168(k) and this section are met, the remaining carryover basis for the year of replacement and the remaining excess basis, if any, for the year of replacement for the acquired MACRS property or the acquired computer software, as applicable, are eligible for the additional first year depreciation deduction. The 30-percent additional first year depreciation deduction applies to the remaining carryover basis and the remaining excess basis, if any, of the acquired MACRS property or the acquired computer software if the time of replacement is after September 10, 2001, and before May 6, 2003, or if the taxpayer made the election provided in paragraph (e)(1)(ii)(A) of this section. The 50-percent additional first year depreciation deduction applies to the remaining carryover basis and the remaining excess basis, if any, of the acquired MACRS property or the acquired computer software if the time of replacement is after May 5, 2003, and before January 1, 2005, or, in the case of acquired MACRS property or acquired computer software that is 50-percent bonus depreciation property described in section 168(k)(2)(B) or (C), the time of replacement is after May 5, 2003, and before January 1, 2006 (or the time of replacement is after May 5, 2003, and before January 1, 2007, in the case of 50-percent bonus depreciation property described in section 168(k)(2)(B) or (C) to which section 105 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135, 119 Stat. 2577) applies (for further guidance, see Announcement 2006-29 (2006-19 I.R.B. 879) and § 601.601(d)(2)(ii)(b) of this chapter)). The additional first year depreciation deduction is computed

separately for the remaining carryover basis and the remaining excess basis.

(B) * * * However, the additional first year depreciation deduction is not allowable for the exchanged or involuntarily converted MACRS property or the exchanged or involuntarily converted computer software if the exchanged or involuntarily converted MACRS property or the exchanged or involuntarily converted computer software, as applicable, is placed in service and disposed of in an exchange or involuntary conversion in the same taxable year.

(C) *Property having a longer production period.* For purposes of paragraph (f)(5)(iii)(A) of this section, the total of the remaining carryover basis and the remaining excess basis, if any, of the acquired MACRS property that is qualified property or 50-percent bonus depreciation property described in section 168(k)(2)(B) is limited to the total of the property's remaining carryover basis and remaining excess basis, if any, attributable to the property's manufacture, construction, or production after September 10, 2001 (for qualified property), or May 5, 2003 (for 50-percent bonus depreciation property), and before January 1, 2005.

(D) *Alternative minimum tax.* The 30-percent or 50-percent additional first year depreciation deduction is allowed for alternative minimum tax purposes for the year of replacement of acquired MACRS property or acquired computer software that is qualified property or 50-percent bonus depreciation property. The 30-percent or 50-percent additional first year depreciation deduction for alternative minimum tax purposes is based on the remaining carryover basis and the remaining excess basis, if any, of the acquired MACRS property or the acquired computer software for alternative minimum tax purposes.

* * * * *

(v) *Acquired MACRS property or acquired computer software that is acquired and placed in service before disposition of involuntarily converted MACRS property or involuntarily converted computer software.* If, in an involuntary conversion, a taxpayer acquires and places in service the acquired MACRS property or the acquired computer software before the time of disposition of the involuntarily converted MACRS property or the involuntarily converted computer software and the time of disposition of the involuntarily converted MACRS property or the involuntarily converted computer software is after December 31, 2004, or, in the case of property

described in section 168(k)(2)(B) or (C), after December 31, 2005 (or after December 31, 2006, in the case of property described in section 168(k)(2)(B) or (C) to which section 105 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135, 119 Stat. 2577) applies (for further guidance, see Announcement 2006-29 (2006-19 I.R.B. 879) and § 601.601(d)(2)(ii)(b) of this chapter)), then—

(A) *Time of replacement.* The time of replacement for purposes of this paragraph (f)(5) is when the acquired MACRS property or acquired computer software is placed in service by the taxpayer, provided the threat or imminence of requisition or condemnation of the involuntarily converted MACRS property or involuntarily converted computer software existed before January 1, 2005, or, in the case of property described in section 168(k)(2)(B) or (C), existed before January 1, 2006 (or existed before January 1, 2007, in the case of property described in section 168(k)(2)(B) or (C) to which section 105 of the Gulf Opportunity Zone Act of 2005 (Pub. L. 109-135, 119 Stat. 2577) applies (for further guidance, see Announcement 2006-29 (2006-19 I.R.B. 879) and § 601.601(d)(2)(ii)(b) of this chapter)); and

(B) *Depreciation of acquired MACRS property or acquired computer software.* The taxpayer depreciates the acquired MACRS property or acquired computer software in accordance with paragraph (d) of this section. However, at the time of disposition of the involuntarily converted MACRS property, the taxpayer determines the exchanged basis (as defined in § 1.168(i)-6T(b)(7)) and the excess basis (as defined in § 1.168(i)-6T(b)(8)) of the acquired MACRS property and begins to depreciate the depreciable exchanged basis (as defined in § 1.168(i)-6T(b)(9)) of the acquired MACRS property in accordance with § 1.168(i)-6T(c). The depreciable excess basis (as defined in § 1.168(i)-6T(b)(10)) of the acquired MACRS property continues to be depreciated by the taxpayer in accordance with the first sentence of this paragraph. Further, in the year of disposition of the involuntarily converted MACRS property, the taxpayer must include in taxable income the excess of the depreciation deductions allowable, including the additional first year depreciation deduction allowable, on the unadjusted depreciable basis of the acquired MACRS property over the additional first year depreciation deduction that would have been allowable to the taxpayer on the remaining carryover

basis of the acquired MACRS property at the time of replacement (as defined in paragraph (f)(5)(v)(A) of this section) plus the depreciation deductions that would have been allowable, including the additional first year depreciation deduction allowable, to the taxpayer on the depreciable excess basis of the acquired MACRS property from the date the acquired MACRS property was placed in service by the taxpayer (taking into account the applicable convention) to the time of disposition of the involuntarily converted MACRS property. Similar rules apply to acquired computer software.

(vi) *Examples.* The application of this paragraph (f)(5) is illustrated by the following examples:

Example 1. (i) In December 2002, EE, a calendar-year corporation, acquired for \$200,000 and placed in service Canopy V1, a gas station canopy. Canopy V1 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). EE depreciated Canopy V1 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. EE elected to use the optional depreciation tables to compute the depreciation allowance for Canopy V1. On January 1, 2003, Canopy V1 was destroyed in a fire and was no longer usable in EE's business. On June 1, 2003, in an involuntary conversion, EE acquired and placed in service new Canopy W1 with all of the \$160,000 of insurance proceeds EE received due to the loss of Canopy V1. Canopy W1 is 50-percent bonus depreciation property under section 168(k)(4) and is 5-year property under section 168(e). Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)-6T(k)(2)(i), EE decided to apply § 1.168(i)-6T to the involuntary conversion of Canopy V1 with the replacement of Canopy W1, the acquired MACRS property.

* * * * *

Example 3. (i) In December 2001, FF, a calendar-year corporation, acquired for \$10,000 and placed in service Computer X2. Computer X2 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). FF depreciated Computer X2 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. FF elected to use the optional depreciation tables to compute the depreciation allowance for Computer X2. On January 1, 2002, FF acquired new Computer Y2 by exchanging Computer X2 and \$1,000 cash in a like-kind exchange. Computer Y2 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)-6T(k)(2)(i), FF decided to apply § 1.168(i)-6T to the exchange of Computer X2 for Computer Y2, the acquired MACRS property.

* * * * *

Example 4. (i) In September 2002, GG, a June 30 year-end corporation, acquired for

\$20,000 and placed in service Equipment X3. Equipment X3 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). GG depreciated Equipment X3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. GG elected to use the optional depreciation tables to compute the depreciation allowance for Equipment X3. In December 2002, GG acquired new Equipment Y3 by exchanging Equipment X3 and \$5,000 cash in a like-kind exchange. Equipment Y3 is qualified property under section 168(k)(1) and is 5-year property under section 168(e). Pursuant to paragraph (g)(3)(ii) of this section and § 1.168(i)-6T(k)(2)(i), GG decided to apply § 1.168(i)-6T to the exchange of Equipment X3 for Equipment Y3, the acquired MACRS property.

* * * * *

Example 5. (i) Same facts as in *Example 4*. GG depreciated Equipment Y3 under the general depreciation system of section 168(a) by using the 200-percent declining balance method of depreciation, a 5-year recovery period, and the half-year convention. GG elected to use the optional depreciation tables to compute the depreciation allowance for Equipment Y3. On July 1, 2003, GG acquired new Equipment Z1 by exchanging Equipment Y3 in a like-kind exchange. Equipment Z1 is 50-percent bonus depreciation property under section 168(k)(4) and is 5-year property under section 168(e). Pursuant to paragraph (g)(3)(iii) of this section and § 1.168(i)-6T(k)(2)(i), GG decided to apply § 1.168(i)-6T to the exchange of Equipment Y3 for Equipment Z3, the acquired MACRS property.

* * * * *

Example 6. (i) In April 2004, SS, a calendar year-end corporation, acquired and placed in service Equipment K89. Equipment K89 is 50-percent bonus depreciation property under section 168(k)(4). In November 2004, SS acquired and placed in service used Equipment N78 by exchanging Equipment K89 in a like-kind exchange.

(ii) Pursuant to paragraph (f)(5)(iii)(B) of this section, no additional first year deduction is allowable for Equipment K89 and, pursuant to § 1.168(d)-1T(b)(3)(ii), no regular depreciation deduction is allowable for Equipment K89, for the taxable year ended December 31, 2004.

(iii) Equipment N78 is not qualified property under section 168(k)(1) or 50-percent bonus depreciation property under section 168(k)(4) because the original use requirement of paragraph (b)(3) of this section is not met. Accordingly, no additional first year depreciation deduction is allowable for Equipment N78.

* * * * *

(10) *Coordination with section 47*—(i) *In general.* If qualified rehabilitation expenditures (as defined in section 47(c)(2) and § 1.48-12(c)) incurred by a taxpayer with respect to a qualified rehabilitated building (as defined in section 47(c)(1) and § 1.48-12(b)) are

qualified property or 50-percent bonus depreciation property, the taxpayer may claim the rehabilitation credit provided by section 47(a) (provided the requirements of section 47 are met)—

(A) With respect to the portion of the basis of the qualified rehabilitated building that is attributable to the qualified rehabilitation expenditures if the taxpayer makes the applicable election under paragraph (e)(1)(i) or (e)(1)(ii)(B) of this section not to deduct any additional first year depreciation for the class of property that includes the qualified rehabilitation expenditures; or

(B) With respect to the portion of the remaining rehabilitated basis of the qualified rehabilitated building that is attributable to the qualified rehabilitation expenditures if the taxpayer claims the additional first year depreciation deduction on the unadjusted depreciable basis (as defined in paragraph (a)(2)(iii) of this section but before the reduction in basis for the amount of the rehabilitation credit) of the qualified rehabilitation expenditures and the taxpayer depreciates the remaining adjusted depreciable basis (as defined in paragraph (d)(2)(i) of this section) of such expenditures using straight line cost recovery in accordance with section 47(c)(2)(B)(i) and § 1.48-12(c)(7)(i). For purposes of this paragraph (f)(10)(i)(B), the remaining rehabilitated basis is equal to the unadjusted depreciable basis (as defined in paragraph (a)(2)(iii) of this section but before the reduction in basis for the amount of the rehabilitation credit) of the qualified rehabilitation expenditures that are qualified property or 50-percent bonus depreciation property reduced by the additional first year depreciation allowed or allowable, whichever is greater.

(ii) *Example.* The application of this paragraph (f)(10) is illustrated by the following example.

Example. (i) Between February 8, 2004, and June 4, 2004, UU, a calendar-year taxpayer, incurred qualified rehabilitation expenditures of \$200,000 with respect to a qualified rehabilitated building that is nonresidential real property under section 168(e). These qualified rehabilitation expenditures are 50-percent bonus depreciation property and qualify for the 10-percent rehabilitation credit under section 47(a)(1). UU's basis in the qualified rehabilitated building is zero before incurring the qualified rehabilitation expenditures and UU placed the qualified rehabilitated building in service in July 2004. UU depreciates its nonresidential real property placed in service in 2004 under the general depreciation system of section 168(a) by using the straight line method of depreciation, a 39-year recovery period, and the mid-month convention. UU elected to use

the optional depreciation tables to compute the depreciation allowance for its depreciable property placed in service in 2004. Further, for 2004, UU did not make any election under paragraph (e) of this section.

(ii) Because UU did not make any election under paragraph (e) of this section, UU is allowed a 50-percent additional first year depreciation deduction of \$100,000 for the qualified rehabilitation expenditures for 2004 (the unadjusted depreciable basis of \$200,000 (before reduction in basis for the rehabilitation credit) multiplied by .50). For 2004, UU also is allowed to claim a rehabilitation credit of \$10,000 for the remaining rehabilitated basis of \$100,000 (the unadjusted depreciable basis (before reduction in basis for the rehabilitation credit) of \$200,000 less the additional first year depreciation deduction of \$100,000). Further, UU's depreciation deduction for 2004 for the remaining adjusted depreciable basis of \$90,000 (the unadjusted depreciable basis (before reduction in basis for the rehabilitation credit) of \$200,000 less the additional first year depreciation deduction of \$100,000 less the rehabilitation credit of \$10,000) is \$1,059.30 (the remaining adjusted depreciable basis of \$90,000 multiplied by the depreciation rate of .01177 for recovery year 1, placed in service in month 7).

(11) *Coordination with section 514(a)(3).* The additional first year depreciation deduction is not allowable for purposes of section 514(a)(3).

(g) * * *

(1) *In general.* Except as provided in paragraphs (g)(2), (3), and (5) of this section, this section applies to qualified property under section 168(k)(2) acquired by a taxpayer after September 10, 2001, and to 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003.

* * * * *

(5) *Revision to paragraphs (b)(3)(iii)(B) and (b)(5)(ii)(B) of this section.* The addition of “(or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months)” to paragraphs (b)(3)(iii)(B) and (b)(5)(ii)(B) of this section applies to property sold after June 4, 2004.

(6) *Rehabilitation credit.* If a taxpayer did not claim on a Federal tax return for any taxable year ending on or before September 1, 2006, the rehabilitation credit provided by section 47(a) with respect to the portion of the basis of a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures and the qualified rehabilitation expenditures are qualified property or 50-percent bonus depreciation property, and the taxpayer

did not make the applicable election specified in paragraph (e)(1)(i) or (e)(1)(ii)(B) of this section for the class of property that includes the qualified rehabilitation expenditures, the taxpayer may claim the rehabilitation credit for the remaining rehabilitated basis (as defined in paragraph (f)(10)(i)(B) of this section) of the qualified rehabilitated building that is attributable to the qualified rehabilitation expenditures (assuming all the requirements of section 47 are met) in accordance with paragraph (f)(10)(i)(B) of this section by filing an amended Federal tax return for the taxable year for which the rehabilitation credit is to be claimed. The amended Federal tax return must include the adjustment to the tax liability for the rehabilitation credit and any collateral adjustments to taxable income or to the tax liability (for example, the amount of depreciation allowed or allowable in that taxable year for the qualified rehabilitated building). Such adjustments must also be made on amended Federal tax returns for any affected succeeding taxable years.

■ **Par. 10.** Section 1.169-3 is amended by revising paragraphs (a), (b)(2), and (g) to read as follows:

§ 1.169-3 Amortizable basis.

(a) *In general.* The amortizable basis of a certified pollution control facility for the purpose of computing the amortization deduction under section 169 is the adjusted basis of the facility for purposes of determining gain (see part II (section 1011 and following), subchapter O, chapter 1 of the Internal Revenue Code), in conjunction with paragraphs (b), (c), and (d) of this section. The adjusted basis for purposes of determining gain (computed without regard to paragraphs (b), (c), and (d) of this section) of a facility that performs a function in addition to pollution control, or that is used in connection with more than one plant or other property, or both, is determined under § 1.169-2(a)(3). For rules as to additions and improvements to such a facility, see paragraph (f) of this section. Before computing the amortization deduction allowable under section 169, the adjusted basis for purposes of determining gain for a facility that is placed in service by a taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1, 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1, or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1 must be reduced by the amount of the additional first year

depreciation deduction allowed or allowable, whichever is greater, under section 168(k) or section 1400L(b), as applicable, for the facility.

(b) * * *

(2) If the taxpayer elects to begin the 60-month amortization period with the first month of the taxable year succeeding the taxable year in which the facility is completed or acquired and a depreciation deduction is allowable under section 167 (including an additional first-year depreciation allowance under former section 179; for a facility that is acquired by the taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1 or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1, the additional first year depreciation deduction under section 168(k)(1) or 1400L(b), as applicable; and for a facility that is acquired by the taxpayer after May 5, 2003, and that is 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1, the additional first year depreciation deduction under section 168(k)(4)) with respect to the facility for the taxable year in which it is completed or acquired, the amount determined under paragraph (b)(1) of this section shall be reduced by an amount equal to the amount of the depreciation deduction allowed or allowable, whichever is greater, multiplied by a fraction the numerator of which is the amount determined under paragraph (b)(1) of this section, and the denominator of which is the facility's total cost. The additional first-year allowance for depreciation under former section 179 will be allowable only for the taxable year in which the facility is completed or acquired and only if the taxpayer elects to begin the amortization deduction under section 169 with the taxable year succeeding the taxable year in which such facility is completed or acquired. For a facility that is acquired by a taxpayer after September 10, 2001, and that is qualified property under section 168(k)(2) or § 1.168(k)-1 or qualified New York Liberty Zone property under section 1400L(b) or § 1.1400L(b)-1, see § 1.168(k)-1(f)(4) or § 1.1400L(b)-1(f)(4), as applicable, with respect to when the additional first year depreciation deduction under section 168(k)(1) or 1400L(b) is allowable. For a facility that is acquired by a taxpayer after May 5, 2003, and that is 50-percent bonus depreciation property under section 168(k)(4) or § 1.168(k)-1, see § 1.168(k)-1(f)(4) with respect to when the additional first year depreciation

deduction under section 168(k)(4) is allowable.

* * * * *

(g) *Effective date for qualified property, 50-percent bonus depreciation property, and qualified New York Liberty Zone property.* This section applies to a certified pollution control facility. This section also applies to a certified pollution control facility that is qualified property under section 168(k)(2) or qualified New York Liberty Zone property under section 1400L(b) acquired by a taxpayer after September 10, 2001, and to a certified pollution control facility that is 50-percent bonus depreciation property under section 168(k)(4) acquired by a taxpayer after May 5, 2003.

§ 1.169-3T [Removed]

■ **Par. 11.** Section 1.169-3T is removed.

■ **Par. 12.** Section 1.312-15 is amended by adding a new sentence at the end of paragraph (a)(1) to read as follows:

§ 1.312-15 Effect of depreciation on earnings and profits.

(a) * * * (1) * * * See § 1.168(k)-1(f)(7) with respect to the treatment of the additional first year depreciation deduction allowable under section 168(k) for qualified property or 50-percent bonus depreciation property, and § 1.1400L(b)-1(f)(7) with respect to the treatment of the additional first year depreciation deduction allowable under section 1400L(b) for qualified New York Liberty Zone property, for purposes of computing the earnings and profits of a corporation.

* * * * *

■ **Par. 13.** Section 1.1400L(b)-1T is redesignated as § 1.1400L(b)-1 and newly designated § 1.1400L(b)-1 is amended as follows:

■ 1. The word “(temporary)” is removed from the section heading.

■ 2. Paragraph (b) is amended by removing the language “§ 1.168(k)-1T(a)(2)” and adding “§ 1.168(k)-1(a)(2)” in its place.

■ 3. Paragraph (b)(4) is revised.

■ 4. Paragraph (c)(1) is revised.

■ 5. Paragraph (c)(2)(i)(A) is amended by removing the language “§ 1.168(k)-1T(b)(2)(i)” and adding “§ 1.168(k)-1(b)(2)(i)” in its place.

■ 6. Paragraph (c)(2)(ii) is revised.

■ 7. Paragraph (c)(4) is amended by removing the language “§ 1.168(k)-1T(b)(3)” and adding “§ 1.168(k)-1(b)(3)” in its place.

■ 8. Paragraph (c)(5)(i) is amended by removing the language “§ 1.168(k)-1T(b)(4)(ii)” and adding “§ 1.168(k)-1(b)(4)(ii) in its place, removing the language “§ 1.168(k)-1T(b)(4)(iii)” and

adding “§ 1.168(k)-1(b)(4)(iii) in its place, and removing the language “§ 1.168(k)-1T(b)(4)(iv)” and adding “§ 1.168(k)-1(b)(4)(iv)” in its place.

■ 9. Paragraph (c)(5)(ii) is amended by removing the language “§ 1.168(k)-1T(f)(1)(ii)” and adding “§ 1.168(k)-1(f)(1)(ii)” in its place, and removing the language “§ 1.168(k)-1T(f)(1)(iii)” and adding “§ 1.168(k)-1(f)(1)(iii)” in its place.

■ 10. Paragraph (c)(6) is amended by removing the language “§ 1.168(k)-1T(b)(5)(ii)” and adding “§ 1.168(k)-1(b)(5)(ii)” in its place, removing the language “§ 1.168(k)-1T(b)(5)(iii)” and adding “§ 1.168(k)-1(b)(5)(iii)” in its place, and removing the language “§ 1.168(k)-1T(b)(5)(iv)” and adding “§ 1.168(k)-1(b)(5)(iv)” in its place.

■ 11. Paragraph (d) is amended by removing the language “§ 1.168(k)-1T(d)(1)(i)” and adding “§ 1.168(k)-1(d)(1)(i)” in its place.

■ 12. Paragraphs (e)(6) and (e)(7) are added.

■ 13. Paragraph (f)(1) is amended by removing the language “§ 1.168(k)-1T(f)(1)” and adding “§ 1.168(k)-1(f)(1)” in its place.

■ 14. Paragraph (f)(2) is amended by removing the language “§ 1.168(k)-1T(a)(2)(iii)” and adding “§ 1.168(k)-1(a)(2)(iii)” in its place, and removing the language “§ 1.168(k)-1T(f)(2)” and adding “§ 1.168(k)-1(f)(2)” in its place.

■ 15. Paragraph (f)(3) is amended by removing the language “§ 1.168(k)-1T(f)(3)” and adding “§ 1.168(k)-1(f)(3)” in its place.

■ 16. Paragraph (f)(4) is amended by removing the language “§ 1.168(k)-1T(f)(4)” and adding “§ 1.168(k)-1(f)(4)” in its place.

■ 17. Paragraph (f)(5) is amended by removing the language “§ 1.168(k)-1T(f)(5)(ii)(A)” and adding “§ 1.168(k)-1(f)(5)(ii)(A)” in its place, removing the language “§ 1.168(k)-1T(f)(5)(ii)(C)” and adding “§ 1.168(k)-1(f)(5)(ii)(C)” in its place, and removing the language “§ 1.168(k)-1T(f)(5)” and adding “§ 1.168(k)-1(f)(5)” in its place.

■ 18. Paragraph (f)(6) is amended by removing the language “§ 1.168(k)-1T(f)(6)” and adding “§ 1.168(k)-1(f)(6)” in its place.

■ 19. Paragraph (f)(7) is amended by removing the language “§ 1.168(k)-1T(f)(7)” and adding “§ 1.168(k)-1(f)(7)” in its place.

■ 20. Paragraph (f)(8) is amended by removing the language “§ 1.168(k)-1T(f)(9)” and adding “§ 1.168(k)-1(f)(9)” in its place.

■ 21. Paragraphs (f)(9) and (10) are added.

■ 22. Paragraph (g)(1) is revised.

■ 23. Paragraphs (g)(4)(iii), (g)(5), and (g)(6) are added.

The additions and revisions read as follows:

§ 1.1400L(b)-1 Additional first year depreciation deduction for qualified New York Liberty Zone property.

* * * * *

(b) * * *

(4) *Real property* is a building or its structural components, or other tangible real property.

(c) *Qualified New York Liberty Zone property*—(1) *In general.* Qualified New York Liberty Zone property is depreciable property that meets all the following requirements in the first taxable year in which the property is subject to depreciation by the taxpayer whether or not depreciation deductions for the property are allowable—

(i) The requirements in § 1.1400L(b)-1(c)(2) (description of property);

(ii) The requirements in § 1.1400L(b)-1(c)(3) (substantial use);

(iii) The requirements in § 1.1400L(b)-1(c)(4) (original use);

(iv) The requirements in § 1.1400L(b)-1(c)(5) (acquisition of property by purchase); and

(v) The requirements in § 1.1400L(b)-1(c)(6) (placed-in-service date).

(2) * * *

(ii) *Property not eligible for additional first year depreciation deduction.*

Depreciable property will not meet the requirements of this paragraph (c)(2) if—

(A) Section 168(k) or § 1.168(k)-1 applies to the property;

(B) The property is described in section 168(f);

(C) The property is required to be depreciated under the alternative depreciation system of section 168(g) pursuant to section 168(g)(1)(A) through (D) or other provisions of the Internal Revenue Code (for example, property described in section 263A(e)(2)(A) if the taxpayer (or any related person) has made an election under section 263A(d)(3), or property described in section 280F(b)(1));

(D) The property is included in any class of property for which the taxpayer elects not to deduct the additional first year depreciation under paragraph (e) of this section; or

(E) The property is qualified New York Liberty Zone leasehold improvement property as described in section 1400L(c)(2).

* * * * *

(e) * * *

(6) *Alternative minimum tax.* If a taxpayer makes an election under this paragraph (e) for a class of property, the depreciation adjustments under section

56 and the regulations under section 56 apply to the property to which the election applies for purposes of computing the taxpayer's alternative minimum taxable income.

(7) *Revocation of election*—(i) *In general.* Except as provided in paragraph (e)(7)(ii) of this section, an election under this paragraph (e), once made, may be revoked only with the written consent of the Commissioner of Internal Revenue. To seek the Commissioner's consent, the taxpayer must submit a request for a letter ruling.

(ii) *Automatic 6-month extension.* If a taxpayer made an election under this paragraph (e) for a class of property, an automatic extension of 6 months from the due date of the taxpayer's Federal tax return (excluding extensions) for the placed-in-service year of the class of property is granted to revoke that election, provided the taxpayer timely filed the taxpayer's Federal tax return for the placed-in-service year of the class of property and, within this 6-month extension period, the taxpayer (and all taxpayers whose tax liability would be affected by the election) files an amended Federal tax return for the placed-in-service year of the class of property in a manner that is consistent with the revocation of the election.

* * * * *

(f) * * *

(9) *Coordination with section 47.* Rules similar to those provided in § 1.168(k)-1(f)(10) apply for purposes of this paragraph (f)(9).

(10) *Coordination with section 514(a)(3).* Rules similar to those provided in § 1.168(k)-1(f)(11) apply for purposes of this paragraph (f)(10).

(g) * * *

(1) *In general.* Except as provided in paragraphs (g)(2), (3), and (5) of this section, this section applies to qualified New York Liberty Zone property acquired by a taxpayer after September 10, 2001.

* * * * *

(4) * * *

(iii) *Revisions made in paragraphs (b)(4) and (c)(2)(ii) of this section.* If a taxpayer did not claim on a Federal tax return for a taxable year ending on or after September 11, 2001, and on or before September 1, 2006, any additional first year depreciation deduction for qualified New York Liberty Zone property because of the application of § 1.1400L(b)-1T(b)(4) or because the taxpayer made an election under § 1.168(k)-1T(e)(1) for a class of property that included such qualified New York Liberty Zone property, the taxpayer may claim the additional first year depreciation deduction for such

qualified New York Liberty Zone property under this section in accordance with the applicable administrative procedures issued under § 1.446-1(e)(3)(ii) for obtaining the Commissioner's consent to a change in method of accounting. Section 481(a) applies to a request to claim the additional first year depreciation deduction for such qualified New York Liberty Zone property under this paragraph (g)(4)(iii).

(5) *Revision to paragraphs (b)(4) and (b)(6)*. The addition of "(or, in the case of multiple units of property subject to the same lease, within three months after the date the final unit is placed in service, so long as the period between the time the first unit is placed in service and the time the last unit is placed in service does not exceed 12 months)" to § 1.168(k)-1(b)(3)(iii)(B) and § 1.168(k)-1(b)(5)(ii)(B) applies to property sold after June 4, 2004, for purposes of paragraphs (b)(4) and (b)(6) of this section.

(6) *Rehabilitation credit*. If a taxpayer did not claim on a Federal tax return for a taxable year ending on or before September 1, 2006, the rehabilitation credit provided by section 47(a) with respect to the portion of the basis of a qualified rehabilitated building that is attributable to qualified rehabilitation expenditures and the qualified rehabilitation expenditures are qualified New York Liberty Zone property, and the taxpayer did not make the election specified in paragraph (e)(1) of this section for the class of property that includes the qualified rehabilitation expenditures, the taxpayer may claim the rehabilitation credit for the remaining rehabilitated basis (as defined in § 1.168(k)-1(f)(10)(i)(B)) of the qualified rehabilitated building that is attributable to the qualified rehabilitation expenditures (assuming all the requirements of section 47 are met) in accordance with paragraph (f)(9) of this section by filing an amended Federal tax return for the taxable year for which the rehabilitation credit is to be claimed. The amended Federal tax return must include the adjustment to the tax liability for the rehabilitation credit and any collateral adjustments to taxable income or to the tax liability (for example, the amount of depreciation allowed or allowable in that taxable year for the qualified rehabilitated building). Such adjustments must also be made on

amended Federal tax returns for any affected succeeding taxable years.

Steven T. Miller,

Acting Deputy Commissioner for Services and Enforcement.

Approved: August 25, 2006.

Eric Solomon,

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

[FR Doc. 06-7333 Filed 8-28-06; 4:28 pm]

BILLING CODE 4830-01-P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 503

[BOP-1136-F]

RIN 1120-AB36

Bureau of Prisons Central Office, Regional Offices, Institutions, and Staff Training Centers: Removal of Addresses From Rules

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons (Bureau) finalizes the removal of rules listing the addresses of Bureau facilities in each of its regions. We have replaced these rules with a short description of the Bureau's structure, the address of the Bureau's Central Office, and a reference to the Bureau's internet address containing current and frequently updated contact information on Bureau facilities and Regional Offices. This change enables the Bureau to more quickly and accurately provide updated contact information to members of the public, in light of frequently changing circumstances.

DATES: This rule is effective October 2, 2006.

FOR FURTHER INFORMATION CONTACT: Sarah Qureshi, Office of General Counsel, Bureau of Prisons, phone (202) 307-2105.

SUPPLEMENTARY INFORMATION: In this document, the Bureau of Prisons (Bureau) finalizes the removal of rules listing the addresses of Bureau facilities in each of its regions. We have replaced these rules with a short description of the Bureau's structure, the address of the Bureau's Central Office, and a reference to the Bureau's Web site containing current and frequently updated contact information on Bureau facilities and Regional Offices.

This rule was published as an interim final rule on November 4, 2005 (70 FR 67090). No comments were received

during the comment period. We therefore finalized the interim final rule without change.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)) allows exceptions to notice-and-comment rulemaking "when the agency for good cause finds * * * that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Further, § 553(d) provides an exception to the usual requirement of a delayed effective date when an agency finds "good cause" that the rule be made immediately effective.

This rulemaking is exempt from normal notice-and-comment procedures because advance notice and public comment in this instance is unnecessary. This is an administrative rule insignificant in impact and inconsequential to the public. The rule merely eliminates a long list of non-current addresses and replaces them with a reference to a publicly accessible and more accurate source. This rulemaking makes no change to any rights or responsibilities of the agency or any regulated entities. For the same reasons, the Bureau finds that "good cause" exists to make this rule effective upon publication. Nevertheless, the Bureau did invite public comment on this interim rule, and no comments were received.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, under Executive Order 13132, we determine that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation and by approving it certifies that it will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional

management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons. This rule will enable the Bureau to move quickly and accurately provide updated contact information to members of the public and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of \$100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 503

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under rulemaking authority vested in the Attorney General in 5 U.S.C 301; 28 U.S.C. 509, 510 and delegated to the Director, Bureau of Prisons in 28 CFR 0.96, we finalize the interim rule amending 28 CFR chapter V, published on November 4, 2005 (70 FR 67090), without change.

[FR Doc. 06-7365 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-05-P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218, 241, and 290

RIN 1010-AD22

Service of Official Correspondence

AGENCY: Minerals Management Service, Interior.

ACTION: Final rule.

SUMMARY: This rule will establish updated procedures for businesses to use when supplying the Minerals Management Service (MMS) with their control information. Because the existing rule contains obsolete procedures, MMS is not receiving updated contact information that it needs to be able to send important correspondence to companies.

DATES: *Effective Date:* November 29, 2006.

FOR FURTHER INFORMATION CONTACT:

Sharron L. Gebhardt, Lead Regulatory Specialist, MRM, MMS, P.O. Box 25165, MS 302B2, Denver, Colorado 80225; telephone (303) 231-3211; FAX (303) 231-3781; e-mail

sharron.gebhardt@mms.gov. The principal authors of this rule are Linda Lautigar and Lorraine Corona, Department of the Interior, MMS, MRM.

SUPPLEMENTARY INFORMATION:

I. Explanation of Rule Amendments

The MMS is amending existing regulations at 30 CFR parts 218, 241, and 290:

- To reflect current program procedures, such as appeal procedure information;
- To remove references to Forms MMS-4025, Oil and Gas Payor Information Form, and MMS-4030, Payor Information Form—Solid Minerals; and
- To revise nomenclature, such as replacing references to “Royalty Management Program” with “Minerals Revenue Management” or its abbreviation, MRM.

This rule will make the following changes:

- The titles of subchapter A and part 218 are revised.
- In part 218, subpart H—Service of Official Correspondence is added. In subpart B, section 290.111 is removed. (It is replaced by the new 218, subpart H—Service of Official Correspondence.) Subpart H revises addressee of record reporting requirements (currently found at 30 CFR 290.111) and requires companies to submit information designating a specific addressee of record for service of official correspondence on Form MMS-4444, Addressee of Record Designation for Service of Official Correspondence, rather than on forms no longer used. During the reengineering effort, MRM eliminated Forms MMS-4025 and MMS-4030, each of which contained addressee of record information, along with information no longer required. However, MRM still requires the addressee of record information, which is now submitted on Form MMS-4444

available at the MMS Web site <http://www.mrm.mms.gov/ReportingServices/RepServhome.htm>. This section also clarifies to whom the Form MMS-4444 is mailed.

- In part 241—Penalties, subpart B—Penalties for Federal and Indian Oil and Gas Leases, §§ 241.51 and 241.61 are revised in their entirety to conform with the addressee of record changes in parts 218 and 290.

In part 290—Appeal Procedures:

- The title of subpart B is changed from “Appeals of Royalty Management Program and Delegated State Orders” to “Minerals Revenue Management Appeal Procedures;” and

- Subpart B is amended to reflect current nomenclature and business practices.

Generally, the amendments to this rule are clear and self-explanatory and do not require additional information. However, we believe additional clarification is helpful regarding the request for contact information.

When MMS reengineered the financial system of the MRM program, one piece of the reengineering effort eliminated Forms MMS-4025 and MMS-4030, each of which contained addressee of record information. This rulemaking revises the previous addressee of record reporting requirements and removes current references to Forms MMS-4025 and MMS-4030. To collect the identifying information of “changes of address” for the addressee of record, MMS will use Form MMS-4444.

II. Procedural Matters

1. Public Comment Policy

Under the Administrative Procedure Act, 5 U.S.C. 553(b)(B), publication of a proposed rule and an opportunity for public comment are required before an agency promulgates a rule, except when the agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. This rule is purely clerical in nature. It simply updates procedures for providing contact and address information to MMS for service of official correspondence, revises existing MMS procedures to conform with those changes, eliminates references to forms that are no longer used, and revises nomenclature to reflect current organization names. Therefore, MMS has determined that notice and public comment are unnecessary.

2. Regulatory Planning and Review, Executive Order 12866

In accordance with the criteria in Executive Order 12866, this rule is not

a significant regulatory action. The Office of Management and Budget (OMB) makes the final determination under Executive Order 12866.

a. This rule does not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis is not required. This rule is a simple technical amendment requiring contact information necessary in the normal course of business. It does not have an annual economic effect of \$100 million or adversely affect an economic sector, productivity, jobs, the environment, or other units of government; and as such, a cost-benefit and economic analysis are not required. This rule provides a straightforward method to provide necessary contact information which is used in the normal course of usual and customary business practices.

b. This rule does not create inconsistencies with other agencies' actions. No other agency collects this particular contact information.

c. This rule does not materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. This rule is a technical amendment that only requires the submission of business contact information and has no further implications.

d. This rule does not raise novel legal or policy issues.

3. Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Your comments are important. The Small Business and Agricultural Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

4. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business

Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of \$100 million or more.

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

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

5. Unfunded Mandates Reform Act

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

a. This rule does not "significantly or uniquely" affect small governments. Therefore, a Small Government Agency Plan is not required.

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

6. Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings), Executive Order 12630

In accordance with Executive Order 12630, this rule does not have significant takings implications. A takings implication assessment is not required.

7. Federalism, Executive Order 13132

In accordance with Executive Order 13132, this rule does not have federalism implications. A federalism summary impact statement is not required. It will not substantially and directly affect the relationship between Federal and State governments. The management of Federal leases is the responsibility of the Secretary of the Department of the Interior. Royalties collected from Federal leases are shared with state governments on a percentage basis as prescribed by law. This rule does not alter any lease management or royalty-sharing provisions. This rule does not impose costs on states or localities.

8. Civil Justice Reform, Executive Order 12988

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order.

9. Paperwork Reduction Act of 1995

This rulemaking:

- Does not contain a current information collection, as defined by the Paperwork Reduction Act of 1995 (PRA);

- Does not change existing information collections; therefore, a submission to OMB is not needed; and
- Does not require a new information collection, based on the following exception in the regulations implementing the PRA at 5 CFR 1320.3(h):

"Information" does not generally include items in the following categories; however, OMB may determine that any specific item constitutes "information": (1) Affidavits, oaths, affirmations, certifications, receipts, **changes of address**, consents or acknowledgments; provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument * * * [Emphasis added.]

To collect the identifying information of "changes of address" for the addressee of record, MMS will use Form MMS-4444.

10. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. This rule deals with financial matters and has no direct effect on MMS decisions on environmental activities. According to Departmental Manual 516 DM 2.3A (2), Section 1.10 of 516 DM 2, Appendix 1 excludes from documentation in an environmental assessment or impact statement "policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature; or the environmental effects of which are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or case-by-case." Section 1.3 of the same appendix clarifies that royalties and audits are considered to be routine financial transactions that are subject to categorical exclusion from the NEPA process. A detailed statement is not required because none of the NEPA exceptions apply.

11. Consultation With Indian Tribes (E.O. 13175)

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes.

12. Effects on the Nation's Energy Supply, Distribution, or Use, Executive Order 13211

In accordance with Executive Order 13211, this regulation does not have a

significant adverse effect on the Nation's energy supply, distribution, or use. The primary purpose of this rule is to revise an existing rule regarding routine MMS operating business practices.

13. Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

List of Subjects in 30 CFR Parts 218, 241, and 290

Appeals, Official correspondence, Orders, Addressee of record, Notice of noncompliance, Notice of civil penalties.

Dated: August 15, 2006.

R.M. "Johnnie" Burton,

Acting Assistant Secretary for Land and Minerals Management.

■ For the reasons set forth in the preamble, subchapter A chapter II of title 30 of the Code of Federal Regulations is amended as follows:

CHAPTER II—MINERALS MANAGEMENT SERVICE, DEPARTMENT OF THE INTERIOR

Subchapter A—Minerals Revenue Management

■ 1. Revise the heading for subchapter A to read as set forth above.

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES, AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

■ 2. The authority for part 218 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 3335; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

■ 3. Add a new subpart H to read as follows:

Subpart H—Service of Official Correspondence

Sec.

218.500 What is the purpose of this subpart?

218.520 What definitions apply to this subpart?

218.540 How does MMS serve official correspondence?

218.560 How do I submit Form MMS-4444?

218.580 When do I submit Form MMS-4444?

§ 218.500 What is the purpose of this subpart?

This subpart contains instructions for designating a specific addressee of record for service of official correspondence using Form MMS-4444, Addressee of Record Designation for Service of Official Correspondence.

§ 218.520 What definitions apply to this subpart?

Address of record is the address to which official correspondence is served.

Addressee of record for service of official correspondence is the person or position to whom official correspondence is served, as specified on Form MMS-4444, or in the absence of such a form, as established in § 218.540(b)(2). The addressee of record in a part 290, subpart B, appeal will be the person or representative making the appeal.

Official correspondence is all correspondence from MMS or our delegates, served on companies related to matters such as: forms reporting, audit and compliance, enforcement notices, rental courtesy notices, and invoices.

§ 218.540 How does MMS serve official correspondence?

MMS will serve all Notices of Noncompliance or Civil Penalty following the procedures in part 241. We will serve all other documents following the procedures in this section.

(a) *Method of Service.* MMS will serve all official correspondence to the addressee of record by one of the following methods:

(1) U.S. Postal Service mail;

(2) Personal delivery made pursuant to the law of the State in which the service is effected; or

(3) Private mailing service (e.g., United Parcel Service, or Federal Express), with signature and date upon delivery, acknowledging the addressee of record's receipt of the official correspondence document.

(b) *Selection of addressee of record information.* (1) We will address official correspondence to the party shown on the most recently received Form MMS-4444 for the type of correspondence at issue. The company or reporting entity is responsible for notifying MMS of any name or address changes on Form MMS-4444. The addressee of record in a part 290, subpart B, appeal will be the person or representative making the appeal.

(2) If we do not receive addressee of record information from you on Form MMS-4444, we may use the individual name and address, position title, or department name and address in our

database, based on previous formal or informal communications or correspondence for the type of official correspondence at issue. Alternately, we may obtain contact information from public records and send correspondence to:

(i) The registered agent;

(ii) Any corporate officer; or

(iii) The addressee of record shown in the files of any State Secretary; Corporate Commission; Federal or state agency that keeps official records of business entities or corporations; or other appropriate public records for individuals, business entities, or corporations.

(c) *Dates of service.* Except as provided in paragraph (d) of this section, MMS considers official correspondence as served on the date that it is received at the address of record. A receipt, signed and dated by any person at that address, is evidence of service and of the date of service. If official correspondence is served in more than one manner and the dates differ, the date of the earliest service is used_[smc1].

(d) *Constructive service.* If we cannot make delivery to the addressee of record after making a reasonable effort, we deem official correspondence as constructively served 7 days after the date that we mail the document. This provision covers situations such as those where no delivery occurs because:

(1) The addressee of record has moved without filing a forwarding address;

(2) The forwarding order has expired;

(3) Delivery was expressly refused; or

(4) The document was unclaimed and the attempt to deliver is substantiated by either:

(i) The U.S. Postal Service;

(ii) A private mailing service, as described in this section; or

(iii) The person who attempted to make delivery using some other method of service.

§ 218.560 How do I submit Form MMS-4444?

A copy of Form MMS-4444 and instructions may be obtained from MMS. It will also be posted on the MMS Web site. Submit the completed, signed form to the address designated on the Form MMS-4444 instructions.

§ 218.580 When do I submit Form MMS-4444?

Initially, you must submit MMS Form-4444 by November 29, 2006, and subsequently, within 2 weeks of any change of your address.

PART 241—PENALTIES**Subpart B—Penalties for Federal and Indian Oil and Gas Leases**

■ 4. The authority for part 241 continues to read as follows:

Authority: 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

■ 5. In § 241.51, remove paragraph (c) and revise paragraph (b) to read as follows:

§ 241.51 What may MMS do if I violate a statute, regulation, order, or lease term relating to a Federal or Indian oil and gas lease?

* * * * *

(b) We will serve the Notice of Noncompliance by registered mail or personal service using your address of record as specified under subpart H of part 218.

■ 6. Revise § 241.61 to read as follows:

§ 241.61 How will MMS inform me of violations without a period to correct?

We will inform you of any violation, without a period to correct, by issuing a Notice of Noncompliance and Civil Penalty explaining the violation, how to correct it, and the penalty assessment. We will serve the Notice of Noncompliance and Civil Penalty by registered mail or personal service using your address of record as specified under subpart H of part 218.

Subchapter C—Appeals**PART 290—APPEAL PROCEDURES**

■ 7. The authority citation for part 290 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396, 396a–396g, 2107; 30 U.S.C. 189, 190, 359, 1023, 1701 *et seq.*, 1751(a); 31 U.S.C. 3716, 9701; 43 U.S.C. 1334, 1801 *et seq.*; and 44 U.S.C. 3506(a).

Subpart B—Minerals Revenue Management Appeal Procedures

■ 8. The heading for subpart B is revised to read as set forth above.

■ 9. Section 290.100 is revised to read as follows:

§ 290.100 What is the purpose of this subpart?

This subpart tells you how to appeal Minerals Management Service (MMS) or delegated State orders concerning reporting to the Minerals Revenue Management (MRM) and the payment of royalties and other payments due under leases subject to this subpart.

■ 10. In § 290.102, in the introductory text of the definition of “order,” the first sentence is revised to read as follows:

§ 290.102 What definitions apply to this subpart?

* * * * *

Order, for purposes of this subpart only, means any document issued by the MMS Director, MMS MRM, or a delegated state that contains mandatory^[smc2] or ordering language that requires the recipient to do any of the following for any lease subject to this subpart: report, compute, or pay royalties or other obligations, report production, or provide other information. * * *

* * * * *

§ 290.111 [Removed]

■ 11. Section 290.111 is removed.

[FR Doc. E6–14368 Filed 8–30–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 100**

[CGD05–06–069]

RIN 1625–AA08

Special Local Regulations for Marine Events; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations during the “Chesapeake Ultra Triathlon”, a marine event to be held annually on the last Saturday in September on the waters of the Choptank River at Cambridge, MD. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to temporarily restrict vessel traffic in a portion of the Choptank River during the Chesapeake Ultra Triathlon swim.

DATES: This rule becomes effective on September 29, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–069) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On July 13, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Choptank River, Cambridge, MD, in the **Federal Register** (71 FR 39611). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts and area newspapers.

Background and Purpose

Annually, the Columbia Triathlon Association sponsors the “Chesapeake Ultra Triathlon” on the waters of the Choptank River near Cambridge, Maryland. The swimming segment of the event will consist of approximately 300 swimmers competing across a 2.4-mile course along the Choptank River between the Hyatt Regency Chesapeake Bay Resort Beach and Great Marsh Park, Cambridge, Maryland. The competition will begin at the Hyatt Regency Beach. The participants will swim across to the finish line located at Great Marsh Park, swimming approximately 100 yards off shore, parallel with the shoreline. Approximately 20 support vessels will accompany the swimmers. Due to the need for vessel control during the swimming event, the Coast Guard will temporarily restrict vessel traffic in the event area to provide for the safety of participants, support craft and other transiting vessels.

The event currently at 33 CFR part 100.512, the American Diabetes Association Reach the Beach Triathlon, Choptank River, Cambridge, Maryland is no longer held. This special local regulation is being replaced with the Chesapeake Ultra Triathlon marine event.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the Notice of

proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing permanent special local regulations on specified waters of the Choptank River, Cambridge, Maryland.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation will prevent traffic from transiting a segment of the Choptank River adjacent to Cambridge, MD during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, area newspapers and local radio stations, so mariners can adjust their plans accordingly. Vessel traffic will be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit this section of the Choptank River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will be enforced for only a limited period, from

6:30 a.m. to 2:30 p.m. on the last Saturday in September. Vessels desiring to transit the event area will be able to transit the regulated area at slow speed as the swim progresses, when the Coast Guard Patrol Commander determines it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This 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 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 would not create an environmental risk to health or risk to safety that might 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

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

Under figure 2–1, paragraph (34)(h), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Section 100.512 is revised to read as follows:

§ 100.512 Chesapeakeman Ultra Triathlon, Choptank River, Cambridge, MD.

(a) *Regulated area.* The regulated area includes all waters of the Choptank River within 200 yards either side of a line drawn northwesterly from a point on the shoreline at latitude 38°33'45" N, 076°02'38" W, thence to latitude 38°35'06" N, 076°04'42" W, a position located at Great Marsh Park, Cambridge, MD. All coordinates reference Datum NAD 1983.

(b) *Definitions.* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all persons participating in the Chesapeakeman Ultra Triathlon swim under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(c) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol and then proceed only as directed.

(ii) All persons and vessels shall comply with the instructions of the Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the swim course.

(d) *Enforcement period.* This section will be enforced annually from 6:30 a.m. to 2:30 p.m. on the last Saturday in September.

Dated: August 21, 2006.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–14497 Filed 8–30–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 06–025]

RIN 1625–AA00

Safety Zone; Lower Colorado River, Laughlin, NV

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Lower Colorado River, Laughlin,

Nevada in support of the Laughlin Labor Day Fireworks Display. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, participating vessels and other vessels and users of the waterway in the vicinity of the Lower Colorado River, Laughlin, Nevada, AVI Resort and Casino. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated on-scene representative.

DATES: This rule is effective from 8 p.m. through 9:30 p.m. on September 3, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP San Diego 06–025 and are available for inspection or copying at Coast Guard Sector San Diego, 2710 N. Harbor Drive, San Diego, CA 92101–1028 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chief Petty Officer Eric Carroll, USCG, Ports and Waterways Management, U.S. Coast Guard Sector San Diego at (619) 278–7277.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On Monday, June 19, 2006, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Lower Colorado River, Laughlin, NV in the **Federal Register** (71 FR 117). We did not receive any letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

AVI Resort and Casino is sponsoring the Labor Day Fireworks Display, which is held in the vicinity of AVI Resort and Casino on the Lower Colorado River, Laughlin, Nevada. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway, as fireworks displays are considered dangerous to human life.

The safety zone extends over an area with an approximate 980-foot radius centered around an anchored firing barge. The sponsor has been provided one (1) Ft. Mojave Fire Department vessel and two (2) Nevada Fish and Game vessels to provide safety and patrol this event.

Discussion of Comments and Changes

No comment or change issues were raised during the proposal period to the regulatory text.

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 rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the size and location of the safety zone within the water. The safety zone is of a limited duration, and is limited to a relatively small compared to the surrounding geographic area. A Patrol Commander will be on-scene and will authorize recreational traffic when vessel movement is safe.

Small Entities

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

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

This rule would affect the following entities, some of which might be small entities: The owners or operators of pleasure craft engaged in recreational activities and sightseeing in a portion of the Lower Colorado River, Laughlin, Nevada in the vicinity of the AVI Resort and Casino from 8 p.m. to 9:30 p.m. September 3, 2006. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: (i) The proposed zone is only in effect for one and a half (1.5) hours; (ii) vessel traffic would not be able to safely pass around the safety zone; (iii) vessels engaged in recreational activities would not have ample space outside of the safety zone to engage in these activities.

If you think that your business, organization, or governmental

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. 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 Chief Petty Officer Eric Carroll, U.S. Coast Guard Sector San Diego at (619) 278–7277. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of

\$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency

provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.ID 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 because this event establishes a safety zone.

A final “Environmental Analysis Check List” and a final “Categorical Exclusion Determination” are 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. A new temporary § 165.T11–099 is added to read as follows: *§ 165.T11–099 Safety Zone; Lower Colorado River, Laughlin, NV.*

(a) *Location.* The Coast Guard proposes establishing a temporary safety zone for the AVI Labor Day Fireworks Display. The limits of this temporary safety zone extend to an area with a

radius of approximately 980 feet radius around the firing location adjacent to the AVI Resort and Casino centered in the navigational channel between Laughlin Bridge and the northwest point of the AVI Resort and Casino Cove.

(b) *Effective Period.* This section is effective from 8 p.m. through 9:30 p.m. on September 03, 2006. If the need for the safety zone ends before the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port San Diego or his designated on-scene representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The Patrol Commander may be contacted on VHF–FM Channel 16.

(d) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port of the designated on-scene patrol personnel. Patrol personnel can be comprised of commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and Federal law enforcement vessels. Upon being hailed by the U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The Coast Guard may be assisted by other Federal, state, or local agencies.

Dated: August 15, 2006.

R.E. Walker,

Commander, U.S. Coast Guard, Captain of the Port, Acting.

[FR Doc. 06–7358 Filed 8–30–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–065]

RIN 1625–AA08

Special Local Regulations for Marine Events; Choptank River, Cambridge, MD

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary special local regulations during the “Cambridge Offshore Challenge”, a marine event to be held over the waters of the Choptank River at Cambridge, Maryland. These special local regulations are necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in the Choptank River during the event.

DATES: This rule is effective from 10:30 a.m. on September 23, 2006, to 4:30 p.m. on September 24, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–065) and are available for inspection or copying at Commander (dpi), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dennis Sens, Project Manager, Inspections and Investigations Branch, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On July 13, 2006, we published a notice of proposed rulemaking (NPRM) entitled Special Local Regulations for Marine Events; Choptank River, Cambridge, MD in the **Federal Register** (71 FR 39613). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the safety of the event participants, support craft and other vessels transiting the event area. However, advance notifications will be made to affected waterway users via marine information broadcasts and area newspapers.

Background and Purpose

On September 23 and 24, 2006, the Chesapeake Bay Powerboat Association will sponsor the “2006 Cambridge Offshore Challenge”, on the waters of the Choptank River at Cambridge, Maryland. The event will consist of approximately 40 offshore powerboats conducting high-speed competitive races between the Route 50 Bridge and Oystershell Point, MD. A fleet of approximately 250 spectator vessels is

expected to gather nearby to view the competition. Due to the need for vessel control during the event, vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels.

Discussion of Comments and Changes

The Coast Guard did not receive comments in response to the notice of proposed rulemaking (NPRM) published in the **Federal Register**. Accordingly, the Coast Guard is establishing temporary special local regulations on the specified waters of the Choptank River, Cambridge, Maryland.

Regulatory Evaluation

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Although this regulation will prevent traffic from transiting a portion of the Choptank River during the event, the effect of this regulation will not be significant due to the limited duration that the regulated area will be in effect. Extensive advance notifications will be made to the maritime community via Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly. Additionally, the regulated area has been narrowly tailored to impose the least impact on general navigation yet provide the level of safety deemed necessary. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of the Choptank River during the event.

This rule would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only a limited period. Vessel traffic will be able to transit the regulated area between heats, when the Coast Guard Patrol Commander deems it is safe to do so. Before the enforcement period, we will issue maritime advisories so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In

particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This 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 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 would not create an environmental risk to health or risk to safety that might 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 would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

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

Technical Standards

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

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

Environment

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

Under figure 2–1, paragraph (34)(h), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule.

List of Subjects in 33 CFR Part 100

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add a temporary § 100.35–T05–065 to read as follows:

§ 100.35–T05–065 Choptank River, Cambridge, MD.

(a) *Definitions:* (1) *Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector Baltimore.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the 2006 Cambridge Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Baltimore.

(b) *Regulated area* includes all waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 Bridge and bounded to the east by a line drawn along longitude 076° W, between Goose Point, MD and Oystershell Point, MD. All coordinates reference Datum: NAD 1983.

(c) *Special local regulations:* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) When authorized to transit the regulated area, all vessels shall proceed at the minimum speed necessary to maintain a safe course that minimizes wake near the race course.

(d) *Enforcement period.* This section will be enforced from 10:30 a.m. on September 23, 2006 to 4:30 p.m. on September 24, 2006.

Dated: August 21, 2006.

L.L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. E6–14494 Filed 8–30–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustment—Arctic Village Sheep Management Area

AGENCIES: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Seasonal adjustment.

SUMMARY: This provides notice of the Federal Subsistence Board’s in-season management action to remove closure restrictions on non-Federally qualified users in the Red Sheep and Cane Creek drainages of the Arctic Village Sheep Management Area. The Board’s action provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 30, 2006. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2006 regulatory year.

DATES: The action is effective from August 10, 2006, through September 20, 2006.

FOR FURTHER INFORMATION CONTACT:

Peter J. Probasco, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786–3888. For questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Manager, USDA—Forest Service, Alaska Region, telephone (907) 786–3592.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural

preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999 (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2006 wildlife seasons, harvest limits, and methods and means were published on June 30, 2006 (71 FR 37642). Because this action relates to a joint program managed by an agency or agencies in both the Departments of Agriculture and the Interior, an identical adjustment would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

Current Management Action

This action is authorized and in accordance with 50 CFR 100.19(d)–(e) and 36 CFR 242.19(d)–(e).

Arctic Village Sheep Management Area

Section 815(3) of ANILCA authorizes restrictions or closures to nonsubsistence uses on the public lands only when necessary for the conservation of healthy populations of fish and wildlife or to continue subsistence uses of such populations. Federal closure regulations for the Arctic Village Sheep Management Area have been in existence since the 1991/92 regulatory year. The management area was expanded in 1995 to include the Cane Creek and Red Sheep Creek drainages. The initial closure was proposed to address concerns regarding low number of sheep in the area, and to provide for continued subsistence use of sheep in the area.

In 2005, the Alaska Department of Fish and Game submitted a proposal that requested the Board remove the closure in the Arctic Village Sheep Management Area to nonrural hunters. Their proposal stated that without evidence of any significant use by local subsistence hunters, the necessity of the closure to continue subsistence use of sheep in the area could not be used to justify maintaining the closure. The public and the Eastern Interior Subsistence Regional Advisory Council reviewed and made recommendations on the proposal. At its May 2006 meeting, the Board rejected the proposal, as well as a motion to remove the closure for only the Red Sheep and Cane Creek drainages, based on the lack of biological and harvest data that would support or oppose the proposed action. The Board requested agency staff to conduct a sheep population survey within the affected area and indicated it would revisit this issue pending the results of the survey.

A survey of sheep in the Red Sheep Creek and Cane Creek drainages within the Arctic Village Sheep Management Area conducted June 19–21, 2006, found a minimum of 188 sheep in these drainages, including 53 rams, of which 18 were classified as mature rams. The estimated density of sheep in these drainages was 1.8 sheep/mi². Although the density of sheep in the area is relatively low compared to some other areas in the state, the density reflects the relatively poor quality of the sheep habitat. The sex and age ratios of the sheep are within normal ranges and indicate that the population is healthy. Allowing sheep hunting by non-Federally qualified hunters in these

drainages would not adversely affect the sheep population because these hunters would be limited to taking one full curl ram in the fall season when this special action would be effective. Removal of some full curl rams from the population will not reduce reproductive success in the sheep population. Maintaining the closure to nonsubsistence hunting of sheep in the Red Sheep Creek and Cane Creek drainages within the Arctic Village Sheep Management Area is no longer necessary for conservation of a healthy sheep population.

Maintaining the closure to nonsubsistence hunting of sheep in these drainages is also not necessary to provide for continued subsistence use of sheep. Currently, despite the closure to non-Federally qualified hunters and a more liberal Federal subsistence harvest limit during the fall than that provided under State regulations in adjacent areas, there has been relatively little hunting effort in these drainages reported by Arctic Village and other Federally qualified residents and very few sheep have been reported taken there since the closure was instituted in 1995. The sheep population in these drainages can support harvest by both subsistence and nonsubsistence hunters. In fact, because subsistence hunters can take rams of any age, the number of rams available to subsistence hunters far exceeds the number of full curl rams to which non-Federally qualified hunters are limited. Allowing hunting by non-Federally qualified hunters in the Red Sheep Creek and Cane Creek drainages would not significantly reduce harvest opportunities for Arctic Village residents.

Finally, the existing closure is not justified for reasons of public safety, administration, or pursuant to other applicable law.

On July 18, 2006, at a public work session in Anchorage, the Board approved lifting the closure in the Red Sheep and Cane Creek drainages from August 10, 2006, through September 20, 2006. The remainder of the Arctic Village Sheep Management Area remains closed to nonrural hunters.

Conformance With Statutory and Regulatory Authorities

Administrative Procedure Act

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this adjustment are impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate action would generally fail to serve the overall public interest and conflict with Section

815(3) of ANILCA. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

National Environmental Policy Act Compliance

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940, published May 29, 1992), implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999 (64 FR 1276).

Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD, which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

Paperwork Reduction Act

The adjustment does not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Federal Agencies 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.

Other Requirements

The adjustment has been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as sporting goods dealers. The number of small entities affected is unknown; however, the effects will be seasonally and geographically limited in nature and will likely not be significant. The Departments certify that this adjustment will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, this adjustment has no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustment will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustment meets the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustment does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal

lands. Cooperative salmon run assessment efforts with ADF&G will continue.

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 substantial direct effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

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

Drafting Information

Bill Knauer drafted this document under the guidance of Peter J. Probasco, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Chuck Ardizzone, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Dr. Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA—Forest Service, provided additional guidance.

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

Dated: August 8, 2006.

Peter J. Probasco,

Acting Chair, Federal Subsistence Board.

Dated: August 8, 2006.

Steve Kessler,

Subsistence Program Leader, USDA—Forest Service.

[FR Doc. 06–7276 Filed 8–30–06; 8:45 am]

BILLING CODE 3410–11–P, 4310–55–P

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[EPA-R01-OAR-2005-CT-0001; A-1-FRL-8209-6]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; VOC Regulations and One-Hour Ozone Attainment Demonstration Shortfall**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Direct final rule.

SUMMARY: The EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes requirements to reduce volatile organic compound (VOC) emissions from portable fuel containers, automotive refinishing operations, and gasoline dispensing facilities. The intended effect of this action is to approve these requirements into the Connecticut SIP. These control measures are needed to meet a portion of the shortfall in emission reduction identified in Connecticut's one-hour ozone attainment demonstration SIP. This action also approves these control measures, along with a previously approved control measure, as fulfilling the shortfall in emission reductions identified in Connecticut's one-hour ozone attainment demonstration SIP. EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: This direct final rule will be effective October 30, 2006, unless EPA receives adverse comments by October 2, 2006. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2005-CT-0001 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: arnold.anne@epa.gov.

3. Fax: (617) 918-0047.

4. Mail: "EPA-R01-OAR-2005-CT-0001," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One

Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA-R01-OAR-2005-CT-0001. 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 through www.regulations.gov, or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER**

INFORMATION CONTACT section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT:

Richard P. Burkhart, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Phone: 617-918-1664, Fax: (617) 918-0664, E-mail: burkhart.richard@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information****A. How Can I Get Copies of This Document and Other Related Information?**

In addition to the publicly available docket materials available for inspection electronically in Regional Material in EDocket, and the hard copy available at the Regional Office, which are identified in the **ADDRESSES** section above, copies of the state submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment at the Bureau of Air Management, Department of Environmental Protection, State Office Building, 79 Elm Street, Hartford, CT 06106.

II. Rulemaking Information

This section is organized as follows:

- A. What action is EPA taking?
- B. What are the requirements of Connecticut's new regulations?
- C. Why is EPA approving Connecticut's regulations?
- D. What is the process for EPA to approve these SIP revisions?

III. Final Action**IV. Statutory and Executive Order Reviews****A. What action is EPA taking?**

EPA is approving Connecticut's Section 22a-174-43, "Portable Fuel Container Spillage Control," the subsections of Section 22a-174-3b, "Exemptions from Permitting for Construction and Operation of External Combustion Units, Automotive Refinishing Operations, Emergency Engines, Nonmetallic Mineral Processing Equipment and Surface Coating Operations" that apply to autobody refinishing operations and Section 22a-174-30, "Dispensing of Gasoline/Stage I and Stage II Vapor Recovery," and incorporating these regulations into the Connecticut SIP. EPA is also approving these measures, along with Connecticut's previously approved municipal waste combustor

rule, as meeting the shortfall emissions reduction identified by EPA in our previous approval of Connecticut's 1-hour ozone attainment demonstration SIP.

B. What are the requirements of Connecticut's new regulations?

Portable Fuel Containers

The Section 22a-174-43 Portable Fuel Containers rule applies to any person who sells, supplies, offers for sale, or manufactures for sale in Connecticut portable fuel containers or spouts or both for use in Connecticut.

Connecticut's portable fuel container rule includes performance standards for portable fuel containers and spouts in order to ensure spill-proof systems. For example, the rule requires that portable fuel containers have an automatic shut-off that stops the fuel flow before the target fuel tank overflows. Connecticut's rule prohibits any person to sell, supply, offer for sale, or manufacture for sale in Connecticut, on or after May 1, 2004, any portable fuel container or spout that does not meet all of the specified performance standards. There is, however, a specified list of exemptions from the rule. For example, the rule does not apply to portable fuel containers with a nominal capacity less than or equal to one quart or to containers or spouts that have been granted an innovative products exemption by California Air Resources Board (CARB) or the New York Department of Environmental Conservation. The exemption for innovative products is considered reasonable, because in order to receive an innovative products exemption the CARB and New York rules require that the manufacturer demonstrate that the use of the product will result in emissions below the highest emitting container in its product category as determined from applicable testing. Connecticut's rule also includes an exemption for products that have received a variance pursuant to the variance provisions in New York's portable fuel container rule. This exemption is acceptable because few variances are expected to be granted. For example, the compliance date of New York's portable fuel container rule was January 1, 2003, and as of March 1, 2006 no variances have been granted by New York.

In addition, Connecticut's rule includes the appropriate testing and recordkeeping requirements to ensure compliance with the specified performance standards. Specifically, the rule requires the use of several test methods and procedures adopted by

CARB. The portable fuel container rule is expected to achieve a creditable VOC reduction of at least 2.3 tons per summer day by 2007. The method used to calculate this reduction is shown in the Connecticut submittal and EPA agrees with the method.

More recently, EPA proposed new standards that would limit hydrocarbon emissions that evaporate from or permeate through gasoline cans (71 FR 15803, March 29, 2006). EPA's proposal starts with gasoline cans manufactured in 2009. The proposed standard would limit evaporation and permeation emissions from these cans to 0.3 grams of hydrocarbons per gallon per day. The Connecticut rule limits the permeation emissions from portable fuel containers to less than or equal to 0.4 grams of hydrocarbons per gallon per day. If, as proposed, the final EPA standard for permeation emissions from portable fuel containers is more stringent than the current state standard, the federal standard will supersede the state standard as of 2009.

Autobody Refinishing

Connecticut's Section 22a-174-3b, "Exemptions from Permitting for Construction and Operation of External Combustion Units, Automotive Refinishing Operations, Emergency Engines, Nonmetallic Mineral Processing Equipment and Surface Coating Operations," allows owners or operators of these types of operations to construct and operate such a source without obtaining a general permit pursuant to Section 22a-174 or a permit pursuant to Section 22a-174-3a, provided that they comply with the applicable provisions of the Section 22a-174-3b regulation. Connecticut submitted to EPA as a SIP revision only those subsections of Section 22a-174-3b that apply to automotive refinishing operations.

EPA has evaluated the portion of Connecticut's Section 22a-174-3b that applies to automotive refinishing operations against applicable EPA guidance documents and the OTC model rule for this source category. An analysis of Connecticut's regulations is presented below.

EPA has issued control technique guidelines (CTGs) and, in some cases, national regulations for certain VOC source categories. A CTG is a document issued by EPA which establishes a "presumptive norm" for Reasonably Available Control Technology (RACT) for a specific VOC source category. EPA has issued a national rule for autobody

refinishing.¹ EPA has also issued an ACT for automobile refinishing.² Similar to a CTG, an ACT (alternative control techniques) document contains information on emissions, control options, and costs that states can use in developing RACT rules. Unlike a CTG, however, the ACT document presents options only, and does not contain a recommendation on RACT.

In addition, the OTC (Ozone Transport Commission) has developed model rules for several VOC source categories, including mobile equipment repair and refinishing (MERR),³ and the OTC states, including Connecticut, have signed a memorandum of understanding (MOU) committing to adopt these model rules.

The coating limits in the OTC MERR model rule are the same as the limits included in EPA's national autobody refinishing rule. The OTC rule, however, applies to the person applying the coatings, whereas the national rule applies to manufacturers or importers that sell or distribute automobile refinish coatings. In addition, the OTC rule includes application equipment requirements, good housekeeping, pollution prevention, and training measures. These additional requirements are similar to those discussed in EPA's ACT document for automobile refinishing.

The portion of Connecticut's Section 22a-174-3b that applies to automotive refinishing operations establishes:

(a) A limit on the total amount of VOC-containing coatings or solvents of 2,000 gallons in any twelve month rolling period;

(b) Requirements that limit the type of application equipment utilized to high-volume low-pressure (HVLP) spray equipment, electrostatic application equipment, or other application methods with a guaranteed transfer efficiency of at least 65%;

(c) Cleaning standards for any application equipment; and

(d) Other work practice standards, such as record keeping, and the storing of coatings and solvents in closed containers.

VOC limits for mobile equipment repair and refinishing coatings are not included in Connecticut's revised SIP, but are in effect nationally under the Federal requirements at 40 CFR Part 59,

¹ "National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings," 40 CFR Part 59, Subpart B.

² "Alternative Control Techniques Document: Automobile Refinishing," (EPA-453/R-94-031), April 1994.

³ "Model Rule for Mobile Equipment Repair and Refinishing," Ozone Transport Commission, March 6, 2001.

Subpart B, National VOC Emissions Standards for Automobile Refinish Coatings, which were adopted by EPA in 1998. Connecticut's autobody regulations have similar requirements to those specified in the OTC model rule, which are also similar to those discussed in EPA's ACT document for autobody refinishing.

The new requirements for autobody refinishing in Connecticut are expected to achieve a creditable VOC reduction of at least 3.0 tons per summer day by May 2007. The method used to calculate this emission reduction is contained in the December 1, 2004 state submittal. EPA considers these emission reduction estimates, which are consistent with a report on VOC control measures,⁴ to be reasonable estimates.

Stage I/II Vapor Recovery

Connecticut revised the Section 22a-174-30, Stage I/II Vapor Recovery rule to include new requirements for PV (pressure/vacuum) vent valves and to require more frequent testing of the Stage II systems (3 years vs. 5 years). Compliance with the PV vent valve requirements is due by May 10, 2005, and the three year re-testing requirement begins November 15, 2004.

The revised Section 22a-174-30 Stage I/II Vapor Recovery Rule includes a testing requirement for the PV vent valve, but does not specify a particular test method. Instead, the regulation specifies a performance standard with a pressure range that any test method must be able to measure. See 22a-174-30(e)(1)(E). In addition, DEP submitted a fact sheet that clarifies what test method DEP expects to use to test PV vent valves. Specifically, the fact sheet includes the test procedures from the New Hampshire Department of Environmental Services "304—PV Vent Cap Test Procedure." The fact sheet states that this test method is accepted in Connecticut, and also provides that CARB test procedures or other procedures approved by the Connecticut DEP are also acceptable.

These provisions leave DEP some discretion to approve alternative test methods without further EPA approval. Nevertheless, EPA believes the combination of testing provisions DEP has in place provide for an acceptable framework for determining an adequate test method for PV vent valves. First, any test method DEP might approve must be able to measure the performance standard required in the

Stage I/II regulation. Any test method that cannot detect pressures accurately enough to measure within the ranges provided for in section 22a-174-30(e)(1)(E) would obviously not qualify under the regulation. Therefore, DEP's discretion in approving alternative test methods is circumscribed by this regulatory standard. Second, DEP has submitted a fact sheet explaining which test methods it finds acceptable. This fact sheet provides good evidence that DEP has selected reliable methods. EPA is approving this SIP with the understanding that the State will only use test methods of the quality identified in that fact sheet. Third, test methods for PV vent valves are not complicated procedures, and they do not present the multiple opportunities for technical judgment calls inherent in more involved test methods. Thus, EPA does not anticipate that DEP and EPA would find it difficult to agree on whether a test method is sufficiently accurate to measure the performance standard provided for in DEP's regulation. Finally, in the unlikely event that a facility uses a test method EPA deems unreliable, nothing in the SIP-approved regulation prevents EPA from requiring testing using an acceptable test method. The Stage I/II regulation neither specifies a test method nor specifically authorizes DEP to designate a test method that would be binding on EPA or any other party as the sole method for determining compliance with the PV vent valve requirement. The fact sheet DEP has submitted with the SIP is a statement of the test methods that DEP is prepared to accept, but it is not legally binding as a matter of state law, nor is it formally incorporated by reference into the SIP as a matter of federal law. Although EPA does not anticipate any disagreement over appropriate test methodology, the Agency can ultimately require the performance of the test method it deems appropriate to enforce this provision, because the SIP does not restrict EPA's choice of test methods.

The fact sheet also states that the PV vent testing must be conducted prior to dispensing gasoline for new stations and as part of the next regularly scheduled Stage II system test for existing facilities. In addition, the SIP submittal states that direct mailings were sent to testing companies and gasoline station owners informing them of the new requirements and the PV vent testing procedure.

The previous version of Section 22a-174-30 was approved into the Connecticut SIP. Therefore, the revised rule must meet the Section 110(l) anti-backsliding provisions of the Clean Air Act. The previous version of 22a-174-

30 was approved as meeting the Section 182(b)(3) Stage II vapor recovery requirements of the Clean Air Act. The new rule includes the previous requirements approved into the SIP, along with the new PV vent valve and more frequent testing requirements discussed above. These new requirements are expected to achieve additional emissions reductions beyond those achieved by the previously approved rule. Therefore, the new Section 22a-174-30 meets the Clean Air Act anti-backsliding requirement. The new requirements for PV vent valves are expected to achieve a creditable VOC reduction of at least 1.4 tons per summer day by 2007. The method used to calculate this reduction is shown in the Connecticut submittal and EPA agrees with the method.

C. Why is EPA approving Connecticut's regulations?

EPA has evaluated Connecticut's regulations and has found that they are consistent with EPA guidance, and/or the Ozone Transport Commission model rules. These control measures are needed to meet a portion of the shortfall emissions reduction identified in Connecticut's 1-hour ozone attainment demonstration SIP (66 FR 63921, December 11, 2001). The specific requirements of Connecticut's regulations, the amount of VOC reductions expected, and EPA's evaluation of these requirements are detailed in a memo dated June 8, 2006, entitled "Technical Support Document—Connecticut—VOC Regulations and Shortfall Commitment" (TSD) and in the SIP submittal from the Connecticut DEP. The TSD and Connecticut's regulations are available in the docket supporting this action. The total emission reduction from these three VOC regulations will be at least 6.7 tons of VOC per summer day by 2007. These emission reductions, coupled with emission reductions from Connecticut's previously approved regulation on municipal waste combustors (66 FR 63311, December 6, 2001) which will result in an emission reduction of at least 1.3 tons of nitrogen oxides by 2007, fills the emission reduction shortfall identified in the 1-hour attainment plan for the 1-hour severe portion of Connecticut.⁵ This level of emission reduction, therefore, fulfills the commitment Connecticut made in its 1-hour attainment demonstration to achieve additional emission reductions within the state, to

⁴ "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules," E.H. Pechan and Associates, Inc., March 31, 2001.

⁵ The Connecticut portion of the New York-Northern New Jersey-Long Island severe ozone nonattainment area.

help bring about attainment for the now revoked 1-hour ozone standard. The commitment was for 0.5 tons per summer day of NO_x and 5.4 tons per summer day of VOC. These emission reductions will also help Connecticut to ultimately achieve the more stringent 8-hour ozone standard as well.

D. What is the process for EPA to approve these SIP revisions?

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This action will be effective October 30, 2006 without further notice unless the EPA receives adverse comments by October 2, 2006.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on October 30, 2006 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

III. Final Action

EPA is approving Section 22a-174-43, "Portable Fuel Container Spillage Control," the autobody refinishing requirements of Section 22a-174-3b, "Exemptions from Permitting for Construction and Operation of External Combustion Units, Automotive Refinishing Operations, Emergency Engines, Nonmettalic Mineral Processing Equipment and Surface Coating Operations," and Connecticut's Section 22a-174-30, "Dispensing of Gasoline/Stage I and Stage II Vapor Recovery," and incorporating these regulations into the Connecticut SIP. These three rules will achieve an emissions reduction of at least 6.7 tons of VOC per summer day by 2007. EPA is also approving these measures, along with Connecticut's previously approved

municipal waste combustor rule, as fulfilling the commitment Connecticut made in its 1-hour attainment demonstration to adopt additional measures to address the emission reduction shortfall.

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 2006. Interested parties should comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and

[FR Doc. 06-7314 Filed 8-30-06; 8:45 am]
 BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2006-0464; FRL-8210-2]

Revisions to the Nevada State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the Nevada State Implementation Plan (SIP). These revisions were proposed in the **Federal**

Register on June 9, 2006, and include the air pollution sections of the Nevada Revised Statutes (NRS). We are approving these statutes in order to regulate emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on October 2, 2006.

ADDRESSES: EPA has established docket number EPA-R09-OAR-2006-0464 for this action. The index to the docket is available electronically at <http://regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and

some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947-4126, rose.julie@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, “we,” “us” and “our” refer to EPA.

I. Proposed Action

On June 9, 2006, (71 FR 33413), EPA proposed to approve into the Nevada SIP those statutes that are listed in the table below. These statutes were submitted on January 12, 2006 and March 24, 2006.

STATUTES SUBMITTED FOR APPROVAL

Nevada revised statutes (NRS)	Title	Submittal date
445B.105	Definitions	01/12/06
445B.110	Air contaminant	01/12/06
445B.115	Air pollution	01/12/06
445B.120	Commission	01/12/06
445B.125	Department	01/12/06
445B.130	Director	01/12/06
445B.135	Federal Act	01/12/06
445B.140	Hazardous air pollutant	01/12/06
445B.145	Operating permit	01/12/06
445B.150	Person	01/12/06
0.039	Person	03/24/06
445B.155	Source and indirect source	01/12/06
445B.210	Powers of Commission	01/12/06
445B.220	Additional powers of Commission	01/12/06
445B.225	Power of Commission to require testing of sources	01/12/06
445B.235	Additional powers of Department	01/12/06
445B.245	Power of Department to perform or require test of emissions from stacks	01/12/06
445B.275	Creation; members; terms	01/12/06
445B.280	Attendance of witnesses at hearing; contempt; compensation	01/12/06
445B.300	Operating permit for source of air contaminant; notice and approval of proposed construction; administrative fees; failure of Commission or Department to act.	01/12/06
445B.320	Approval of plans and specifications required before construction or alteration of structure	01/12/06
445B.500	Establishment and administration of program; contents of program; designation of air pollution control agency of county for purposes of federal act; powers and duties of local air pollution control board; notice of public hearings; delegation of authority to determine violations and levy administrative penalties; cities and smaller counties; regulation of certain electric plants prohibited.	01/12/06
445B.510	Commission may require program for designated area	01/12/06
445B.520	Commission may establish or supersede county program	01/12/06
445B.530	Commission may assume jurisdiction over specific classes of air contaminants	01/12/06
445B.540	Restoration of superseded local program; continuation of existing local program	01/12/06
445B.560	Plan or procedure for emergency	01/12/06
445B.595	Governmental sources of air contaminants to comply with state and local provisions regarding air pollution; permit to set fire for training purposes; planning and zoning agencies to consider effects on quality of air.	01/12/06

We proposed to approve these statutes because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the statutes and our evaluation.

II. Public Comments and EPA Responses

EPA’s proposed action provided a 30-day public comment period. We did not receive any comments on the proposed action.

III. EPA Action

No comments were submitted that change our assessment that the submitted statutes comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the

Act, EPA is fully approving these statutes into the Nevada SIP.¹

IV. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a “significant regulatory action” and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the

¹ Final approval of the submitted statutes supersedes the following statutes in the applicable SIP (superseding statute or statutes are shown in parentheses): NRS 445.406 (NRS 445B.105); NRS 445.411 (NRS 445B.110); NRS 445.416 (NRS 445B.115); NRS 445.421 (NRS 445B.120); NRS 445.424 (NRS 445B.125); NRS 445.427 (NRS 445B.130); NRS 445.431 (NRS 445B.135); NRS 445.441 (NRS 445B.150 and NRS 0.039); NRS 445.446 (NRS 445B.155); NRS 445.461 (NRS 445B.210); NRS 445.471 (NRS 445B.220); NRS 445.472 (NRS 445B.225); NRS 445.474 (NRS 445B.235); NRS 445.477 (NRS 445B.245); NRS 445.481 (NRS 445B.275); NRS 445.486 (NRS 445B.280); NRS 445.491 (NRS 445B.300); NRS 445.496 (NRS 445B.320); NRS 445.546 (NRS 445B.500); NRS 445.551 (NRS 445B.510); NRS 445.556 (NRS 445B.520); NRS 445.561 (NRS 445B.530); NRS 445.566 (NRS 445B.540); NRS 445.571 (NRS 445B.560); and NRS 445.586 (NRS 445B.595). NRS 445B.140 (“Hazardous air pollutant”) and NRS 445B.145 (“Operating permit”) are new to the SIP.

distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves state law implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997), because it is not economically significant.

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 30, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and

shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: August 2, 2006.

Wayne Nastri,

Regional Administrator, Region IX.

■ Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

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

Subpart DD—Nevada

■ 2. Section 52.1470 is amended by adding paragraphs (c)(56)(i)(A)(4) and (c)(59) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(56) * * *

(i) * * *

(A) * * *

(4) Title 40, Chapter 445B of Nevada Revised Statutes (2003): Sections 445B.105, 445B.110, 445B.115, 445B.120, 445B.125, 445B.130, 445B.135, 445B.140, 445B.145, 445B.150, 445B.155, 445B.210, 445B.220, 445B.225, 445B.235, 445B.245, 445B.275, 445B.280, 445B.300, 445B.320, 445B.500, 445B.510, 445B.520, 445B.530, 445B.540, 445B.560, and 445B.595.
* * * * *

(59) The following statute was submitted on March 24, 2006, by the Governor’s designee.

(i) Incorporation by reference.

(A) Nevada Division of Environmental Protection.

(1) Title 0, Preliminary Chapter-General Provisions, of Nevada Revised Statutes: Section 0.039, effective April 29, 1985.

[FR Doc. 06–7316 Filed 8–30–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 585

[Docket No. NHTSA 2005-22323]

RIN 2127-A198

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this document, NHTSA is amending its safety standard on occupant crash protection to establish the same 56 km/h (35 mph) maximum speed for frontal barrier crash tests using belted 5th percentile adult female test dummies as we previously adopted for tests using belted 50th percentile adult male dummies. The agency is adopting this amendment to help improve crash protection for small statured occupants. The new requirement is phased-in in a manner similar to the phase-in for the 56 km/h (35 mph) maximum speed test requirement using the 50th percentile adult male dummy, but beginning 2 years later, i.e., September 1, 2009.

DATES: *Effective Date:* This final rule is effective November 29, 2006.

Petitions for Reconsideration: If you wish to submit a petition for reconsideration of this rule, your petition must be received by October 16, 2006.

ADDRESSES: Petitions for reconsideration should refer to the docket number above and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

See the **SUPPLEMENTARY INFORMATION** portion of this document (Section VIII; Rulemaking Analyses and Notice) for DOT's Privacy Act Statement regarding documents submitted to the agency's dockets.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Ms. Lori Summers, Office of Crashworthiness Standards (Telephone: 202-366-1740) (Fax: 202-366-2739).

For legal issues, you may call Mr. Edward Glancy, Office of the Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

You may send mail to these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Background
- II. Notice of Proposed Rulemaking (NPRM) and Summary of Comments
 - A. The NPRM
 - B. Summary of Public Comments on the NPRM
- III. The Final Rule and Response to Public Comments
 - A. Agency Decision—Overview
 - B. Response to Public Comments by Issue
 - 1. Vehicle Crash Tests and Practicability Concerns
 - 2. Unintended Consequences
 - 3. Timing of Agency Decision
 - 4. Harmonization With Canada
 - 5. Concerns About the 5th Percentile Adult Female Dummy
 - 6. Test Set-Up Procedure
 - 7. Leadtime
 - 8. Alternative Tests
 - C. Benefits and Costs
- IV. Rulemaking Analyses and Notices

I. Background

Federal Motor Vehicle Safety Standard (FMVSS) No. 208, *Occupant Crash Protection*, requires passenger cars and other light vehicles to be equipped with seat belts and frontal air bags to prevent or mitigate the effects of occupant interaction with the vehicle interior in a crash. While air bags have been very effective in increasing the number of people saved in moderate and high speed frontal crashes, they have occasionally been implicated in fatalities in instances where vehicle occupants were very close to the air bag when it deployed. This is particularly true of vehicles produced in the 1990s.

On May 12, 2000, NHTSA published in the **Federal Register** (65 FR 30680) a final rule to require that future air bags be designed to create less risk of serious air bag-induced injuries than then-current air bags and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology (advanced air bag rule). That final rule was consistent with the requirements of the Transportation Equity Act for the 21st Century (TEA 21), enacted by Congress in June 1998, which required us to issue a rule amending FMVSS No. 208:

* * * to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.

The advanced air bag rule established two phase-in schedules. For the first phase-in, which began September 1, 2003 and will be completed by September 1, 2006, NHTSA required vehicle manufacturers to install advanced air bag systems that reduce the risk of air bag-induced injury

(particularly to young children and small adult drivers), while improving the frontal crash protection provided by air bag systems to occupants of different sizes. For the second phase-in, which will begin on September 1, 2007, the agency required manufacturers to improve further the frontal protection provided by their vehicles by meeting a belted rigid barrier crash test at higher test speeds.

Prior to the advanced air bag rule, the crash tests specified in FMVSS No. 208 used only one size dummy, a 50th percentile adult male dummy. NHTSA also used that dummy in frontal crash tests conducted under the New Car Assessment Program (NCAP), although at a higher speed. The FMVSS No. 208 belted rigid barrier test was conducted at speeds up to 48 km/h (30 mph), while the NCAP test was conducted at a speed of 56 km/h (35 mph).

For the advanced air bag rule, NHTSA specified the use of both 50th percentile adult male and 5th percentile adult female dummies for the standard's crash tests.¹ The first phase-in requires vehicles to be certified as passing the test requirements for both of these dummies, while unbelted, in a 32 km/h (20 mph) to 40 km/h (25 mph) rigid barrier test (unbelted rigid barrier test requirements), and test requirements for the same two dummies, while belted, in a rigid barrier crash test with a maximum test speed of 48 km/h (30 mph) (belted rigid barrier test requirements).

The second phase-in will require vehicles to be certified as passing the belted rigid barrier test requirements at speeds up to and including 56 km/h (35 mph) using the 50th percentile adult male dummy. NHTSA and the industry have had considerable experience with conducting belted tests at 56 km/h (35 mph) using this dummy in connection with the NCAP program.

In the preamble to the advanced air bag rule, we stated

We did not propose including the 5th percentile adult female dummy in [the 56 km/h (35 mph) phase-in] requirement because we had sparse information on the practicability of such a requirement. NHTSA will initiate testing to examine this issue and anticipates proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed.

¹ The advanced air bag rule also specified the use of 1-year-old infant dummies, 3- and 6-year-old child dummies, and 5th percentile adult female dummies in its test requirements to minimize the risk to infants, children, and other occupants from injuries and deaths caused by air bags.

(60 FR 30680, 30690.) The agency reiterated this position when it denied a petition to begin rulemaking immediately to establish a requirement for vehicles to meet a 0–56 km/h (0–35 mph) belted rigid barrier test with the 5th percentile adult female dummy (66 FR 65376; December 18, 2001). However, the agency continued research on the feasibility and practicability of increasing the test speed for belted testing using this dummy.

II. Notice of Proposed Rulemaking (NPRM) and Summary of Comments

A. The NPRM

On August 6, 2003, we published in the **Federal Register** (68 FR 46539) a notice of proposed rulemaking (NPRM) to increase the test speed for the belted rigid barrier test using the 5th percentile adult female dummy to 56 km/h (35 mph). We proposed the same phase-in schedule as that already adopted for the 50th percentile adult male dummy, *i.e.*, beginning September 1, 2007.

In the NPRM, we cited the results of 18 crash tests conducted by NHTSA, some in conjunction with Transport Canada. We tentatively concluded that the test results indicated both a need for and the feasibility of extending the 56 km/h (35 mph) maximum speed for the rigid barrier test to include the 5th percentile adult female dummy. The testing indicated that a belted 5th percentile adult female dummy may be subject to higher injury measures than a belted 50th percentile adult male dummy in comparable frontal barrier crash tests, when both are seated in accordance with the applicable FMVSS No. 208 seating procedures.

The tested vehicles included small and medium passenger cars, sport utility vehicles, minivans, and a pickup truck. None of the tested vehicles were designed to meet the new test requirements of the advanced air bag rule. Of the 18 vehicles tested, 12 were able to meet the driver and right front passenger dummy Injury Assessment Reference Values (IARVs) required under FMVSS No. 208. The six vehicles that exceeded the IARVs for the 5th percentile adult female dummy were found to exceed injury measures in the head, chest, and/or neck regions. When comparable NCAP crash tests were conducted with 50th percentile adult male dummies, none of the adult male dummies exceeded the IARVs.

We estimated that the proposed requirements, if adopted, could prevent between five and six small occupant fatalities per year and could also reduce two to three moderate to severe injuries

yearly (MAIS 2+).² We also explained that beyond reducing the rates of injury and fatality to small-stature occupants, increasing the maximum belted test speed for testing with the 5th percentile adult female dummy would extend improved belted crash protection to occupants of different sizes. We stated that the proposed amendment would address the potential hazard to all belted occupants who are very close to both the air bag module and the steering wheel or instrument panel.

In the NPRM, we tentatively concluded that compliance with the proposal would result in a nominal additional cost to vehicle manufacturers. We noted that the test procedure itself is already required at a lower impact speed in FMVSS No. 208; only the maximum impact speed would be raised. We stated that, as indicated by the 12 vehicles that met all IARVs in NHTSA's test program, many vehicles already meet the proposed requirement. We also stated our belief that to the extent additional measures may prove necessary, improving performance beyond the 48 km/h (30 mph) requirement could involve relatively simple changes. We estimated that the overall cost of the proposal would range from minimal costs to \$24.56 million, depending on the implementation of technologies. A complete discussion of how NHTSA arrived at its estimates of both benefits and costs was presented in a Preliminary Regulatory Evaluation.³

B. Summary of Public Comments on the NPRM

We received comments from five companies or organizations: General Motors (GM), DaimlerChrysler, the Alliance of Automobile Manufacturers (Alliance), TRW Automotive, and the Insurance Institute for Highway Safety (IIHS). The commenters generally supported improved crash protection for belted small statured occupants, but did not support the agency's proposal to increase the test speed for FMVSS No. 208's belted barrier test using the 5th percentile adult female dummy to 56 km/h (35 mph).

GM raised concerns about practicability. That company commented that none of the 18 vehicles that NHTSA tested and analyzed for practicability and benefits were certified

to the advanced air bag provisions of FMVSS No. 208. GM stated that the restraint systems in the vehicles tested by the agency do not represent the same balancing of requirements that is necessary to meet the advanced air bag provisions, which are more complex and demanding than the ones to which the 18 vehicles were certified. GM also stated that NHTSA had not considered the compliance margins necessary to ensure that each vehicle would meet the IARVs for the proposed test conditions.

GM also raised concerns about leadtime. That manufacturer stated that if testing demonstrates that the IARVs can be met at the proposed higher speed, and if the countermeasures necessary to enable that performance do not negatively affect other aspects of occupant protection, manufacturers will need time to bring these countermeasures into production. GM stated that given its experience in developing vehicles and occupant protection systems designed to meet the advanced air bag requirements, a minimum postponement of two years in the effective date of the proposed rule would be necessary to accommodate the necessary testing and product development.

Several commenters addressed the estimated benefits. GM stated that the benefits estimated by the agency are very small and are projections based on old air bag technology. It also stated that increasing the maximum test speed to 56 km/h (35 mph) for the belted 5th percentile adult female dummy could have unintended consequences for belted small stature occupants involved in low severity frontal collisions. GM stated that the severity of the 56 km/h (35 mph) rigid barrier test would force stiffer restraint systems than are presently needed in the current 48 km/h (30 mph) frontal barrier test required by the advanced air bag final rule. According to GM, stiffening the restraint system would have an adverse affect on the older, weaker, smaller population since their injury tolerance is lower than the younger, stronger population.

DaimlerChrysler stated that the agency's projected benefits are statistically minor, an overestimate, and cannot be absolutely quantified. The Alliance raised several issues about the agency's methodology for estimating benefits, and argued that the action could result in no safety benefits or even negative safety effects.

IIHS stated that the agency failed to provide a clear assessment of the benefits and offered little compelling evidence that vehicle design changes resulting from the proposed rule would be meaningful in real-world crashes.

² MAIS (Maximum Abbreviated Injury Scale) represents the maximum injury severity at an Abbreviated Injury Scale (AIS) level, regardless of the nature or location of the injury. The AIS ranks individual injuries by body region on a scale of 1 to 6 as follows: 1=minor, 2=moderate, 3=serious, 4=severe, 5=critical, and 6=maximum/currently untreatable.

³ Docket No. NHTSA–2003–15732–2.

IIHS also stated that other measures to improve frontal crash protection, such as offset deformable barrier tests or pole tests, would be more beneficial and be more representative of real-world crashes.

Some commenters recommended that the agency defer the rulemaking to a later date. DaimlerChrysler stated that the prudent course of action would be to defer rulemaking until enough vehicles certified to the advanced air bag requirements are in commerce and their field performance with small females can be assessed. That company suggested waiting until the end of Phase II of the advanced air bag phase-in schedule.

GM stated that an Alliance-sponsored panel of experts, referred to as the Blue Ribbon Panel, is currently engaged in a major real-world data gathering program to provide a greater factual basis for future air bag rulemakings, and suggested that the agency wait until after the panel has finished its work before proceeding on this rulemaking.

GM and the Alliance also expressed concerns about differences between how NHTSA and Transport Canada are addressing improved protection for belted small statured occupants. The Alliance noted that Transport Canada has proposed a more stringent chest compression requirement for 5th percentile adult female dummies in 48 km/h (30 mph) tests. The Alliance expressed concern that each country's proposal may require opposing or at least non-complementary design strategies in order to meet the different proposed test requirements.

DaimlerChrysler reiterated concerns it has previously identified about the 5th percentile adult female Hybrid III dummy, including ones about neck structure and response, dummy interference with deploying air bags, and the Nij neck injury criterion. DaimlerChrysler stated its belief that neck tension limits alone appear to be the only significant factor in the Nij neck injury criterion to predict neck injury accurately.

TRW commented on the test set-up procedures for the 5th percentile adult female dummy driver. It argued that the positioning of the steering wheel is not realistic with regard to conditions in the field. IIHS stated that the agency should change its dummy seating procedures consistent with a petition it had previously submitted.

III. The Final Rule and Response to Public Comments

A. Agency Decision—Overview

After carefully considering the comments, we have decided to issue a final rule increasing the maximum test speed for the belted rigid barrier test using the 5th percentile adult female dummy from 48 km/h (30 mph) to 56 km/h (35 mph), the same speed we adopted for 50th percentile adult male dummies. We believe this amendment is consistent with the goal of providing improved frontal crash protection for all occupants. This was one of the primary goals of our advanced air bag rule and also of TEA 21.

We recognize that the benefits directly attributable to this rule are relatively small, since most of the restraint system improvements needed to meet this rule were required by the advanced air bag rule. Among other things, the advanced air bag rule added the 5th percentile adult female dummy to the FMVSS No. 208 48 km/h (30 mph) belted rigid barrier crash test and also increased the maximum speed for that test to 56 km/h (35 mph) for the 50th percentile adult male dummy. These test requirements, as well as other new tests using the 5th percentile adult female dummy, already require improved protection for occupants of different sizes.

In the preamble to advanced air bag rule, however, we stated that we anticipated proposing to increase the maximum test speed for the belted rigid barrier test using the 5th percentile adult female dummy to 56 km/h (35 mph), the same maximum speed specified for the 50th percentile adult male dummy. We did not propose this higher speed as part of the advanced air bag rulemaking because of lack of available test data.

This rulemaking is thus intended to complete the agency's consideration of an issue that was partially addressed in the advanced air bag rulemaking. As discussed earlier, we conducted a series of 18 vehicle crash tests in support of the NPRM. Moreover, as discussed below, we subsequently conducted five additional crash tests of vehicles certified to the advanced air bag requirements.

After considering the comments, we continue to believe that the available test data indicate both a need for and the feasibility of extending the 56 km/h (35 mph) maximum speed for the rigid barrier test to include the 5th percentile adult female dummy. While many vehicles would meet the higher test speed requirements using 5th percentile adult female dummies even in the absence of this rule, we believe that

FMVSS No. 208 should require the same level of high speed crash protection for small statured occupants as for larger occupants.

The final rule is essentially the same as the proposal, except for the timing of the phase-in. The new requirement is phased-in in a manner similar to the phase-in for the 56 km/h (35 mph) maximum speed test requirement using the 50th percentile adult male dummy, but begins two years later, *i.e.*, September 1, 2009. The additional leadtime will provide manufacturers the time needed to meet design challenges associated with some vehicles and incorporate these additional requirements into their product development schedules without undue consequences.

Given that this phase-in is two years later, and recognizing that many vehicles already comply with the new requirement, we are not including advance credits as part of this phase-in, although carryover credits earned during the phase-in will be allowed.

The implementation schedule for the new requirement is as follows:

- 35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009;
- 65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2010, with an allowance of carryover credits from vehicles built after September 1, 2009.
- 100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2011, with an allowance of carryover credits from vehicles built after September 1, 2009.
- All light vehicles manufactured on or after September 1, 2012.

Manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2009) will have the option of omitting the first year of the phase-in, if they fully comply beginning on September 1, 2010.

Manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance with the new requirement until September 1, 2012.

Consistent with our usual policy concerning multi-stage vehicles, multi-stage manufacturers and alterers may defer compliance with the new requirement until September 1, 2013.

We are adopting phase-in reporting requirements similar to those used in other phase-ins.

B. Response to Public Comments by Issue

1. Vehicle Crash Tests and Practicability Concerns

As indicated above, to support the NPRM, we tested 18 vehicles in 56 km/h (35 mph) barrier crash tests, some in conjunction with Transport Canada, with belted 5th percentile adult female dummies. The vehicles tested included small and medium passenger cars, sport utility vehicles, minivans, and a pickup truck. Of the 18 vehicles tested, 12 were able to meet the driver and right front passenger IARVs required under FMVSS No. 208.

GM commented that none of the 18 vehicles were certified to the advanced air bag provisions of FMVSS No. 208. GM stated that the restraint systems in the vehicles tested by the agency do not represent the same balancing of requirements that is necessary to meet the advanced air bag provision of FMVSS No. 208, which are more complex and demanding than the provisions for which the vehicles were certified. That company argued that testing of vehicles with restraint systems balanced to meet the advanced air bag requirements is necessary to make an informed feasibility assessment.

We note that vehicles with advanced air bags were not available during the time we were developing the NPRM. Consequently, the agency tested fleet-representative vehicles that were equipped with the most advanced air bag and seat belt technology of the time. Most of the vehicles included force-limited seat belts, pretensioners, and dual stage air bag inflation. One vehicle included a driver seat track sensor.

We also note that since publication of the NPRM, NHTSA has tested five additional vehicles that have been certified to the advanced air bag requirements of FMVSS No. 208. These vehicles include the 2004 Honda Accord, 2004 Ford Taurus, 2004 Honda Odyssey, 2004 Chevrolet Avalanche, and 2004 Jeep Liberty. All five of the vehicles tested met the proposed requirements.⁴

GM also stated in its comments that NHTSA had not considered the compliance margins necessary to ensure that each vehicle would be capable of meeting the IARVs for the proposed test conditions. GM stated that if a 20 percent compliance margin were applied, then only five of the eighteen vehicles cited in the NPRM would meet the IARVs.

As to the issue of margin of compliance, we agree that manufacturers need to ensure that all of their vehicles meet a test requirement established by a Federal safety standard. As we noted in the rulemaking for advanced air bags, examination of compliance and certification data for pre-redesigned air bags shows that manufacturers often certified vehicles with much less than a 20 percent margin of compliance. We agree, however, that calculations of 20 percent compliance margins are useful for analytical and discussion purposes.

As indicated above, 12 of the 18 vehicles tested in support of the NPRM met the driver and right front passenger IARVs required under FMVSS No. 208. Of these 12, five had more than a 20 percent compliance margin and three others had almost exactly a 20 percent compliance margin. Thus, eight of the 12 had compliance margins of approximately 20 percent or more, while four had smaller compliance margins. None of the 18 vehicles were designed to meet the test requirements of the advanced air bag rule. Given this fact, and the number of available means discussed in the NPRM and the PRE for improving performance, we continue to believe that these test results demonstrated the practicability of the new requirements.

Moreover, of the five additional vehicles we tested that have been certified to the advanced air bag requirements of FMVSS No. 208, four of the vehicles met the standard's driver and right front passenger IARVs in 56 km/h (35 mph) barrier crash tests using the 5th percentile adult female dummy with 20 percent compliance margins. The fifth vehicle, the Chevrolet Avalanche, resulted in a passenger Nij value of 1.0, providing it no margin of compliance. We note that this vehicle did not incorporate force-limiters or pretensioners to improve restraint performance, whereas the other four advanced air bag-equipped vehicles employed both of these technologies. Thus, we believe that additional restraint technologies are available that could be used for this vehicle. Moreover, since some vehicles passed the requirements without these technologies, we also believe that adjustments to air bag characteristics and/or firing threshold could be used to enable this vehicle to comply with the requirements by comfortable margins for certification.

GM also submitted a comment discussing the results of what it referred to as rapid proposal evaluation testing.⁵

That company evaluated one truck and one car program that were near the end of their development and validation for meeting the advanced air bag requirements, in light of the proposal. GM stated that simple changes will not suffice for the two programs to meet the proposed speed increase. GM stated that significant restraint system rebalancing or vehicle structural changes would be needed, which would require longer leadtime than the agency proposed.

While we have considered GM's comment, we believe the test results of the five vehicles equipped with advanced air bags address the concerns raised by GM about feasibility. Leadtime issues are discussed later in this document.

2. Unintended Consequences

GM expressed concern that increasing the maximum test speed to 56 km/h (35 mph) for the belted 5th percentile adult female dummy could have unintended consequences for belted small stature occupants involved in low severity frontal collisions. GM stated that the severity of the 56 km/h (35 mph) rigid barrier test will force stiffer restraint systems than presently needed for the current 48 km/h (30 mph) frontal barrier test required by the advanced air bag final rule. According to GM, stiffening the restraint system would have an adverse affect in crashes of lower severity on the older, weaker, smaller population since their injury tolerance is lower than the younger, stronger population. GM submitted a theoretical analysis in support of its comments, which concluded that limiting the restraint load to the injury threshold load of the small occupant produced the lowest number of occupant injuries over the spectrum of frontal accident severities.

The Alliance stated that the same air bag and belt system is used for different size occupants in other crash modes. It argued that if that system has been optimized for those crash modes then any change made to it will produce less than optimal results for those modes, resulting in disbenefits.

We believe that the concerns expressed by GM and the Alliance about adverse consequences to occupants in other crash modes are addressed by the overall requirements of the advanced air bag rule. As noted earlier, the purpose of that rule was to require that future air bags be designed to create less risk of serious air bag-induced injuries than then-current air bags and provide improved frontal crash protection for all occupants. Vehicles designed to meet the rigid barrier crash test with 5th percentile adult female dummies at a

⁴ The Chevrolet Avalanche had a passenger Nij value of 1.0, providing it no margin of compliance.

⁵ Docket No. NHTSA-2003-15732-11 and 12.

maximum speed of 56 km/h (35 mph) will have to meet all of the requirements of the advanced air bag rule. That rule specifies test requirements at various test speeds/impact conditions including lower severity speeds and offset/oblique conditions, different dummy sizes, and restraint status.

With respect to GM's stated concern about belted small stature occupants involved in low severity frontal collisions, we note that the belted rigid barrier requirement must be met using 5th percentile adult female dummies at speeds from 0 to the maximum specified speed. Vehicles must also meet a 40 percent offset frontal deformable barrier test using belted 5th percentile adult female dummies at speeds from 0 to 40 km/h (25 mph). Vehicles must also meet unbelted test requirements using that dummy, as well as low risk tests at the driver position.

NHTSA believes that the overall requirements of the advanced air bag rule, including the amendment made in today's rule, will encourage manufacturers to optimize their occupant protection systems to adequately protect all sizes of occupants both in low and high severity crashes.

IIHS commented that by potentially further increasing the complexity of the restraint system, the proposed rule would increase the possibility of a system failure. However, that organization did not provide any support for this position. As indicated above, some vehicles being manufactured today meet the requirements of the advanced air bag rule and also meet the proposed requirement by a 20 percent margin.

3. Timing of Agency Decision

As indicated above, some commenters recommended that we defer this rulemaking until the performance of vehicles equipped with advanced air bags can be assessed. GM recommended that the agency wait until the work of the Blue Ribbon panel is completed.

While we agree that the field experience with advanced air bag-equipped vehicles is very limited, we do not believe it is necessary or appropriate to wait until there is sufficient experience with advanced air bags to assess their performance before completing this rulemaking. We are addressing in this rulemaking a remaining issue from the advanced air bag rulemaking, whether it is practicable to establish the same 56 km/h (35 mph) maximum test speed for belted rigid barrier tests using the 5th percentile adult female dummy as was established for the same test using 50th percentile adult male dummies.

As we explained in the advanced air bag rulemaking, we did not propose including the 5th percentile adult female dummy in the 56 km/h (35 mph) phase-in requirement because we had sparse information on the practicability of such a requirement. We announced that we would initiate testing to examine this issue and anticipated proposing increasing the test speed for belted tests using the 5th percentile adult female dummy to 56 km/h (35 mph), beginning at the same time that the 50th percentile adult male is required to be used in belted testing at that speed.

We have conducted the anticipated testing to support the proposal, and believe it is appropriate to proceed with a final rule. We believe it could take 10 or more years to accumulate significant field experience with advanced air bags and small females. In the meantime, improved protection for occupants of different sizes would not occur, and the benefits associated with the rule would be lost.

NHTSA is aware of the work of the Blue Ribbon Panel and has attended its annual presentation of case findings. Much of the field work has focused on the performance of depowered air bag-equipped vehicles, rather than vehicles equipped with advanced air bags. At this point in time, the data collection is complete, and the analysis is ongoing and expected to be completed by the end of this year. A public meeting is scheduled for May 2007. However, since the advanced air bag phase-in did not begin until model year 2004, the data reflect limited on-road exposure with respect to fifth percentile adult females. Therefore, we do not believe its work will provide significant information relevant to this specific rulemaking.

4. Harmonization With Canada

As indicated above, GM and the Alliance expressed concerns about differences between how NHTSA and Transport Canada are addressing improved protection for belted small statured occupants. The Alliance noted that Transport Canada has proposed a more stringent chest compression requirement for 5th percentile adult female dummies in 48 km/h (30 mph) tests. That organization expressed concern that each country's proposal may require opposing or at least non-complementary design strategies in order to meet the different proposed test requirements. The Alliance stated that assuming that the interior space and the vehicle stiffness are constant, engineering judgment would suggest that different restraint system solutions would be needed to manage the higher

crash loads in the 56 km/h (35 mph) test, as opposed to restraints needed to reduce chest loading in order to meet the chest compression limit proposed by Transport Canada for the 48 km/h (30 mph) test.

GM stated that it believes regulations should be harmonized with other countries, particularly in North America, whenever possible. It also stated that it believes that Transport Canada's approach is at least more directionally appropriate and more likely to reduce crash injuries and fatalities in small stature occupants and the elderly.

On June 30, 2001, Transport Canada published a notice of intent to amend its occupant crash protection standard to improve chest protection in frontal collisions, particularly for the small and aging population. For one aspect of the regulation, Transport Canada proposed a 0–48 km/h (0–30 mph) full frontal rigid barrier crash test requirement using a 5th percentile adult female dummy and a 0–40 km/h (0–25 mph) fixed offset deformable barrier crash test requirement as in FMVSS No. 208. However, Transport Canada also proposed a reduced chest deflection limit of 41 mm in the full frontal rigid barrier crash test and 32 mm in the offset deformable barrier crash test. NHTSA's chest deflection limit is 52 mm for the 5th percentile dummy.

We agree it is desirable to develop harmonized regulations whenever possible. We note that NHTSA and Transport Canada have met together on six occasions between May and October of 2004 to fully discuss the merits of the two proposals.

While we recognize the differences between the proposals and that manufacturers would not want to be required to develop multiple restraint systems for the North American market, we believe that the two proposals do not require non-complementary design strategies. As indicated above, the Alliance was concerned that different restraint system solutions could be needed to manage the higher crash loads in the 56 km/h (35 mph) test, as opposed to restraints needed to reduce chest loading in order to meet the chest compression limit proposed by Transport Canada for the 48 km/h (30 mph) test. We evaluated test results of 11 vehicles that were subjected to rigid barrier crash tests using the 5th percentile adult female dummy at both 48 km/h (30 mph) and 56 km/h (35 mph). Nine of the 11 vehicles were able to comply with the chest protection requirements of both proposals with approximately a 20 percent margin of compliance. This testing indicates that

when keeping vehicle stiffness and interior space constant, different restraint packages are not necessary to meet both the NHTSA and Transport Canada proposals.

5. Concerns About the 5th Percentile Adult Female Dummy

In commenting on the NPRM, DaimlerChrysler reiterated concerns it has previously identified about the Hybrid III 5th percentile adult female dummy, including ones about neck structure and response, dummy interference with deploying air bags, and the Nij neck injury criterion. That manufacturer stated that these issues were discussed in numerous submissions during the advanced air bag rulemaking, and most recently in its petition for reconsideration of the July 2002 final rule on the 5th percentile adult female dummy.

We note that the issues raised by DaimlerChrysler are not specific to this proposed requirement. Nij is already incorporated as an injury criterion in FMVSS No. 208, for both in-position and out-of-position test conditions using the 5th percentile adult female dummy. We did not propose any new injury criteria or modifications to the dummy neck as part of the proposal.

DaimlerChrysler has provided comments and petitions on these issues before, and the agency has denied its requests. For example, in a final rule published in the **Federal Register** on November 19, 2003, we stated:

The agency also determined that the Nij formula incorporates the relevant measurements for evaluating neck injury during frontal impact and that much of the automotive industry has accepted Nij as a valid injury measurement. See 66 FR 65376, 65399. DaimlerChrysler has not provided any new information with respect to these two issues in its current petition for reconsideration. The agency still concurs with our previous determination and therefore is denying DaimlerChrysler's petition with respect to * * * Nij measurements.

68 FR 65189.

Most recently, the agency denied DaimlerChrysler's petition for reconsideration of the July 2002 final rule on the 5th percentile adult female dummy, referred to in its comments on this rulemaking, in a document published in the **Federal Register** (70 FR 13227) on March 18, 2005.

Because DaimlerChrysler has not presented new data or arguments in support of its concerns about this issue, we are not making changes in this rulemaking in response to its concerns.

6. Test Set-Up Procedure

In the NPRM, we proposed to use the seat set-up and dummy positioning procedures specified for the existing 0–48 km/h (0–30 mph) frontal rigid barrier test for the belted 5th percentile adult female dummy. The set-up includes the use of the mid-tilt and mid-telescoping positions of the steering wheel (when available).

We received two comments concerning the test procedure set-up, from IIHS and TRW. IIHS commented that dummy seating procedures in crash tests should be based on where drivers really sit and not on arbitrary seating positions that can be manipulated to optimize crash test results. It stated that NHTSA should change its regulations so anthropomorphic data are used to determine seating positions during tests, as it petitioned the agency in September 2002.

TRW stated that it believes the proposed test set-up procedures for the 5th percentile adult female dummy at the driver position, particularly with respect to the steering wheel orientation, are not realistic with regard to field conditions. That company stated that the proposal fails to recognize the different statures of the 5th percentile adult female dummy and the 50th percentile adult male dummy. It believes that representative driving positions as indicated in the IIHS/University of Michigan Transportation Research Institute (UMTRI) positioning procedures should be adopted. TRW noted that the UMTRI procedure calls for adjusting a telescoping wheel to a full-forward (untelescoped) position. TRW also recommended that the tilt position for the 5th percentile adult female dummy be lowered one or two notches from mid-position since it believes that would be a more representative position for an occupant of this stature.

We note that since publishing the NPRM, the agency denied IIHS's petition for rulemaking on amending the seating procedure in a document published in the **Federal Register** (69 FR 8160) on February 23, 2004. In that document, we stated:

* * * NHTSA denies this petition for rulemaking based on a lack of compelling beneficial evidence supporting the UMTRI procedure and the agency's views about the adequacy of the current seating procedure * * * The agency has no immediate plans to conduct research on an alternative seating method for either the driver or passenger positions. However, NHTSA may revisit the seat position issue at a later time depending on the agency's future research needs and priorities.

The current seating procedure for the 5th percentile adult female dummy was developed in the late 1990s, in consideration of work performed by the Society of Automotive Engineers (SAE) Hybrid III 5th Seating Procedure Task group and NHTSA's Vehicle Research Test Center. We believe that neither TRW nor IIHS have provided data or arguments demonstrating that amending the procedure would result in benefits. We also believe that since a great deal of testing has been performed using the existing procedure, both by government agencies and industry, we should avoid making unnecessary changes in the procedure.

For steering set-up, the procedure specifies the use of the mid-tilt and mid-telescoping positions of the steering wheel. These represent nominal positions. However, we also believe that it is reasonable to assume that some small statured drivers will drive with the steering wheel in this position, particularly if multiple-sized drivers routinely drive a vehicle.

TRW noted that NHTSA specifies a lower wheel tilt for the driver out-of-position procedure for the "chin on rim" test. The test procedure states that if the steering wheel can be adjusted to allow the chin to rest on the uppermost portion of the wheel, then the adjustment should be made. TRW stated that this position would help to present the air bag in a more uniform position to the small female driver.

However, we believe that the positioning procedure for the low risk deployment test is not relevant to the positioning procedure proposed for this rulemaking. Unlike the low risk tests, the normal seating position for the 5th percentile adult female dummy in the high speed crash tests is not intended to encompass a worst-case scenario for air bag interaction.

TRW also stated that if the tilt remains in the higher position, and the IARVs are close to compliance limits for the small female dummy, system designs might need to be changed to provide equal margins for mid-size occupants and smaller occupants. That company stated that, as a consequence, the driver air bag system may need to be more aggressive (larger air bag, higher output and/or slope inflator) to keep the small occupant off the rim. According to TRW, these designs may have the unintended consequence of more neck and chest interaction with the deploying air bag for all sized occupants who may be out-of-position during deployment.

We note, however, that vehicles are also required to meet the low risk deployment tests and neck and chest injury requirements in the low-speed

offset and high-speed full frontal barrier tests. As discussed earlier, vehicle crash tests indicate that many vehicles can meet the advanced air bag requirements, including driver low risk deployment tests, and the proposed 35 mph crash test using the 5th percentile adult female dummy with the steering wheel positioned as currently specified in FMVSS No. 208.

TRW also stated that if the agency does not change the mid-position specification, the possibility exists for adding additional lower detents to the wheel tilt mechanism, thus lowering the "mid-tilt" position without compromising the ability of the wheel to be adjusted for larger occupants. TRW stated that the result might be a trade-off in performance for larger occupants.

However, TRW did not provide any data to support its statement. Therefore, it is unclear what tradeoffs are implied.

TRW also stated that there is evidence from tests and computer models that show that the overall injury numbers improve for a 5th percentile adult female dummy when the wheel is tilted farther down from the mid-position. We note that while it may be easier to pass the test in the position advocated by TRW, this does not mean that it is in the interest of safety to adjust the steering wheel position for the specified test. As indicated above, it is reasonable to assume that some small statured drivers will drive with the steering wheel adjusted in the mid-position. Moreover, the 5th percentile adult female dummy seating procedure proposed in the NPRM is used in other tests in FMVSS No. 208, which are outside of the scope of this rulemaking. Also, as indicated above, given the amount of testing that has been performed using the existing procedure, we believe we should avoid making unnecessary changes.

7. Leadtime

GM commented that a minimum postponement of two years in the effective date of the proposed rule is necessary to accommodate testing and product development.

While a number of vehicles already meet the proposed requirement as well as the advanced air bag requirements, we recognize that some models involve greater design challenges than others. For example, in its comments, GM compared the vehicle deceleration (pulse) characteristics of the Impala to other vehicles, and showed that the vehicle pulse for the Impala is significantly less aggressive (slower deceleration) than most of the vehicles in its fleet. Some vehicles have shorter front overhangs with tighter packaging, with the result that less front crush

space is available. For these vehicles, the restraint system is more challenged to provide the crash energy absorption needed.

As discussed earlier, we proposed the same phase-in schedule for the higher 56 km/h (35 mph) rigid barrier test using belted 5th percentile adult female dummies as that already adopted for 50th percentile adult male dummies, *i.e.*, beginning September 1, 2007.

After considering the comments, we have decided to phase in the new requirement in a similar manner to the one for 50th percentile adult male dummies. However, given the short time until the compliance date for the higher speed test requirement using 50th percentile male dummies and the impact on product development plans, we have decided to begin the phase-in for the higher speed test requirement using 5th percentile female dummies two years later, *i.e.*, September 1, 2009. The additional leadtime will provide manufacturers the time needed to meet any design challenges associated with some vehicles and incorporate these additional requirements into their product development schedules without undue consequences.

The details of the phase-in are provided above in the section titled "Agency Decision—Overview," so we will not repeat them here.

8. Alternative Tests

IIHS commented that other measures to improve frontal crash protection would prove far more beneficial than the proposed requirement. It stated that these measures include offset deformable barrier and pole tests, which it believes are more representative of real world crash experience.

We note that consideration of an offset deformable barrier crash test or a pole test is outside the scope of this rulemaking. We proposed to amend an existing test procedure speed, and not an entirely new frontal crash test procedure. We also note that IIHS did not present any data to quantify how an offset deformable barrier or pole test would be more beneficial or more representative of real world crashes.

C. Benefits and Costs

In conjunction with the NPRM, the agency prepared a Preliminary Regulatory Evaluation (PRE) that analyzed the benefits and costs associated with the proposed requirements. The agency has prepared a Final Regulatory Evaluation (FRE) to accompany this final rule. The FRE addresses comments concerning benefits and costs, including comments on the methodologies used in the PRE.

The following summarizes the FRE's conclusions regarding the benefits and costs associated with this rule.

1. Benefits

The rule will annually prevent an estimated 2–4 fatalities and reduce 2 MAIS 2–5 non-fatal injuries, once all light vehicles on the road comply with it. The low and high ends of the range are dependent on assumptions about injury probability curves for head injury.

The relatively low magnitude of these benefits reflects the fact that the majority of the vehicle changes necessary to meet this rule are already being made to meet the May 2000 advanced air bag final rule, and most vehicles designed to meet that rule already meet this rule. As indicated above, four of five vehicles with advanced air bags tested by NHTSA met the requirements of this rule with 20 percent compliance margins. Relative to the May 2000 advanced air bag final rule, this rule is designed to further improve air bag technologies to expand benefits to small stature occupants under the same severity crash test conditions as required for the 50th percentile males.

2. Costs

The total net cost of this final rule could range from \$0.0 to \$9.0 million (2004 economics). The same technology countermeasures will be used by the manufacturers to comply with the rule as they use to comply with the May 2000 advanced air bag final rule. They may not need to make any additional changes, they may need to redesign their air bags but add no costs, or they may add technologies to vehicles that didn't need them before this final rule. The agency estimates the total cost of the rule will most likely be \$4.5 million.

IV. Rulemaking Analyses and Notices

A. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 *et seq.*), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.⁶ These motor vehicle safety standards set a minimum standard for motor vehicle or motor vehicle equipment performance.⁷ When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety

⁶ 49 U.S.C. 30111(a).

⁷ 49 U.S.C. 30102(a)(9).

information.⁸ The Secretary also must consider whether a proposed standard is reasonable, practicable, and appropriate for the type of motor vehicle or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.⁹ The responsibility for promulgation of Federal motor vehicle safety standards has been delegated to NHTSA.¹⁰

In developing this final rule, the agency carefully considered the statutory requirements of 49 U.S.C. Chapter 301. We also note that the issue addressed by this rule arose during the agency's advanced air bag rulemaking required by the Transportation Equity Act for the 21st Century (TEA 21), enacted by Congress in June 1998. That statute required us to issue a rule amending FMVSS No. 208:

* * * to improve occupant protection for occupants of different sizes, belted and unbelted, under Federal Motor Vehicle Safety Standard No. 208, while minimizing the risk to infants, children, and other occupants from injuries and deaths caused by air bags, by means that include advanced air bags.

As discussed in the preamble to the advanced air bag rule, the agency did not propose to include the 5th percentile adult female dummy in the 56 km/h (35 mph) belted rigid barrier test requirement because we had sparse information on the practicability of such a requirement. Instead, we addressed this issue in this later rulemaking, after conducting a series of vehicle crash tests to obtain the information we needed to analyze this issue.

This final rule was preceded by an NPRM, in which we discussed the results of the vehicle crash tests conducted to support the rulemaking. We have also conducted five additional crash tests of vehicles certified to the advanced air bag requirements.

In preparing this document, the agency carefully evaluated the comments, testing results and other available information. We have also updated our cost and benefits analysis. Thus, this document reflects our consideration of all relevant, available information.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory

action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. 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 budget impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This rulemaking document was reviewed by the Office of Management and Budget under E.O. 12866. It is considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979) because of significant public interest.

This final rule amends FMVSS No. 208 by increasing the maximum belted frontal barrier crash test speed from 48 km/h (30 mph) to 56 km/h (35 mph) for the 5th percentile adult female dummy. This is the same test speed as is specified for the 50th percentile adult male dummy.

As noted above in the section entitled Benefits and Costs, the agency estimates that the rule will prevent 2-4 fatalities and reduce 2 MAIS 2-5 non-fatal injuries. The total net cost could range from \$0.0 to \$9.0 million (2004 economics). The agency estimates the total cost of the rule will most likely be \$4.5 million.

A complete discussion of how NHTSA arrived at these benefits and costs may be found in the FRE located in the docket for this rulemaking.

C. Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, NHTSA has evaluated the effects of this final rule on small entities. I hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities.

The following is the agency's statement providing the factual basis for the certification (5 U.S.C. 605(b)). The rule directly affects motor vehicle manufacturers, second stage or final

manufacturers, and alterers. SIC code number 3711, *Motor Vehicles and Passenger Car Bodies*, prescribes a small business size standard of 1,000 or fewer employees. SIC code No. 3714, *Motor Vehicle Part and Accessories*, prescribes a small business size standard of 750 or fewer employees.

The majority of motor vehicle manufacturers would not qualify as a small business. These manufacturers, along with manufacturers that do qualify as a small business, are already required to comply with the 48 km/h (30 mph) maximum crash test speed requirements using 5th percentile adult female dummies under the advanced air bag rule of FMVSS No. 208. Measures to provide protection up to 48 km/h (30 mph) are already being implemented, and many tested vehicles already comply with requirements as amended by this rule. Improving performance as necessary to meet the 56 km/h (35 mph) requirement can generally be achieved through changes in safety belt design or changes in air bag inflation characteristics with low-cost algorithm changes. Furthermore, small volume manufacturers are given the option of waiting until the end of the phase-in to meet the new requirements.

Most of the intermediate and final stage manufacturers of vehicles built in two or more stages and alterers have 1,000 or fewer employees. But again, these companies already are required to comply with the 48 km/h (30 mph) belted 5th percentile adult female dummy requirement. These companies can either rely on the original equipment manufacturer's certification, or employ similar low cost measures as the large manufacturers. Also, final stage manufacturers and alterers can wait until one year after the end of the phase-in to meet the new requirements. Accordingly, there will be no significant economic impact on small businesses, small organizations, or small governmental units by these amendments. For these reasons the agency has not prepared a regulatory flexibility analysis.

D. Executive Order No. 13132

NHTSA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 13132, Federalism, and has determined that it does not have sufficient Federal implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. The rule will not have any substantial impact on the States, or on the current Federal-State relationship, or on the current distribution of power and

⁸ 49 U.S.C. 30111(b).

⁹ *Id.*

¹⁰ 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

responsibilities among the various local officials. However, under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use.

E. National Environmental Policy Act

NHTSA has analyzed this rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this rule will not have any significant impact on the quality of the human environment.

F. Paperwork Reduction Act

Under the procedures established by the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule contains a "collection of information" as that term is defined by OMB at 5 CFR 1320. As a result of this final rule, NHTSA proposes to revise a currently approved collection of information as follows. NHTSA will also ask for an extension of the revised collection of information for three more years.

Agency: National Highway Traffic Safety Administration (NHTSA).

Title: Part 585—Phase-in Reporting Requirements.

Type of Request:—Revision of a Currently Approved Collection of Information.

OMB Clearance No.—2127–0599.

Form Number:—This collection of information will not use any standard forms.

Requested Expiration Date of Clearance:—At present, Clearance No. 2127–0599 is scheduled to expire on October 31, 2006. NHTSA will ask for a 3-year extension of this collection of information (with revisions) through October 31, 2009. As a result of this final rule, NHTSA anticipates asking for another extension of this collection, through October 31, 2012.

Summary of the Collection of Information

In the "Rulemaking Analyses and Notices" section of the August 6, 2003 NPRM, NHTSA discussed the Paperwork Reduction Act consequences of its proposed collection of information (See 68 FR at 46544–46545.) As a result of this final rule, NHTSA amends its description of the collection of

information in the NPRM as follows. As discussed earlier, the final rule is essentially the same as the proposal, except for the timing of the phase-in. The new requirement is phased-in in a manner similar to the phase-in for the 56 km/h (35 mph) maximum speed test requirement using the 50th percentile adult male dummy, but begins two years later, *i.e.*, September 1, 2009. The additional leadtime will provide manufacturers the time needed to meet design challenges associated with some vehicles and incorporate these additional requirements into their product development schedules without undue consequences.

We are adopting phase-in reporting requirements similar to those used in other phase-ins. For each year of the phase-in period, manufacturers are required to provide to NHTSA, within 60 days after the August 31 end date of each "production year," information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with the belted barrier test upgrade.

As discussed earlier, the implementation schedule for the new requirement is as follows:

- 35 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2009 (with the phase-in report to NHTSA due on October 31, 2010);
- 65 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2010, with an allowance of carryover credits from vehicles built after September 1, 2009 (with the phase-in report to NHTSA due on October 31, 2011);
- 100 percent of each manufacturer's light vehicles manufactured during the production year beginning on September 1, 2011, with an allowance of carryover credits from vehicles built after September 1, 2009 (with the phase-in report to NHTSA due on October 31, 2012).
- All light vehicles manufactured on or after September 1, 2012.

Manufacturers that sell two or fewer carlines in the United States at the beginning of the first year of the phase-in (September 1, 2009) will have the option of omitting the first year of the phase-in, if they fully comply beginning on September 1, 2010.

Manufacturers that produce or assemble fewer than 5,000 vehicles for the U.S. market per year may defer compliance with the new requirement until September 1, 2012. Pursuant to

this final rule, these manufacturers do not have to file any reports to NHTSA.

Consistent with our usual policy concerning multi-stage vehicles, multi-stage manufacturers and alterers may defer compliance with the new requirement until September 1, 2013. Pursuant to this final rule, these manufacturers do not have to file any reports to NHTSA.

Description of the Need for the Use of the Information

NHTSA needs this information to ensure that vehicle manufacturers are certifying their applicable vehicles as meeting the new belted barrier test using the 5th percentile female. NHTSA will use this information to determine whether a manufacturer has complied with the amended requirements of FMVSS No. 208 during the phase-in period.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information)

NHTSA estimates that 21 vehicle manufacturers will submit the required information.

For each report, the manufacturer will provide, in addition to its identity, several numerical items of information. The information includes:

- (a) Total number of vehicles manufactured for sale during the preceding production year,
- (b) Total number of vehicles manufactured during the production year that meet the regulatory requirements, and
- (c) Information identifying the vehicles (by make, model, and vehicle identification number (VIN)) that have been certified as complying with the belted barrier test upgrade.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information

Approved Clearance for October 31, 2003 through October 31, 2006:—At present, OMB Clearance 2127–0599 gives NHTSA approval to collect 1,281 burden hours a year from industry, or 61 hours from each of 21 manufacturers. This figure of 61 hours represents the burden hours that would result if reports for two separate but related phase-ins were due the same year, *e.g.*, both the higher speed test requirement using 50th percentile adult male test dummies and the higher speed test requirement using the 5th percentile adult female dummies. At no time from October 31, 2003 through October 31, 2006 has there been a requirement for manufacturers to provide two such

phase-in reports. Thus, this figure of 61 hours should have been 60 hours per manufacturer, or a total collection of information burden on industry of 1,260 hours.

Request for Clearance for October 31, 2006 through October 31, 2009—NHTSA is asking OMB to extend Clearance 2127–0599 for an additional three years, October 31, 2006 through October 31, 2009. NHTSA notes that for the first year of this period, November 1, 2006 through October 31, 2007, the reporting requirement relates to the optional earning of advanced credits for Phase II. If all manufacturers choose to earn advanced credits, the burden hours would be the same as for one of the years of the phase-in *i.e.*, 60 hours.

The phase-in period for Phase II (higher speed test requirement using 50th percentile adult male test dummies) will begin on September 1, 2007, with the report due on October 31, 2008. From November 1, 2007 through October 31, 2009, NHTSA estimates that each manufacturer will again incur 60 burden hours per year, through October 31, 2009. The burden hours for OMB Clearance, 2127–0599 will remain at 60 hours multiplied by 21 manufacturers per year (1,260 hours). Thus, in its OMB Form 83–I submission for approval to extend OMB Clearance 2127–0599 to collect information from October 31, 2007 through October 31, 2009, NHTSA will ask that the collection of information be revised to reflect the lower figure of 1,260 hour figure for the two years in which reports (60 burden hours a year on 21 manufacturers).

Anticipated Request for Clearance for October 31, 2009 through October 31, 2012—The first year of the phase-in for the higher speed test requirement using 5th percentile adult female dummies covers the production period from September 1, 2009 through August 31, 2010. The report will be due by October 31, 2010, a time after OMB Clearance 2127–0599 expires on October 31, 2009.

According to the phase-in schedule specified in this final rule, the three year period from October 31, 2009 through October 31, 2012 will include one year (covering the production period from September 1, 2009 through August 31, 2010) when manufacturers will report on both the last year of the phase-in for the higher speed test requirement using 50th percentile adult male test dummies and the first year of the higher speed test requirement using 5th percentile adult female dummies. For this one year, there will be an increase of one burden hour, resulting in a total of 61 burden hours per manufacturer, or a total burden of 1,281 hours on industry. This estimate is

based on the fact that the reporting format for the test requirements using both the 50th percentile adult male test dummies and the 5th percentile adult female test dummies is identical. The data collection will involve only computer tabulation (using the same reporting format) and manufacturers will provide the information to NHTSA in an electronic (as opposed to paper) format. The data will cover the same types of vehicles for both the upgrade of the belted barrier test using the 50th percentile adult male test dummies and the upgrade using the 5th percentile adult female test dummies.

The additional two years in the period from October 31, 2010 through October 31, 2012, will include the phase-in reporting requirement for light vehicle manufacturers only for the higher speed test requirement using 5th percentile adult female test dummies. We estimate that the reporting burden for manufacturers will be the same as was the reporting burden for the higher speed test requirement using 50th percentile adult male test dummies, 60 burden hours per year. Thus, for each of the two years from October 31, 2010 through October 31, 2012, the reporting burden on light vehicle manufacturers is 60 hours per year.

There are 0 hours of recordkeeping burdens resulting from the collection of information.

NHTSA estimates that there are no additional cost burdens resulting from this final rule. There are no capital or start-up costs as a result of this collection. Manufacturers could collect and tabulate the information by using existing equipment. Thus, there are no additional costs to respondents or recordkeepers.

Because the scope of this collection of information differs from that described in the NPRM, NHTSA invites comment on its estimates of the total annual hour and cost burdens resulting from this collection of information. Please submit any comments to the NHTSA Docket Number referenced in the heading of this document or to: Ms. Lori Summers, Office of Rulemaking, NHTSA, 400 Seventh St., SW., Washington, DC 20590. Ms. Summers' telephone number is: (202) 366–1740. Comments are due within 30 days of the date of publication of this document in the **Federal Register**.

G. National Technology Transfer and Advancement Act

Under the National Technology Transfer and Advancement Act of 1995 (NTTAA) (Pub. L. 104–113), “all Federal agencies and departments shall use technical standards that are developed

or adopted by voluntary consensus standards bodies, using such technical standards as a means to carry out policy objectives or activities determined by the agencies and departments.” The amendments use the technical standards currently in FMVSS No. 208 and only increase the maximum speed for the frontal barrier crash test using the 5th percentile adult female dummy from 48 km/h (30 mph) to 56 km/h (35 mph). No voluntary consensus standard uses a maximum speed of 56 km/h (35 mph) for a frontal rigid barrier crash test using a 5th percentile adult female dummy.

H. Civil Justice Reform

This rule will not have any retroactive effect. As noted above in the discussion of Executive Order No. 13132, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the State requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending, or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file a suit in court.

I. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually (adjusted for inflation with base year of 1995). This rulemaking would not result in expenditures by State, local or tribal governments, in the aggregate, or by the private sector in excess of \$100 million annually.

J. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be “economically significant” as defined under E.O. 12866, and (2) concerns an environmental, health, or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the

planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, health, or safety risks that disproportionately affect children. The rule increases the maximum belted frontal crash barrier test speed from 48 km/h (30 mph) to 56 km/h (35 mph) for the 5th percentile adult female dummy.

K. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

L. Privacy Act

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 in 49 CFR Parts 571 and 585

Imports, Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, NHTSA is amending 49 CFR parts 571 and 585 as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.208 is amended by adding S14.6 through S14.7 and revising S15.1 and S16.1(a) to read as follows:

§ 571.208 Standard No. 208; Occupant crash protection.

* * * * *

S14.6 *Vehicles manufactured on or after September 1, 2009, and before September 1, 2012 (Phase-in of higher*

maximum speed (56 km/h (35 mph)) belted test requirement using 5th percentile adult female dummies).

(a) For vehicles manufactured for sale in the United States on or after September 1, 2009, and before September 1, 2012, a percentage of the manufacturer's production, as specified in S14.6.1, shall meet the requirements specified in S15.1(b) (in addition to the other requirements specified in this standard).

(b) Manufacturers that sell two or fewer carlines, as that term is defined at 49 CFR 583.4, in the United States may, at the option of the manufacturer, meet the requirements of this paragraph instead of paragraph (a) of this section. Each vehicle manufactured on or after September 1, 2010, and before September 1, 2012, shall meet the requirements specified in S15.1(b) (in addition to the other requirements specified in this standard).

(c) Vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having previously been certified in accordance with Part 567 of this chapter are not subject to the requirements of S14.6.

(d) Vehicles that are manufactured by a manufacturer that produces fewer than 5,000 vehicles worldwide annually are not subject to the requirements of S14.6.

S14.6.1 Phase-in schedule.

S14.6.1.1 *Vehicles manufactured on or after September 1, 2009, and before September 1, 2010.* Subject to S14.6.2(a), for vehicles manufactured by a manufacturer on or after September 1, 2009, and before September 1, 2010, the amount of vehicles complying with S15.1(b) shall be not less than 35 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1, 2009, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2007, and before September 1, 2010, or

(b) The manufacturer's production on or after September 1, 2009, and before September 1, 2010.

S14.6.1.2 *Vehicles manufactured on or after September 1, 2010, and before September 1, 2011.* Subject to S14.6.2(b), for vehicles manufactured by a manufacturer on or after September 1, 2010, and before September 1, 2011, the amount of vehicles complying with S15.1(b) shall be not less than 65 percent of:

(a) If the manufacturer has manufactured vehicles for sale in the United States during both of the two production years prior to September 1,

2010, the manufacturer's average annual production of vehicles manufactured on or after September 1, 2008 and before September 1, 2011, or

(b) The manufacturer's production on or after September 1, 2010, and before September 1, 2011.

S14.6.1.3 *Vehicles manufactured on or after September 1, 2011, and before September 1, 2012.* Subject to S14.6.2(c), for vehicles manufactured by a manufacturer on or after September 1, 2011, and before September 1, 2012, the amount of vehicles complying with S15.1(b) shall be 100 percent of the manufacturer's production during that period.

S14.6.2 Calculation of complying vehicles.

(a) For the purposes of complying with S14.6.1.1, a manufacturer may count a vehicle if it is manufactured on or after September 1, 2009, but before September 1, 2010.

(b) For purposes of complying with S14.6.1.2, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2009, but before September 1, 2011, and

(2) Is not counted toward compliance with S14.6.1.1.

(c) For purposes of complying with S14.6.1.3, a manufacturer may count a vehicle if it:

(1) Is manufactured on or after September 1, 2009, but before September 1, 2012, and

(2) Is not counted toward compliance with S14.6.1.1 or S14.6.1.2.

S14.6.3 Vehicles produced by more than one manufacturer.

S14.6.3.1 For the purpose of calculating average annual production of vehicles for each manufacturer and the number of vehicles manufactured by each manufacturer under S14.6.1, a vehicle produced by more than one manufacturer shall be attributed to a single manufacturer as follows, subject to S14.6.3.2.

(a) A vehicle that is imported shall be attributed to the importer.

(b) A vehicle manufactured in the United States by more than one manufacturer, one of which also markets the vehicle, shall be attributed to the manufacturer that markets the vehicle.

S14.6.3.2 A vehicle produced by more than one manufacturer shall be attributed to any one of the vehicle's manufacturers specified by an express written contract, reported to the National Highway Traffic Safety Administration under 49 CFR Part 585, between the manufacturer so specified and the manufacturer to which the

vehicle would otherwise be attributed under S14.6.3.1.

S14.7 *Vehicles manufactured on or after September 1, 2012. (Higher maximum speed (56km/h (35 mph)) belted test requirement using 5th percentile adult female dummies).* Each vehicle shall meet the requirements specified in S15.1(b) (in addition to the other requirements specified in this standard). However, vehicles that are manufactured in two or more stages or that are altered (within the meaning of 49 CFR 567.7) after having been previously certified in accordance with Part 567 of this chapter may comply with the requirements specified in S15.1(a) instead of S15.1(b), if they are manufactured before September 1, 2013.

* * * * *

S15.1 *Belted Test.*

(a) Each vehicle that is certified as complying with S14.1 or S14.2 shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 when tested under S16.1(a)(1).

(b) Each vehicle that is certified as complying with S14.6 or S14.7 shall, at each front outboard designated seating position, meet the injury criteria specified in S15.3 when tested under S16.1(a)(2).

* * * * *

S16.1 *General provisions.* * * *

(a) *Belted test.*

(1) *Vehicles certified to S14.1 or S14.2.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 48 km/h (30 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

(2) *Vehicles certified to S14.6 or S14.7.* Place a 49 CFR Part 572 Subpart O 5th percentile adult female test dummy at each front outboard seating position of a vehicle, in accordance with the procedures specified in S16.3 of this standard. Impact the vehicle traveling longitudinally forward at any speed, up to and including 56km/h (35 mph), into a fixed rigid barrier that is perpendicular within a tolerance of ± 5 degrees to the line of travel of the vehicle under the applicable conditions of S16.2 of this standard.

* * * * *

PART 585—PHASE-IN REPORTING REQUIREMENTS

■ 3. The authority citation for Part 585 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

■ 4. Section 585.14 is amended by redesignating paragraph (c) as (d) and adding new paragraph (c) to read as follows:

§ 585.14 Definitions.

* * * * *

(c) *Phase three of the advanced air bag reporting requirements of Standard No. 208* refers to the requirements set forth in S14.6 and S14.7 of Federal Motor Vehicle Safety Standard No. 208, 49 CFR 571.208.

* * * * *

■ 5. Section 585.15 is amended by adding new paragraph (b)(3) and revising paragraph (d) to read as follows:

§ 585.15 Reporting requirements.

* * * * *

(b) * * *

(3) Within 60 days after the end of the production years ending August 31, 2010, August 31, 2011, and August 31, 2012, each manufacturer shall submit a report to the National Highway Traffic Safety Administration regarding its compliance with phase three of the advanced air bag requirements of Standard No. 208 for its vehicles produced in that production year. The report shall provide the information specified in paragraph (d) of this section and in § 585.2 of this part.

* * * * *

(d) *Phase-in report content.*

(1) *Basis for phase-in production requirements.* For production years ending August 31, 2003, August 31, 2004, August 31, 2005, August 31, 2007, August 31, 2008, August 31, 2009, August 31, 2010, and August 31, 2011, each manufacturer shall provide the number of vehicles manufactured in the current production year, or, at the manufacturer's option, for the current production year and each of the prior two production years if the manufacturer has manufactured vehicles during both of the two production years prior to the year for which the report is being submitted.

(2) *Production of complying vehicles.* Each manufacturer shall report for the production year for which the report is filed the number of vehicles, by make and model year, that meet the applicable advanced air bag requirements of Standard No. 208, and

to which advanced air bag requirements the vehicles are certified. Provide this information separately for phase two and phase three of the advanced air bag reporting requirements.

■ 6. Section 585.16 is revised to read as follows:

§ 585.16 Records.

Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.15(c)(1) until December 31, 2011. Each manufacturer shall maintain records of the Vehicle Identification Number of each vehicle for which information is reported under § 585.15(d)(2) until December 31, 2013.

Issued: August 23, 2006.

Nicole R. Nason,

Administrator.

[FR Doc. 06-7225 Filed 8-30-06; 8:45 am]

BILLING CODE 4910-59-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060621176-6219-02; I.D. 052306A]

RIN 0648-AU50

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Great South Channel Scallop Dredge Exemption Area

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to modify the regulations implementing the Northeast (NE) Multispecies Fishery Management Plan (FMP) to allow vessels issued either a General Category Atlantic sea scallop permit or a limited access sea scallop permit, when not fishing under a scallop days-at-sea (DAS) limitation, to fish for scallops with small dredges (combined width not to exceed 10.5 ft (3.2 m)) within the Great South Channel Scallop Dredge Exemption Area. This final rule responds to a request from the fishing industry to add this area to the list of exempted fisheries. The intent of this action is to allow small scallop dredge vessels to harvest scallops in a manner that is consistent with the bycatch reduction objectives of the FMP.

DATES: Effective August 31, 2006.

ADDRESSES: Copies of supporting documents, including the Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), and the Environmental Assessment (EA) prepared for this action are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. NMFS prepared a Final Regulatory Flexibility Analysis (FRFA), which is contained in the Classification section of the preamble of this final rule. Copies of the FRFA and the Small Entity Compliance Guide are available from the Regional Administrator, and are also available via the internet at <http://www.nero.nmfs.gov>.

FOR FURTHER INFORMATION CONTACT: Tobey H. Curtis, Fishery Management Specialist, 978-281-9273, fax 978-281-9135.

SUPPLEMENTARY INFORMATION:

Background

Current regulations (implemented under Framework Adjustment 9 and expanded under Amendment 7 to the FMP) contain a multispecies fishing mortality and bycatch reduction measure that is applied to the Gulf of Maine (GOM), Georges Bank (GB), and Southern New England (SNE) Exemption Areas. A vessel may not fish in these areas unless it is fishing under a NE multispecies or a scallop days-at-sea (DAS) allocation, is fishing with exempted gear, is fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or is fishing in an exempted fishery. The procedure for adding, modifying, or deleting fisheries from the list of exempted fisheries is found in 50 CFR 648.80. A fishery may be exempted by the Regional Administrator (RA), after consultation with the New England Fishery Management Council (Council), if the RA determines, based on available data or information, that the bycatch of regulated species of groundfish is, or can be reduced to, less than 5 percent by weight of the total catch, and that such exemption will not jeopardize the fishing mortality objectives of the FMP.

On October 25, 2005, a request was submitted on behalf of the General Category scallop fleet to establish an additional exempted scallop dredge fishery in the GOM/GB Exemption Area in the vicinity of traditional scalloping grounds within the area known as the Great South Channel, off Cape Cod, MA. Neither the GOM Scallop Dredge Exemption Area, established in Framework 21 to the FMP (February 1997), nor the SNE Scallop Dredge

Exemption Area, established in Amendment 13 to the FMP (April 2004), include this area within their exemption programs.

Bycatch analyses conducted by NMFS for all observed scallop trips (both General Category and limited access scallop vessels) demonstrate that the exempted fishery described below meets the requirements of the regulations in a discrete area of the Great South Channel, in a portion of the initially requested area. On July 6, 2006, a proposed rule was published in the **Federal Register** (71 FR 38352) soliciting public comment. The proposed rule and EA discuss these analyses in greater detail. This final rule addresses the public comments that were received during the comment period, which ended on July 21, 2006. Based on some of the received comments, NMFS is slightly modifying the final rule with regard to the boundaries of the exemption area described in the proposed rule. This final rule exempts a slightly larger area around the Great South Channel, which includes an area of bottom identified as important to the General Category scallop fleet, and from which observer data were available that indicated low bycatch rates. This additional area was included in another alternative as reflected in the Comments section.

Approved Management Measures

Great South Channel Scallop Dredge Exemption Area

Based on the analysis of available data, the bycatch of regulated species by scallop dredge vessels is less than 5 percent, by weight, of the total catch in the Great South Channel. Therefore, the RA has determined that an exempted scallop dredge fishery in a specifically defined portion of the Great South Channel meets the exemption requirements specified in § 648.80(a)(8). At this time, there are not sufficient data to determine if a scallop dredge fishery in any other area would also meet the exemption requirements.

Therefore, this final rule implements an exempted fishery for vessels fishing with General Category scallop permits, or limited access scallop permits not fishing under a DAS allocation, to use small dredges with a combined width not greater than 10.5 ft (3.2 m) in portions of the Great South Channel (see area definition below). This area will be referred to as the Great South Channel Scallop Dredge Exemption Area (GSC Area). Portions of the GSC Area will be seasonally closed to protect SNE, GB, and Cape Cod (CC)/GOM yellowtail flounder during their peak spawning

periods. Peak spawning periods are defined in the EA prepared for Framework Adjustment 40-B to the FMP. The portion of the GSC Area that lies within statistical areas 525 and 526 (SNE and GB yellowtail flounder stock areas) will be closed from April 1 through June 30. The portion of the GSC that lies within statistical area 521 (CC/GOM yellowtail flounder stock area) will be closed from June 1 through June 30.

Vessels fishing in this exemption that wish to land more than 40 lb (18.1 kg) of shucked (5 bu (1.76 hL) unshucked) scallops are required to have a Category 1B General Category scallop permit, an operational Vessel Monitoring System (VMS), and are allowed to land a maximum of 400 lb (181.4 kg) of shucked (50 bu (17.62 hL) unshucked) scallops per trip. Vessels with a limited access scallop permit may also participate in the exemption when not fishing under a scallop DAS, and are restricted to the Category 1B General Category scallop permit regulations. These vessels are not allowed to fish for, possess on board, or land any fish species other than scallops. Other than the seasonal closures between April and June, these regulations are consistent with those of the existing scallop dredge exemption areas defined at § 648.80(a)(11) and (b)(11). Regulations governing the scallop fishery can be found at § 648 subpart D.

Comments and Responses

NMFS received 25 comment letters on the proposed rule; 18 letters were from General Category scallop vessel owner/operators, three were from industry representatives, one was from an individual, one was from a state-level fisheries management agency, one was from the Council, and one was from an environmental advocacy group. Although comments were received on the economic effects of the rule more generally, no public comments were received specifically on the economic analyses summarized in the IRFA. These comment letters could generally be divided into several main groups of similar comments, which are summarized below:

Comment 1: Most letters from General Category scallop vessel owner/operators indicated strong support for the GSC Area as proposed. Their personal observations agree with the low observed groundfish bycatch rates described in the proposed rule. Many described the economic hardships that they have endured since learning the Great South Channel was prohibited for General Category scallop vessels, and

requested that the area be opened as soon as possible.

Response: The proposed rule and EA for this action identified that, based on the best available data, this exemption meets the bycatch requirements of the regulations (i.e., regulated multispecies bycatch is less than 5 percent of the total catch). The IRFA also described how the No Action alternative would have negative impacts on small entities in the affected communities. The RA has therefore approved the exemption and is implementing the GSC Area through this final rule.

Comment 2: Four letters primarily support the establishment of the GSC Area, but requested that the boundaries be expanded to include one or two areas the commenters stated are important scallop fishing areas that were not included in the proposed rule. They stated that the spatial distribution of observed scallop dredge tows would support this expansion. The commenters indicated that the change in boundaries of the GSC Area should only be considered if it would not delay the implementation of the exemption; again citing economic hardship and a need to open the GSC Area as soon as possible.

Response: NMFS reviewed the relevant data and found that an expansion of the GSC Area to include an area north of the northwest corner of Closed Area I was justified because of its relatively small size, and the fact that available data in this general area indicated low bycatch rates. This adjustment from the boundaries defined in the proposed rule are addressed in this final rule. This adjustment incorporates part of a larger potential exemption area which was analyzed as an alternative in the EA for this action. A more complete discussion of the justification and impacts of this modification are described in the EA, and were determined to not have any further significant impacts than previously identified in the draft EA.

Comment 3: Many of the General Category scallop owner/operators argued that the GSC Area should be open solely because the limited access scallop fleet is already permitted to fish in the Great South Channel, and it is inequitable to prohibit General Category scallop vessels, which arguably have fewer impacts on habitat and fishery resources.

Response: Because of the poor condition of many groundfish stocks, the NE multispecies regulations prohibit all vessels from fishing in the GOM, GB, and SNE Exemption Areas, unless the vessel is fishing under a groundfish or scallop DAS, is fishing with exempted

gear, is fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or is fishing in an exempted fishery. An exempted fishery is a fishery where the bycatch of groundfish has been determined to be less than 5-percent of the total catch in that fishery. Under existing regulations, the General Category scallop fishery has only demonstrated that it would meet these bycatch requirements in the GOM and SNE Scallop Dredge Exemption Areas, and has therefore been limited to those specific areas. This final rule finds that this exempted fishery status now also applies to the Great South Channel. Additionally, although General Category effort expansion has not yet been specifically analyzed in the Atlantic Sea Scallop (Scallop) FMP, this action is not expected to result in increased effort in this fishery, but rather a redistribution of existing effort. The Council is also currently considering measures for General Category scallop vessels that would address issues with capacity, effort, and mortality in the long-term.

Comment 4: The Council commented that it previously voted to support this exemption proposal if the RA found that the exemption would meet the bycatch and fishing mortality objectives of the regulations. The Council supports the establishment of the GSC Area as described in the proposed rule.

Response: The regulations require that the RA consult with the Council before approving new exempted fisheries. The RA has found that the proposed exemption meets the requirements of the regulations, and the Council concurs with this determination.

Comment 5: Two letters did not support the proposed rule to create the GSC Area. One letter did not provide any specific reasons for its arguments against the exemption. The other letter described its concerns in detail, citing the potentially negative impacts on habitat and bycatch species that the commenter believed could result from the increased dredge effort in the Great South Channel. This letter also proposed that NMFS should implement an annual bycatch quota in the GSC Area, similar to those utilized in the Scallop Access Area Program.

Response: NMFS addressed the impacts that the proposed action would have on habitat and non-target species in the EA. It was acknowledged that this area provides important habitat for managed species of groundfish and that the proposed action will adversely impact EFH for those species. However, given the substantial amount of bottom trawling and dredging that already takes place in the area and the fact that the environment is naturally so dynamic,

NMFS concluded that any additional adverse impacts that result from this action would be no more than minimal. Therefore, no management measures to mitigate for the adverse effects of this action are required (see 50 CFR 600.815(a)(2)(ii)). The EA does not include any quantitative data that would indicate more exactly how much additional bottom contact would result from this action, but rather notes that there is not enough information available to make such a prediction. However, NMFS believes that the amount of bottom disturbance caused by the existing fishing activity and the natural disturbance caused by bottom currents and storms far exceeds the additional disturbance that would result from this action. Additionally, impacts will be minimized to the extent practicable by limiting the size of the dredge gear to 10.5 ft (3.2 m), and with comparatively low daily trips limits, which would result in less bottom contact.

As pointed out by the commenter, several closed area alternatives were analyzed in Amendment 10 to the Scallop FMP that partially overlap with the proposed GSC Area. However, including the results of these analyses in the EA would not change the conclusions reached in the document. The commenter also suggested that this action could have a detrimental effect on the Habitat Area of Particular Concern (HAPC) designation process that is currently underway in New England. NMFS does not agree. This process is still in the very early stages. No management decisions that would affect fishing will be made until new HAPC areas are established. Until such time, fishing can continue in any potential HAPC. Allowing General Category scallop vessels into the GSC Area will not complicate the HAPC designation process or any subsequent decisions that would affect fishing in the area.

As discussed above, based on the best available data, the bycatch of regulated multispecies in this exempted fishery is expected to be within the allowable limits defined in the regulations, and a seasonal closure to protect spawning yellowtail flounder will be implemented. Furthermore, the opening of the GSC Area is expected to redistribute the effort of the General Category scallop fishery, to some degree, from other areas where bycatch rates tend to be higher. With regard to annual bycatch quotas, such a measure is not warranted or practicable in an exempted fishery with very low bycatch rates. The observed bycatch rates in the adjacent Nantucket Lightship Scallop Access

Area, similar to those calculated for the GSC Area, average less than 1 percent. Bycatch quotas could also pose negative social and economic effects by promoting rapid harvest rates to maximize landings before the quota is reached, as has been observed in the Scallop Access Area Program. A steady, long-term harvest rate would be more beneficial to the fishery as a whole, provided the bycatch rates remain low. Moreover, it would be impracticable to monitor on a real time basis, the very low bycatch levels in this fishery. The regulations allow for the periodic review and modification of exempted fisheries if it is determined that bycatch rates have risen above the acceptable thresholds.

Changes From the Proposed Rule

In § 648.80, paragraph (a)(18)(i) is revised to include new coordinates for the boundary of the GSC Area.

In § 648.80, paragraph (a)(18)(ii)(D) is revised to include new coordinates for the boundary of the GSC CC/GOM Yellowtail Flounder Peak Spawning Closure.

Classification

NMFS has determined that this final rule is consistent with the FMP and determined that the rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Because § 648.80(a)(18) of this rule eliminates a prohibition on General Category scallop vessels fishing in the Great South Channel, thereby relieving a restriction, it is not subject to the 30-day delayed effectiveness provision of the APA pursuant to 5 U.S.C. 553(d)(1). The NE multispecies regulations at § 648.80(a)(2)(viii) prohibit all vessels from fishing in the GOM/GB Exemption Area, unless the vessel is fishing under a groundfish or scallop DAS, is fishing with exempted gear, is fishing under the Small Vessel Handgear (A or B) or Party/Charter permit restrictions, or is fishing in an exempted fishery. Under existing regulations, the General Category scallop fishery has only demonstrated that it would meet these bycatch requirements in the GOM and SNE Scallop Dredge Exemption Areas, and has therefore been limited to those specific areas. This final rule finds that this exempted fishery status now also applies to the Great South Channel, thereby relieving the restrictions on General Category scallop vessels in this area.

NMFS, pursuant to section 604 of the Regulatory Flexibility Act, has prepared a FRFA in support of this action. The FRFA describes the economic impact that this final rule will have on small entities. The FRFA incorporates the economic impacts and analysis summarized in the IRFA for the proposed rule to implement the GSC Area (71 FR 38352), and the corresponding economic analyses prepared for this action in the EA and the RIR. The contents of these documents are not repeated in detail here. Copies of the IRFA, the RIR, and the EA are available upon request (see **ADDRESSES**). A description of the reasons for this action, the objectives of the action, and the legal basis for this final rule are found in the preamble to the proposed and final rules.

There are no Federal rules that duplicate, overlap, or conflict with this final rule. This action will create a new scallop dredge exemption area for General Category scallop vessels in the GOM/GB Exemption Area. This action was compared to three different alternatives for the boundaries of the exemption area. Alternatives to the proposed exemption area included exempting all of statistical areas 521 and 526, exempting the entirety of the GOM/GB Exemption Area, and a No Action alternative, which would continue to prohibit General Category scallop dredge vessels from fishing outside of the existing scallop dredge exemption areas.

Description and Estimate of the Number of Small Entities to Which This Rule Would Apply

The Small Business Administration (SBA) defines a small commercial fishing entity as a firm with gross receipts not exceeding \$4 million. As of March 2006, a total of 2,814 vessels had been issued open access General Category scallop permits in the NE region. Approximately 30 percent of these were issued a Category 1B permit, which allows up to 400 lb (181.4 kg) of scallop meats per trip, and are considered to be vessels that primarily rely on scallops for the bulk of their revenues. Any of these permitted vessels would be allowed to participate in this exemption program, but the area proposed to be exempt has traditionally been mostly fished by vessels from Massachusetts and Maine. Average 2005 scallop revenues for General Category scallop vessels was \$87,369 per vessel, though there was great variation from vessel to vessel, ranging from less than \$7,000 to over \$160,000 per vessel. The majority of these vessels also receive additional revenues from landings of a

variety of other species. Each vessel in this analysis is treated as a single entity for purposes of size determination and impact assessment. All commercial fishing entities would fall under the SBA size standard for small commercial fishing entities. Therefore, there is no differential impact between large and small entities. A more complete description of the General Category fishery can be found in Framework Adjustment 18 to the Scallop FMP, available from the Council (www.nefmc.org).

Economic Impacts of This Action

The economic impacts of the action are expected to be positive. This action will open a valuable scallop fishing ground to the General Category scallop fleet, and allow the fleet to utilize these resources in a manner consistent with the bycatch and mortality objectives of the FMP. The demand for scallops has increased significantly in recent years, and revenues for General Category vessels are also expected to increase if the exemption area is approved. There is evidence that some General Category vessels have been fishing in this area for years, despite the fact that it is outside of the existing Scallop Dredge Exemption Areas. Their profits from scallop fishing have declined since access to this area was prohibited and enforced. The ports in Cape Cod and southern Massachusetts will be the most impacted, due to their proximity to the proposed exemption area.

Economic Impacts of Other Non-Selected Alternatives

Three alternatives other than the preferred alternative were considered. The alternative that proposed to exempt the entirety of statistical areas 521 and 526 throughout the year to General Category scallop vessels, and the alternative that proposed to exempt the much larger area of the GOM/GB Exemption Area year-round would also have positive impacts; possibly slightly more positive than the preferred alternative due to the larger exempted area and the lack of a closure period. These alternatives were rejected, however, due primarily to the lack of observer data needed to estimate the bycatch rates of regulated multispecies throughout these areas. The No Action alternative was the only alternative that could pose negative economic impacts by continuing to prohibit General Category scallop vessels from fishing in the Great South Channel.

Small Entity Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of

1996 states that, for each rule for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides." The agency shall explain the actions a small entity is required to take to comply with a rule. As part of this rulemaking process, a small entity compliance guide was prepared. The guide will be sent to all holders of permits issued for the Atlantic sea scallop fishery. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from the Regional Administrator (see ADDRESSES).

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: August 25, 2006.

Samuel D. Rauch III,

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

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.14, paragraph (a)(43) is revised to read as follows:

§ 648.14 Prohibitions.

* * * * *

(a) * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(5), the small-mesh northern shrimp fishery exemption area; (a)(6), the Cultivator Shoal whiting fishery exemption area; (a)(9), Small-mesh Area 1/Small-mesh Area 2; (a)(10), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the GOM Scallop Dredge Exemption Area; (a)(12), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(13), the GOM/GB monkfish gillnet exemption area; (a)(14), the GOM/GB dogfish gillnet exemption area; (a)(15), the Raised Footrope Trawl Exempted Whiting Fishery; (a)(18), the Great South Channel Scallop Dredge Exemption Area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; (b)(9), the SNE little tunny gillnet exemption area; and (b)(11), the SNE Scallop Dredge Exemption Area. Each

violation of any provision in § 648.80 constitutes a separate violation.

* * * * *

■ 3. In § 648.80, paragraphs (a)(3)(viii) and (a)(7)(ii) are revised, and paragraph (a)(18) is added to read as follows:

§ 648.80 NE Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(viii) *Other restrictions and exemptions.*

Vessels are prohibited from fishing in the GOM/GB Exemption Area as defined in paragraph (a)(17) of this section, except if fishing with exempted gear (as defined under this part) or under the exemptions specified in paragraphs (a)(5) through (7), (a)(9) through (16), (a)(18), (d), (e), (h), and (i) of this section; or if fishing under a NE multispecies DAS; or if fishing under the Small Vessel or Handgear A exemptions specified in § 648.82(u)(5) and (6), respectively; or if fishing under a scallop DAS in accordance with paragraph (h) of this section; or if fishing pursuant to a NE multispecies open access Charter/Party or Handgear permit, or if fishing as a charter/party or private recreational vessel in compliance with the regulations specified in § 648.89. Any gear on a vessel, or used by a vessel, in this area must be authorized under one of these exemptions or must be stowed as specified in § 648.23(b).

* * * * *

(7) * * *

(ii) Vessels subject to the minimum mesh size restrictions specified in paragraphs (a)(3) or (4) of this section may transit through the Scallop Dredge Fishery Exemption Areas defined in paragraphs (a)(11) and (18) of this section with nets on board with a mesh size smaller than the minimum size specified, provided that the nets are stowed in accordance with one of the methods specified in § 648.23(b), and provided the vessel has no fish on board.

* * * * *

(18) *Great South Channel Scallop Dredge Exemption Area.* Vessels issued a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or that have used up their DAS allocations, and vessels issued a General Category scallop permit, may fish in the Great South Channel Scallop Dredge Exemption Area as defined under paragraph (a)(18)(i) of this section, when not under a NE multispecies or scallop DAS, provided the vessel complies with the

requirements specified in paragraph (a)(18)(ii) of this section.

(i) *Area Definition.* The Great South Channel Scallop Dredge Exemption Area is defined by the straight lines connecting the following points in the order stated (copies of a chart depicting the area are available from the Regional Administrator upon request):

GREAT SOUTH CHANNEL SCALLOP DREDGE EXEMPTION AREA

Point	N. lat.	W. long.
GSC 1	42°06 [min]	69°40 [min]
GSC 2	41°30 [min]	69°10 [min]
GSC 3	41°30 [min]	69°23 [min]
GSC 4	40°50 [min]	68°49.2 [min]
GSC 5	40°50 [min]	69°29.46 [min]
GSC 6	41°10 [min]	69°50 [min]
GSC 7	41°10 [min]	70°00 [min]
GSC 8	41°35 [min]	70°00 [min]
GSC 9	41°35 [min]	69°40 [min]

(ii) Requirements. (A) A vessel fishing in the Great South Channel Scallop Dredge Exemption Area specified in this paragraph (a)(18) may not fish for, possess on board, or land any species of fish other than Atlantic sea scallops.

(B) The combined dredge width in use by, or in possession on board, vessels fishing in the Great South Channel Scallop Dredge Exemption Area may not exceed 10.5 ft (3.2 m), measured at the widest point in the bail of the dredge.

(C) GSC SNE/GB Yellowtail Flounder Peak Spawning Closure. No vessel that qualifies under this exemption, as defined in this paragraph (a)(18), may fish for or possess Atlantic sea scallops in the part of the Great South Channel Scallop Dredge Exemption Area that lies within the SNE and GB yellowtail flounder stock areas (statistical areas 525 and 526) between April 1 and June 30, as defined by the straight lines connecting the following points in the order stated below.

GSC SNE/GB YELLOWTAIL FLOUNDER SPAWNING CLOSURE

Point	N. lat.	W. long.
YTA 1	41°20 [min]	70°00 [min]
YTA 2	41°20 [min]	69°50 [min]
YTA 3	41°10 [min]	69°50 [min]
YTA 4	41°10 [min]	69°30 [min]
YTA 5	41°00 [min]	69°30 [min]
YTA 6	41°00 [min]	68°57.58 [min]
YTA 7	40°50 [min]	68°49.20 [min]
YTA 8	40°50 [min]	69°29.46 [min]
YTA 9	41°10 [min]	69°50 [min]
YTA 10	41°10 [min]	70°00 [min]
YTA 11 ...	(1)	70°00 [min]

(1) Intersection of south-facing coastline of Nantucket, MA, and 70°00 [min] W. Long.

(D) GSC CC/GOM Yellowtail Flounder Peak Spawning Closure. No vessel that

qualifies under this exemption, as defined in this paragraph (a)(18), may fish for or possess Atlantic sea scallops in the part of the Great South Channel Scallop Dredge Exemption Area that lies within the CC/GOM yellowtail flounder stock area (statistical area 521) between June 1 and June 30 of each year, as defined by the straight lines connecting the following points in the order stated below.

GSC CC/GOM YELLOWTAIL FLOUNDER SPAWNING CLOSURE

Point	N. lat.	W. long.
YTB 1	41°33.05 [min]	70°00 [min]
YTB 2	41°20 [min]	70°00 [min]
YTB 3	41°20 [min]	69°50 [min]
YTB 4	41°10 [min]	69°50 [min]
YTB 5	41°10 [min]	69°30 [min]
YTB 6	41°00 [min]	69°30 [min]
YTB 7	41°00 [min]	68°57.58 [min]
YTB 8	41°30 [min]	69°23 [min]
YTB 9	41°30 [min]	69°10 [min]
YTB 10	42°06 [min]	69°40 [min]
YTB 11	41°35 [min]	69°40 [min]
YTB 12	41°35 [min]	70°00 [min]

* * * * *

■ 5. § 648.81, paragraph (g)(2)(iii) is revised to read as follows:

§ 648.81 NE multispecies closed areas and measures to protect EFH.

* * * * *

(g) * * *

(2) * * *

(iii) That are fishing with or using scallop dredge gear when fishing under a scallop DAS, and provided that the vessel complies with the NE multispecies possession restrictions for scallop vessels specified at § 648.80(h); or when lawfully fishing in the Scallop Dredge Fishery Exemption Areas, as described in paragraphs (a)(11) and (18) of this section.

* * * * *

[FR Doc. 06-7270 Filed 8-25-06; 4:23 pm]
BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044-6044-01; I.D. 082506D]

Fisheries of the Economic Exclusive Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason adjustment; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), effective 2400 hrs, Alaska local time, September 1, 2006. This adjustment is necessary to allow a 12-hour fishery for species that comprise the shallow-water species fishery without exceeding the fourth seasonal apportionment of the 2006 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), September 1, 2006, through 2400 hrs, A.l.t., September 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The fourth seasonal apportionment of the 2006 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 150 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006), for the period 1200 hrs, A.l.t., September 1, 2006, through 1200 hrs, A.l.t., October 1, 2006.

Regulations at § 679.23(b) specify that the time of all openings and closures of fishing seasons other than the beginning and end of the calendar fishing year is 1200 hrs, A.l.t. Current information shows the expected trawl Pacific halibut bycatch rates observed in groundfish fisheries during the fourth season in the GOA to be 300 mt per day. The Administrator, Alaska Region, NMFS, has determined that the 2006 Pacific halibut bycatch allowance specified for the trawl fisheries could be exceeded if a 24-hour fishery were allowed to occur. NMFS intends that the halibut bycatch allowance not be exceeded and, therefore, will not allow a 24-hour directed fishery. NMFS, in accordance with §§ 679.25(a)(1)(i) and 679.25(a)(2)(i)(A), is adjusting the trawl shallow-water species fishery in the

GOA by prohibiting the fishery at 2400 hrs, A.l.t., September 1, 2006, at which time directed fishing for shallow-water species by vessels using trawl gear in the GOA will be prohibited. This action has the effect of opening the fishery for 12 hours.

NMFS is taking this action to allow a controlled fishery to occur, thereby preventing the overharvest of the Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery designated in accordance with the 2006 and 2007 harvest specifications for groundfish in the GOA (71 FR 10870, March 3, 2006) and § 679.21(d). In accordance with § 679.25(a)(2)(iii), NMFS has determined that prohibiting directed fishing at 2400 hrs, A.l.t., September 1, 2006, after a 12 hour opening is the least restrictive management adjustment to allow the fishing industry opportunity to harvest species that comprise the shallow-water species fishery without exceeding the fourth seasonal apportionment of the 2006 Pacific halibut bycatch allowance for the shallow-water species fishery in the GOA. Pursuant to § 679.25(b)(5), NMFS has considered data regarding inseason prohibited species bycatch rates observed in groundfish fisheries in the GOA in making this adjustment.

The species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and "other species."

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the inseason adjustment closing of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 25, 2006.

The AA also finds good cause to waive the 30-day delay in the effective

date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2006.

James P. Burgess,

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

[FR Doc. 06-7321 Filed 8-28-06; 2:03 pm]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 060216044-6044-01; I.D. 082506C]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the C season allowance of the 2006 total allowable catch (TAC) of pollock for Statistical Area 620 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August, 28, 2006, through 1200 hrs, A.l.t., October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The C season allowance of the 2006 TAC of pollock in Statistical Area 620 of the GOA is 2,953 metric tons (mt) as established by the 2006 and 2007 harvest specifications for groundfish of the GOA (71 FR 10870, March 3, 2006). In accordance with § 679.20(a)(5)(iv)(B) the Administrator, Alaska Region, NMFS (Regional Administrator), hereby increases the C season pollock allowance by 545 mt, the remaining amount of the A and B season allowance of the pollock TAC in Statistical Area 620. The revised C season allowance of the pollock TAC in Statistical Area 620 is therefore 3,498 mt (2,953 mt plus 545 mt).

In accordance with § 679.20(d)(1)(i), the Regional Administrator has determined that the C season allowance of the 2006 TAC of pollock in Statistical Area 620 of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,488 mt, and is setting aside the remaining 10 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of directed fishing for pollock in Statistical Area 620 of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 25, 2006.

The AA also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2006.

James P. Burgess

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

[FR Doc. 06-7322 Filed 8-28-06; 2:03 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 71, No. 169

Thursday, August 31, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 40

[Docket No. PRM-40-29]

Terrence O. Hee, Ion Technology; Denial of Petition for Rulemaking

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Denial of petition for rulemaking.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM-40-29) submitted by Terrence O. Hee, Ion Technology. The petitioner requested that the NRC amend its regulations regarding unimportant quantities of source material to exempt end users of a catalytic device containing thorium from the NRC's licensing requirements.

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

The NRC maintains an Agencywide Document Access 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>. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at: 1-800-397-4209, 301-415-4737, or by e-mail to: pdr@nrc.gov.

FOR FURTHER INFORMATION CONTACT: Torre Taylor, Office of Nuclear Material

Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone (301) 415-7900, e-mail: tmt@nrc.gov.

SUPPLEMENTARY INFORMATION:

The Petition

On October 15, 2003, (68 FR 59346), the NRC published a notice of receipt of a petition for rulemaking filed by Terrence O. Hee, Ion Technology. The petitioner requested that the NRC amend its regulations in 10 CFR 40.13, "Unimportant quantities of source material," to exempt end users from NRC's regulatory requirements to the extent that such person receives, possesses, uses or transfers, any patented catalytic device containing thorium.

The petitioner stated that the device is part of a "new technology for the reduction of air pollution chemicals" produced by mobile and industrial combustion processes and that granting his petition would contribute to the reduction in air pollution. Mr. Hee also identified his monetary interest, as his company has secured distribution rights for this patented catalytic device in the United States.

The petitioner asserts that there are potentially millions of users for this device, and that obtaining "an individual license for each application would prove to be burdensome for the state agencies issuing the individual licenses and to those wishing to use the devices." The petitioner requested an exemption in 10 CFR 40.13(c) for his product, a catalytic device containing thorium. Thorium is a type of source material licensed by the NRC. The exemptions in 10 CFR 40.13(c) apply to the end user, who is exempt from the licensing requirements set forth in section 62 of the Atomic Energy Act. The petitioner suggested the following language be added to 10 CFR 40.13(c) for the requested exemption:

Any patented catalyst used in the treatment of fuel, gas or air streams for combustion processes, or other processes provided that the thorium content does not exceed 6 percent by weight. The weight percentage to be calculated for either a homogeneous mixture or as a coating on a substrate base, with the base and the coating being considered the same as a homogeneous mixture, and the finished product is constructed in a manner that will prevent the exposure of the public to any radiation

during the normal application and use of this technology.

The petitioner offered the following rationale in support of the petition: (1) The "environmental and quality of life benefits" derived from the application of this technology are "currently enjoyed by the citizens of Japan." The petitioner stated that this technology is proposed for license in China as a way to reduce air pollution; (2) Implementation of these devices can reduce the cost of air emissions pollution control to U.S. industry over the cost of current methods, thus enhancing the ability of industry to meet strict air emission standards; (3) Workers involved with the devices will be protected from the low levels of radiation exposure by a metal housing encasing the thorium-bearing material; (4) The devices are manufactured in Japan, so no U.S. workers will have direct contact with the thorium-bearing material; and (5) The long-term effect on the environment would be "reduced emissions of air pollutants from mobile and stationary combustion sources." The petitioner also stated that the device "could also lead to a reduction in the volume of hydrocarbon fuels used." In addition, the petitioner explained that the public is protected by housings shielding the radiation-emitting material, and that the housings are designed not to be "readily disassembled by the curious."

The petitioner stated the product will have warning labels which instruct users in the proper disposal method, which is only by return of the product to the distributor. The petitioner anticipated that these labels would prevent long-term negative effects on the environment. The petitioner noted that disposal instructions would also be in the "Material Safety Data Sheet" delivered with each device. The petitioner projects the product to have a 30-year life cycle, and expected no short-term negative effects on the environment from disposal of the devices. The petitioner believes that the product is a safe and cost-effective method for contributing to the reduction of air pollution chemicals in the air in the United States and claims that it poses no adverse risk to the public or to workers involved in installing or removing the devices.

The petitioner stated that Honda Motor Company is currently installing

the technology as a factory-installed device on their diesel-powered vehicles, and claims use of this technology in Japan has demonstrated a reduction of air pollution chemicals and a reduction in fuel consumption. The petitioner submitted test data showing reductions of soot emissions after installation of the device on diesel bus engines on the Okayama Bus Line company and a Caterpillar/Mitsubishi diesel-powered shovel. The petitioner also submitted data showing reductions in nitrogen oxides, carbon monoxide, and hydrocarbons for a 1989 gasoline-fueled Mercedes Benz, and similar data for a 1998 Mitsubishi van. The petitioner also presented "fuel usage reduction examples" comparing various makes and models of vehicles before and after installation of the catalytic device.

The petitioner believes that the proposed change to the Commission's regulations to allow the use of catalytic devices containing thorium in the United States is appropriate because it will benefit citizens by increasing the efficiency of combustion processes, reducing the use of hydrocarbon fuels, and lowering air pollutant emissions. The petitioner concludes that this technology poses no hazard to users or the public.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on December 29, 2003. NRC did not receive any comments on the petition.

Reasons for Denial

The petition is being denied because the petitioner did not submit information of sufficient scope and depth for NRC to find that authorizing this exemption would adequately ensure protection of public health and safety and the environment.

The NRC staff evaluated the technical merits of the petition for: (1) The appropriateness of this product for distribution to persons exempt from licensing and regulatory requirements; (2) Whether public health and safety would be adequately protected; and (3) The potential environmental impacts. After reviewing the petition, NRC has determined that there are unresolved questions related to technical aspects of the device, safety, and the potential impact to the environment. These questions would have to be resolved before the petition could be granted.

To fully evaluate a product designed for distribution to persons exempt from licensing and regulatory requirements, NRC needs for its review detailed

descriptions and drawings that clearly illustrate the components of the product, materials of construction, dimensions, assembly methods, source containment and shielding, operation of the product and tamper resistance. NRC also needs to review prototype testing that demonstrates the integrity of the product during normal use and likely accident conditions (physical testing, engineering analysis, or operational history). A quality assurance program is also needed to ensure that the product will be manufactured and distributed in accordance with the information provided in the application.

This information was not provided by the petitioner, or was not of sufficient detail for NRC to conduct a thorough evaluation. For example, while the petitioner provided a description and drawings of the catalytic device, NRC could not determine the exact materials of construction, assembly methods, source containment and shielding, operation of the product and tamper resistance features. Prototype testing, both methodology and results, was not submitted. Additionally, the petition did not include any information regarding a quality assurance program.

The petition did not contain support for all uses of the device requested in the petition (i.e., buses and industrial facilities). NRC could not determine the actual isotope of thorium or the amount of thorium to be used in the device, as different percentages by weight concentrations were given in different sections of the information provided.

The petitioner provided statements on the benefit of catalytic converting devices to substantially reduce air pollution chemicals. However, there was no data to support the results provided. Additionally, there was not enough detailed information to support the claim that the metal housing enclosure which prevents access to radioactive material is sufficient protection from radiation exposure. There were statements that the device is designed for a 30 year working life, with no repair. However, information was provided regarding 5, 10, and 15 year maintenance cycles with no description of what the maintenance involves.

The petitioner provided a description of the worst case scenario for an accident condition but did not include a description of other possible accident conditions during installation and normal use. There was a summary of radiological impacts under normal and accident conditions, but there was no description of how this information was obtained.

As part of the petitioner's request, the petitioner included language for the

proposed amendment to the regulations that limited the exemption to "Any patented catalyst * * *" It is not NRC's practice to authorize exemptions that are limited to a certain patented device/product. If NRC determined that a catalytic device containing thorium was appropriate for distribution to persons exempt from licensing and regulatory requirements, the exemption would authorize distribution of such a device/product, regardless of the manufacturer or patent status. Therefore, anyone that developed a catalytic device that met the required criteria and any technical and licensing requirements for the exemption would be authorized to distribute that device/product.

Because the petitioner is requesting an amendment to add an exemption in 10 CFR 40.13(c), an environmental report is required in accordance with 10 CFR 51.68. Section 51.68, "Environmental report—rulemaking," requires petitioners for rulemaking requesting amendments of certain parts of the regulations concerning exemptions from licensing and regulatory requirements of any device, commodity or other product containing source material to submit with the petition a separate "Petitioner's Environmental Report." The purpose of an environmental review is to identify and evaluate the potential environmental impacts associated with a request. NRC's evaluation relies on information provided by the petitioner, as well as staff's own independent assessment. As part of the environmental review, several issues are evaluated: (1) Why is the action proposed and what need will it meet; (2) How can the need be met; and (3) What aspects of the environment would be impacted? Alternatives to a proposed action are also evaluated. Radiological and non-radiological impacts, as well as direct, indirect, and cumulative impacts are part of this environmental review. Staff requested an environmental report from the petitioner by letter dated May 12, 2004. The environmental report was submitted by the petitioner in January 2005.

This report failed to include detailed information related to: (1) Testing conditions and supporting data to evaluate the short-term and long-term impacts and benefits of the device; (2) Supporting data for accident analysis, such as accident rates, device failure rates and modes; (3) Supporting data for assumptions, such as market penetration and recovery rate; and (4) Data to support how the product would be more effective or efficient than alternative products. NRC must be able to independently assess the data

submitted in support of a petition. NRC was not able to do this with the information submitted.

The petitioner also stated that there would be label warnings on the device that instruct any person who handles, uses or comes in contact with the product to dispose of it only by returning it to the distributor for safe disposal. Products that are distributed under an exemption must meet health and safety requirements without any regulatory requirements on the end user. Therefore, the petition must address the environmental aspects of disposal of the catalytic device presuming that none of the devices would be returned to the distributor for disposal.

In summary, the petitioner did not submit information of sufficient scope and depth for NRC to determine the adequacy of this product to be distributed to persons exempt from licensing and regulatory requirements. NRC could not ensure that the public health and safety, and the environment, would be protected based on the information submitted in support of the petition.

For the reasons cited in this document, the NRC denies this petition.

Dated at Rockville, Maryland, this 18th day of August, 2006.

For the Nuclear Regulatory Commission.

Luis A. Reyes,

Executive Director for Operations.

[FR Doc. 06-7284 Filed 8-30-06; 8:45 am]

BILLING CODE 7590-01-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP San Diego 06-055]

RIN 1625-AA00

Safety Zone; Blue Water Resort and Casino 60th Thanksgiving Regatta, Colorado River, Parker, AZ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone within the Lake Moovalya Region on the navigable waters of the Colorado River in Parker, Arizona for the Blue Water Resort and Casino 60th Thanksgiving Regatta. This temporary safety zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels of the race, and general users of the waterway. Persons and vessels are

prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated on-scene representative.

DATES: Comments and related material must reach the Coast Guard on or before October 2, 2006.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Sector San Diego, Waterways Management, 2710 N. Harbor Drive, San Diego, CA 92101-1064. Waterways Management maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Waterways Management between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade José Caballero, USCG, c/o U.S. Coast Guard Captain of the Port, at (619) 278-7277.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking COTP San Diego 06-055, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Waterways Management at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Southern California Speedboat Club is sponsoring the Blue Water Casino and Resort 60th Thanksgiving Regatta, which is held on the Lake Moovalya region on the Colorado River in Parker, AZ. This temporary safety

zone is necessary to provide for the safety of the participants, crew, spectators, sponsor vessels, and other users of the waterway.

This event involves powerboats racing along a circular track in the Lake Moovalya region of the Colorado River. The size of the boats varies from 11 to 21 feet. Approximately sixty to eighty boats will participate in this event. The sponsor has provided two (2) water rescue and three (3) patrol vessels to patrol this event.

Discussion of Proposed Rule

The proposed temporary safety zone would be comprised of the following area: that portion of the navigable waterway of Lake Moovalya from Headgate Dam to 0.5 nautical miles north of Blue Water Marina, Parker, Arizona.

The Coast Guard proposes to establish one (1) safety zone that will be enforced from 6 a.m. to 6 p.m. from November 24, 2006 through November 26, 2006. This safety zone is necessary to provide for the safety of the crews, spectators, and participants of the Blue Water Casino and Resort Thanksgiving Regatta and to protect other vessels and users of the waterway. Persons and vessels will be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated on-scene representative.

U.S. Coast Guard personnel will enforce this safety zone. The Coast Guard may be assisted by other Federal, State, or local agencies, including the Coast Guard Auxiliary. Section 165.23 of Title 33, Code of Federal Regulations, prohibits any unauthorized person or vessel from entering or remaining in a safety zone. Vessels or persons violating this section will be subject to both criminal and civil penalties.

Regulatory Evaluation

This proposed 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 proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This determination is based on the size and location of the safety zone. Commercial vessels will not be hindered by the safety zone. Recreational vessels will not be allowed

to transit through the designated safety zone during the specified times.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The safety zone will affect the following entities some of which may be small entities: the owners and operators of pleasure craft engaged in recreational activities and sightseeing. This safety zone will not have a significant economic impact on a substantial number of small entities because this safety zone is limited in scope and duration (it would be in effect for only twelve (12) hours per day for a period of three (3) days, from November 24, 2006 through November 26, 2006). Furthermore, the Coast Guard will publish local notice to mariners (LNM) before the safety zone is enforced.

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

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed 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 Lieutenant Junior Grade José Caballero, Waterways Management U.S. Coast Guard Sector San Diego at (619) 278–7277. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This proposed 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 proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

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

Taking of Private Property

This proposed 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.ID 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 made a preliminary determination that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. Paragraph (34)(g) of the Instruction would apply because this rule would establish a safety zone.

A preliminary "Environmental Analysis Check List" is available in the docket where indicated under **ADDRESSES**. Comments on this section will be considered before we make the final decision on whether the rule should be categorically excluded from further environmental review.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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.

2. A new temporary § 165.T11–113 is added to read as follows:

§ 165.T11–113 Safety Zone; Lake Moovalya, Colorado River, Parker, AZ.

(a) *Location*. The Coast Guard proposes to establish a temporary safety zone for the Bluewater Resort and Casino 60th Thanksgiving Regatta. The limits of this proposed temporary safety zone would include that portion of the Colorado River from Headgate Dam to 0.5 nautical miles north of Bluewater Marina, Parker, Arizona.

(b) *Effective Period*. This section is effective from 6 a.m. to 6 p.m. from November 24, 2006 through November 26, 2006.

(c) *Definitions*. The following definitions apply to this section: *Designated on-scene representative* means Coast Guard Patrol Commanders including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, State, and local officers designated by or assisting the Captain of the Port (COTP), San Diego, CA, in the enforcement of regulated navigation areas and safety and security zones.

(d) *Regulations*. Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port San Diego or his designated on-scene representative. Mariners requesting permission to transit through the safety zone may request authorization to do so from the Patrol Commander (PATCOM). The Patrol Commander may be contacted on VHF–FM Channel 16.

Dated: August 15, 2006.

R.E. Walker,

Commander, U.S. Coast Guard, Captain of the Port, Acting.

[FR Doc. E6–14498 Filed 8–30–06; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. EPA–R02–OAR–2006–0615, FRL–8215–7]

Approval and Promulgation of Plans for Designated Facilities; New Jersey; Delegation of Authority

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes approval of a request from the New Jersey Department of Environmental Protection (NJDEP) for delegation of authority to implement and enforce the following three Federal plans: Hospital/Medical/Infectious Waste Incinerators (HMIWI); Municipal Solid Waste Landfills (MSW Landfills); and Small Municipal Waste Combustion Units (Small MWC). On August 15, 2000, November 8, 1999, and January 31, 2003 respectively, EPA promulgated the Federal plans for HMIWI, MSW Landfills and Small MWCs to fulfill the requirements of sections 111(d)/129 of the Clean Air Act. The Federal plans impose emission limits and control requirements for existing affected facilities located in areas not covered by an approved and currently effective State plan.

On May 15, 2006, NJDEP signed Memorandum of Agreements (MOAs) which act as the mechanism for the transfer of EPA authority to NJDEP. The intended effect is to approve MOAs that define the policies, responsibilities, and procedures by which the Federal plans for HMIWI, MSW Landfills and Small MWCs will be administered on behalf of EPA by NJDEP.

DATES: Comments must be received on or before October 2, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R02–OAR–2006–0615, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail*: *Werner.Raymond@epa.gov*.
- *Fax*: 212–637–3901.
- *Mail*: Raymond Werner, Chief, Air Programs Branch, Environmental

Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

• *Hand Delivery*: Raymond Werner, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2006–0615. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3892.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency (EPA) proposes to approve the New Jersey Department of Environmental Protection's (NJDEP's) request for

delegation of authority of three Federal plans. The following table of contents describes the format for this

SUPPLEMENTARY INFORMATION section.

I. EPA's Proposed Action

- A. What Action Is EPA Proposing Today?
- B. Why Is EPA Proposing This Action?
- C. What Was Submitted by NJDEP and How Did EPA Respond?
- D. What Are the Clean Air Act Requirements?
- E. What Guidance Did EPA Use To Evaluate NJDEP's Delegation Request?

II. What Is EPA's Conclusion?

III. Statutory and Executive Order Revisions

I. EPA's Proposed Action

A. What Action Is EPA Proposing Today?

EPA is proposing to approve NJDEP's request for delegation of authority to implement and enforce three Federal plans and to adhere to the terms and conditions prescribed in the Memorandum of Agreements (MOAs) signed between EPA and NJDEP, as further explained below. NJDEP requested delegation of authority of the following three Federal plans: Hospital/Medical/Infectious Waste Incinerators (HMIWI); Municipal Solid Waste Landfills (MSW Landfills); and Small Municipal Waste Combustion Units (Small MWC). The Federal plans were promulgated by EPA to implement emission guidelines pursuant to sections 111(d) and 129 of the Clean Air Act (the Act). The purpose of this delegation is to acknowledge NJDEP's ability to implement a program and to transfer primary implementation and enforcement responsibility from EPA to NJDEP for existing sources of HMIWI, MSW Landfills and Small MWC. While NJDEP is delegated the authority to implement and enforce the three Federal plans, nothing in the delegation agreement shall prohibit EPA from enforcing the Federal plans for HMIWI, MSW Landfills and Small MWC.

B. Why Is EPA Proposing This Action?

EPA is proposing this action to:

- Give the public the opportunity to submit comments on EPA's proposed action, as discussed in the **ADDRESSES** section;
- Fulfill a goal of the Act to place State governments in positions of leadership for air pollution prevention and control; and
- Allow NJDEP to implement and enforce Federal plans promulgated by EPA that implement emission guidelines pursuant to sections 111(d) and 129 of the Act.

C. What Was Submitted by NJDEP and How Did EPA Respond?

On May 13, 2005, NJDEP submitted to EPA a request for delegation of authority from EPA to implement and enforce the Federal plans for existing HMIWI, MSW Landfills and Small MWC. EPA prepared the MOAs that define the policies, responsibilities, and procedures by which the Federal plans will be administered by both NJDEP and EPA, pursuant to the following: 40 CFR part 62, subpart HHH for HMIWI; 40 CFR part 62, subpart GGG for MSW Landfills; and 40 CFR part 62, subpart JJJ for Small MWC. The MOAs are the mechanism for the transfer of responsibility between EPA and NJDEP.

On April 24, 2006, Alan J. Steinberg, EPA Region 2 Administrator, signed the three MOAs and forwarded them to NJDEP for signature. On May 15, 2006, Lisa P. Jackson, NJDEP Commissioner, signed the MOAs, thereby agreeing to the terms and conditions of the MOAs and accepting responsibility to implement and enforce the policies, responsibilities and procedures of the Federal plans for HMIWI, MSW Landfills and Small MWC. The transfer of authority to NJDEP became effective on May 15, 2006.

D. What Are the Clean Air Act Requirements?

Sections 111(d) and 129 of the Act require states to submit plans to control certain pollutants (designated pollutants) at existing solid waste combustor facilities and MSW Landfills (designated facilities) whenever standards of performance have been established under section 111(b) for new sources of the same type and EPA has established emission guidelines (EG) for such existing sources. A designated pollutant is any pollutant for which no air quality criteria has been issued and which is not included on a list published under section 108(a) (national ambient air quality standards) or section 112 (hazardous air pollutants) of the Act, but emissions of which are subject to a standard of performance for new stationary sources (NSPS). In addition, section 129 of the Act also requires EPA to promulgate EG for solid waste combustion units that emit a mixture of air pollutants. These pollutants include organics (dioxins and dibenzo furans), carbon monoxide, metals (cadmium, lead and mercury), acid gases (hydrogen chloride, sulfur dioxide and oxides of nitrogen), particulate matter and opacity.

On September 15, 1997 (62 FR 48348), EPA promulgated NSPS and EG for HMIWI units, 40 CFR part 60, subparts

Ec and Ce, respectively. The designated facility to which the EG apply is for each existing HMIWI unit, as stipulated in subpart Ce, that commenced construction on or before June 20, 1996. See 40 CFR section 60.32e for details. On December 6, 2000 (65 FR 76350 and 76378), EPA promulgated NSPS and EG for Small MWC units, 40 CFR part 60, subparts AAAA and BBBB, respectively. The designated facility to which the EG apply is for each existing Small MWC unit, as stipulated in subpart BBBB, that (1) commenced construction on or before August 30, 1999, and (2) has the capacity to combust at least 35 tons per day of municipal solid waste but no more than 250 tons per day municipal solid waste or refuse derived fuel. See 40 CFR sections 60.1550, 60.1555 and 60.1940 for details.

On March 12, 1996 (61 FR 9905), EPA promulgated NSPS and EG for MSW Landfills, 40 CFR part 60, subparts WWW and Cc, respectively. That action also added the source category "municipal solid waste landfills" to the priority list in 40 CFR 60.16, for regulation under section 111 of the Act. The NSPS and EG implement section 111 of the Act and are based on the EPA Administrator's determination that MSW Landfills cause, or contribute significantly to, air pollution that may be reasonably anticipated to endanger public health or welfare. The emissions of concern are non-methane organic compounds (NMOC) and methane. NMOC include volatile organic compounds (VOC), hazardous air pollutants (HAPs), and odorous compounds. The designated facility to which the EG apply are as follows: (1) Each existing MSW Landfill for which construction, reconstruction or modification was commenced before May 30, 1991; and (2) each MSW Landfill that has accepted waste at any time since November 8, 1987 or the landfill has additional capacity for future waste capacity. See 40 CFR 60.32c for details.

Pursuant to section 129 of the Act, State plan requirements must be "at least as protective" as the EG and become federally enforceable upon approval by EPA. The procedures for adoption and submittal of State plans are codified in 40 CFR part 60, subpart B. For states that fail to submit a plan, EPA is required to develop and implement a Federal plan within two years following promulgation of the EG. EPA implementation and enforcement of the Federal plan is viewed as an interim measure until states assume their role as the preferred implementers of the EG requirements stipulated in the Federal plan. Accordingly, EPA

encourages states to develop their own plan, or to request delegation of the Federal plan, as NJDEP has done.

E. What Guidance Did EPA Use To Evaluate NJDEP's Delegation Request?

EPA evaluated NJDEP's request for delegation of the three Federal plans pursuant to EPA's Delegation Manual. Under EPA's Delegation Manual, item 7-139, the Regional Administrator is authorized to delegate implementation and enforcement of sections 111(d)/129 Federal plans to state environmental agencies. The requirements and limitations of a delegation agreement are defined in item 7-139. The Regional Administrator may consider delegating authority to implement and enforce Federal plans to a state provided all of the following conditions are met by the state: (1) The state does not already have an EPA approved State plan; (2) the state has submitted a written request for delegation authority and has demonstrated that it has satisfied EPA's criteria for delegation including, at a minimum, a demonstration of adequate resources and legal and enforcement authority to administer and enforce the Federal plan at issue; and (3) the state has entered into a MOA with the Regional Administrator that sets forth the terms, conditions and effective date of the delegation, and that serves as the mechanism for the transfer of authority. New Jersey met all of EPA's delegation requirements. The reader may view New Jersey's letter to EPA requesting delegation and the MOAs signed by both parties at the following Web site: www.regulations.gov.

II. What Is EPA's Conclusion?

EPA has evaluated New Jersey's submittal for consistency with the Act, EPA regulations, and EPA policy. New Jersey has met all the requirements of EPA's guidance for obtaining delegation of authority to implement and enforce the three Federal plans. New Jersey entered into a MOA with EPA and it became effective on May 15, 2006. Accordingly, EPA is proposing to approve New Jersey's request dated May 13, 2005 for delegation of authority of the three Federal plans for existing sources of HMIWI, Small MWC and MSW Landfills. EPA will continue to retain enforcement authority along with NJDEP and EPA will continue to retain certain specific authorities reserved to EPA in individual Federal plans and as indicated in each MOA (e.g., authority to approve major alternatives to test methods or monitoring, etc).

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. In this context, in the absence of a prior existing requirement for the

state to use voluntary consensus standards (VCS), EPA has no authority to disapprove plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a plan submission, to use VCS in place of a plan submission that otherwise satisfies the provisions of the Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Authority: 42 U.S.C. 7401-7671q.

Dated: August 21, 2006.

Alan J. Steinberg,

Regional Administrator, Region 2.

[FR Doc. 06-7317 Filed 8-30-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R01-OAR-2005-CT-0001; A-1-FRL-8209-5]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; VOC Regulations and One-Hour Ozone Attainment Demonstration Shortfall

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Connecticut. This revision establishes requirements to reduce volatile organic compound (VOC) emissions from portable fuel containers, automotive refinishing operations, and gasoline dispensing facilities. The intended effect of this action is to propose approval of these requirements into the Connecticut SIP. This action also proposes approval of these control measures, along with a previously approved control measure, as fulfilling the shortfall in emission reductions identified in Connecticut's one-hour ozone attainment demonstration SIP.

EPA is taking this action in accordance with the Clean Air Act (CAA).

DATES: Written comments must be received on or before October 2, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R01-OAR-2005-CT-0001 by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.

2. E-mail: arnold.anne@epa.gov.

3. Fax: (617) 918-0047.

4. Mail: "EPA-R01-OAR-2005-CT-0001," Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (mail code CAQ), Boston, MA 02114-2023.

5. Hand Delivery or Courier. Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4, excluding legal holidays.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT:

Richard P. Burkhardt, Air Quality Planning, Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, (CAQ), Boston, MA 02114-2023. Phone: 617-918-1664, Fax: (617) 918-0664, E-mail: burkhart.richard@epa.gov.

SUPPLEMENTARY INFORMATION: In the Final Rules Section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting

on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: July 31, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. 06-7311 Filed 8-30-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2006-0630; FRL-8215-8]

Approval and Promulgation of Implementation Plans; Revisions to the Nevada State Implementation Plan; Monitoring and Volatile Organic Compound Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing full approval of some revisions and a limited approval/limited disapproval of other revisions to the Nevada Department of Conservation and Natural Resources portion of the Nevada State Implementation Plan (SIP). These revisions concern definitions, organic solvent controls, and various monitoring regulations. We are proposing action on state provisions that regulate emission sources under the Clean Air Act as amended in 1990 (Act or CAA). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by October 2, 2006.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2006-0630, by one of the following methods:

1. Federal eRulemaking Portal: www.regulations.gov. Follow the on-line instructions.

2. E-mail: steckel.andrew@epa.gov.

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov,

including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail.

www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Julie A. Rose, EPA Region IX, (415) 947-4126.

SUPPLEMENTARY INFORMATION:

Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

- I. The State's Submittal
 - A. What regulations did the State submit?
 - B. What is the regulatory history of the Nevada SIP?
 - C. What is the purpose of this proposed rule?
- II. EPA's Evaluation and Action
 - A. How is EPA evaluating the regulations?
 - B. Do the regulations meet the evaluation criteria?
 - C. What are the regulation deficiencies?
 - D. EPA recommendations to further improve the regulations
 - E. Proposed action and public comment
- III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What regulations did the State submit?

The Governor's designee, the Nevada Department of Conservation and Natural Resources, Division of Environmental Protection (NDEP), submitted a large revision to the applicable state implementation plan (SIP) on January

12, 2006. On March 23, 2006, the Nevada SIP submittal dated January 12, 2006 was found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

The primary purpose of these revisions is to clarify and harmonize State and federally-enforceable requirements. Because these revisions incorporate so many changes from the 1970s and 1980s vintage SIP regulations, EPA has decided to review

and act on the submittal in a series of separate actions. The first such action (mostly related to definitions, sulfur dioxide rules, and burning rules) was finalized in the **Federal Register** on March 27, 2006 (71 FR 15040). A second action (related to state statutes) was proposed in the **Federal Register** on June 9, 2006 (71 FR 33413). The remaining portions of the submittal will be acted on in future **Federal Register** actions.

The following table lists the provisions of the Nevada Administrative Code (NAC) addressed by this proposal with the dates they were submitted by NDEP. Some of these provisions were renumbered after their initial adoption. Two of these submitted rules would be new to the SIP: NAC 445B.084 (“Hazardous air pollutant”) and NAC 445B.153 (“Regulated air pollutant”), while the remainder would amend existing rules in the SIP.

SUBMITTED PROVISIONS

NAC No.	NAC title	Adopted	Submitted
445B.015	“Alternative method” defined	10/03/95	01/12/06
445B.062	“Equivalent method” defined	10/03/95	01/12/06
445B.063	“Excess emissions” defined	10/04/05	01/12/06
445B.084	“Hazardous air pollutant” defined	11/03/93	01/12/06
445B.134	“Person” defined	09/16/76	01/12/06
445B.153	“Regulated air pollutant” defined	10/04/05	01/12/06
445B.202	“Volatile organic compounds” defined	03/03/94	01/12/06
445B.22093	Organic solvents and other volatile organic compounds	10/04/05	01/12/06
445B.256	Monitoring systems: Calibration, operation and maintenance of equipment	10/03/95	01/12/06
445B.257	Monitoring systems: Location	09/16/76	01/12/06
445B.258	Monitoring systems: Verification of operational status	09/16/76	01/12/06
445B.259	Monitoring systems: Performance evaluations	09/16/76	01/12/06
445B.260	Monitoring systems: Components contracted for before September 11, 1974	09/16/76	01/12/06
445B.261	Monitoring systems: Adjustments	09/16/76	01/12/06
445B.262	Monitoring systems: Measurement of opacity	09/18/03	01/12/06
445B.263	Monitoring systems: Frequency of operation	09/16/76	01/12/06
445B.264	Monitoring systems: Recordation of data	08/22/00	01/12/06
445B.265	Monitoring systems: Records; reports	04/26/84	01/12/06
445B.267	Alternative monitoring procedures or requirements	09/18/03	01/12/06

B. What is the regulatory history of the Nevada SIP?

Pursuant to the Clean Air Amendments of 1970, the Governor of Nevada submitted the original Nevada SIP to EPA in January 1972. EPA approved certain portions of the original SIP and disapproved other portions under CAA section 110(a). See 37 FR 10842 (May 31, 1972). For some of the disapproved portions of the original SIP, EPA promulgated substitute provisions under CAA section 110(c).¹ This original SIP included various rules, codified as articles within the Nevada Air Quality Regulations (NAQR), and various statutory provisions codified in chapter 445 of the Nevada Revised Statutes (NRS). In the early 1980’s, Nevada reorganized and re-codified its air quality rules into sections within chapter 445 of the Nevada Administrative Code (NAC). Today, Nevada codifies its air quality regulations in chapter 445B of the NAC and codifies air quality statutes in chapter 445B (“Air Pollution”) of title

40 (“Public Health and Safety”) of the NRS.

Nevada adopted and submitted many revisions to the original set of regulations and statutes in the SIP, some of which EPA approved on February 6, 1975 at 40 FR 5508; on March 26, 1975 at 40 FR 13306; on January 9, 1978 at 43 FR 1341; on January 24, 1978 at 43 FR 3278; on August 21, 1978 at 43 FR 36932; on July 10, 1980 at 45 FR 46384; on April 14, 1981 at 46 FR 21758; on August 27, 1981 at 46 FR 43141; on March 8, 1982 at 47 FR 9833; on April 13, 1982 at 47 FR 15790; on June 18, 1982 at 47 FR 26386; on June 23, 1982 at 47 FR 27070; on March 27, 1984 at 49 FR 11626. Since 1984, EPA has approved very few revisions to Nevada’s applicable SIP despite numerous changes that have been adopted by the State Environmental Commission. As a result, the version of the rules enforceable by NDEP is often quite different from the SIP version enforceable by EPA.

C. What is the purpose of this proposed rule?

The purpose of this proposal is to bring the applicable SIP up to date. The

regulations that are the subject of this proposal include certain definitions, organic solvent controls, and various monitoring rules.

II. EPA’s Evaluation and Action

A. How is EPA evaluating the regulations?

Generally, SIP regulations must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). Relevant EPA guidance and policy documents that we used to help evaluate enforceability include “Review of State Implementation Plans and Revisions for Enforceability and Legal Sufficiency,” dated September 23, 1987, from J. Craig Potter, Assistant Administrator for Air and Radiation, et al.

B. Do the regulations meet the evaluation criteria?

We believe the following provisions are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations: NAC 445B.015, NAC 445B.062, NAC 445B.063, NAC 445.084, NAC 445B.134, NAC 445B.153, NAC 445B.202, NAC 445B.22093, NAC

¹ Provisions that EPA promulgates under CAA section 110(c) in substitution of disapproved State provisions are referred to as Federal Implementation Plans (FIPs).

445B.256, NAC 445B.257, NAC 445B.258, NAC 445B.259, NAC 445B.260, NAC 445B.261, NAC 445B.263, NAC 445B.264, and NAC 445B.265. Generally, these submitted rules are unchanged from the older versions in the existing SIP other than for certain clarifications and enhancements. The Technical Support Document (TSD) dated August 16, 2006 has more information on our evaluation.

C. What are the regulation deficiencies?

The following provisions conflict with section 110 of the Act and prevent full approval of the SIP revision.

1. NAC 445B.262, Monitoring systems: Measurement of opacity, This regulation lists the methods and procedures for measuring opacity. This regulation allows the director to approve equivalent and alternative opacity procedures without describing the criteria to be used. A new paragraph has been added that removes the director's ability to approve an equivalent or alternative method when determining compliance with standards and emission limits contained in 40 CFR parts 60, 61, 63 and affected sources in the acid rain program. This new paragraph limits the breath of the director's discretion; however, the director maintains the ability to approve equivalent and alternative methods for SIP sources. This constitutes a SIP deficiency and conflicts with section 110 of the CAA. A third paragraph can be added to NAC 445B.262 requiring that equivalent and alternative test methods for SIP sources be approved in advance by EPA.

2. NAC 445B.267, Alternate monitoring procedures or requirements. This regulation lists situations when an alternative monitoring procedure or requirement can be approved by the director. A new paragraph has been added that removes the director's ability to approve an equivalent or alternative method when determining compliance with standards and emission limits contained in 40 CFR parts 60, 61, 63 and affected sources in the acid rain program. This new paragraph limits the breath of the director's discretion; however, the director maintains the ability to approve alternative methods for SIP sources and for ASTM test methods. This constitutes a SIP deficiency and conflicts with section 110 of the CAA. A third paragraph can be added to NAC 445B.267 requiring that equivalent and alternative test methods for SIP sources be approved in advance by EPA.

D. EPA Recommendations To Further Improve the Regulations

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the state modifies their rules.

E. Proposed Action and Public Comment

Pursuant to sections 110(k)(3) and 301(a) of the Act, EPA is proposing a full approval of the following provisions: NAC 445B.015, NAC 445B.062, NAC 445B.063, NAC 445.084, NAC 445B.134, NAC 445B.153, NAC 445B.202, NAC 445B.22093, NAC 445B.256, NAC 445B.257, NAC 445B.258, NAC 445B.259, NAC 445B.260, NAC 445B.261, NAC 445B.263, NAC 445B.264, and NAC 445B.265.

In addition, EPA is proposing a limited approval of NAC 445B.262 and NAC 445B.267 to improve the SIP. This approval is limited because EPA is simultaneously proposing a limited disapproval of the two provisions mentioned above. If we finalize this limited disapproval, we will not be imposing sanctions under CAA section 179 and 40 CFR 52.31 because the state's submittal of NAC 445B.262 and NAC 445B.267, which represent updated versions of existing SIP rules, was not required under the Clean Air Act. If finalized as proposed, this action would incorporate the submitted provisions into the SIP, including those provisions identified as deficient.²

We will accept comments from the public on this proposed approval and limited approval/disapproval for the next 30 days.

III. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is

² Final approval of these rules would supersede the following rules in the applicable SIP (superseding rule shown in parentheses) upon the established compliance date for any new or amended requirements in the superseding rules: NAC 445.439 (NAC 445B.015); NAC 445.501 (NAC 445B.062); NAC 445.504 (NAC 445B.063); NAC 445.564 (NAC 445B.134); NAC 445.650 (NAC 445B.202); NAC 445.846, NAQR Articles 9.2.1, 9.2.1.1, and 9.2.1.2 (NAC 445B.22093); NAQR Articles 2.17.10 and 2.17.10.1 (NAC 445B.256); NAQR Articles 2.17.6, 2.17.7 (NAC 445B.257); NAC 445.685 (NAC 445B.258); NAC 445.686 (NAC 445B.259); NAC 445.687 (NAC 445B.260); NAC 445.688 (NAC 445B.261); NAC 445.689 (NAC 445B.262); NAC 445.690 (NAC 445B.263); NAC 445.691 (NAC 445B.264); NAC 445.692 (NAC 445B.265); and NAC 445.693 (NAC 445B.267).

also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to approve state rules as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This proposed action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve state rules implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of

the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions

of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compound.

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

Dated: August 21, 2006.

Jane Diamond,

Acting Regional Administrator, Region IX.
[FR Doc. 06-7320 Filed 8-30-06; 8:45 am]

BILLING CODE 6560-50-P

Notices

Federal Register

Vol. 71, No. 169

Thursday, August 31, 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

Forest Service

Willamette Province Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Willamette Province Advisory Committee (PAC) will meet in Salem, Oregon. The purpose of the meeting is to discuss issues pertinent to the implementation of the Northwest Forest Plan and to provide advice to Federal land managers in the Province. The topics to be covered at the meeting include status of BLM Resource Management Plan revisions, review and status of wildfires in the Province, information presentation on Environmental Management Systems for National Forests, discussion of future meeting topics, and information sharing. **DATES:** The meeting will be held September 20, 2006 beginning at 9 a.m. PDT.

ADDRESSES: This meeting will be held at the Salem District Office of the Bureau of Land Management, 1717 Fabry Road, Salem, Oregon. Send written comments to Neal Forrester, Willamette Province Advisory Committee, c/o Willamette National Forest, 211 E. 7th Avenue, Eugene, Oregon 97401, (541) 225-6436 or electronically to nforrester@fs.fed.us. **FOR FURTHER INFORMATION CONTACT:** Neal Forrester, Willamette National Forest, (541) 225-6436.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to PAC members. However, persons who wish to bring matters to the attention of the Committee may file written statements with the PAC staff before or after the meeting. A public forum will be provided and individuals will have the opportunity to address the PAC. Oral comments will be limited to three minutes.

Dated: August 25, 2006.

Kathryn E. Bulchis,

Acting Forest Supervisor, Willamette National Forest.

[FR Doc. 06-7275 Filed 8-30-06; 8:45am]

BILLING CODE 3410-11-M

DEPARTMENT OF AGRICULTURE

Forest Service

Black Hills National Forest's Custer County Resource Advisory Committee; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to authorities in the Federal Advisory Committee Act (Pub. L. 92-463) and the Secure Rural Schools and Community Self determination Act of 2000 (Pub. L. 106-393), the Black Hills National Forest's Custer County Resource Advisory Committee will meet on Tuesday, September 12, 2006 in Custer, South Dakota for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on September 12, 2006, will begin at 6 p.m. at the Black Hills National Forest Supervisor's office at 25041 North Highway 16, Custer, South Dakota. Agenda topics will include discussion of potential projects.

FOR FURTHER INFORMATION CONTACT: Mike Lloyd, Hell Canyon District Ranger and Designated Federal Officer, at 605-673-4853.

Dated: August 25, 2006.

Michael D. Lloyd,

District Ranger.

[FR Doc. 06-7368 Filed 8-30-06; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-825]

Oil Country Tubular Goods, Other Than Drill Pipe, from Korea: Preliminary Results of Antidumping Duty Administrative Review

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

SUMMARY: In response to a request filed by IPSCO Tubulars, Inc., Lone Star Steel Company, and Maverick Tube Corporations (collectively, the "petitioners"), and SeAH Steel Corporation ("SeAH"), the U.S. Department of Commerce ("the Department") is conducting an administrative review of the antidumping duty order on oil country tubular goods, other than drill pipe ("OCTG") from Korea. This review covers the following producers/exporters: SeAH and Husteel Co., Ltd. ("Husteel") and SeAH. The period of review ("POR") is August 1, 2004 through July 31, 2005. The preliminary results are discussed below in the section entitled "Preliminary Results of Review." We preliminarily find that both Husteel and SeAH made sales below normal value ("NV"). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection ("CBP") to assess antidumping duties based on the difference between the constructed export price ("CEP") and the NV.

EFFECTIVE DATE: August 31, 2006.

FOR FURTHER INFORMATION CONTACT:

Scott Lindsay, Nicholas Czajkowski, or Dara Iserson, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482-0780, (202) 482-1395, or (202) 482-4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1995, the Department published in the **Federal Register** an antidumping duty order on OCTG from Korea (60 FR 41058). On August 1, 2005, the Department published the notice of opportunity to request an administrative review of the antidumping order on OCTG from Korea. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation: Opportunity To Request Administrative Review*, 69 FR 44085 (August 1, 2005). On August 31, 2005, the Department received a properly filed, timely request for an administrative review of Husteel and SeAH from petitioners and a request from SeAH for a review of its sales. On September 28, 2005, the Department published a notice of initiation for this

antidumping duty administrative review. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 56631 (September 28, 2005).

On October 26, 2005, the Department issued questionnaires¹ to Husteel and SeAH. Both Husteel and SeAH submitted Section A responses on January 9, 2005. Husteel submitted its Section B–D responses on January 27, 2006. SeAH submitted its Section B–E responses on February 2, 2006. The Department issued supplemental questionnaires to Husteel and SeAH on April 7, 2006 and received responses on May 1, 2006. The Department issued additional questionnaires to Husteel and SeAH on July 18, 2006. Husteel and SeAH submitted their responses on August 4, 2006 and August 16, 2006, respectively.

On April 25, 2006, the Department published a notice extending the deadline for the preliminary results of this administrative review from May 3, 2006 until August 24, 2006. *See Oil Country Tubular Goods from Korea: Notice of Extension of Time Limit for Preliminary Results of Administrative Review*, 71 FR 23897 (April 25, 2006).

Scope Of The Order

The products covered by this order are OCTG, hollow steel products of circular cross-section, including only oil well casing and tubing, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (“API”) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing or tubing pipe containing 10.5 percent or more of chromium, or drill pipe. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (“HTSUS”) under sub-headings: 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10,

7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. The HTSUS sub-headings are provided for convenience and customs purposes. The written description remains dispositive of the scope of the order.

Analysis

Product Comparisons

Because neither HuSteel’s home market sales nor its third country sales pass the viability test, we are using constructed value (“CV”) as the basis for normal value (“NV”) for HuSteel. *See* “Selection of Comparison Market” section, below. In accordance with section 771(16) of the Tariff Act of 1930, as amended (“the Act”), we considered all products manufactured by SeAH that are covered by the description contained in the “Scope of the Order” section above and that were sold in the comparison market during the POR, to be the foreign like product for purposes of determining the appropriate product comparisons to U.S. sales. Where SeAH made no sales of identical merchandise in the comparison market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department’s October 26, 2005 antidumping questionnaire.

Date of Sale

It is the Department’s practice to use the invoice date as the date of sale. However, 19 CFR 351.401(i) states that the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.” *See* 19 CFR 351.401(i); *see also Allied Tube and Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090–1093 (CIT 2001).

Husteel:

U.S. Sales: For its U.S. sales, Husteel has reported that its customers contact Husteel USA, Husteel’s U.S. affiliate, by phone and negotiate quantity and price. After production is complete and the merchandise has been shipped from Korea, Husteel USA issues its invoice to the unaffiliated U.S. customer. Husteel reported the date of sale to be the invoice date because material terms of sales are subject to change until Husteel USA issues its invoice to the unaffiliated U.S. customer. However, the Department finds that shipment date (the date subject merchandise is shipped from Korea to the U.S. unaffiliated customer) always precedes the date Husteel USA issues its invoice to the U.S. unaffiliated customer. Thus, because shipment occurs prior to invoice date, we are following our practice of using shipment date as date of sale. *See Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value*, 70 FR 9041 (February, 24, 2005), and accompanying *Magnesium Metal from the Russian Federation: Notice of Final Determination of Sales at Less Than Fair Value Issues and Decisions Memorandum at Comment 14*. Since we are using CV for purposes of NV, the issue of appropriate date of sale in the comparison market is moot.

SeAH:

U.S. Sales: All of SeAH’s U.S. OCTG sales were made out of inventory in the United States and, in most cases, further manufactured in the United States by Pusan Pipe America (“PPA”), SeAH’s U.S. affiliate. For its U.S. sales, SeAH reported that its customers contact PPA to inquire about a sale. Once price and quantity are agreed to, its customer issues a purchase order. After further manufacturing is completed, PPA ships the OCTG directly to the unaffiliated customer. PPA issues its invoice to the customer after shipment. SeAH has reported the actual date of shipment from PPA to the unaffiliated customer as the date of sale. SeAH reports that material terms of sale are subject to change until shipment of the merchandise from PPA in the United States. However, the Department only accepts shipment date as date of sale if shipment occurs before invoice date. In this instance, all of PPA’s shipments occurred prior to invoice date, we will use ship date as the date of sale. *See id.*

Comparison Market Sales: For sales to Canada, the comparison market in this review (*see* “Normal Value Comparisons” below), PPA receives an

¹ Section A of the questionnaire requests general information concerning a company’s corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation. Section E requests information on further manufacturing.

inquiry from the customer by fax or telephone. Once SeAH and PPA agree on the price to be charged to the unaffiliated customer, that customer then sends a written purchase order to PPA. SeAH ships the merchandise from Korea directly to the unaffiliated customer in Canada and issues an invoice to PPA. PPA then invoices the unaffiliated Canadian customer. As such, SeAH reported the shipment date from Korea as date of sale. *See id.*

Normal Value Comparisons

To determine whether Husteel's or SeAH's sales of subject merchandise to the United States were made at less than NV, we compared each company's CEP to the NV, as described in the "Constructed Export Price" and "Normal Value" sections of this notice, in accordance with section 777A(d)(2) of the Act.

Selection of Comparison Market

The Department determines the viability of a comparison market by comparing the aggregate quantity of comparison market sales to U.S. sales. A home market is not considered a viable comparison market if the aggregate quantity of sales of the foreign like product in that market amounts to less than five percent of the quantity of sales of subject merchandise to the United States during the POR. *See* section 773(a)(1)(C)(ii) of the Act; *see also* 19 CFR 351.404(b). Husteel and SeAH each reported that the aggregate quantity of sales of the foreign like product in Korea during the POR amounted to less than five percent of the quantity of each company's sales of subject merchandise to the United States during the POR.

In its January 9, 2006 questionnaire response, Husteel reported having no sales of OCTG to any other countries besides the United States and Singapore during the POR. Since the quantity of foreign like product sold by Husteel to Singapore was less than five percent of the quantity of subject merchandise sold to the United States, the Department is using CV for Husteel as the basis for NV for this review based on Husteel's cost of production ("COP"), in accordance with section 773(a)(4) of the Act.

In its January 9, 2006 questionnaire response, SeAH reported sales of OCTG to Canada and Indonesia during the POR. Since the quantity of foreign like product sold by SeAH to Canada was more than five percent and the quantity sold to Indonesia was less than five percent of the quantity of subject merchandise sold to the United States, the Department determined that only Canada qualified as a viable comparison market based on the criterion

established in section 773(a)(1) of the Act. Therefore, we are basing NV on sales to Canada except where there were no usable product matches. In those instances, in accordance with section 773(a)(4) of the Act, the Department used CV as the basis for NV.

Normal Value

Price-to-Price Comparisons:

SeAH: Where appropriate, we made adjustments to NV in accordance with section 773(a)(6) of the Act. We deducted movement expenses, including foreign inland freight, third country brokerage, international freight, and marine insurance as well as credit expenses, and packing expenses from the NV. We made further adjustments for differences in costs attributable to differences in physical characteristics of merchandise in accordance with section 773(a)(6)(C)(ii) of the Act. We also made a CEP offset in accordance with section 773(a)(7)(B) of the Act (*see* "Level of Trade/CEP Offset" section below).² Finally, the Department added U.S. packing expenses to calculate the foreign unit price in dollars ("FUPDOL") to use as the NV.

Constructed Value:

Husteel: We used CV as the basis for NV for all sales because, as discussed above, Husteel had no viable comparison market in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. We added the costs of materials, labor, and factory overhead to calculate the cost of manufacturing ("COM") in accordance with section 773(e)(1) of the Act. We then added interest expenses; selling, general and administrative expenses ("SG&A"); profit; and U.S. packing expenses to COM to calculate the CV in accordance with sections 773(e)(2) and (3) of the Act. In accordance with section 773(e)(2)(B)(iii) of the Act, we calculated profit and selling expenses based on the public version of SeAH's 2004 financial statements.

SeAH: We used CV as the basis for NV for sales in which there were no usable contemporaneous sales of the foreign like product in the comparison market, in accordance with section 773(a)(4) of the Act. We calculated CV in accordance with section 773(e) of the Act. We added reported materials, labor, and factory overhead costs to derive the COM, in accordance with 773(e)(1) of the Act. We then added interest expenses, SG&A, profit, and U.S.

packing expenses to derive the CV, in accordance with sections 773(e)(2) and (3) of the Act. We calculated profit based on the total value of sales and total COP reported by SeAH in its questionnaire response, in accordance with section 773(e)(2)(A) of the Act. We revised SeAH's G&A expense rate calculation to include certain donation expenses. *See Memorandum to Neal M. Halper through Peter S. Scholl from Laurens van Houten: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results – SeAH Steel Corporation, Ltd.* (August 24, 2006) (on the record of this review and on file in the Central Records Unit ("CRU"), room B-099 of the main Commerce building). Finally, we deducted comparison market credit expenses from CV to calculate the FUPDOL, pursuant to section 773(e)(2)(b) of the Act.

United States Price/Constructed Export Price

In accordance with section 772(b) of the Act, CEP is the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under sections 772(c) and (d) of the Act. In Husteel's and SeAH's questionnaire responses, each company classified all of its export sales of OCTG to the United States as CEP sales.

We preliminarily determine that all of Husteel's export sales of OCTG to the United States are properly classified as CEP sales because they were made for the account of Husteel by Husteel USA. Husteel reported one channel of distribution in the U.S. market: "produced to order" sales, shipped directly from Korea to the unaffiliated U.S. customers.

We preliminarily determine that all of SeAH's export sales of OCTG to the United States are properly classified as CEP sales because they were made for the account of SeAH by PPA. SeAH reported one channel of distribution in the U.S. market: merchandise was shipped by SeAH to PPA, then sold out of inventory by PPA to the unaffiliated customers. Many of SeAH's sales to the United States are further manufactured by an affiliated U.S. company.

Husteel's CEP: The Department calculated Husteel's starting price as its gross unit price to its unaffiliated U.S. customers, taking into account, where necessary, billing adjustments and discounts, pursuant to section 772(c)(1)

² The CEP offset is equal to the lesser of the total weighted average comparison market inventory carrying costs and indirect selling expenses or the sum of indirect selling expenses and inventory carrying costs for U.S. sales.

of the Act. The Department made deductions from the starting price for movement expenses, including foreign inland freight, foreign and U.S. brokerage and handling, international freight, marine insurance and U.S. customs duties in accordance with section 772(c)(2) of the Act. See *Memorandum from Dara Iserson, Case Analyst, to the File: Analysis of Husteel Co., Ltd. ("Husteel") for the Preliminary Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, dated August 24, 2006 ("Husteel's Preliminary Analysis Memo"), on the record of this review and on file in the CRU. In accordance with section 772(d)(1) of the Act, the Department also deducted U.S. credit expenses, inventory carrying costs, and indirect selling expenses to derive Husteel's net U.S. price. We also deducted CEP profit in accordance with section 772(d)(3) of the Act.

SeAH's CEP: The Department calculated SeAH's starting price as its gross unit price to its unaffiliated U.S. customers, taking into account, where necessary, billing adjustments and early payment discounts, pursuant to section 772(c)(1) of the Act. Where applicable, the Department made deductions from the starting price for movement expenses, including foreign inland freight, foreign and U.S. brokerage and handling, international freight, marine insurance and U.S. customs duties in accordance with section 772(c)(2) of the Act. See *Memorandum from Nicholas Czajkowski, Case Analyst, to the File: Analysis of SeaH Steel Corporation ("SeAH") for the Preliminary Results of the Administrative Review of Oil Country Tubular Goods, Other Than Drill Pipe from Korea*, dated August 24, 2006 ("SeAH's Preliminary Analysis Memo"), on the record of this review and on file in the CRU. In accordance with section 772(d)(1) of the Act, the Department also deducted U.S. credit expenses, inventory carrying costs, and indirect selling expenses incurred in the United States. We also deducted the cost of further manufacturing, where applicable, in accordance with section 772(d)(2) of the Act. In addition, we deducted CEP profit in accordance with section 772(d)(3) of the Act.

Level of Trade/CEP Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determined NV based on sales made in the comparison market at the same level of trade ("LOT") as the CEP sales. The NV LOT is based on the starting price of the sales in the comparison market. In *Micron Technology, Inc. v. United States*, 243

F.3d 1301, 1315 (Fed. Cir. 2001) ("*Micron Technology*"), the Court of Appeals for the Federal Circuit held that the statute unambiguously requires Commerce to remove the selling activities set forth in section 772(d) of the Act from the CEP starting price prior to performing its LOT analysis. As such, for CEP sales, the U.S. LOT is based on the starting price of the sales, as adjusted under section 772(d) of the Act.

To determine whether NV sales are at a different LOT than the CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the customer. If the comparison market sales are at different levels of trade, and the difference in levels of trade affects price comparability, as manifested in a pattern of consistent price differences, we make an LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). See e.g., *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) ("*South African Plate Final*").

Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.* In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the channel of distribution),³ including selling functions,⁴ class of customer

³ The marketing process in the United States and in the comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondents' sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of each respondent to properly determine where in the chain of distribution the sale occurs.

⁴ Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common selling functions into four major categories: sales process and marketing support, technical service, freight and delivery, and inventory maintenance.

(customer category), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(I) of the Act, in identifying levels of trade for CEP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments. Consistent with *Micron Technology*, 243 F.3d at 1315, the Department will adjust the U.S. LOT, pursuant to section 772(d) of the Act, prior to performing the LOT analysis, as articulated by 19 CFR 351.412.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the CEP sales, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing CEP sales to sales at a different LOT in the comparison market, where available data make it practicable, we make an LOT adjustment under section 773(a)(7)(A) of the Act.

In determining whether separate LOTs exist, we obtained information from SeAH regarding the marketing stages for the reported U.S. and comparison market sales, including a description of the selling activities performed for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller at each level should be similar. Conversely, if a party reports that LOTs are different for different groups of sales, the selling functions and activities of the seller for each group should be dissimilar.

In the current review, SeAH reported one channel of distribution in the Canadian comparison market. All sales to the Canadian market were made between PPA and the unaffiliated customer and shipped directly to the customer from Korea. The selling functions performed by SeAH and PPA for the Canadian market were identical for each customer. As such, we preliminarily find that all of SeAH's sales in the Canadian market were made at one LOT.

SeAH reported one channel of distribution for its sales to the United States. We examined the selling functions performed by SeAH and PPA for the U.S. sales and found that all sales of the subject merchandise were inventoried and most were further manufactured by PPA in the United States before being sold to the unaffiliated customer. The selling functions performed by SeAH and PPA in the U.S. market were identical for each customer. Therefore, we preliminarily find that SeAH made its U.S. sales at one LOT. SeAH claimed

that once adjustments for PPA's activities for U.S. sales are made, pursuant to section 772(d) of the Act, the LOT in the U.S. market is less advanced than the Canadian LOT.

To determine whether NV is at a different LOT than the U.S. transactions, the Department compared SeAH's selling activities for the Canadian market with those for the U.S. market. We grouped SeAH's selling activities for the Canadian market and U.S. market into the following categories: selling and marketing, technical service, freight, and inventory. See SeAH's Section A questionnaire response at Exhibit A-15. In accordance with *Micron Technology*, we removed the selling activities set forth in section 772(d) of the Act from the U.S. LOT prior to performing the LOT analysis. See *SeAH's Preliminary Analysis Memo*. After removing the appropriate selling activities, we compared the U.S. LOT to the Canadian LOT. Based on our analysis, we find that the U.S. sales are at a less advanced LOT than the Canadian sales. See *SeAH's Preliminary Analysis Memo*.

Therefore, because the sales in Canada are being made at a more advanced LOT than the sales to the United States, an LOT adjustment is appropriate for the Canadian sales in this review. However, as SeAH sold only through one channel of distribution to Canada, there is not sufficient data to evaluate whether an LOT adjustment is warranted. Therefore, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). This offset is equal to the amount of indirect selling expenses and inventory carrying costs incurred in the comparison market up to but not exceeding the sum of indirect selling expenses and inventory carrying costs from the U.S. price in accordance with section 772(d)(1)(D) of the Act.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank of New York.

Preliminary Results Of Review

As a result of this review, we preliminarily find that the following weighted average dumping margins exist:

Manufacturer/Exporter	Margin
SeAH Steel Corporation	0.58%
HuSteel Co., Ltd	0.85%

Cash Deposit Requirements

If these preliminary results are adopted in the final results of this review, the following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of the final results of this administrative review, as provided by section 751(a)(1) of the Act: 1) the cash deposit rate for the reviewed company will be the rate established in the final results of this review, except if the rate is less than 0.50 percent (*de minimis* within the meaning of 19 CFR 351.106(c)(1)), the cash deposit will be zero; 2) for previously reviewed companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in this review, a prior review, or the original 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 merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be the "all others" rate established in the LFTV investigation, which is of 12.17 percent. See *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods from Korea*, 60 FR 33561 (June 28, 1995). These cash deposit requirements, 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.

Duty Assessment

Upon publication of the final results of this review, the Department shall determine and CBP shall assess antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. HuSteel and SeAH each made all their sales to the United States through an affiliated importer. HuSteel and SeAH have reported entered values for all of their respective sales of subject merchandise to the United States during the POR. We have compared the entered values reported by HuSteel and SeAH with the entered values that they reported to CBP on their customs entries and preliminarily find that HuSteel's and SeAH's reported entered values are reliable. See *HuSteel's Preliminary Analysis Memo* and *SeAH's Preliminary*

Analysis Memo. Therefore, in accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales and the total entered value of the examined sales. These rates will be assessed uniformly on all entries the respective importers made during the POR if these preliminary results are adopted in the final results of review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of the final results of this review.

The Department clarified its "automatic assessment" regulation on May 6, 2003. See *Notice of Policy Concerning Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Assessment-Policy Notice*). This clarification will apply to entries of subject merchandise during the period of review produced by companies included in these final results of reviews for which the reviewed companies did not know that the merchandise it sold to the intermediary (*e.g.*, a reseller, trading company, or exporter) 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 intermediary involved in the transaction. See the *Assessment-Policy Notice* for a full discussion of this clarification.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to any party to the proceeding the calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) A statement of the issues; (2) a brief summary of the argument; and (3) a table of authorities. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310(c), within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments

to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case brief, rebuttal brief, or hearing no later than 120 days after publication of these preliminary results, unless extended. *See* 19 CFR 351.213(h).

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These preliminary results of this administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(l)(1) of the Act.

Dated: August 24, 2006.

Stephen J. Claeys,

Acting Assistant Secretary for Import Administration.

[FR Doc. 06-7348 Filed 8-30-06; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology (VCAT), National Institute of Standards and Technology (NIST), will meet Tuesday, September 12, from 8:30 a.m. to 4:45 p.m. The Visiting Committee on Advanced Technology is composed of fifteen members appointed by the Director of NIST who are eminent in such fields as business, research, new product development, engineering, labor, education, management

consulting, environment, and international relations.

The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on NIST's activities, a vision and overview of NIST's biotechnology and health care activities, technical program highlights in biotechnology and health care, a presentation on research at the NIST's Center for Nanoscale Science and Technology (CNST), and an overview and laboratory tours of JILA. JILA is a joint research institution of NIST and the University of Colorado. In addition, Dr. Lee Hood, President of the Institute for Systems Biology, will deliver a talk entitled, "Systems Medicine: Measurement and Computational Challenges in the Emergence of Predictive, Preventive, Personalized and Participatory Medicine." The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at <http://www.nist.gov/director/vcat/agenda.htm>.

DATES: The meeting will convene on September 12 at 8:30 a.m. and will adjourn on September 12 at 4:45 p.m.

ADDRESSES: The meeting will be held in Building 1, Room 1107, at NIST, Boulder, Colorado. All visitors to the NIST site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Peters no later than Thursday, September 7, and she will provide you with instructions for admittance. Mrs. Peter's e-mail address is carolyn.peters@nist.gov and her phone number is (301) 975-5607.

FOR FURTHER INFORMATION CONTACT:

Carolyn Peters, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899-1000, telephone number (301) 975-5607.

Dated: August 24, 2006.

William Jeffrey,

Director.

[FR Doc. 06-7287 Filed 8-30-06; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Information Security and Privacy Advisory Board (ISPAB) will meet Thursday, September 14, 2006, from 8:30 a.m. until 5 p.m., and Friday, September 15, 2006, from 8:30 a.m. until 4 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100-235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107-347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to Federal computer systems. Details regarding the Board's activities are available at <http://csrc.nist.gov/ispab/>.

DATES: The meeting will be held on September 14, 2006 from 8:30 a.m. until 5 p.m. and September 15, 2006, from 8:30 a.m. until 4 p.m.

ADDRESSES: The meeting will take place at the George Washington University Cafritz Conference Center 800 21st Street, NW., Room 101, Washington, DC.

Agenda:

- Welcome and Overview.
- NIST Computer Security Division Update.
- Overview of the Privacy & Civil Liberties Oversight Board Activities.
- Data Security Breaches.
- Privacy Technology Project Discussion.
- Safeguarding Personal Information—Government Steps and Lessons Learned.
- Update Status of Security and Privacy Legislation.
- OMB Update.
- HSPD-12 Status Briefing.
- Wrap-Up.

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public

who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899-8930. It would be appreciated if 25 copies of written material were submitted for distribution to the Board and attendees no later than September 8, 2006. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Bowen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899-8930, telephone: (301) 975-2938.

Dated: August 24, 2006.

William Jeffrey,

Director.

[FR Doc. 06-7288 Filed 8-30-06; 8:45 am]

BILLING CODE 3510-CN-P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Thursday, September 14, 2006. The Judges Panel is composed of ten members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the consensus process, select applicants for site visits, determine possible conflict of interest for site visited organizations, begin stage 3 judging process, discuss Judges' survey revisions, review feedback to first stage applicants, a debriefing on the State and Local Workshop and a program update. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene September 14, 2006 at 8:15 a.m. and adjourn at 3 p.m. on September 14, 2006. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building, Lecture Room D, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 27, 2005, that the meeting of the Judges Panel will be closed pursuant to Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by Section 5(c) of the Government in the Sunshine Act, Public Law 94-409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: August 24, 2006.

William Jeffrey,

Director.

[FR Doc. 06-7289 Filed 8-30-06; 8:45 am]

BILLING CODE 3510-13-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081606A]

Atlantic Highly Migratory Species; U.S. Atlantic Swordfish Fishery Public Meetings

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

ACTION: Notice; public meetings.

SUMMARY: NMFS will hold five public meetings in September 2006 in order to obtain recommendations from swordfish fishery participants and other members of the public regarding potential management measures for the U.S. Atlantic swordfish fishery so as to fully

harvest the quota allocated to the United States by the International Commission for the Conservation of Atlantic Tunas (ICCAT).

DATES: The public meetings will be held in September 2006. For specific dates and times see the **SUPPLEMENTARY INFORMATION** section of this document.

ADDRESSES: The public meetings will be held in Peabody, MA; Manahawkin, NJ; Manteo, NC; Panama City, FL; and Houma, LA. For specific locations see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly at (301) 713-2347.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic swordfish fishery is managed under the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks, and regulations at 50 CFR part 635 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (ATCA) (16 U.S.C. 971 *et seq.*). Regulations issued under the authority of ATCA implement the recommendations of ICCAT. In the last several years, the U.S. Atlantic swordfish fishery has not fully harvested the available quota allocated by ICCAT. The adjusted 2005 North Atlantic swordfish total quota was 6,336.1 mt dw, which included a baseline quota of 2,937.6 and a quota carry-over of 3,398.5 mt dw. The total U.S. North Atlantic quota allocation for the 2006 fishing year is 2,937.6 mt dw, and the carry-over is yet to be determined. NMFS anticipates that the pending September 2006 stock assessment may identify the North Atlantic swordfish stock as fully rebuilt. Fishermen and others have asked NMFS to assist in revitalizing this fishery. Also, at its November 2006 meeting ICCAT will likely review swordfish management measures and quota allocations. Therefore NMFS is considering potential management measures for the U.S. Atlantic swordfish fishery that would address factors limiting the ability to catch the allocated quota, and to aid in revitalizing the fishery so that swordfish are harvested in a sustainable and economically viable manner, while bycatch is minimized to the extent practicable. At the September 2006 public meetings NMFS wishes to obtain recommendations from swordfish fishery participants and other members of the public regarding potential management measures for the fishery to fully harvest the available quota.

Special Accommodations

As listed below, NMFS will hold five public meetings to obtain recommendations from swordfish fishery participants and other members of the public regarding potential swordfish fishery management measures. These meetings will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sari Kiraly at (301) 713-2347, at least 7 days prior to the meeting.

Public Meeting Dates, Times, and Locations

1. September 14, 2006, from 6–8 p.m. at the Vietnamese Community Center of Houma, 1268 Highway 182 West, Houma, LA 70364.

2. September 18, 2006, from 7–9 p.m. at the Manahawkin Holiday Inn, 151 Route 72 East, Manahawkin, NJ 08050.

3. September 19, 2006, from 7–9 p.m. at the Peabody Holiday Inn, 1 Newberry Street, Peabody, MA 01960.

4. September 20, 2006, from 7–9 p.m. at the North Carolina Aquarium on Roanoke Island, 374 Airport Road, Manteo, NC 27954.

5. September 21, 2006, from 6–8 p.m. at the NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL 32408.

Dated: August 25, 2006.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 06-7325 Filed 8-30-06; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082106C]

Fisheries of the Exclusive Economic Zone Off Alaska; Western Alaska Community Development Quota Program

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

ACTION: Notice.

SUMMARY: NMFS issues this notice to inform the public about the Community Development Quota (CDQ) percentage allocations among the six CDQ managing entities (CDQ groups) that are in effect as a result of recent amendments to the Magnuson-Stevens Fishery Conservation and Management

Act (Magnuson-Stevens Act). On July 11, 2006, the Coast Guard and Maritime Transportation Act of 2006 amended the Magnuson-Stevens Act to establish percentage allocations for groundfish, crab, and halibut allocated among the CDQ groups at those percentage allocations in effect on March 1, 2006. In addition, this notice provides information about the percentage allocations for prohibited species quota (PSQ) allocated among the CDQ groups that were not affected by the Magnuson-Stevens Act amendments, but continue in effect under an administrative determination issued by NMFS on August 8, 2005.

ADDRESSES: Copies of section 416 of the Coast Guard and Maritime Transportation Act of 2006 and the August 8, 2005, initial administrative determination (IAD) extending the 2003–2005 groundfish, halibut, crab, and prohibited species CDQ percentage allocations may be obtained by mail from NMFS Alaska Region, Attn: in-person at Ellen Walsh, Records Officer, P.O. Box 21668, Juneau, AK 99802; NMFS Alaska Region, 709 W. 9th Street, Room 420A, Juneau, AK; or at the NMFS Alaska Region web site at <http://www.fakr.noaa.gov/cdq>.

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907-586-7241 or obren.davis@noaa.gov.

SUPPLEMENTARY INFORMATION:

Background

The Coast Guard and Maritime Transportation Act of 2006 (Public Law 109-241) was signed by the President on July 11, 2006. Section 416 of this legislation amended section 305(i)(1) of the Magnuson-Stevens Act. The Magnuson-Stevens Act is the primary statute governing management of the nation's marine fisheries within the U.S. exclusive economic zone. Section 305(i)(1) establishes the Western Alaska CDQ Program, which provides western Alaska communities with allocations of Bering Sea and Aleutian Islands (BSAI) groundfish, halibut, crab, and prohibited species. These allocations provide such communities with the opportunity to participate and invest in BSAI fisheries in support of economic development activities. Revised section 305(i)(1) of the Magnuson-Stevens Act contains a broad range of changes to various aspects of the CDQ Program. These include elements associated with CDQ Program administration and oversight, percentage allocations of annual CDQ Program catch limits, permanent eligibility status for current CDQ communities, and CDQ fisheries management measures. Subparagraph

(C) of section 305(i)(1), "Allocations to Entities" directs that:

Each entity eligible to participate in the program shall be authorized under the program to harvest annually the same percentage of each species allocated to the program under subparagraph (B) that it was authorized by the Secretary to harvest of such species annually as of March 1, 2006, except to the extent that its allocation is adjusted under subparagraph (H).

Subparagraph (H) addresses the decennial review and adjustment of entity allocations beginning in 2012. This notice does not address the process that will be used to make such adjustments; that process will be addressed in future rulemaking. Once such a decennial review is completed, the percentage allocations contained in this notice may be revised through the adjustment process described in subparagraph (H).

Purpose

Annual CDQ Program allocations for approximately 36 quota categories of BSAI groundfish, halibut, crab, and prohibited species are distributed among CDQ groups based on CDQ and PSQ percentage allocations. Historically, percentage allocations have been established through periodic CDQ application processes. Section 305(i)(1)(c) establishes the CDQ percentage allocations for BSAI groundfish, halibut, and crab at the same levels that were in effect on March 1, 2006. The CDQ and PSQ percentage allocations for all quota categories (except two) that were in effect on that date were originally approved by NMFS on January 17, 2003, as part of the 2003–2005 CDQ allocation process. The expiration date for those CDQ and PSQ percentage allocations was December 31, 2005.

On August 8, 2005, NMFS issued an IAD that removed the December 31, 2005, expiration date from these CDQ and PSQ percentage allocations. This administrative determination, which was effective on September 7, 2005, established the CDQ percentage allocations that were in effect on March 1, 2006, for all BSAI groundfish, halibut, and prohibited species, as well as for all crab species except Eastern Aleutian Islands (EAI) golden king crab and Adak red king crab. This IAD is available from NMFS (see **ADDRESSES**).

EAI golden king crab and Adak red king crab were allocated to the CDQ Program on April 1, 2005, as part of the crab rationalization program (70 FR 10174; March 2, 2005). These two crab species had not previously been allocated to the CDQ Program, so they were not included in the CDQ

percentage allocations that were originally approved by NMFS on January 17, 2003. On October 12, 2005, NMFS issued a final agency decision that established CDQ percentage allocations for these two crab species through June 30, 2006. These were the CDQ percentage allocations in effect for EAI golden king crab and Adak red king crab on March 1, 2006.

The prohibited species allocated to the CDQ Program are not allocations for directed fisheries under sections 305(i)(1)(B) and (C) of the Magnuson-Stevens Act. Therefore, they are not included among the species allocated to the program under section 305(i)(1)(B). Existing PSQ percentage allocations will remain in effect under the administrative determination issued on

August 8, 2005, unless revised through some future final agency action.

Allocation Percentages

The tables below identify the CDQ and PSQ percentage allocations in effect for each CDQ group. Table 1 lists the CDQ percentage allocations of BSAI groundfish, crab, and halibut. Table 2 lists the PSQ percentage allocations of BSAI prohibited species.

TABLE 1—CDQ PERCENTAGE ALLOCATIONS OF BSAI GROUND FISH, CRAB, AND HALIBUT AS OF MARCH 1, 2006

Species	Area ¹	CDQ Group ²					
		APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
GROUND FISH ³	.....	.....	.....	.....	.....	.....	.....
Pollock	BS	14%	21%	5%	24%	22%	14%
	AI	14%	21%	5%	24%	22%	14%
	Bogoslof	14%	21%	5%	24%	22%	14%
Pacific cod	BSAI	15%	21%	9%	18%	18%	19%
Sablefish (from trawl gear allocation)	BS	21%	22%	9%	13%	13%	22%
	AI	26%	20%	8%	13%	12%	21%
Sablefish, fixed gear	BS	15%	20%	16%	0%	18%	31%
	AI	14%	19%	3%	27%	23%	14%
Atka mackerel	EAI/BS	30%	15%	8%	15%	14%	18%
	CAI	30%	15%	8%	15%	14%	18%
	WAI	30%	15%	8%	15%	14%	18%
Yellowfin sole	BSAI	28%	24%	8%	6%	7%	27%
Rock sole	BSAI	24%	23%	8%	11%	11%	23%
Greenland turbot	BS	16%	20%	8%	17%	19%	20%
	AI	17%	19%	7%	18%	20%	19%
Arrowtooth flounder	BSAI	22%	22%	9%	13%	12%	22%
Flathead sole	BSAI	20%	21%	9%	15%	15%	20%
Other flatfish	BSAI	26%	24%	8%	8%	8%	26%
Alaska plaice	BSAI	14%	21%	5%	24%	22%	14%
Pacific ocean perch	BS	17%	21%	6%	21%	19%	16%
	EAI	30%	15%	8%	15%	14%	18%
	CAI	30%	15%	8%	15%	14%	18%
	WAI	30%	15%	8%	15%	14%	18%
Other rockfish	BS	21%	19%	7%	17%	17%	19%
	AI	21%	18%	8%	17%	17%	19%
CRAB	.....	.....	.....	.....	.....	.....	.....
Red king	Adak	8%	18%	21%	18%	21%	14%
Red king	Bristol Bay	17%	19%	10%	18%	18%	18%
<i>C. bairdi</i> (Tanner) crab	BS	10%	19%	19%	17%	18%	17%
<i>C. opilio</i> crab	BS	8%	20%	20%	17%	18%	17%
Golden king	EAI	8%	18%	21%	18%	21%	14%
Red king	Norton Sound	0%	0%	0%	0%	50%	50%
Red and blue king	Pribilof Is.	0%	0%	100%	0%	0%	0%
Blue king	St. Matthew	50%	12%	0%	12%	14%	12%
PACIFIC HALIBUT	.....	.....	.....	.....	.....	.....	.....
	4B	100%	0%	0%	0%	0%	0%
	4C	15%	0%	85%	0%	0%	0%
	4D	0%	26%	0%	24%	30%	20%
	4E	0%	30%	0%	70%	0%	0%

¹Management area abbreviations: AI = Aleutian Islands, BS = Bering Sea, CAI = Central AI, EAI = Eastern AI, and WAI = Western AI.

²CDQ groups: APICDA = Aleutian Pribilof Island Community Development Corporation, BBEDC = Bristol Bay Economic Development Corporation, CBSFA = Central Bering Sea Fishermen's Association, CVRF = Coastal Villages Region Fund, NSEDC = Norton Sound Economic Development Corporation, and YDFDA = Yukon Delta Fisheries Development Association.

³Certain BSAI groundfish species allocated to the CDQ Program are not allocated among CDQ groups. Program allocations for northern rockfish, shorttraker rockfish, and rougheye rockfish were not allocated among the CDQ groups on March 1, 2006, per NMFS's January 17, 2003, administrative determination that approved 2003-2005 CDQ allocation percentages. No percentage allocations were in effect on March 1, 2006, for the "other species" category, which is no longer allocated among CDQ groups per the recommendation of the North Pacific Fishery Management Council (68 FR 69974, December 16, 2003). NMFS now manages these species at the CDQ program level. Finally, squid was removed from the CDQ Program in 2001 (66 FR 13762, March 7, 2001).

TABLE 2—PSQ PERCENTAGE ALLOCATIONS OF BSAI PROHIBITED SPECIES

Species	Area	CDQ Group					
		APICDA	BBEDC	CBSFA	CVRF	NSEDC	YDFDA
<i>C. opilio</i> crab	BS	25%	24%	8%	10%	8%	25%
Pacific halibut	BSAI	22%	22%	9%	12%	12%	23%
Chinook salmon	BSAI	14%	21%	5%	24%	22%	14%
Non-Chinook salmon	BSAI	14%	21%	5%	24%	22%	14%
Red king crab	Zone 1	24%	21%	8%	12%	12%	23%
<i>C. bairdi</i> (Tanner) crab	Zone 1	26%	24%	8%	8%	8%	26%
<i>C. bairdi</i> (Tanner) crab	Zone 2	24%	23%	8%	11%	10%	24%

CDQ groups: APICDA = Aleutian Pribilof Island Community Development Corporation, BBEDC = Bristol Bay Economic Development Corporation, CBSFA = Central Bering Sea Fishermen's Association, CVRF = Coastal Villages Region Fund, NSEDC = Norton Sound Economic Development Corporation, and YDFDA = Yukon Delta Fisheries Development Association.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 25, 2006.

James P. Burgess,

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

[FR Doc. 06-7326 Filed 8-30-06; 8:45 am]

BILLING CODE 3510-22-S

THE COMMISSION OF FINE ARTS

Sunshine Act; Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for September 21, 2006, at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001-2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web site: <http://www.cfa.gov>. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Thomas Luebke, Secretary, Commission of Fine Arts, at the above address or call 202-504-2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, August 28, 2006.

Thomas Luebke,
Secretary.

[FR Doc. 06-7382 Filed 8-29-06; 11:36 am]

BILLING CODE 6330-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Defense Policy Board Advisory Committee

AGENCY: Department of Defense, Defense Policy Board Advisory Committee.

ACTION: Notice.

SUMMARY: The Defense Policy Board Advisory Committee will meet in closed session on September 21, 2006 from 0800 hrs until 1830 at the State Department, Washington, DC and September 22, 2006 from 0800 hrs until 1400 at the Pentagon.

The purpose of the meeting is to provide the Secretary of Defense, Deputy Secretary of Defense and Under Secretary of Defense for Policy with independent, informed advice on major matters of defense policy. The Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92-463, as amended [5 U.S.C. App II (1982)], it has been determined that this meeting concerns matters listed in 5 U.S.C.

§ 552B(c)(1)(1982), and that accordingly this meeting will be closed to the public.

Dated: August 25, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06-7294 Filed 8-30-06; 8:45 am]

BILLING CODE 5000-06-M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of intent.

SUMMARY: Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations, which implements Public Law 96-517, as amended, the Department of the Air Force announces its intention to grant Hybrid Plastics Inc., a Mississippi corporation, having a place of business at 55 W.L. Runnels

Ind. Road, Hattiesburg, MS 39401; two exclusive licenses in any right, title and interest the Air Force has in the following three U.S. Patents:

License 1: U.S. Patent 6,362,279, issued 26 March 2002, entitled "Pre-ceramic Additives as Fire Retardants for Plastics", Joseph D. Lichtenhan and Jeffrey W. Gilman—Inventors.

License 2: U.S. Patent 6,660,823, issued 9 December 2003, entitled "Modifying POSS Compounds", Joseph D. Lichtenhan, Frank J. Feder and Daravong Soulivong—Inventors.

U.S. Patent 6,770,724, issued 3 August 2004, entitled "Altering of POSS Rings", Joseph D. Lichtenhan, Timothy S. Haddad, Frank J. Feher and Daravong Soulivong—Inventors.

DATES: Any objection to the grant of either of the above licenses must be submitted in writing and received within fifteen (15) days from the date of publication of this Notice in the **Federal Register** in order to be considered.

FOR FURTHER INFORMATION CONTACT:

Written objection should be sent to: Air Force Materiel Command Law Office, AFMCLO/JAZ, 2240 B Street, Room 100, Wright-Patterson AFB OH 45433-7109. Telephone: (937) 255-2838; facsimile (937) 255-3733.

Bao-Anh Trinh,

Air Force Federal Register Liaison Officer.

[FR Doc. 06-7277 Filed 8-30-06; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Board of Visitors of Marine Corps University

AGENCY: Department of the Navy, DoD.

ACTION: Notice of open meeting.

SUMMARY: The Executive Committee of the Board of Visitors of the Marine Corps University (BOV MCU) will meet

to receive the recommendations of the Officer Professional Military Education Study Group. The Board will receive the final written report from the three-month study of Marine Corps Professional Military Education. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Friday, September 29, 2006, from 1 p.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Marine Corps University, 2076 South Street, Quantico, Virginia 22134, in the Hooper Room.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Lanzillotta, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number 703-784-4037.

Dated: August 21, 2006.

M.A. Harvison,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 06-7281 Filed 8-30-06; 8:45 am]

BILLING CODE 3810-FF-P

DEPARTMENT OF EDUCATION

Safe and Drug-Free Schools and Communities Advisory Committee

AGENCY: Office of Safe and Drug-Free Schools.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of The Safe and Drug-Free Schools and Communities Advisory Committee. The notice also describes the functions of the Committee. Notice of this meeting is required by section 10(a)(2) of Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend. This notice is appearing in the **Federal Register** less than 15 days before the meeting due to difficulties in scheduling within the Agency.

DATES: Tuesday, September 5, 2006.
Time: 2 p.m. EST.

ADDRESSES: The Committee will meet by telephone conference call.

FOR FURTHER INFORMATION CONTACT: Catherine Davis, Executive Director, The Safe and Drug-Free Schools and Communities Advisory Committee, Room 1E110B, 400 Maryland Avenue, SW., Washington, DC, telephone: (202) 205-4169, e-mail: OSDFSC@ed.gov.

SUPPLEMENTARY INFORMATION: The Committee was established to provide

advice to the Secretary on Federal, State and local programs designed to create safe and drug-free schools, and on issues related to crisis planning. The agenda for the September 5th meeting will include follow-up discussion on the August 21-22, 2006 hearing. The August hearing focused on issues related to the Safe and Drug-Free Schools and Communities Act State Grants program, as well the collection and use of data to effectively manage youth drug and violence prevention programs.

There will not be an opportunity for public comment during this meeting, however the public may listen to the conference call by calling 800-473-8796, Chairperson: Deborah Price. Individuals who will need accommodations for a disability in order to listen to the meeting may access a TTY line by calling 800-473-8796, Chairperson: Deborah Price.

Request for Written Comments: We invite the public to submit written comments relevant to the focus of the Advisory Committee. We would like to receive written comments from members of the public no later than April 30, 2007.

ADDRESSES: Submit all comments to the Advisory Committee using one of the following methods:

1. Internet. We encourage the public to submit comments through the Internet to the following address: OSDFSC@ed.gov.

2. Mail. The public may also submit your comments via mail to Catherine Davis, Office of Safe and Drug Free Schools, U.S. Department of Education, 400 Maryland Avenue, SW., Room 1E110B, Washington, DC 20202. Due to delays in mail delivery caused by heightened security, please allow adequate time for the mail to be received.

Records are kept of all Committee proceedings and are available for public inspection at the staff office for the Committee from the hours of 9 a.m. to 5 p.m.

Ray Simon,

Deputy Secretary, U.S. Department of Education.

[FR Doc. 06-7305 Filed 8-30-06; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of upcoming teleconference meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the teleconference meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Friday, September 8, 2006 by contacting Ms. Hope Gray at (202) 219-2099 or via e-mail at hope.gray@ed.gov. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The teleconference site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Friday, September 15, 2006, beginning at 2:30 p.m. and ending at approximately 3:30 p.m.

ADDRESSES: Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Room 412, Washington, DC 20202-7582.

FOR FURTHER INFORMATION CONTACT: Dr. William J. Goggin, Executive Director, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202-7582, (202) 219-2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under Section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Amendments of 1998 to include several important areas: access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review,

monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this teleconference solely to conduct the election of officers.

Space for the teleconference meeting is limited and you are encouraged to register early if you plan to attend. You may register by sending an e-mail to the following addresses: hope.gray@ed.gov. Please include your name, title, affiliation, complete address (including internet and e-mail, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219-3032. You may also contact the Advisory Committee staff directly at (202) 219-2099. The registration deadline is Tuesday, September 12, 2006.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's web site, <http://www.ed.gov/ACSFA>.

Dated: August 25, 2006.

Dr. William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 06-7272 Filed 8-30-06; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance: Hearing

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of Upcoming Hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming hearing of the Advisory Committee on Student Financial Assistance. Individuals who will need accommodations for a disability in order to attend the hearing (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify the Advisory Committee no later than Monday, September 11, 2006 by contacting Ms. Hope Gray at (202) 219-2099 or via e-mail at hope.gray@ed.gov. We will attempt to meet requests after this date, but cannot

guarantee availability of the requested accommodation. The hearing site is accessible to individuals with disabilities. This notice also describes the functions of the Advisory Committee. Notice of this hearing is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATE AND TIME: Tuesday, September 19, 2006, beginning at 9 a.m. and ending at approximately 5 p.m.

ADDRESSES: The Washington Court Hotel, 525 New Jersey Avenue, NW., Executive Room, Lower Lobby Level, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Dr. Michelle Asha Cooper, Director of Policy Research or Ms. Erin B. Renner, Director of Government Relations, Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC 20202-7582, (202) 219-2099.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100-50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. In addition, Congress expanded the Advisory Committee's mission in the Higher Education Amendments of 1998 to include several important areas: Access, Title IV modernization, distance education, and early information and needs assessment. Specifically, the Advisory Committee is to review, monitor and evaluate the Department of Education's progress in these areas and report recommended improvements to Congress and the Secretary.

The Advisory Committee has scheduled this one-day hearing to publicly launch its new report on the impact of financial barriers on college enrollment and the Committee's newly requested Congressional charge, to conduct a one-year study of the rising cost of college textbooks and make recommendations on ways to reduce the financial barriers for all students. The proposed agenda includes expert testimony and discussions by prominent higher education community leaders, state representatives, and policy

researchers who will address (a) the Committee's report on the impact of financial barriers on college enrollment and degree attainment; (b) the Congressionally requested study of college textbooks; (c) the feasibility study for radical simplification of federal expected family contribution (EFC) determination, which is a part of the Committee's Innovative Pathways Study, and (d) a roundtable discussion among Advisory Committee members and panelists on the issues addressed in the first three sessions, followed by a public comment session.

The Advisory Committee invites the public to submit written comments on the agenda topics to the following e-mail address: ACSFA@ed.gov. Information regarding the topics covered at the hearing will also be available on the Advisory Committee's Web site at <http://www.ed.gov/ACSFA>. We must receive your comments on or before September 15, 2006 to be included in the hearing materials.

Space for the hearing is limited and you are encouraged to register early if you plan to attend. You may register by sending an e-mail to the following address: ACSFA@ed.gov or Tracy.Deanna.Jones@ed.gov. Please include your name, title, affiliation, complete address (including internet and e-mail, if available), and telephone and fax numbers. If you are unable to register electronically, you may fax your registration information to the Advisory Committee staff office at (202) 219-3032. You may also contact the Advisory Committee staff directly at (202) 219-2099. The registration deadline is Tuesday, September 12, 2006.

Records are kept for Advisory Committee proceedings, and are available for inspection at the Office of the Advisory Committee on Student Financial Assistance, Capitol Place, 80 F Street, NW., Suite 413, Washington, DC from the hours of 9 a.m. to 5:30 p.m. Monday through Friday, except Federal holidays. Information regarding the Advisory Committee is available on the Committee's Web site, <http://www.ed.gov/ACSFA>.

Dated: August 25, 2006.

William J. Goggin,

Executive Director, Advisory Committee on Student Financial Assistance.

[FR Doc. 06-7273 Filed 8-30-06; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY**Environmental Management Site-Specific Advisory Board, Paducah****AGENCY:** Department of Energy (DOE).**ACTION:** Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, September 21, 2006, 5:30 p.m.–9 p.m.**ADDRESSES:** 111 Memorial Drive, Barkley Centre, Paducah, Kentucky 42001.

FOR FURTHER INFORMATION CONTACT: William E. Murphie, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219-4001.

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:

- 5:30 p.m. Informal Discussion.
- 6 p.m. Call to Order.
 - Introductions.
 - Review of Agenda.
 - Approval of August Minutes.
- 6:15 p.m. Deputy Designated Federal Officer's Comments.
- 6:35 p.m. Federal Coordinator's Comments.
- 6:40 p.m. Liaisons' Comments.
- 6:50 p.m. Public Comments and Questions.
- 7 p.m. Task Forces/Presentations.
 - Environmental Protection Agency Economic Development—David Williams.
 - Waste Disposition/Water Quality Task Force.
- 8 p.m. Review of Action Items.
- 8:05 p.m. Public Comments and Questions.
- 8:15 p.m. Break.
- 8:25 p.m. Administrative Issues.
 - Preparation for October Presentation.
 - Budget Review.
 - Review of Work Plan.
 - Review of Next Agenda.
- 8:35 p.m. Subcommittee Report.
 - Executive Committee "Chairs" Meeting Review.
- 8:50 p.m. Final Comments.
- 9 p.m. Adjourn.

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 David Dollins at the address listed below or by telephone at (270) 441-6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday through Friday or by writing to David Dollins, Department of Energy, Paducah Site Office, Post Office Box 1410, MS-103, Paducah, Kentucky 42001 or by calling him at (270) 441-6819.

Issued at Washington, DC on August 24, 2006.

Carol Matthews,*Acting Advisory Committee Management Officer.*

[FR Doc. 06-7303 Filed 8-30-06; 8:45 am]

BILLING CODE 6450-01-P**DEPARTMENT OF ENERGY****Environmental Management Site-Specific Advisory Board, Idaho National Laboratory****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), Idaho National Laboratory. The Federal Advisory Committee Act (Pub. L. No. 92-463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Tuesday, September 19, 2006, 8 a.m.–6 p.m.; Wednesday, September 20, 2006, 8 a.m.–5 p.m.

Opportunities for public participation will be held Tuesday, September 19, 2006, from 1 to 1:15 p.m. and 4 to 4:15 p.m.; and Wednesday, September 20, 2006, from 11:45 to 12 p.m. Additional time may be made available for public comment during the presentations.

These times are subject to change as the meeting progresses, depending on the extent of comment offered.

ADDRESSES: Ameritel Inn, 645 Lindsay Boulevard, Idaho Falls, ID 83402.

FOR FURTHER INFORMATION CONTACT: Shannon A. Brennan, Federal Coordinator, Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, MS-1216, Idaho Falls, ID 83415. Phone (208) 526-3993; fax (208) 526-1926 or e-mail:

Shannon.Brennan@nuclear.energy.gov or visit the Board's Internet home page at: <http://www.inelemcab.org>.

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 Topics (agenda topics may change up to the day of the meeting; please contact Shannon A. Brennan for the most current agenda):

- Advanced Mixed Waste Treatment Project Baseline.
- Tank Farm Soils Cleanup.
- Citizens Advisory Board Budgets, Operating Procedures, Annual Work Plan.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral presentations pertaining to agenda items should contact Shannon A. Brennan at the address or telephone number listed above. The request must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the U.S. Department of Energy's Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Minutes will also be available by writing to Shannon A. Brennan, Federal

Coordinator, at the address and phone number listed above.

Issued at Washington, DC on August 24, 2006.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. 06-7304 Filed 8-30-06; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Extension of Comment Period on the Draft Site-Wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, NM

AGENCY: U.S. Department of Energy (DOE), National Nuclear Security Administration (NNSA).

ACTION: Notice of comment period extension.

SUMMARY: On July 7, 2006, NNSA published a Notice of Availability for the Draft Site-wide Environmental Impact Statement for Continued Operation of Los Alamos National Laboratory, Los Alamos, New Mexico (LANL Draft SWEIS) (DOE/EIS-0380) (71 FR 38638) and announced a 60-day public comment period ending September 5, 2006. Subsequently, in response to requests for additional time to review and comment on the document, NNSA is extending the public comment period until September 20, 2006.

DATES: Comments should be submitted to NNSA no later than September 20, 2006. NNSA will consider comments submitted after this date to the extent practicable.

ADDRESSES: Comments, or requests for copies of the LANL Draft SWEIS should be sent to: U.S. Department of Energy, National Nuclear Security Administration, Los Alamos Site Office, Attn: Ms. Elizabeth Withers, SWEIS Document Manager, 528 35th Street, Los Alamos, New Mexico, 87544; or by facsimile (1-505-667-5948); or by e-mail at: LANL_SWEIS@doeal.gov.

Requests for copies of the LANL Draft SWEIS or recorded comments may also be made by calling 1-877-491-4957. Please mark all envelopes, faxes and e-mail: "LANL Draft SWEIS Comments". The LANL Draft SWEIS and its reference documents are available for review at: the Robert J. Oppenheimer Study Center Research Library, Technical Area 3, Los Alamos National

Laboratory, Los Alamos, New Mexico; the Office of the Northern New Mexico Citizens Advisory Board, 1660 Old Pecos Trail, Suite B, Santa Fe, New Mexico; and the Zimmerman Library, University of New Mexico, Albuquerque, New Mexico. The Draft SWEIS is available on the DOE Los Alamos Site Office's NEPA Web site at: <http://www.doeal.gov/laso/nepa/sweis.htm>.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Los Alamos Site Office, Attn: Ms. Elizabeth Withers, SWEIS Document Manager, 528 35th Street, Los Alamos, New Mexico 87544; or telephone 1-505-845-4984.

Issued in Los Alamos, NM, this 24th day of August, 2006.

Edwin L. Wilmot,

Manager.

[FR Doc. 06-7298 Filed 8-30-06; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OECA-2006-0557; FRL-8215-4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Tips and Complaints Regarding Environmental Violations; EPA ICR No. 2219.02, OMB Control No. 2020-0032

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on November 29, 2006. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 30, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OECA-2006-0557, by one of the following methods:

- <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
- E-mail: ledesma.michael@epa.gov.
- Mail: The Enforcement and Compliance Docket and Information Center, Environmental Protection

Agency, Mailcode: 2201T, 1301 Constitution Ave., NW., Washington, DC 20460.

- Hand Delivery: 1301 Constitution Avenue, NW., Room B102, Washington, DC 20460. 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-OECA-2006-0557. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-OM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

FOR FURTHER INFORMATION CONTACT: Michael Le Desma; Legal Counsel & Resource Management Division; Office of Criminal Enforcement, Forensics and Training; Environmental Protection Agency, Building 25, Box 25227, Denver Federal Center, Denver, CO 80025; telephone number: (303) 462-9453; fax number: (303) 462-9075; e-mail address: ledesma.michael@epa.gov.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA-HQHQ-OECA-2006-0557, which is available for online viewing at www.regulations.gov, or in person viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202-566-1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is 202-564-1927.

Use www.regulations.gov to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

- (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;
- (ii) 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;
- (iii) Enhance the quality, utility, and clarity of the information to be collected; and
- (iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Offer alternative ways to improve the collection activity.
6. Make sure to submit your comments by the deadline identified under **DATES**.
7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected entities: Entities potentially affected by this action are general members of the public who choose to voluntarily supply a tip or complaint regarding a suspected violation of environmental law.

Title: Tips and Complaints Regarding Environmental Violations.

ICR numbers: EPA ICR No. 2219.02, OMB Control No. 2020-0032.

ICR status: This ICR is currently scheduled to expire on November 29, 2006. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, and are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The EPA tips and complaints web form is intended to provide an easy and convenient means by which members of the public can supply information to EPA regarding suspected violations of environmental law. The decision to provide a tip or complaint is entirely voluntary and use of the webform when supplying a tip or complaint is also entirely voluntary. Tipsters need not supply contact

information or other personal identifiers. Those who do supply such information, however, should know that this information may be shared by EPA with appropriate administrative, law enforcement, and judicial entities engaged in investigating or adjudicating the tip or complaint.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average one-half hour per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

It is expected that a total of 300 tipsters or complainants will complete the tips and complaints form each month, for a total of 3,600 tipsters and complainants per year. Given that tipsters typically arrive at the form with all of the information needed to complete the form, EPA expects that the form will take no more than 30 minutes to complete. Accordingly, EPA expects that the total annual burden hours will be approximately 1,800. EPA does not anticipate any capital or start-up costs associated with completion of this form.

EPA also does not anticipate that, in the usual case, burden hours associated with the tips and complaint form will translate into actual labor costs; we expect relatively few tips or complaints to be submitted as part of an employee's official duties. For this reason, we believe that the relevant "labor costs" associated with the form are best calculated as the wage opportunity cost to tipsters of the form's estimated burden hours. The wage opportunity cost of the burden hours associated with this form can be estimated by multiplying the total number of burden hours by the average national hourly wage reported by the Bureau of Labor Statistics (BLS). BLS reports the average hourly wage in December 2005 to have been \$18.59 per hour; accordingly, the total wage opportunity cost associated with the tips and complaints form

would be approximately \$33,462 per annum.

Are There Changes in the Estimates From the Last Approval?

There is no change in the hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: August 17, 2006.

Granta Y. Nakayama,

Assistant Administrator, Office of Enforcement and Compliance Assurance.

[FR Doc. 06-7315 Filed 8-30-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8215-6; EPA-HQ-OEI-2006-0634]

Amendment to a Privacy Act System of Records

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Amendment to a Privacy Act System of Records.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Administration and Resources Management gives notice that it proposes to amend the EPA Identification Card system of records (EPA-19). The changes reflect the inclusion of photographs and fingerprints of identification card holders in the identification card system, as well as the information captured by automatic card reader machines used to gain access to EPA facilities.

DATES: Persons wishing to comment on this amended system of records may do so by October 10, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OEI-2006-0634, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.

- E-mail: oei.docket@epa.gov.

- Fax: 202-566-1752.

- Mail: OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- Hand Delivery: OEI Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OEI-2006-0634. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at

www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly

available docket materials are available either electronically in

www.regulations.gov or in hard copy at the OEI Docket, EPA/DC, EPA West Building, Room B102, and 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 OEI Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT:

Yvette Jackson, Chief Security Operations Branch, Security Management Division, Environmental Protection Agency, Ronald Reagan Building, MS 3206R, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564-6352; e-mail address: jackson.yvette@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

This action amends the existing system of records notice for the EPA Identification Card system of records. Details regarding the system of records are contained in this **Federal Register** Notice. The EPA Identification Card system is the basis for issuing official U.S. Government identification cards to EPA employees and certain non-EPA employees who require access to EPA-controlled facilities; maintaining a record of all holders of identification cards, for renewal and recovery of expired cards; managing and confirming requests for and access to EPA-controlled facilities; and identifying lost and stolen identification cards. These actions effect no changes in the privacy protections of the affected category of records. Access to the system is restricted to authorized users and will be maintained in a secure, password protected computer system, in secure areas and buildings with physical access controls and environmental controls. The system is maintained by the Office of Administration and Resources Management.

Dated: August 22, 2006.

Linda A. Travers,

Acting Assistant Administrator and Chief Information Officer.

EPA-19

SYSTEM NAME:

EPA Identification Card Record.

SYSTEM LOCATION:

1. Security Operations Branch, Security Management Division, Environmental Protection Agency, Ronald Reagan Building, 1200

Pennsylvania Avenue, NW.,
Washington, DC 20460;

2. Regional EPA offices. See the appendix for regional office addresses.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

EPA employees and certain non-EPA employees, including contractors and grantees, who require identification cards to access EPA controlled facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. EPA Form 5110-1 EPA Identification Card Acknowledgment which contains the following information: Name, identification card credential number, height, weight, color of eyes/hair, date of birth, Social Security Number, position/title, grade, EPA office location, signature, date of issuance.

2. EPA Form 1480-39 Official U.S. Government Identification which contains the following information: Name, Social Security Number, EPA office location, date of birth, height, weight, color of eyes/hair, signature, identification card credential number, date of issuance, and photograph of person issued the identification card.

3. Photographs of individuals.

4. Information captured by automatic card reader machines used to gain access to certain EPA facilities, including the individual's name, card credential number, date and time of access request, and location of access requested.

5. Fingerprint information for individuals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

Executive Order 12072 (Aug. 16, 1978), Federal Property and Administrative Services Act of 1949, 40 U.S.C. 121, and Executive Order 9397 (Nov. 22, 1943).

PURPOSE(S):

To issue official U.S. Government identification cards to EPA employees and certain non-EPA employees requiring access to EPA-controlled facilities; to maintain a record of all holders of identification cards for renewal and recovery of expired cards; to manage and confirm requests for and access to EPA-controlled facilities; and to identify lost or stolen identification cards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS, AND THE PURPOSES OF SUCH USES:

General routine uses A, E, F, G, H, and K applies to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The completed forms are kept in locked file cabinets in the Crystal City and Ronald Reagan badging offices. This system maintains records in two central command centers. These central command centers retain a record of each instance of request for access to an EPA-controlled facility. Each record indicates the time, location of card reader, and card credential number requesting access. This information can be linked to personally identifiable information using the central command center databases.

RETRIEVABILITY:

Records are retrieved by subject name and identification card credential number.

SAFEGUARDS:

Computer records are maintained in a secure, password protected computer system. Paper records are maintained in locked file cabinets. All records are maintained in secure, access-controlled areas or buildings.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with EPA Records Control Schedule 627, approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters: Chief, Security Operations Branch, Security Management Division, Environmental Protection Agency, Ronald Reagan Building, MS3206R, and 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Other locations: General Services Administration Manager at offices listed in the Appendix.

NOTIFICATION PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to EPA FOIA Office, Attn: Privacy Act Officer, 1200 Pennsylvania Avenue, MC2822T, NW., and Washington, DC 20460.

ACCESS PROCEDURE:

Requesters will be required to provide adequate identification, such as a driver's license, EPA identification card, or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING PROCEDURE:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Requests for name changes must be accompanied by a copy of a current redacted SF-50, "Request for Personnel Action". The information contained in the fields identified by the following item numbers must be provided on the redacted form:

1. Name (Last, First, Middle).
2. Social Security Number.
4. Effective Date.
5. First Action (all fields, A-F).
6. Second Action (all fields, A-F).
7. FROM: Position Title and Number.
14. Name and Location of Position's Organization.
15. TO: Position Title and Number.
22. Name and Location of Position's Organization.
38. Duty Station Code.
39. Duty Station.
46. Employing Department or Agency.
47. Agency Code.
48. Personnel Office ID.
49. Approval Date.
50. Signature/Authentication and Title of Approving Official.

Complete EPA Privacy Act procedures are set out in 40 CFR part 16.

RECORD SOURCE CATEGORIES:

Information from EPA Form 5110-1 and EPA Form 1480-39 provided by applicant is entered manually into the central command center database.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

None.

Appendix

- Region 1: 1 Congress Street, Suite 1100, Boston, MA 02114-2023.
Region 2: 290 Broadway, New York, NY 10007-1866.
Region 3: 1650 Arch Street, Philadelphia, PA 19103-2029.
Region 4: 61 Forsyth Street, SW., Atlanta, GA 30303-3104.
Region 5: 77 West Jackson Boulevard, Chicago, IL 60604-3507.
Region 6: Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202-2733.
Region 7: 901 North 5th Street, Kansas City, KS 66101.
Region 8: 999 18th Street, Suite 300, Denver, CO 80202-2466
Region 9: 75 Hawthorne Street, San Francisco, CA 94105.
Region 10: 1200 Sixth Avenue, Seattle, WA 98101.

[FR Doc. 06-7318 Filed 8-30-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-8215-5; EPA-HQ-OEI-2006-0633]

Creation of a New System of Records**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of creation of a new system of records notice.

SUMMARY: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Office of Administration and Resources Management gives notice that it proposes to create a new system of records for its administrative systems by transferring the Inspector General's Operation and Reporting (IGOR) system of records (EPA-41) from the Office of the Inspector General to the Office of Administration and Resources Management and renaming it Office of Administration Services Information System (OASIS). In addition to the exempted personnel security files currently covered under EPA-41, records in the following Privacy Act systems are being transferred to OASIS: Wellness Program Medical Records (EPA-3); EPA Parking Control Office File (EPA-10); and the EPA Transit Operation Files.

DATES: Persons wishing to comment on this system of records notice may do so by October 10, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-HQ-OEI-2006-0633, by one of the following methods:

- www.regulations.gov: Follow the on-line instructions for submitting comments.

- E-mail: oei.docket@epa.gov.

- Fax: 202-566-1752.

- Mail: OEI Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

- Hand Delivery: OEI Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA-HQ-OEI-2006-0633. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information

for which disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov. The www.regulations.gov Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the OEI Docket, EPA/DC, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OEI Docket is (202) 566-1752.

FOR FURTHER INFORMATION CONTACT: Ray Lee, Office of Administrative Services, Environmental Protection Agency, Ariel Rios, MC 3201A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number, (202) 564-4625; e-mail address, Lee.Ray@epa.gov.

SUPPLEMENTARY INFORMATION:**I. General Information**

The Office of Administration and Resources Management plans to create a Privacy Act system of records for its administrative systems, i.e., OASIS.

Details regarding the system of records are contained in this **Federal Register** Notice. OASIS maintains records that are used to administer and manage the administrative resources of the EPA. These actions effect no changes in the privacy protections of the affected category of records. Access to the system is restricted to authorized users and will be maintained in a secure, password protected computer system, in secure areas and buildings with physical access controls and environmental controls. The system is maintained by the Office of Administration and Resources Management.

Dated: August 22, 2006.

Linda A. Travers,

Acting Assistant Administrator and Chief Information Officer.

EPA-41**SYSTEM NAME:**

Office of Administrative Services Information System (OASIS)

SYSTEM LOCATION:

Office of Administrative Services, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who require regular, ongoing access to EPA-controlled facilities, information technology systems, or information classified in the interest of national security, including applicants for employment or contracts, Federal employees, contractors, grantees, students, interns, volunteers, other non-Federal employees and individuals formerly in any of these positions. The system also covers individuals authorized to perform or use services provided in Agency facilities (e.g., Fitness Center, etc.). The system does not apply to occasional visitors or short-term guests to whom the Agency will issue temporary identification.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system maintains records that are used to administer and manage the administrative resources of the EPA. Categories of records include:

- Personal information such as name, home address, telephone number, and date of birth.

- Work related information such as work address, work telephone number, organization/office assignment, and company name.

- Personnel Security Records such as the results of a background investigation, and information derived

from documents used to verify applicant's identity.

- Locks and Keys Management information such as combinations, locks, incidents requiring a security report, keys, and safes located at Headquarters.
- Physical Security information such as building vulnerabilities, mitigations, costs associated with mitigation, and risk designation levels at various EPA locations.
- Warehouse Management information such as type of product order, contact information for recipient, and purchase order number.
- Fitness Center information such as photographs, medical information, payroll deductions, and pay grade (GS level only).
- Driver Tracking information such as EPA vehicle license plate numbers, service records, and number of passengers utilizing the Agency buses.
- Parking and Transit information such as carpool members names, addresses, work addresses, license plate numbers, and type of cars as well as transit subsidy information such as subsidy amount, possession of a registered Smart Trip card, and serial number of Smart Trip card if registered.
- Mail Center Management information used to track registered mail. Records include mailing address of the recipient and sender, name of individual who signed for the piece of mail, date and time mail was signed for, and costs of postage for each office.
- Printing information such as name and telephone number of the office requesting print jobs, the budget associated with the print job, and completion and delivery of the print job.
- Trouble Ticket information such as the name and work telephone number of the caller and the nature of the information technology problem.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM (INCLUDES ANY REVISIONS OR AMENDMENTS):

5 U.S.C. 301; Federal Information Security Act (Pub. L. 104-106, sec. 5113); Electronic Government Act (Pub. L. 104-347, sec. 203); the Paperwork Reduction Act of 1995 (44 U.S.C. 3501); and the Government Paperwork Elimination Act (Pub. L. 105-277, 44 U.S.C. 3504); Federal Property and Administrative Act of 1949, as amended.

PURPOSE(S):

The purpose of this system is to administer and manage administrative resources for the EPA. Each module's purpose is described below.

- Physical Security—The purpose of the Physical Security module is to assist

the members of the Security Management Division with assessments of the physical vulnerabilities of buildings, risk and cost of exterior/perimeter mitigations, and security access.

- Warehouse Management—The purpose of the Warehouse Management module is to assist the Agency with tracking and recording government property.
- Fitness Center Management System—The purpose of the Fitness Center Management module is to assist team members within the Safety, Health and Environmental Management Division with tracking visitors, fitness center members' information, payment, and equipment inventory and maintenance.
- Parking and Transit System—The purpose of the Parking and Transit module is to assist the members of the Facilities Management and Services Division with tracking of the use of parking spaces provided by EPA. This module also tracks EPA employees' transit subsidy and Smart Trip transactions.
- Combo, Locks, Incidents, Keys, and Safe System—The purpose of the Combo Locks Incident Keys Safe System (CLIKS) module is to assist the members of the Security Management Division with tracking documentation associated with security changes for locks and keys as well as safes and combinations. This system also maintains a log of incidents on the grounds of EPA Headquarters' sites.
- Driver Tracking—The purpose of the Driver Tracking module is to assist the motor pool of the Facilities Management and Services Division with tracking requests, ridership, vehicles and buses. The Driver Tracking module contains information about special requests for the services of an EPA driver or shuttle bus.
- Mail Center—The purpose of the Mail Center module is to track costs associated with the Agency's incoming and outgoing mail as well as route and distribute internal and external mail.
- Personnel Security System—The purpose of the Personnel Security module is to assist the members of the Security Management Division with tracking the documentation associated with security investigations for Federal and non-Federal personnel working for EPA.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General routine uses A, B, C, D, E, F, G, H, I, J, and K apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in electronic media and paper files are stored in locked file cabinets.

RETRIEVABILITY:

Records are maintained in a database that requires authorized user login and password to retrieve personal data.

SAFEGUARDS:

Security controls used to protect personal sensitive data in OASIS are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in NIST Special Publication, 800-53, "Recommended Security Controls for Federal Information Systems," Annex 2.

RETENTION AND DISPOSAL:

Records are retained and disposed of in accordance with EPA's records control schedule approved by the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Administrative Services, Environmental Protection Agency, MC3201A, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

NOTIFICATION PROCEDURES:

Any individual who wants to know whether this system of records contains a record about him or her, who wants access to his or her record, or who wants to contest the contents of a record, should make a written request to the EPA FOIA Office, Attn: Privacy Act Officer, MC2822T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

RECORD ACCESS PROCEDURE:

Requests for access must be made in accordance with the procedures described in EPA's Privacy Act regulations at 40 CFR part 16. Requesters will be required to provide adequate identification, such as a driver's license, employee identification card, or other identifying document. Additional identification procedures may be required in some instances.

CONTESTING RECORDS PROCEDURE:

Requests for correction or amendment must identify the record to be changed and the corrective action sought. Complete EPA Privacy Act procedures are described in EPA's Privacy Act regulations at 40 CFR part 16.

RECORD SOURCE CATEGORIES:

The system of records notice that applies to OASIS is PeoplePlus Payroll,

Time and Labor Application (EPA-1). All data not collected from this system is entered manually from employees and contractors via paper or electronic format.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Under 5 U.S.C. 552a(k)(1), (k)(2), and (k)(5), the Personnel Security System is exempt from the following provisions of the Privacy Act of 1974 as amended, subject to the limitations set forth in this subsection; 5 U.S.C. 552a(c)(3); (d)(2), (d)(3), and (d)(4); (e)(1), and (f)(2) through (5). Although the Personnel Security System has been exempted, EPA may, in its discretion, fully grant individual requests for access and correction if it determines that the exercise of these rights will not interfere with an interest that the exemption is intended to protect.

[FR Doc. 06-7319 Filed 8-30-06; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[EPA-HQ-OPPT-2005-0051; FRL-8215-9]

Asbestos-Containing Materials in Schools; State Request for Waiver From Requirements; Reopening of Comment Period; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed approval and request for comments; reopening of comment period and correction.

SUMMARY: EPA is reopening the comment period for a proposed approval and request for comments published June 1, 2006, (71 FR 31183) where EPA proposed to waive the requirements of the Federal asbestos-in-schools program for the Commonwealth of Kentucky. In the June 1, 2006, document the Federal Docket Management System (FDMS) docket number was incorrectly referenced. This document corrects the docket number and provides the opportunity to comment and/or request a public hearing.

DATES: Written comments under Docket ID Number EPA-HQ-OPPT-2005-0051 must be received by October 30, 2006. Each comment must include the name and address of the submitter. Any request for a public hearing must be in writing, be received on or before October 30, 2006, and detail specific objections to the grant of the waiver. If, during the comment period, EPA receives such a request for a public

hearing, EPA will schedule a public hearing in Kentucky following the comment period. EPA will announce the date of the public hearing in the **Federal Register**.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA-HQ-OPPT-2005-0051, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: hund.john@epa.gov.
3. Fax: (404) 562-8972.
4. Mail: Docket ID Number EPA-HQ-OPPT-2005-0051, Asbestos Coordinator, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-8960.
5. Hand Delivery or Courier: John Hund, Asbestos Coordinator, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID Number EPA-HQ-OPPT-2005-0051. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through www.regulations.gov or e-mail, information that you consider to be CBI or otherwise protected. The www.regulations.gov website is an "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the electronic docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Asbestos Coordinator, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, GA 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For general information contact: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-8182; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: John Hund, Asbestos Coordinator, Region 4, Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303-8960; telephone number: (404) 562-8978; e-mail address: hund.john@epa.gov.

SUPPLEMENTARY INFORMATION: EPA is reopening the comment period and making a correction to the document published on June 1, 2006, (71 FR 31183) proposing to waive the requirements of the Federal asbestos-in-schools program for the Commonwealth of Kentucky. The FDMS docket number "EPA-HQ-OPPT-2005-0096" in the June 1, 2006, document was incorrect. The FDMS docket number in the heading, **DATES** and **ADDRESSES** (twice) section in the third column on page 31183, the first full paragraph in the first column of page 31184 and the last paragraph before the signature block in the second column on page 31186 of the

document should read as follows:
"EPA-HQ-OPPT-2005-0051."

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

Dated: August 22, 2006.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 06-7324 Filed 8-30-06; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-06-69-A (Auction No. 69);
DA 06-1016; AU Docket No. 06-104]

Auction of 1.4 GHz Bands Licenses Scheduled for February 7, 2007; Comments Sought on Competitive Bidding Procedures for Auction No. 69

AGENCY: Federal Communications
Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of 1.4 GHz Band licenses scheduled to commence on February 7, 2007 (Auction No. 69). This document also seeks comments on the competitive bidding procedures for Auction No. 69.

DATES: Comments are due on or before September 11, 2006 and reply comments are due on or before September 18, 2006.

ADDRESSES: You may submit comments, identified by AU Docket No. 06-104; DA 06-1016 by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Federal Communications Commission's Web Site:* <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.

- *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureau continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-

delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554. The Bureau also requests that a copy of all comments and reply comments be submitted electronically to the following address: auction69@fcc.gov.

FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, *for legal questions:* Howard Davenport at (202) 418-0660. *For general auction questions:* Roy Knowles or Barbara Sibert at (717) 338-2888.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 69 Comment Public Notice* released on August 28, 2006. The complete text of the *Auction No. 69 Comment Public Notice*, including attachments and related Commission documents is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 69 Comment Public Notice* and related Commission documents may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When ordering documents from BCPI please provide the appropriate FCC document number for example, DA 06-1016. The *Auction No. 69 Comment Public Notice* and related documents are also available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/69/>.

I. Licenses To Be Offered in Auction No. 69

1. In Auction No. 69, two 3-megahertz blocks, each consisting of a pair of 1.5 megahertz segments in the 1392-1395 MHz and 1432-1435 MHz bands, will be offered in each of six regions known as Economic Area Groupings (EAGs).

Additionally, one 2-megahertz block of unpaired spectrum in the 1390-1392 MHz band will be offered in each of 52 geographic areas known as Major Economic Areas (MEAs). The licenses available in Auction No. 69 are also listed in Attachment A of the *Auction No. 69 Comment Public Notice*.

2. *Permissible Services.* When adopting its service rules for these bands, the Commission established a flexible regulatory and licensing framework in order to promote the provision of new and technologically innovative services. Licensees may provide both fixed and mobile services including wireless internet, high speed data as well as advanced two-way mobile and paging services.

3. *International Coordination.*

Currently, the United States does not have international agreements with Canada and Mexico governing operations in the 1392-1395 MHz, 1432-1435 MHz or the 1390-1392 MHz bands. Licensees in these bands operating near the borders must protect stations in Canada and Mexico from harmful interference. The Bureau also notes that operation in these bands may be subject to future agreements with Canada and Mexico and therefore may be subject to further modification.

4. *Incumbency Issues.* Potential applicants are advised that there are several government operations that will continue to operate in these bands:

1390-1392 MHz

Radio astronomy observations may be assigned in the 1350-1400 MHz band on an unprotected basis at the 16 radio astronomy observatories. Government operations authorized as of March 22, 1995, at the 17 sites will continue to operate on a fully protected basis until January 1, 2009. All other government operations, except for medical telemetry (1395-1400 MHz), will operate on a non-interference basis to authorized non-Government operations and shall not hinder implementation of any non-Government operations.

1392-1395 MHz and 1432-1435 MHz

Government operations authorized as of March 22, 1995, at the 17 sites will continue to operate on a fully protected basis until January 1, 2009. All other government operations, except for medical telemetry (1395-1400 MHz), will operate on a non-interference basis to authorized non-Government operations and shall not hinder implementation of any non-Government operations. Government stations in the fixed and mobile services may operate indefinitely on a primary basis at the 23 sites. All other Government stations in

the fixed and mobile services shall operate on a primary basis until re-accommodated in accordance with the National Defense Authorization Act of 1999.

5. *Spectrum Relocation Fund*. The upper half of paired frequencies for 1.4 GHz Bands licenses, *i.e.*, 1432–1435 MHz, is spectrum covered by a Congressional mandate that requires that auction proceeds fund the estimated relocation costs of incumbent Federal entities. Specifically, the Commercial Spectrum Enhancement Act (CSEA) established a Spectrum Relocation Fund (SRF), to which the cash proceeds attributable to eligible frequencies in an auction of licenses involving such frequencies would be deposited.

6. On December 27, 2005, pursuant to CSEA, NTIA notified the Commission that there are no costs associated with relocating Federal operations from the 1432–1435 MHz band.

II. Bureau Seeks Comment on Auction Procedures

7. Section 309(j)(3) of the Communications Act of 1934, as amended, requires the Commission to ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed before issuance of bidding rules, to permit notice and comment on proposed auction procedures. Consistent with the provisions of section 309(j)(3) and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. The Bureau seeks comment on the following issues relating to Auction No. 69.

A. Auction Structure

i. Simultaneous Multiple-Round Auction Design

8. The Bureau proposes to auction all licenses included in Auction No. 69 in a simultaneous multiple-round auction. This type of auction offers every license for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual licenses. Typically, bidding remains open on all licenses until bidding stops on every license. The Bureau seeks comment on this proposal.

9. *Information Available to Bidders Before and During an Auction*. The Bureau also seeks comment on whether to implement procedures that would

limit the disclosure of information on bidder interests and identities relative to the information procedures that have typically been used for Commission auctions. Commenters should indicate what factors support the position they take on this issue. In particular, commenters should specifically address whether technological considerations or the likely level of competition in this auction weighs in favor of or against limiting the disclosure of information relative to most past Commission spectrum auctions.

10. *Package Bidding*. The Bureau has considered the possibility of using a simultaneous multiple-round with package bidding (SMR–PB) format for this auction, but is not inclined to believe that SMR–PB would be appropriate for the auction of these licenses. Under the Commission's package bidding rules, bidders can place bids on any groups of licenses they wish to win together, with the result that they win either all the licenses in a group or none of them. In the SMR–PB auction format, each bidder can have at most a single winning bid. Consequently, because bidders cannot win a group of licenses unless they have explicitly placed a bid on that exact combination, package bidding may be more complex for bidders if they wish to aggregate any or all of a number of licenses. However, we seek comment on this issue. If commenters believe that an SMR–PB design should be implemented for this auction, they should indicate what specific factors lead them to that conclusion.

ii. Round Structure

11. The Commission will conduct Auction No. 69 over the Internet. Alternatively, telephonic bidding will also be available via the Auction Bidder Line. The toll-free telephone number for telephonic bidding will be provided to qualified bidders.

12. The auction will consist of sequential bidding rounds. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction.

13. The Bureau proposes to retain the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. Under this proposal, the Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon bidding activity levels and other factors. The Bureau seeks comment on this proposal.

iii. Stopping Rule

14. The Bureau has discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction No. 69, the Bureau proposes to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all licenses remain available for bidding until bidding closes simultaneously on all licenses. More specifically, bidding will close simultaneously on all licenses after the first round in which no bidder submits any new bids, applies a proactive waiver, or submits a withdrawal. Thus, unless circumstances dictate otherwise, bidding will remain open on all licenses until bidding stops on every license.

15. Further, the Bureau proposes to retain the discretion to exercise any of the following options during Auction No. 69: (a) Use a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder applies a waiver, places a withdrawal, or submits any new bids on any license for which it is not the provisionally winning bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the provisionally winning bidder would not keep the auction open under this modified stopping rule; (b) Keep the auction open even if no bidder submits any new bids, applies a waiver, or submits a withdrawal. In this event, the effect will be the same as if a bidder had applied a waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining waiver; and (c) Declare that the auction will end after a specified number of additional rounds (special stopping rule). If the Bureau invokes this special stopping rule, it will accept bids in the specified final round(s) after which the auction will close.

16. The Bureau proposes to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureau is likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day and/or changing the minimum acceptable bid percentage. The Bureau seeks comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

17. For Auction No. 69, the Commission proposed that, by public notice or by announcement during the auction, the Bureau may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. The Bureau emphasizes that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureau seeks comment on this proposal.

B. Auction Procedures

i. Upfront Payments and Bidding Eligibility

18. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the licenses for specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these factors in mind, the Bureau proposes to calculate upfront payments on a license-by-license basis using a formula based on bandwidth and license area population:

$$\begin{aligned} & \$0.005 * \text{MHz} * \text{License Area} \\ & \text{Population with a minimum of} \\ & \text{\$1,000 per license.} \end{aligned}$$

19. The Bureau further proposes that the amount of the upfront payment submitted by a bidder will determine the bidder's initial bidding eligibility in bidding units. The Bureau proposes that each license be assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 69 Comment Public Notice*, on a bidding unit per dollar basis. The number of bidding units for a given license is fixed and does not change during the auction as prices rise. A bidder's upfront payment is not

attributed to specific licenses. Rather, a bidder may place bids on any combination of licenses it selected on its FCC Form 175 as long as the total number of bidding units associated with those licenses does not exceed its current eligibility. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount and hence its initial bidding eligibility, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round.

20. The proposed number of bidding units for each license and associated upfront payment amounts are listed in Attachment A of the *Auction No. 69 Comment Public Notice*. The Bureau seeks comment on these proposals.

ii. Activity Rule

21. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. A bidder's activity in a round will be the sum of the bidding units associated with any licenses upon which it places bids during the current round and the bidding units associated with any licenses for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

22. The Bureau proposes to divide the auction into two stages, each characterized by a different activity requirement. The auction will start in Stage One. The Bureau proposes that the auction generally will advance from Stage One to Stage Two when the auction activity level, as measured by the percentage of bidding units receiving new provisionally winning bids, is approximately 20 percent or below for three consecutive rounds of bidding. However, the Bureau further proposes that the Bureau retains the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of

bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage of increase in revenue. The Bureau seeks comment on these proposals.

23. For Auction No. 69, the Bureau proposes the following activity requirements: *Stage One*: In each round of the first stage of the auction, a bidder desiring to maintain its current bidding eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by five-fourths (5/4). *Stage Two*: In each round of the second stage, a bidder desiring to maintain its current bidding eligibility is required to be active on 95 percent of its current bidding eligibility. Failure to maintain the required activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage Two, a bidder's reduced eligibility for the next round will be calculated by multiplying the bidder's current round activity by twenty-nineteenths (20/19).

24. The Bureau seeks comment on this proposal. Commenters that believe this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

iii. Activity Rule Waivers and Reducing Eligibility

25. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding, not to particular licenses. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

26. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding

eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round in which a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers remaining; or (2) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

27. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rule. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

28. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids, withdrawals or proactive waivers will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

29. The Bureau proposes that each bidder in Auction No. 69 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction as set forth above. The Bureau seeks comment on this proposal.

iv. Reserve Price or Minimum Opening Bid

30. Section 309(j) calls upon the Commission to prescribe methods for establishing a reasonable reserve price

or a minimum opening bid amount when FCC licenses are subject to auction, unless the Commission determines that a reserve price or minimum opening bid amount is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid amount and/or reserve price prior to the start of each auction.

a. Reserve Price

31. In CSEA, Congress requires the Commission to prescribe methods by which the total cash proceeds from any auction of licenses authorizing use of eligible frequencies, such as 1432–1435 MHz, shall equal at least 110 percent of the total estimated relocation costs provided to the Commission pursuant to CSEA. For purposes of determining whether a CSEA revenue requirement has been met, the Commission has determined that total cash proceeds means winning bids net of any applicable bidding credit discounts at the end of bidding. CSEA also requires that the total cash proceeds attributable to eligible spectrum must be at least 110 percent of the total estimated relocation costs before the Commission may conclude the auction. If this condition is not met, CSEA requires that the Commission shall cancel the auction. On December 27, 2005, pursuant to CSEA, NTIA notified the Commission that there are no costs associated with relocating Federal operations from the 1432–1435 MHz band. The Bureau does not propose any reserve price to cover relocation cost under CSEA.

b. Minimum Opening Bid

32. In contrast to a reserve price, a minimum opening bid amount is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. The auctioneer, however, often has the discretion to lower the minimum opening bid amount during the course of the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

33. In light of section 309(j)'s requirements, the Bureau proposes to establish minimum opening bid amounts for Auction No. 69. The Bureau believes a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process. The Bureau does not propose a separate reserve price for the licenses to be offered in Auction No. 69.

34. Specifically, for Auction No. 69, the Bureau proposes to calculate minimum opening bid amounts on a license-by-license basis using a formula based on bandwidth and license area population:

$$\$0.005 * \text{MHz} * \text{License Area Population with a minimum of } \$1,000 \text{ per license.}$$

This proposed minimum opening bid amount for each license available in Auction No. 69 is set forth in Attachment A of the *Auction No. 69 Comment Public Notice*. The Bureau seeks comment on this proposal.

35. If commenters believe that this minimum opening bid amount will result in unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing minimum opening bid amounts, the Bureau particularly seeks comment on such factors as the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 1.4 GHz Bands licenses being auctioned. The Bureau also seeks comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

v. Bid Amounts

36. The Bureau proposes that, in each round, eligible bidders be able to place a bid on a given license in any of nine different amounts. Under this proposal, the FCC Auction System interface will list the nine acceptable bid amounts for each license.

37. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a license will be equal to its minimum opening bid amount until there is a provisionally winning bid for the license. After there is a provisionally winning bid for a license, the minimum acceptable bid amount for that license will be equal to the amount of the provisionally winning bid plus a percentage of that bid amount calculated using the formula described below. In general, the percentage will be higher for a license receiving many bids than for a license receiving few bids. In

the case of a license for which the provisionally winning bid has been withdrawn, the minimum acceptable bid amount will equal the second highest bid received for the license.

38. The percentage of the provisionally winning bid used to establish the minimum acceptable bid amount (the additional percentage) is calculated at the end of each round, based on an activity index which is a weighted average of the number of bids in that round and the activity index from the prior round. Specifically, the activity index is equal to a weighting factor times the number of bids on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The additional percentage is determined as one plus the activity index times a minimum percentage amount, with the result not to exceed a given maximum. The additional percentage is then multiplied by the provisionally winning bid amount to obtain the minimum acceptable bid for the next round. The Commission will initially set the weighting factor at 0.5, the minimum percentage at 0.1 (10%), and the maximum percentage at 0.2 (20%). Hence, at these initial settings, the minimum acceptable bid for a license will be between 10% and 20% higher than the provisionally winning bid, depending upon the bidding activity for the license.

39. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 5 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.05) rounded, or (minimum acceptable bid amount) * 1.05, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.1, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.15, rounded; etc. The Bureau will round the results of these calculations, as well as the calculations to determine the minimum acceptable bid amounts, using our standard rounding procedures. For Auction No. 69, the Bureau proposes to use a bid increment percentage of 5 percent to calculate the eight additional acceptable bid amounts.

40. The Bureau retains the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage of the provisionally winning bid used to determine the minimum acceptable bid, and the bid increment percentage if it determines that circumstances so dictate. The Bureau will do so by announcement in the FCC Auction System during the auction. The Bureau seeks comment on these proposals.

vi. Provisionally Winning Bids

41. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid for each license will be determined based on the highest bid amount received for the license. In the event of identical high bid amounts being submitted on a license in a given round (*i.e.*, tied bids), the Bureau will use a random number generator to select a single provisionally winning bid from among the tied bids. The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the provisionally winning bid. If any bids are received on the license in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the license.

42. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the license at the close of a subsequent round, unless the provisionally winning bid is withdrawn. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

43. For Auction No. 69, the Bureau proposes the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. In contrast to the bid withdrawal provisions, a bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

44. A bidder may withdraw its provisionally winning bids using the withdraw bids function in the FCC Auction System. A bidder that withdraws its provisionally winning

bid(s) is subject to the bid withdrawal payment provisions of the Commission rules. The Bureau seeks comment on these bid removal and bid withdrawal procedures.

45. In the *Part 1 Third Report and Order*, 65 FR 13540, May 21, 1997, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion in managing the auction to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

46. Applying this reasoning, the Bureau proposes to limit each bidder to withdrawing provisionally winning bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals may be used will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of provisionally winning bids that may be withdrawn in either of the rounds in which withdrawals are used. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules.

C. Post-Auction Procedures

i. Establishing the Interim Withdrawal Payment Percentage

47. The Bureau seeks comment on the appropriate percentage of a withdrawn bid that should be assessed as an interim withdrawal payment, in the event that a final withdrawal payment cannot be determined at the close of the auction. In general, the Commission's rules provide that a bidder that withdraws a bid during an auction is subject to a withdrawal payment equal to the difference between the amount of the withdrawn bid and the amount of the winning bid in the same or subsequent auction(s). However, if a license for which there has been a withdrawn bid is neither subject to a

subsequent higher bid nor won in the same auction, the final withdrawal payment cannot be calculated until a corresponding license is subject to a higher bid or won in a subsequent auction. When that final payment cannot yet be calculated, the bidder responsible for the withdrawn bid is assessed an interim bid withdrawal payment, which will be applied toward any final bid withdrawal payment that is ultimately assessed. The Commission recently amended its rules to provide that in advance of the auction, the Commission shall establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment between three percent (3%) and twenty percent (20%).

48. When it adopted the new rule, the Commission indicated that the level of the interim withdrawal payment in a particular auction will be based on the nature of the service and the inventory of the licenses being offered. The Commission noted that it may impose a higher interim withdrawal payment percentage to deter the anti-competitive use of withdrawals when, for example, bidders likely will not need to aggregate licenses offered, such as when few licenses are offered that are not on adjacent frequencies or in adjacent areas, or there are few synergies to be captured by combining licenses.

49. With respect to an auction of the licenses in the 1.4 GHz Bands, the service rules permit a variety of fixed and mobile services, some of which may best be offered by combining licenses on adjacent frequencies or in adjacent areas. Balancing the potential need for bidders to use withdrawals to avoid incomplete combinations of licenses with our interest in deterring strategic withdrawals, the Bureau proposes a percentage below the maximum 20 percent (20%) permitted under the current rules but above the 3 percent (3%) previously provided by the Commission's rules. Specifically, the Bureau proposes to establish the percentage of the withdrawn bid to be assessed as an interim bid withdrawal payment at ten percent (10%) for the 1.4 GHz Bands auction. The Bureau seeks comment on this proposal.

ii. Establishing the Additional Default Payment Percentage

50. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists

of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a license covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for non-combinatorial auctions has been set at 3 percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

51. The *CSEA/Part 1 Report and Order*, 71 FR 6214, February 7, 2006, modified section 1.2104(g)(2) by, *inter alia*, increasing the 3 percent limit on the additional default payment for non-combinatorial auctions to 20 percent. Under the modified rule, the Commission will, in advance of each non-combinatorial auction, establish an additional default payment for that auction of 3 percent up to a maximum of 20 percent. As the Commission has indicated, the level of this payment in each case will be based on the nature of the service and the inventory of the licenses being offered.

52. For Auction No. 69, the Bureau proposes to establish an additional default payment of 10 percent. As noted in the *CSEA/Part 1 Report and Order*, defaults weaken the integrity of the auctions process and impede the deployment of service to the public, and an additional default payment of more than the previous 3 percent will be more effective in deterring defaults. At the same time, the Bureau does not believe the detrimental effects of any defaults in Auction No. 69 are likely to be unusually great. Balancing these considerations, the Bureau proposes an additional default payment of 10 percent of the relevant bid. The Bureau seeks comment on this proposal.

III. Conclusion

53. Comments are due on or before September 11, 2006, and reply comments are due on or before September 18, 2006. All filings related to the auction of 1.4 GHz Bands licenses should refer to AU Docket No. 06-104. Comments may be submitted using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Bureau strongly encourages interested parties to file comments electronically, and requests submission of a copy via the Auction No. 69 e-mail box (auction69@fcc.gov).

54. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are

reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

William W. Huber,

Associate Chief, Auctions and Spectrum Access Division, WTB.

[FR Doc. E6-14526 Filed 8-30-06; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC-06-68-A (Auction No. 68); DA 06-997; AU Docket No. 06-101]

Auction of FM Broadcast Construction Permits Scheduled for January 10, 2007; Comments Sought on Competitive Bidding Procedures for Auction No. 68

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of nine FM broadcast construction permits scheduled to commence on January 10, 2007 (Auction No. 68). This document also seeks comments on reserve prices or minimum opening bids and other procedures for Auction No. 68.

DATES: Comments are due on or before September 6, 2006 and reply comments are due on or before September 13, 2006.

ADDRESSES: Comments and reply comments must be identified by AU Docket No. 06-101; DA 06-997. The Bureaus request that a copy of all comments and reply comments be submitted electronically to the following address: auction68@fcc.gov. In addition, comment and reply comments may be submitted by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Federal Communications Commission's Web site: <http://www.fcc.gov/cgb/ecfs/>. Follow the instructions for submitting comments.
- People with Disabilities: Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters,

CART, etc.) by e-mail: FCC504@fcc.gov or phone: 202-418-0530 or TTY: 202-418-0432.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Bureaus continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Attn: WTB/ASAD, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:

Wireless Telecommunications Bureau, Auctions and Spectrum Access Division, for legal questions: Lynne Milne at (202) 418-0660. For general auction questions: Linda Sanderson or Debbie Smith at (717) 338-2888. Media Bureau, Audio Division, for service questions: Lisa Scanlan or Tom Nessinger at (202) 418-2700.

SUPPLEMENTARY INFORMATION: This is a summary of the *Auction No. 68 Comment Public Notice* released on August 24, 2006. The complete text of the *Auction No. 68 Comment Public Notice*, including attachments and related Commission documents, is available for public inspection and copying from 8 a.m. to 4:30 p.m. Monday through Thursday or from 8 a.m. to 11:30 a.m. on Friday at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. The *Auction No. 68 Comment Public Notice* and related Commission documents also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-488-5300, facsimile 202-488-5563, or you may contact BCPI at its Web site: <http://www.BCPIWEB.com>. When

ordering documents from BCPI, please provide the appropriate FCC document number for example, DA 06-997. The *Auction No. 68 Comment Public Notice* and related documents also are available on the Internet at the Commission's Web site: <http://wireless.fcc.gov/auctions/68/>.

I. Construction Permits To Be Offered in Auction No. 68

1. The Media and Wireless Telecommunications Bureaus (Bureaus) announce that Auction No. 68 is composed of nine construction permits in the FM broadcast service as listed in Attachment A of the *Auction No. 68 Comment Public Notice*. The construction permits to be auctioned are unsold FM construction permits from Auction Nos. 37 and 62, which closed on November 23, 2004 and January 31, 2006, respectively.

2. These nine construction permits are vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's established rulemaking procedures, designated for use in the indicated community. Pursuant to the policies established in the *Broadcast Auction First Report and Order*, 63 FR 48615, September 11, 1998, applicants may apply for any vacant FM allotment specified in Attachment A of the *Auction No. 68 Comment Public Notice*. Applications specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for that FM allotment will be awarded by competitive bidding procedures. Once mutual exclusivity exists for auction purposes, even if only one applicant for the same construction permit in Auction No. 68 submits an upfront payment, that applicant is required to submit a bid in order to obtain the construction permit. Any applicant that submits a short-form application that is accepted for filing but fails to timely submit an upfront payment will retain its status as an applicant in Auction No. 68 and will remain subject to the Commission's anti-collusion rule, 47 CFR 1.2105(c), but, having purchased no bidding eligibility, will not be eligible to bid.

II. Bureaus Seek Comment on Auction Procedures

3. Consistent with the provisions of section 309(j)(3) of the Communications Act of 1934, as amended, and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Bureaus seek comment on the following issues relating to Auction No. 68.

A. Auction Structure

i. Simultaneous Multiple Round Auction Design

4. The Bureaus propose to award all construction permits included in Auction No. 68 in a simultaneous multiple-round (SMR) auction. This type of auction offers every construction permit for bid at the same time and consists of successive bidding rounds in which eligible bidders may place bids on individual construction permits. A bidder may bid on, and potentially win, any number of construction permits. Typically, bidding remains open on all construction permits until bidding stops on every construction permit, unless a modified stopping rule is invoked. The Bureaus seek comment on this proposal.

ii. Round Structure

5. The Commission will conduct Auction No. 68 over the Internet. Alternatively, telephonic bidding also will be available.

6. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction. The simultaneous multiple-round format will consist of sequential bidding rounds, each followed by the release of round results.

7. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. The Bureaus seek comment on this proposal.

iii. Stopping Rule

8. The Bureaus have discretion to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time. For Auction No. 68, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits. More specifically, bidding will close simultaneously on all construction permits after the first round in which no bidder submits any new bids, or applies a proactive waiver. Thus, unless circumstances dictate otherwise, bidding will remain open on all construction permits until bidding stops on every construction permit.

9. The Bureaus propose to retain the discretion to exercise any of the

following options during Auction No. 68: (a) Use a modified version of the simultaneous stopping rule, based on the failure to submit during a prior round of a waiver or a new bid by a bidder who is not a provisionally winning bidder for that construction permit, as described in the *Auction No. 68 Comment Public Notice*; (b) keep the auction open even if no bidder submits any new bids or applies a waiver; and (c) declare that the auction will end after a specified number of additional rounds (special stopping rule).

10. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the minimum acceptable bid percentage for the limited number of construction permits on which there is still a high level of bidding activity. The Bureaus seek comment on these proposals.

iv. Information Relating to Auction Delay, Suspension, or Cancellation

11. For Auction No. 68, the Bureaus propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend, or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. The Bureaus emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. The Bureaus seek comment on this proposal.

B. Bidding Procedures

i. Upfront Payments and Bidding Eligibility

12. The Bureaus have delegated authority and discretion to determine an appropriate upfront payment for each

FM construction permit being auctioned, taking into account such factors as the efficiency of the auction process and the potential value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on construction permits. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. With these guidelines in mind, the Bureaus propose the schedule of upfront payments for each construction permit as set forth in Attachment A of the *Auction No. 68 Comment Public Notice*. The Bureaus seek comment on this proposal.

13. The Bureaus further propose that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial bidding eligibility. Each FM construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 68 Comment Public Notice*, on a bidding unit per dollar basis. Bidding units for a given construction permit do not change as prices rise during the auction. A bidder's upfront payment is not attributed to specific construction permits. Rather, a bidder may place bids on any combination of construction permits that it selected in its short form application (FCC Form 175), as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. In order to bid on a construction permit, qualified bidders must have an eligibility level that meets the number of bidding units assigned to that construction permit. Eligibility cannot be increased during the auction; it can only remain the same or decrease. Thus, in calculating its upfront payment amount, an applicant must determine the maximum number of bidding units it may wish to bid on (or hold provisionally winning bids on) in any single round, and submit an upfront payment amount covering that total number of bidding units. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. The Bureaus seek comment on this proposal.

ii. Activity Rule

14. In order to ensure that an auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction

before participating. A bidder's activity in a round will be the sum of the bidding units associated with any construction permits upon which it places bids during the current round and the bidding units associated with any construction permits for which it holds provisionally winning bids. Bidders are required to be active on a specific percentage of their current bidding eligibility during each round of the auction. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly curtailing or eliminating the bidder's ability to place bids in the auction.

15. The Bureaus propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its eligibility to participate in the auction is required to be active on one hundred (100) percent of its bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used).

16. The Bureaus seek comment on this proposal. Commenters that believe this activity rule should be modified should explain their reasoning and comment on the desirability of an alternative approach. Commenters are advised to support their claims with analyses and suggested alternative activity rules.

iii. Activity Rule Waivers and Reducing Eligibility

17. Use of an activity rule waiver preserves the bidder's eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

18. The FCC Auction System assumes that a bidder that does not meet the activity requirement would prefer to apply an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver at the end of any bidding round where a bidder's activity level is below the minimum required unless: (1) The bidder has no activity rule waivers available; or (2) the bidder overrides the automatic application of a waiver by reducing

eligibility, thereby meeting the minimum requirement. If a bidder has no waivers remaining and does not satisfy the required activity level, its eligibility will be permanently reduced, possibly curtailing or eliminating the bidder's ability to place additional bids in the auction.

19. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding round by using the reduce eligibility function in the FCC Auction System. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described above. Reducing eligibility is an irreversible action. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility, even if the round has not yet closed.

20. A bidder may apply an activity rule waiver proactively as a means to keep the auction open without placing a bid. If a bidder proactively applies an activity rule waiver (using the apply waiver function in the FCC Auction System) during a bidding round in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver applied by the FCC Auction System in a round in which there are no new bids will not keep the auction open. A bidder cannot submit a proactive waiver after submitting a bid in a round, and submitting a proactive waiver will preclude a bidder from placing any bids in that round. Applying a waiver is irreversible; once a proactive waiver is submitted, that waiver cannot be unsubmitted, even if the round has not yet closed.

21. The Bureaus propose that each bidder in Auction No. 68 be provided with three activity rule waivers that may be used at the bidder's discretion during the course of the auction. The Bureaus seek comment on this proposal.

iv. Reserve Price or Minimum Opening Bid

22. The Bureaus seek comment on the use of a minimum opening bid amount and/or a reserve price in Auction No. 68. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid amount, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding

process. Also, the auctioneer, however, has the discretion to lower the minimum opening bid amount during the course of the auction. It is also possible for the minimum opening bid amount and the reserve price to be the same amount.

23. The Bureaus propose to establish minimum opening bid amounts for Auction No. 68. The Bureaus believe a minimum opening bid amount, which has been used in other auctions, is an effective bidding tool for accelerating the competitive bidding process.

24. For Auction No. 68, the proposed minimum opening bids were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data and recent broadcast transactions. The specific minimum opening bid for each construction permit available in Auction No. 68 is set forth in Attachment A of the *Auction No. 68 Comment Public Notice*. The Bureaus seek comment on this proposal.

25. If commenters believe that these minimum opening bid amounts will result in unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid amount levels or formulas. In establishing the minimum opening bid amounts, the Bureaus particularly seek comment on such factors as the potential value of the spectrum being auctioned, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility and other relevant factors that could reasonably have an impact on valuation of the broadcast spectrum. The Bureaus also seek comment on whether, consistent with section 309(j), the public interest would be served by having no minimum opening bid amount or reserve price.

v. Bid Amounts

26. The Bureaus propose that, in each round, eligible bidders be able to place bids on a given construction permit in any of nine different amounts, if a bidder has sufficient eligibility to place a bid on that construction permit. Under this proposal, the FCC Auction System interface will list the nine acceptable

bid amounts for each construction permit.

27. The first of the nine acceptable bid amounts is called the minimum acceptable bid amount. The minimum acceptable bid amount for a construction permit will be equal to its minimum opening bid amount until there is a provisionally winning bid for the construction permit. After there is a provisionally winning bid for a construction permit, the minimum acceptable bid amount will be calculated by multiplying the provisionally winning bid amount times one plus the minimum acceptable bid percentage. If, for example, the minimum acceptable bid percentage is 10 percent, the minimum acceptable bid amount will equal (provisionally winning bid amount) * (1.10), rounded.

28. The eight additional bid amounts are calculated using the minimum acceptable bid amount and a bid increment percentage, which need not be the same as the percentage used to calculate the minimum acceptable bid amount. The first additional acceptable bid amount equals the minimum acceptable bid amount times one plus the bid increment percentage, rounded. If, for example, the bid increment percentage is 10 percent, the calculation is (minimum acceptable bid amount) * (1 + 0.10), rounded, or (minimum acceptable bid amount) * 1.10, rounded; the second additional acceptable bid amount equals the minimum acceptable bid amount times one plus two times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.20, rounded; the third additional acceptable bid amount equals the minimum acceptable bid amount times one plus three times the bid increment percentage, rounded, or (minimum acceptable bid amount) * 1.30, rounded; etc. The Bureaus will round the result using our standard rounding procedures.

29. For Auction No. 68, the Bureaus propose to use a minimum acceptable bid percentage of 10 percent. This means that the minimum acceptable bid amount for a construction permit will be approximately 10 percent greater than the provisionally winning bid amount for the construction permit. The Bureaus also propose to use a bid increment percentage of 10 percent to calculate the eight additional acceptable bid amounts.

30. The Bureaus retain the discretion to change the minimum acceptable bid amounts, the parameters of the formula to determine the percentage increment, and the bid increment percentage if it determines that circumstances so dictate. The Bureaus will do so by

announcement in the FCC Auction System during the auction. The Bureaus seek comment on these proposals.

vi. Provisionally Winning Bids

31. Provisionally winning bids are bids that would become final winning bids if the auction were to close in that given round. At the end of a bidding round, a provisionally winning bid amount for each construction permit will be determined based on the highest bid amount received for the construction permit. In the event of identical high bid amounts being submitted on a construction permit in a given round (*i.e.*, tied bids), the Bureaus will use a random number generator to select a single provisionally winning bid from among the tied bids. (Each bid is assigned a random number, and the tied bid with the highest random number wins the tiebreaker.) The remaining bidders, as well as the provisionally winning bidder, can submit higher bids in subsequent rounds. However, if the auction were to end with no other bids being placed, the winning bidder would be the one that placed the selected provisionally winning bid. If any bids are received on the construction permit in a subsequent round, the provisionally winning bid again will be determined by the highest bid amount received for the construction permit.

32. A provisionally winning bid will remain the provisionally winning bid until there is a higher bid on the same construction permit at the close of a subsequent round. Bidders are reminded that provisionally winning bids count toward activity for purposes of the activity rule.

vii. Bid Removal and Bid Withdrawal

33. For Auction No. 68, the Bureaus propose the following bid removal procedures. Before the close of a bidding round, a bidder has the option of removing any bid placed in that round. By removing selected bids in the FCC Auction System, a bidder may effectively unsubmit any bid placed within that round. A bidder removing a bid placed in the same round is not subject to any penalties. Once a round closes, a bidder may no longer remove a bid.

34. In the *Part 1 Third Report and Order*, 63 FR 2315, January 15, 1998, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and construction permits and the pursuit of backup strategies as information becomes available during the course of an auction. Given the limited number and wide geographic dispersion of the permits available in this auction,

however, these rationales are less compelling. The Commission also noted that, in some instances, bidders may seek to withdraw bids for improper reasons. The permits being offered in Auction No. 68 are, in fact, permits for which provisionally winning bids were withdrawn in previous FM Broadcast auctions, in some cases in successive auctions by the same bidders. The Bureaus have discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureaus should assertively exercise their discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular construction permit if the Bureaus find that a bidder is abusing the Commission's bid withdrawal procedures.

35. Applying this reasoning, the Bureaus propose that bidders in Auction No. 68 not be permitted to withdraw bids placed in any round after it has closed. To permit bidders further opportunities to withdraw bids may encourage insincere bidding or the use of withdrawals for anti-competitive purposes. Moreover, given that the permits offered in Auction No. 68 have already been subject to bid withdrawals in at least one auction, our paramount concern is that the permits be awarded and broadcast service be initiated to the public in the communities listed. The Bureaus seek comment on this proposal.

C. Due Diligence

36. Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific Report and Order amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to

bid. Reports and Orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements. Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements. Applicants are strongly encouraged to inspect any prospective transmitter sites located in, or near, the service area for which they plan to bid, and also to familiarize themselves with the Commission's rules regarding the National Environmental Policy Act.

37. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 68 in order to determine the existence of pending proceedings, including pending rulemaking proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 68 are strongly encouraged to continue such research during the auction.

D. Post-Auction Procedures

i. Default and Disqualification

38. Any winning bidder that defaults or is disqualified after the close of an auction (*i.e.*, fails to remit the required down payment within the prescribed period of time, fails to submit a timely long-form application, fails to make full payment, or is otherwise disqualified) is liable for a default payment under 47 CFR 1.2104(g)(2). This payment consists of a deficiency payment, equal to the difference between the amount of the bidder's bid and the amount of the winning bid the next time a construction permit covering the same spectrum is won in an auction, plus an additional payment equal to a percentage of the defaulter's bid or of the subsequent winning bid, whichever is less. Until recently this additional payment for most auctions has been set at 3 percent of the defaulter's bid or of the subsequent winning bid, whichever is less.

39. On January 24, 2006, the Commission released the *Commercial Spectrum Enhancement Act Report and Order*, 71 FR 6214, February 7, 2006, in which it modified § 1.2104(g)(2) by, *inter alia*, increasing the 3 percent limit on the additional default payment for non-combinatorial auctions to 20 percent. Under the modified rule, the Commission will, in advance of each auction, establish an additional default

payment for that auction of 3 percent up to a maximum of 20 percent. The level of this payment in each case will be based on the nature of the service and the inventory of the construction permits being offered.

40. As noted in this rulemaking order, defaults weaken the integrity of the auctions process and impede the deployment of service to the public, and an additional default payment of more than the previous 3 percent will be more effective in deterring defaults. Accordingly, for Auction No. 68, the Bureaus propose an additional default payment of 10 percent of the relevant bid. The Bureaus seek comment on this proposal.

III. Conclusion

41. Comments are due on or before September 6, 2006, and reply comments are due on or before September 13, 2006. All filings related to the auction of FM broadcast construction permits must refer to AU Docket No. 06-101. Comments may be submitted using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. The Bureaus encourage interested parties to file electronically. The Bureaus also request that all comments and reply comments be filed electronically to the following address: *auction68@fcc.gov*. In addition, commenters should format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents.

42. This proceeding has been designated as a permit-but-disclose proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of

the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.
William W. Huber,
Associate Chief, Auctions and Spectrum Access Division, WTB.
 [FR Doc. E6-14527 Filed 8-30-06; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL ELECTION COMMISSION

[Notice 2006-14]

Filing Dates for the Ohio Special Election in the 3rd Congressional District

AGENCY: Federal Election Commission.
ACTION: Notice of filing dates for special election.

SUMMARY: Ohio has scheduled a special primary election on September 15, 2006, to fill the vacancy on the November 7, 2006, general election ballot that was created by the withdrawal of Democratic candidate Stephanie Studebaker.

Committees participating in the Ohio Special Primary Election are required to file pre-election reports.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin R. Salley, Information Division, 999 E Street, NW., Washington, DC 20463; Telephone: (202) 694-1100; Toll Free (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Principal Campaign Committees

All principal campaign committees of candidates who participate in the Ohio Special Primary shall file a 12-day Pre-Primary Report on September 3, 2006.

(See chart below for the closing date for each report.)

Unauthorized Committees (PACs and Party Committees)

Political committees filing on a quarterly basis in 2006 are subject to special election reporting if they make previously undisclosed contributions or expenditures in connection with the Ohio Special Primary Election by the close of books for the applicable report(s). (See chart below for the closing date for each report.)

Committees filing monthly that support candidates in the Ohio Special Primary Election should continue to file according to the monthly reporting schedule.

Disclosure of Electioneering Communications (Individuals and Other Unregistered Organizations)

As required by the Bipartisan Campaign Reform Act of 2002, the Federal Election Commission promulgated new electioneering communications rules governing television and radio communications that refer to a clearly identified federal candidate and are distributed within 30 days prior to a special primary election or 60 days prior to a special general election. 11 CFR 100.29. The statute and regulations require, among other things, that individuals and other groups not registered with the FEC who make electioneering communications costing more than \$10,000 in the aggregate in a calendar year disclose that activity to the Commission within 24 hours of the distribution of the communication. See 11 CFR 104.20.

The 30-day electioneering communications period in connection with the Ohio Special Primary runs from August 16, 2006 through September 15, 2006.

CALENDAR OF REPORTING DATES FOR OHIO SPECIAL ELECTION FOR COMMITTEES INVOLVED IN THE SPECIAL PRIMARY (09/15/06)

Report	Close of books ¹	Reg./cert. & overnight mailing date	Filing date
Pre-Primary	08/26/06	08/31/06	² 09/03/06
October Quarterly	09/30/06	10/15/06	² 10/15/06

¹ The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.

² Notice that this deadline falls on a holiday or a weekend. Filing dates are not extended when they fall on nonworking days.

Dated: August 25, 2006.

Robert D. Lenhard,

Vice Chairman, Federal Election Commission.

[FR Doc. 06-7297 Filed 8-30-06; 8:45 am]

BILLING CODE 6715-01-P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System ("Board") its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before October 30, 2006.

ADDRESSES: You may submit comments, identified by FR Y-12 or FR Y-12A, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- FAX: 202-452-3819 or 202-452-3102.

- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83-I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202-263-4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal to approve under OMB delegated authority the extension for three years, with revision, of the following collection of information:

Report title: Consolidated Bank Holding Company Report of Equity Investments in Nonfinancial Companies, and the Annual Report of Merchant Banking Investments Held for an Extended Period.

Agency form number: FR Y-12 and FR Y-12A, respectively

OMB control number: 7100-0300

Frequency: FR Y-12, quarterly and semiannually; FR Y-12A, annually

REPORTERS: Bank holding companies, financial holding companies

Annual reporting hours: FR Y-12, 1,824; FR Y-12A, 105

Estimated average hours per response: FR Y-12, 16; FR Y-12A, 7

Number of respondents: FR Y-12, 30; FR Y-12A, 15

General description of report: This collection of information is mandatory pursuant to Section 5(c) of the Bank Holding Company Act (12 U.S.C. 1844(c)). The FR Y-12 data are not considered confidential, however, bank holding companies may request confidential treatment pursuant to Sections (b)(4) and (b)(8) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4) and (b)(8)). The FR Y-12A data would be considered confidential on the basis that disclosure of specific commercial or financial data relating to investments held for extended periods of time could result in substantial harm to the competitive position of the financial holding company pursuant to the FOIA (5 U.S.C. 552(b)(4) and (b)(8)).

Abstract: The FR Y-12 collects data from certain domestic bank holding companies on their equity investments in nonfinancial companies on four schedules: Type of Investments, Type of Security, Type of Entity within the Banking Organization, and Nonfinancial Investment Transactions during Reporting Period. The FR Y-12 data serve as an important risk-monitoring device for institutions active in this business line by allowing the Federal Reserve to monitor an institution's activity between review dates. It also serves as an early warning mechanism to identify institutions whose activities in this area are growing rapidly and therefore warrant special supervisory attention.

Current actions: The Federal Reserve proposes to extend for three years, without revision, the FR Y-12. In addition, the Federal Reserve proposes to implement a companion reporting form, the FR Y-12A, effective December 31, 2006. The proposed FR Y-12A is

intended to provide the Federal Reserve with data concerning merchant banking investments that are approaching the end of the holding period permissible under Regulation Y. A financial holding company generally would have to submit a FR Y-12A if it holds a merchant banking investment for longer than eight years (or thirteen years in the case of an investment held through a qualifying private equity fund).

Board of Governors of the Federal Reserve System, August 28, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6-14503 Filed 8-30-06; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH-008]

National Personal Protective Technology Laboratory; Meeting

AGENCY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC).

ACTION: Notice; CDC/NIOSH announces the following meeting.

Name: National Personal Protective Technology Laboratory (NPPTL) Public Meeting.

New programs for the approval of Powered, Air-Purifying Respirators (PAPRs), Total Inward Leakage (TIL), the Quality Assurance (QA) module, and the Administrative module will be discussed. In addition, presentations of current and future research projects for personal protective technology will be made, and opportunity for discussion will follow the presentations.

Dates and Times: October 12, 2006, 8:30 a.m.-4 p.m., and October 13, 2006, 8:30 a.m.-11:30 a.m.

Place: Crowne Plaza Pittsburgh South (formerly Holiday Inn Select), 164 Fort Couch Road, Pittsburgh (Bethel Park), Pennsylvania.

Purpose: The topics to be addressed include continuing discussions of certification issues, standards, and testing processes for CBRN PAPRs. Additionally, NPPTL research projects and plans will be presented and opportunity for discussion will be provided.

Interested participants may view the PAPR program, the industrial PAPR concept paper, as well as earlier versions of other concept papers used

during the standard development effort, on the NIOSH Web site: <http://www.cdc.gov/niosh/npptl>, Respirator Standards Development; CBRN Standards: PAPR. The concept papers will be used as the basis for discussion at the public meeting.

Status: This meeting is hosted by NIOSH/NPPTL and will be open to the public, limited only by the space available. The meeting room will accommodate approximately 150 people. Interested parties should make hotel reservations directly with the Crowne Plaza Pittsburgh South (formerly Holiday Inn Select), Pittsburgh (Bethel Park), Pennsylvania, before the cut-off date of September 18, 2006. A special group rate of \$91 per night for meeting guests has been negotiated for this meeting. The NIOSH/ NPPTL Public Meeting must be referenced to receive this rate.

Please confirm your attendance to this meeting by completing a registration form and submitting it to NPPTL Event Management. You may register electronically by accessing the on-line registration link at <http://www.cdc.gov/niosh>, or you can download the Adobe PDF form and send it by e-mail to npptlevents@cdc.gov or fax it to 304-225-2003.

ADDRESSES: Comments on the topics presented in this notice and at the meeting should be mailed to: NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513-533-8303, fax 513-533-8285. Comments may also be submitted by e-mail to niocindocket@cdc.gov. E-mail attachments should be formatted in Microsoft Word.

Comments regarding the Industrial PAPR should reference Docket Number NIOSH-008 in the subject heading.

FOR FURTHER INFORMATION CONTACT: NPPTL Event Management, 3604 Collins Ferry Road, Suite 100, Morgantown, West Virginia 26505-2353, Telephone 304-225-5138, fax 304-225-2003, e-mail npptlevents@cdc.gov.

Dated: August 23, 2006.

James D. Seligman,

Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. 06-7279 Filed 8-30-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Docket Number NIOSH-005]

National Personal Protective Technology Laboratory Public Meeting

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC).

ACTION: Notice; CDC/NIOSH announces the following meeting.

Name: National Personal Protective Technology Laboratory (NPPTL) Public Meeting on the Performance and Reliability Requirements of Closed-Circuit Escape Respirators (CCER).

Meeting Dates, Times and Places: September 19, 2006, 9 a.m. to 4 p.m., Marriott Key Bridge, 1401 Lee Highway, Arlington, VA 22209; and September 28, 2006, 9 a.m. to 4 p.m. Colorado School of Mines (Petroleum Hall), 1500 Illinois Street, Golden, CO 80401.

Purpose: NIOSH, in cooperation with the Mine Safety and Health Administration (MSHA), is developing a proposed rule on the performance and reliability requirements of closed-circuit escape respirators. Examples of this type of equipment include self-contained self-rescuers (SCSRs) used in the mining industry and emergency escape breathing apparatus (EEBD).

Two meetings will be held, one in Virginia and one in Colorado, to provide an opportunity for an exchange of information between NIOSH and respirator manufacturers, industry representatives, labor representatives, and others with an interest in respiratory protection.

ADDRESSES: Comments concerning the topics presented in this notice should be addressed to the NIOSH Docket Office, Robert A. Taft Laboratories, M/S C34, 4676 Columbia Parkway, Cincinnati, Ohio 45226. All comments submitted to the NIOSH Docket Office regarding closed-circuit escape respirators should reference Docket Number NIOSH-005 in the subject heading.

Submit electronic comments to e-mail address niocindocket@cdc.gov. E-mail attachments submitted to the NIOSH Docket Office at niocindocket@cdc.gov should be formatted in Microsoft Word.

FOR FURTHER INFORMATION CONTACT: NPPTL Event Management, telephone 304-225-5138 or e-mail address npptlevents@cdc.gov.

SUPPLEMENTARY INFORMATION: Interested participants may view the Technical

Concept Summary for CCER Certification, as well as earlier versions of other concept papers used during the standards development effort, on the NIOSH Web site: <http://www.cdc.gov/niosh/npptl>, Respirator Standards Development; Other Respirator Standards. The Technical Concept Summary for CCER Certification will be used as the basis for discussion at the public meeting.

The meetings will be open to the public, limited only by the space available. The meeting rooms will accommodate approximately 80 people. Please confirm your attendance to these meetings by completing the appropriate registration form and submitting it to NPPTL Event Management. There is an individual registration form for each meeting. You may register electronically by accessing the on-line registration link at <http://www.cdc.gov/niosh>, or you can download an Adobe .PDF form and send it by e-mail to npptlevents@cdc.gov or fax it to 304-225-2003.

Status: Hotel reservations should be made directly with the hotel. A special group rate of \$239 per night has been negotiated for meeting guests at the

Marriott Key Bridge in Arlington, Virginia. The cut-off date is August 28, 2006. Contact the Marriott at (703-524-6400/800-228-9290).

A rate of \$119 per night for meeting guests has been negotiated for the Golden Hotel in Golden, Colorado. The cut-off date is September 1, 2006, and the Golden Hotel can be reached at (303-279-0100/800-233-7214).

The NIOSH Public Meeting must be referenced to receive these rates.

Dated: August 23, 2006.

James D. Seligman,
Chief Information Officer, Centers for Disease Control and Prevention.

[FR Doc. 06-7280 Filed 8-30-06; 8:45 am]

BILLING CODE 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of the Head Start Oral Health Initiative.

OMB No: New Collection.

Description: The purpose of this evaluation is to examine the implementation of the Head Start Oral Health Initiative (OHI). The Office of Head Start has funded 52 programs for OHI to improve the oral-health services to young children, from birth to five, and pregnant women. The funded programs will develop, implement, and disseminate culturally sensitive, innovative, and empirically based best practices for oral health in Head Start. The evaluation will examine information on approaches taken by the 52 individual programs and the implementation of the approaches, including challenges faced, as well as facilitating factors, and create a uniform method for collecting administrative information across all sites.

Respondents: Head Start directors, staff, and teachers who are implementing OHI; community organizations that have partnered with Head Start programs implementing OHI; and parents or guardians of children who attend Head Start programs where OHI is being implemented.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Directors: Telephone Interview	52	1	1.5	78
Head Start Staff: Program Recordkeeping System	52	184	1.08	10,333
Head Start Directors: Site Visit Interview	16	1	1.5	24
Head Start Staff: Site Visit Interview	48	1	1.5	72
Head Start Community Partner: Interview	80	1	1	80
Head Start Parent: Focus Group	160	1	1.5	240

Estimated Total Annual Burden Hours: 10,827.

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address:* infocollection@acf.hhs.gov.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office

of Management and Budget, Paperwork Reduction Project, *Attn:* Desk Officer for ACF, *E-mail address:*

Katherine_T._Astrich@omb.eop.gov.

Dated: August 28, 2006.

Robert Sargis,
Reports Clearance Officer.

[FR Doc. 06-7366 Filed 8-30-06; 8:45 am]

BILLING CODE 4184-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to the Institute for American Values

AGENCY: Office of Planning, Research and Evaluation, ACF, HHS.

ACTION: Award announcement.

C.F.D.A. Number: 93.647.

SUMMARY: Notice is hereby given that the Office of Planning, Research and Evaluation will award grant funds without competition to the Institute for American Values. This grant is being awarded for an unsolicited proposal entitled, "Gendered Parenting and Its Implications for Child Well-Being and Couple Relationships," that conforms to the applicable program objectives, is within the legislative authorities and proposes activities that may be lawfully supported through grant mechanisms. The study is unique and relevant to ACF's interest in increasing child well-being and supporting healthy marriage. The resulting products can be expected to benefit policymakers and others interested in family policy.

The Institute for American Values is a nonprofit, nonpartisan research and education organization conducting

interdisciplinary research concerning issues of civil society.

The grant will support an 18-month project at a cost of \$96,000 in Federal support. The project is also being supported through non-Federal funding sources.

FOR FURTHER INFORMATION CONTACT:

Richard Jakopic, Office of Planning, Research and Evaluation, Administration for Children and Families, 370 L'Enfant Promenade, SW., Washington, DC 20447; phone: 202-205-5930.

Dated: August 25, 2006.

Naomi Goldstein,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 06-7367 Filed 8-30-06; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Children's Bureau Proposed Research Priorities for Fiscal Years 2006-2008

AGENCY: Administration on Children, Youth and Families (ACYF), Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS).

ACTION: Response to Notice of Proposed Child Abuse and Neglect Research Priorities for Fiscal Years 2006-2008.

SUMMARY: The Children's Bureau solicited comments from the public on the Proposed Research Priorities for Fiscal Years 2006-2008 in Volume 71, Number 23 of the **Federal Register** on February 3, 2006. Comments were due by April 4, 2006. All comments received by the deadline were reviewed and given consideration in the preparation of this notice.

Summary of Public Comments

Section 104 (a)(4) of the Child Abuse Prevention and Treatment Act (CAPTA), as amended by the Keeping Children and Families Safe Act of 2003, Public Law (Pub. L.). 108-36, requires the Secretary of the U.S. Department of Health and Human Services (HHS) to publish proposed priorities for research activities for public comment and to maintain an official record of such public comment. In response to this requirement, proposed priorities were published in February 2006 for public comment and the responses received are detailed in this document.

The Children's Bureau received over a dozen written responses from a variety

of sources; State protection and advocacy systems; community agencies for children and families; national, State and local associations and non-profit organizations; universities; hospitals; children's medical centers; mental health services agencies; agencies serving children with disabilities; and private citizens.

Legislative Topics

One response commented on the proposed research topic of the causes of child abuse and neglect. The commenter noted this issue as a high priority, suggested that understanding the cause of child abuse and neglect is central to understanding the dynamics of the issues as a whole, and necessary for designing effective prevention and intervention services. In contradiction to this comment, another set of comments received ranked causes of abuse and neglect as a low priority and suggested that there has been a wealth of research conducted in this area.

A comment was received in response to the proposed research topic on the socio-economic distinctions and consequences of child abuse and neglect. The commenter suggested issues surrounding cultural and socio-economic distinctions be studied in more depth given the recent studies on overrepresentation of children of color in the child welfare and juvenile justice systems. The commenter suggested that a longitudinal study be conducted on this issue, and determination of how culture, ethnicity and race play into the identification, assessment, prevention and treatment and the consequences faced by families of color as a result of involvement with the child protection system.

A number of comments were received in response to the proposed research priority on the identification of successful early intervention services or other needed services; these responses supported the Children's Bureau's attention to this area.

The evaluation and dissemination of best practices was mentioned in a number of responses. One response supported proposed research on State-level strategies to improve child protection systems under this topic area. Another commenter noted that attention to "what works" in child protection and child welfare services has reached a "new low," and greater support is needed in establishing a body of evidence about effective services.

A number of comments were received in response to paragraphs (1) through (14), under the heading of the evaluation and dissemination of best practices consistent with the goals of

achieving improvements in child protective services systems of the States in accordance with CAPTA [Section 106(a), Grant to States for Child Abuse and Neglect Prevention and Treatment Program].

A comment was received encouraging that priority be given to paragraph (ii): *Creating and improving the use of multidisciplinary teams and interagency protocol to enhance investigation, and improving legal preparation and representation.*

Another comment was received encouraging that priority be given to paragraph (iv): *Enhancing the general child protective system by developing, improving and implementing risk and safety assessment tools and protocols.* This response specifically requested research on differential response in child protective services.

One comment was received related to paragraph (x): *Developing, implementing or operating programs to assist in obtaining or coordinating necessary services for families of disabled infants with life-threatening conditions.* The comment received related to this paragraph noted the lack of mention given to issues related to persons with disabilities, specifically parents with disabilities or to children with disabilities (beyond this mention of disabled infants). Additional attention to this response can be found below in the field-initiated research area.

One comment was received in response to paragraph (xi): *Developing and delivering information to improve public education relating to the role and responsibilities of the child protection system and the nature and basis for reporting suspected incidents of child abuse and neglect.* This commenter noted that mandated reporters often experience confusion as to their responsibility to report suspected child abuse or neglect, even after receiving training in this area. Due to the severity of child abuse and neglect and the consequences at stake, the commenter suggested additional research be conducted to explore better ways to develop and deliver training and information to mandated reporters and the public.

A comment was received encouraging that priority be given to paragraph (xii): *Developing and enhancing the capacity of community-based programs to integrate shared leadership strategies between parents and professionals to prevent and treat child abuse and neglect at the neighborhood level.*

One response was a comment encouraging that priority be given to paragraph (xiii): *Supporting and*

enhancing interagency collaboration between the child protection system and the juvenile justice system for improved delivery of services and treatment, including methods for continuity of treatment plans and services as children transition between systems.

Two responses were submitted in response to paragraph (xiv): *Supporting and enhancing collaboration among public health agencies, the child protection system and private community-based programs to provide child abuse and neglect prevention and treatment services (including linkages with education systems) and to address the health needs, including mental health needs, of children identified as abused or neglected, including supporting prompt, comprehensive health and developmental evaluations for children who are the subject of substantiated child maltreatment reports.* One response suggested researching the use of differential response in child protective services in reference to this priority area, focused on collaboration among child protection systems and other public and private agencies.

Other Topics

A number of comments addressed the priority area of prevention practices. Responses were received noting particular interest in effective child abuse and neglect prevention practices, supporting focused research to enlarge the knowledge base in this area. Responses were received stating support for the approach included in the CAPTA amendments for "an evaluation of the redundancies and gaps in services in the field of child abuse and neglect prevention in order to make better use of resources." Two comments received suggest that prevention research be the highest priority, and strongly supported the Bureau's emphasis on prevention. Another comment supported the Children's Bureau priority of the evaluation of services to prevent abuse and the recurrence of abuse. Attention to home visitation as a prevention strategy is suggested by two commenters. The use of respite care is suggested in one submission. Research on respite, particularly used to support families of children with disabilities is the focus of this comment.

In response to the priority area of child protection systems, a comment was received in regards to disproportionality within child welfare and as noted earlier, comments were received in terms of collaborative efforts among service providers targeting children involved in the child welfare system or at risk of involvement.

A number of responses were directed at the services research priority area. Comments were received supporting assessment of services needed by and provided to children and families. One commenter responded encouraging the prioritization of research in the identification of early intervention services and the assessment and provision of services to children and families, and the analysis of services provided to victims of child maltreatment and the response of protective services to children's mental health issues. As noted earlier in terms of best practices, a response supported attention to "what works" in child protective and child welfare services. This commenter also supported the assessment of services provided to children and families and the relationship of these services to outcomes, as outlined in the proposed research priorities. This commenter suggested that little is known about the services provided to children and families, and encouraged furthering this concept to encompass the inclusion of documentation for services received by in-home and community service cases.

A comment was received related to the provision of legal services for children, specifically legal counsel. It suggested research to examine state and local policies for appointing legal representation for children in court proceedings, and to analyze disparities in outcome for children who are or are not appointed legal counsel.

A comment was submitted encouraging research in the area of service provision to both children and parents with mental health needs.

One comment was received in response to the proposed program evaluation of priority area initiatives (or Evaluation of Programs Addressing Administration Priorities). This comment expressed support of the evaluation of effectiveness of healthy marriage promotion and fatherhood initiatives to prevent child abuse and neglect.

Two comments were received in response to the proposed research area entitled Perpetrators. Specifically, one comment supported research in the area of characterizations of perpetrators to inform more effective intervention and prevention efforts. One commenter submitted a response supporting the pre-existing item "research on perpetrators and their patterns of perpetrating behaviors," and supporting integrating recognition of perpetrator subgroups through the research priorities.

Additional Comments

Finally, several respondents recommended additional areas of research. In addition to supporting the research priorities already outlined by the Children's Bureau, a number of additional suggestions were submitted.

Research related to the CAPTA requirement linked to IDEA Part C was noted by three commenters. Research in the area of privatization, specifically in terms of cost effectiveness and efficiency (noting workload and workforce issues) was submitted in response to this solicitation for comment.

A response was received encouraging that attention be paid to the documentation of in-home or community-based services and the lack of a data collection systems for these services.

Research projects focusing on attention to risk factors associated with child abuse and neglect, including domestic violence, substance abuse, mental health issues, poverty and perpetrators experience as a victim of child abuse were submitted as a comment.

One response encouraged research on the effectiveness of supervised visitation programs and trauma and the engagement of caregivers in treatment of trauma.

Comments were received including research in the areas of non-violent households and research on corporal and physical punishment as they relate to child maltreatment.

Two comments were received on research in the field of disabilities, for children faced with disabilities and parents with disabilities involved in the child welfare system.

A comment was received supporting research to ascertain the prevalence of fetal alcohol syndrome (FAS) and fetal alcohol spectrum disorder (FASD) in the foster care population, research on the development of a protocol of services for children in the foster care system diagnosed with FAS/FASD, and a longitudinal study on the impact of intervention, treatment and services on children in foster care diagnosed with FAS/FASD.

Conclusion

Throughout the Fiscal Years 2006–2008, the Children's Bureau will address these proposed priorities, taking into consideration the public comments and current funding cycles in drafting future announcements. All grant applications will be posted

electronically each every fiscal year at <http://www.grants.gov>.

Joan E. Ohl,

Commissioner, Administration on Children,
Youth and Families.

[FR Doc. 06-7364 Filed 8-30-06; 8:45 am]

BILLING CODE 4184-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Anti-Infective Drugs Advisory Committee Meeting; Amendment of Notice

AGENCY: Food and Drug Administration,
HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of a meeting of the Anti-Infective Drugs Advisory Committee. This meeting was announced in the **Federal Register** of July 25, 2006 (71 FR 42096). The amendment is being made to reflect a change in the *Date and Time* and *Agenda* portions of the document. The meeting scheduled for September 11, 2006, has been cancelled. There are no other changes.

FOR FURTHER INFORMATION CONTACT:

Sohail Mosaddegh, 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: 301-827-6776, e-mail:

sohail.mosaddegh@fda.hhs.gov, or FDA Advisory Committee Information Line, 1-800-741-8138 (301-443-0572 in the Washington DC area), code 3014512530. Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 25, 2006 (71 FR 42096), FDA announced that a meeting of the Anti-Infective Drugs would be held on September 11 and 12, 2006. On page 42096, in the second column, the *Date and Time* portion of the meeting is amended to read as follows:

Date and Time: The meeting will held on September 12, 2006, from 8 a.m. to 5 p.m.

On page 42096, third column, the *Agenda* portion of the meeting is amended to read as follows:

Agenda: On September 12, 2006, the committee will discuss supplemental

new drug application (sNDA) 21-158/S-006, FACTIVE (gemifloxacin mesylate) Tablets, submitted by Oscient Pharmaceuticals Corp., for the proposed treatment of acute bacterial sinusitis.

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 25, 2006.

Randall W. Lutter,

Associate Commissioner for Policy and Planning.

[FR Doc. 06-7310 Filed 8-30-06; 8:45 am]

BILLING CODE 4160-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Data Collection; Comment Request; California Health Interview Survey 2007

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, National Cancer Institute (NCI), the National Institute of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

The first California Health Interview Survey (CHIS) Cancer Control Module (CCM) took place in 2001 (2000 CHIS CCM, OMB No. 0925-0478, **Federal Register**, May 8, 2000, Vol. 65, No. 89, p. 26620). The second survey took place in 2003 (2003 CHIS CCM, OMB No. 0925-0518, **Federal Register**, October 3, 2002, Volume 67, No. 192, pp. 62067-62068) and the third in 2005 (2005 CHIS CCM, OMB No. 0925-0000, **Federal Register**, Vol. 69, No. 150, Aug. 5, 2004, pp. 47450-47451, and **Federal Register**, Vol. 70, No. 1, Jan. 3, 2005, pp. 93-94).

Proposed Collection

Title: California Health Interview Survey (CHIS) 2007 Cancer Control Module (CCM). *Type of Information Collection Request:* New. *Need and Use of Information Collection:* The NCI has sponsored three Cancer Control Modules in the California Health Interview Survey (CHIS), and will be sponsoring a fourth to be administered in 2007.

The CHIS is a telephone survey designed to provide population-based,

standardized health-related data to assess California's progress in meeting Healthy People 2010 objectives for the nation and the state. The CHIS sample is designed to provide statistically reliable estimates statewide, for California counties, and for California's ethnically and racially diverse population. Initiated by the UCLA Center for Health Policy Research, the California Department of Health Services, and the California Public Health Institute, the survey is funded by a number of public and private sources. It was first administered in 2001 to 55,428 adults and subsequently in 2003 and 2005 to 42,043 and 43,020 adults respectively. These adults are a representative sample of California's non-institutionalized population living in households.

CHIS 2007, the fourth bi-annual survey, is planned for administration to 55,000 adult Californians. The cancer control module, which is similar to that administered in CHIS 2001, CHIS 2003, and CHIS 2005, will allow NCI to examine trends in breast cancer screening and diagnosis, as well as to study other cancer-related topics such as diet, physical activity, and obesity.

Because California is the most populous and the most racially and ethnically diverse state in the nation, the CHIS 2007 sample will yield adequate numbers of respondents in key ethnic and racial groups, including African Americans, Latinos, Asians, and American Indian/Alaska Natives. The Latino group will include large numbers of respondents in the Mexican, Central American, South American, and other Latino subgroups; the Asian group will include large numbers of respondents in the Chinese, Filipino, Japanese, Vietnamese, and Korean subgroups. NCI will compare the CHIS and National Health Interview Survey (NHIS) data in order to conduct comparative analyses and better estimate cancer risk factors and screening among racial/ethnic minority populations. The CHIS sample size also permits NCI to create estimates for ethnic subdomains of the population, for which NHIS has insufficient numbers for analysis.

Frequency of Response: One-time. *Affected public:* Individuals or households. *Types of Respondents:* U.S. adults (persons 18 years of age and older).

The annual reporting burden is as follows.

TABLE A.—ANNUALIZED BURDEN ESTIMATES FOR CHIS 2007 DATA COLLECTION

Data collection	Estimated number of respondents	Frequency of response	Average time per response	Annual hour burden
(1) Pilot Test Adult Demographics	150	1	.07	11
CCM	150	1	.03	5
(2) Full Survey Adult Demographics	55,000	1	.07	3,850
CCM	55,000	1	.03	1,650
Totals	55,150	1	.1	5,516

There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proposed performance of the functions of the agency, including whether the information shall have practical utility; (2) 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) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Nancy Breen, Ph.D., Project Officer, National Cancer Institute, EPN 4005, 6130 Executive Boulevard MSC 7344, Bethesda, Maryland 20852-7344, or call non-toll free number 301-496-8500 or FAX your request, including your address to breenn@mail.nih.gov.

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of this publication.

Dated: August 24, 2006.

Rachelle Ragland-Greene,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 06-7328 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Novel Acylthiol Compositions and Methods of Making and Using Them

Description of Technology: This invention provides a novel family of acylthiols and uses thereof. More specifically, this invention provides effective inhibitors of HIV that selectively target its highly conserved nucleocapsid protein (NCp7) by interacting with metal chelating structures of a zinc finger-containing protein. Because of the mutationally intolerant nature of NCp7, drug resistance is much less likely to occur with compounds attacking this target. In addition, these drugs should inactivate all types and strains of HIV and could also inactivate other retroviruses, since most retroviruses share one or two

highly conserved zinc fingers that have the CCHC motif of the HIV Ncp7. Finally, this invention could be very useful for the large-scale practical synthesis of HIV inhibitors, because these compounds can be prepared by using inexpensive starting materials and facile reactions. Thus, it opens the possibility that an effective drug treatment for HIV could be made available to much larger populations. These thioesters may also be used as an active component in topical applications that serve as a barrier to HIV infection.

Inventors: John K. Inman (NIAID), Atul Goel (NCI), Ettore Appella (NCI), James A. Turpin (NIAID), Marco Schito (NCI).

Publications:

1. ML Schito, A Goel, Y Song, JK Inman, RJ Fattah, WG Rice, JA Turpin, A Sher, E Appella. In vitro antiviral activity of novel human immunodeficiency virus type 1 nucleocapsid p7 zinc finger inhibitors in a transgenic murine model. *AIDS Res Hum Retroviruses*. 2003 Feb;19(2):91-101.

2. P Srivastava, M Schito, RJ Fattah, T Hara, T Hartman, RW Buckheit Jr, JA Turpin, JK Inman, E Appella. Optimization of unique, uncharged thioesters as inhibitors of HIV replication. *Bioorg Med Chem*. 2004 Dec 15;12(24):6437-6450.

3. LM Jenkins, JC Byrd, T Hara, P Srivastava, SJ Mazu, SJ Stahl, JK Inman, E Appella, JG Omichinski, P Legault. Studies on the mechanism of inactivation of the HIV-1 nucleocapsid protein NCp7 with 2-mercaptobenzamide thioesters. *J Med Chem*. 2005 Apr 21;48(8):2847-2858.

4. V Basrur, Y Song, SJ Mazur, Y Higashimoto, JA Turpin, WG Rice, JK Inman, E Appella. Inactivation of HIV-1 nucleocapsid protein P7 by pyridinioalkanoyl thioesters. Characterization of reaction products and proposed mechanism of action. *J Biol Chem*. 2000 May 19;275(20):14890-14897.

5. JA Turpin, Y Song, JK Inman, M Huang, A Wallqvist, A Maynard, DG

Covell, WG Rice, E Appella. Synthesis and biological properties of novel pyridinioalkanoyl thioesters (PATE) as anti-HIV-1 agents that target the viral nucleocapsid protein zinc fingers. *J Med Chem.* 1999 Jan 14;42(1):67-86.

Patent Status: U.S. Patent Application No. 10/485,165 filed 28 Jan 2004, claiming priority to 03 Aug 2001 (HHS Reference No. E-329-2000/0-US-06).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Sally H. Hu, Ph.D., M.B.A.; 301/435-5605; hus@mail.nih.gov.

Novel Thioesters and Uses Thereof

Description of Technology: The human immunodeficiency virus (HIV) is the causative agent of acquired immunodeficiency syndrome (AIDS). Drug-resistance is a critical factor contributing to the gradual loss of clinical benefit to treatments for HIV infection. Accordingly, combination therapies have further evolved to address the mutating resistance of HIV. However, there has been great concern regarding the apparent growing resistance of HIV strains to current therapies.

The present invention provides for a novel family of thioesters and uses thereof. These thioesters are capable of inactivating viruses by a variety of mechanisms, particularly by complexing with metal ion-complexing zinc fingers. The invention further provides for methods for inactivating a virus, such as the human immunodeficiency virus (HIV), using these compounds, and thereby also inhibiting transmission of the virus.

Inventors: James A. Turpin (NCI), Yongsheng Song (NCI), John K. Inman (NIAID), Mingjun Huang (NCI), Anders Wallqvist (NCI), David G. Covell (NCI), William G. Rice (NCI), Ettore Appella (NCI), *et al.*

Patent Status: U.S. Patent No. 6,706,729 issued 16 Mar 2004 (HHS Reference No. E-136-1998/0-US-10); U.S. Patent Application No. 10/738,062 filed 16 Dec 2003 (HHS Reference No. E-136-1998/0-US-11).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Sally H. Hu, Ph.D., M.B.A.; 301/435-5605; hus@mail.nih.gov.

Dated: August 25, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 06-7327 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

A Novel Small Protein Antibiotic

Description of Technology: Due to the increase in drug resistance among bacteria, continued progress in the development of new antibiotic treatments is needed. Available for licensing and commercial development is the small protein SrgT, its analogs and related peptides. SrgT is a 43 amino acid protein that effectively inhibits bacterial growth. This protein likely exerts its antibiotic action by inhibiting the metabolism of glucose in these microorganisms. The claimed invention includes methods for SrgT synthesis and suggested modifications for production of SrgT analogs and related peptides, which may remain effective against potential SrgT resistant bacteria. Thus, the current technology provides a novel approach to the treatment and prevention of bacterial infections.

Application: Novel therapeutics and prophylactics for bacterial infections.

Development Status: Preclinical data is available at this time.

Inventors: Carin K. Vanderpool and Susan Gottesman (NCI).

Selected Publication: CK Vanderpool, S Gottesman. Involvement of a novel transcriptional activator and small RNA in post-transcriptional regulation of the

glucose phosphoenolpyruvate phosphotransferase system. *Mol Microbiol.* 2004 Nov; 54(4):1076-1089.

Patent Status: U.S. Provisional Application No. 60/799,830 filed 11 May 2006 (HHS Reference No. E-166-2006/0-US-01).

Licensing Status: Available for non-exclusive and exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301/435-4507; thalhamc@mail.nih.gov.

Methods and Compositions for the Production of Highly Effective Vaccines Against Cancers and Infections Diseases

Description of Technology: Because cancers and infectious diseases remain prominent causes of death among adults and children worldwide, the availability of vaccines targeting these conditions is a global health priority. With the current vaccine development state-of-the-art, there are limitless combinations of enhancing molecules that can be used with antigen vaccines targeting these diseases. The technology offered for licensing and commercial development combines effective aspects of antigen-vaccines, including peptides and other forms of vaccination, with enhancing molecules, including co-stimulation of T cell immunity for efficient vaccine development.

The claimed invention includes a non-viral polynucleotide vector encoding immune enhancing molecules, such as the T cell co-stimulatory molecule B7.1 (CD80), which significantly enhance cellular immune responses when combined with antigen stimulation. Delivery of this co-stimulatory molecule as non-replicating DNA with any antigenic form, peptides in this case, overcomes the problems of combining enhancing molecules with the antigen in the same DNA vector, co-infecting or transfecting these molecules in the same antigen presenting or tumor cell, or manufacturing enhancing molecules in the same format as the antigens. Furthermore, the use of this chimeric vaccine with the enhancing molecule expressed as polynucleotide vector overcomes the low antigenicity and safety considerations of viral vectors, as well as the instability and conformational maintenance challenges associated with the use of full-length protein delivery. Furthermore, polynucleotide's constructs encoding enhancing molecules are inexpensive to produce and can potentially be used along with any form of antigen vaccine delivery system, including peptides, full-length proteins and naked DNA antigens.

Applications: (1) Significant enhancement of immunological responses to antigen vaccines; (2) Development of safe and effective vaccines for cancer and various infectious diseases; (3) Cost effective vaccine to test the combination of immune enhancing molecules with any form of antigen vaccine.

Development Status: Preclinical data is available at this time.

Inventors: Samir Khleif and Jay Berzofsky (NCI).

Patent Status: U.S. Patent Application No. 09/810,310 filed 14 Mar 2001 (HHS Reference No. E-128-2000/0-US-02).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Cristina Thalhammer-Reyero, Ph.D., M.B.A.; 301/435-4507; thalamc@mail.nih.gov.

Collaborative Research Opportunity: The National Cancer Institute Vaccine Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize methods and compositions for the production of highly effective vaccines. Please contact Betty Tong, Ph.D., at 301-594-4263 or tongb@mail.nih.gov for more information.

Dated: August 25, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 06-7329 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

The Mucus Slurper: A Novel Device to Keep the Endotracheal Tube (ETT) Free of all Mucus, Without Suctioning.

Description of Technology: Available for licensing and commercial development is a mucus slurping device to remove all mucus, before mucus reaches the tip of the endotracheal tube (ETT); thus, no mucus ever enters the ETT, and the ETT remains always clean—without suctioning. A Mallinckrodt Hi-Lo® CASS (continuous aspiration of subglottic secretions) endotracheal tube is modified by appending to the distal-most tip of a cut-off CASS tube a molded, hollow, concentric plastic ring with 3-4 (or more) small (less than 1 mm in diameter) suction ports, the latter positioned in the most dependent part of the ETT (Figure 1). The CASS line was extended to the very tip of the ETT, and suction was activated for approximately 0.5 s, synchronized to the early part of expiration; and repeated once a minute, or as desired. All mucus was collected in a small in-line vial. Healthy, anesthetized and paralyzed sheep, were intubated with a modified 8 mm CASS ETT tube with attached "Mucus Slurper"; with sheep lying prone, trachea/neck oriented below horizontal. Never suctioned. At the end of the 72 h study, sheep were electively euthanized, and autopsied.

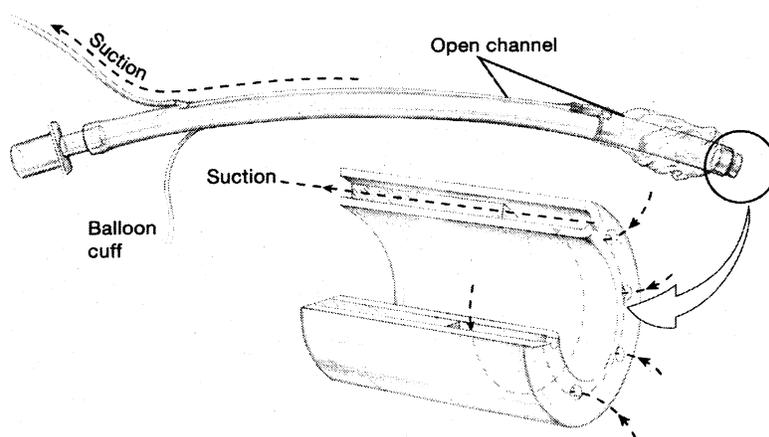


Figure 1. Normal arterial blood gases. No traces of mucus were found along the entire length of the ETT. There were no gross abnormalities of the tracheal mucosa; Bacterial cultures of the 5 lobes of the lungs were negative. The Mucus Slurper represents a new concept that

may significantly contribute to improved care of patients intubated and mechanically ventilated; with no need for suctioning/cleaning, and free of ventilator associated pneumonia.

Applications: (1) Prevention of ventilator associated pneumonia; (2) Intubation; (3) Mucus clearance.

Market: All patients intubated for longer than 18 hours.

Development Status: Pre-clinical data available from sheep.

Inventors: Theodor Kolobow, Gianluigi Li Bassi, Francesco Curto (NHLBI).

Publications:

1. L Berra et al. Antibacterial-coated tracheal tubes cleaned with the Mucus Shaver: A novel method to retain long-term bactericidal activity of coated tracheal tubes. *Intensive Care Med.* 2006 Jun;32(6):888–893. Epub 2006 Apr 19, doi: 10.1007/s00134-006-0125-6.

2. T Kolobow et al. Novel system for complete removal of secretions within the endotracheal tube: the Mucus Shaver. *Anesthesiology.* 2005 May;102(5):1063–1065.

3. L Berra et al. Evaluation of continuous aspiration of subglottic secretion in an in vivo study. *Crit Care Med.* 2004 Oct;32(10):2071–2078.

4. R Trawogger et al. Intratracheal pulmonary ventilation keeps tracheal tubes clean without impairing mucociliary transport. *Scand J Clin Lab Invest.* 2002;62(5):351–356.

Patent Status: U.S. Patent Application No. 11/081,420 filed 15 Mar 2005 (HHS Reference No. E-074-2005/0-US-01); International Patent Application PCT/US2006/009166 filed 14 Mar 2006 (HHS Reference No. E-074-2005/0-PCT-02).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Michael A. Shmilovich, Esq.; 301/435-5019; shmilovm@mail.nih.gov.

Collaborative Research Opportunity: The NHLBI Pulmonary Critical Care Medicine Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the endotracheal tube mucus cleaning device and related laboratory interests. Please contact Marianne Lynch at 301-594-4094 or lynchm@nhlbi.nih.gov for more information.

Mucus Shaving Apparatus for Endotracheal Tubes

Description of Technology: HHS seeks parties interested in manufacturing and commercializing an endotracheal tube cleaning apparatus for insertion into the inside of the endotracheal tube of a patient to shave away mucus deposits. This cleaning apparatus comprises a flexible central tube with an inflatable balloon at its distal end. Affixed to the inflatable balloon are one or more silicone rubber shaving rings, each having a squared leading edge to shave away mucus accumulations implicated in bacterial accumulation. In operation, the un-inflated cleaning apparatus is inserted into the endotracheal tube until its distal end is properly aligned with the distal end of the endotracheal tube. After proper alignment, the balloon is inflated by a suitable inflation device (e.g., a syringe) until the balloon's shaving rings are pressed against the

inside surface of the endotracheal tube. The cleaning apparatus is then pulled out of the endotracheal tube and in the process the balloon's shaving rings shave off the mucus deposits from the inside of the endotracheal tube.

Inventors: Theodor Kolobow and Lorenzo Berra (NHLBI).

Publication: T Kolobow et al. Novel system for complete removal of secretions within the endotracheal tube: the Mucus Shaver. *Anesthesiology.* 2005 May;102(5):1063–1065.

Patent Status: U.S. Patent No. 7,051,737 issued 05 Feb 2004 (HHS Reference No. E-061-2004/0-US-01).

Related Technology: PCT Application No. PCT/US2005/003395 filed 04 Feb 2005, which published as WO 2005/076895 on 25 Aug 2005 (HHS Reference No. E-061-2004/1-PCT-01).

Licensing Status: Available for non-exclusive or exclusive licensing.

Licensing Contact: Michael Shmilovich, Esq.; 301/435-5019; shmilovm@mail.nih.gov.

Collaborative Research Opportunity: The NHLBI Pulmonary Critical Care Medicine Branch is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate, or commercialize the endotracheal tube apparatus and related laboratory interests. Please contact Marianne Lynch at 301-594-4094 or lynchm@nhlbi.nih.gov for more information.

Dated: August 25, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 06-7330 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage

for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852-3804; telephone: 301/496-7057; fax: 301/402-0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Molecules for Studying Cellular Immune Responses to Vaccines and Therapeutics

Description of Technology: HLA molecules are indispensable and invaluable tools for efficient vaccine research and development. Infectious diseases are the second leading cause of death among adults and the most prominent cause of death in infants and children worldwide. Thus, rapid availability of prophylactic vaccines for cancers and infectious diseases such as HIV, HPV, influenza and diarrheal and respiratory diseases is a world-wide health concern.

Available for licensing is a large variety of cell lines, each expressing a particular HLA molecule and the plasmids encoding them, including soluble HLAs. This technology has broad application for development of vaccines and immunotherapeutics. HLA molecules can be used to characterize HLA-peptide binding and elucidate the process of both antigen and tumor cell peptide-processing and presentation. In addition to wild-type HLA molecules, available for licensing are HLAs containing point-mutations in the peptide binding regions. The mutated HLAs can be used to evaluate key peptide interactions. Additionally, soluble HLA molecules are useful for elucidating the structural details of HLAs and HLA-peptide complexes through crystallographic studies, which can be used to aid in vaccine design. Thus, the present technology has the potential to lend insight into immune recognition and identification of immunogenic epitopes for the systematic design of peptide and protein subunit vaccines for cancers and infectious diseases. Furthermore, this technology has application in the development of therapies for autoimmune and related immunological diseases, including those associated with organ transplantation.

Applications: (1) Identification/Quantification of T cell responses to specific antigens including vaccine antigens; (2) Identification of T cell

responses in patients with autoimmune diseases; (3) Development of vaccines candidates for cancer and infectious diseases; (4) Organ transplant diagnostics and immunotherapeutics.

Inventors: William Biddison, Richard Turner, Susan Gagnon (NINDS).

Relevant Publications:

1. TK Baxter, SJ Gagnon, RL Davis-Harrison, JC Beck, AK Binz, RV Turner, WE Biddison. Strategic mutations in the class I major histocompatibility complex HLA-A2 independently affect both peptide binding and T cell receptor recognition. *J. Biol. Chem.* 2004 Jul 9; 279(28):29175–29184.

2. BM Baker, RV Turner, SJ Gagnon, DC Wiley, WE Biddison. Identification of a crucial energetic footprint on the alpha1 helix of human histocompatibility leukocyte antigen (HLA)-A2 that provides functional interactions for recognition by tax peptide/HLA-A2-specific T cell receptors. *J. Exp. Med.* 2001 Mar 5; 193(5):551–562.

Patent Status: HHS Reference Nos. E-251-2006/0 and E-251-2006/1—Biological Materials.

Licensing Status: Available for licensing through Biological Materials License Agreements.

Licensing Contact: Susan Ano, Ph.D.; 301/435-5515; anos@mail.nih.gov.

Neutralizing Monoclonal Antibodies to Botulinum Neurotoxin A

Description of Technology: Available for licensing from the NIH are two chimpanzee-derived monoclonal antibodies (mAbs) against botulinum neurotoxin type A (BoNT/A). These mAbs can be developed for prevention, therapy, or diagnosis of BoNT/A. Use of this technology represents a significant improvement over the existing therapy of supportive care and treatment with equine antitoxin polyclonal antibodies.

Potential Applications of Technology: (1) Emergency prophylaxis against BoNT/A outbreak (natural or biodefense-related); (2) Therapeutic against BoNT/A; (3) Rapid Diagnosis of BoNT/A; (4) Therapeutic against overdose of BoNT/A as used in clinical treatments.

Advantages of Existing Therapies: (1) No anticipated side effects compared to currently utilized equine antitoxin polyclonal antibodies; (2) Monoclonal instead of polyclonal.

Inventors: Robert H. Purcell et al. (NIAID).

Patent Status: HHS Reference No. E-180-2006/0—Research Tool.

Licensing Status: Available for non-exclusive licensing.

Licensing Contact: Susan Ano, Ph.D.; 301/435-5515; anos@mail.nih.gov.

Dated: August 25, 2006.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 06-7331 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training, NCI F—Initial Review of K01 and T32 Applications.

Date: September 26–27, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Lynn M. Amende, PhD, Scientific Review Administrator, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8105, Bethesda MD 20892, 301-451-4759, amendel@mail.nih.gov.

(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 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-7336 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03 Chemosense Scientific Review Panel.

Date: October 5, 2006.

Time: 11 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892; 301-496-8683; singhs@nidcd.nih.gov.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03 Voice and Language Scientific Review Meeting.

Date: October 5, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shiguang Yang, PhD, DVM, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892; 301-496-8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, R03 Hearing and Balance Scientific Review Meeting.

Date: October 6, 2006.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Shiguang Yang, PhD, DVM, Scientific Review Administrator,

Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892; 301-496-8683.

Name of Committee: National Institute on Deafness and Other Communication Disorders Special Emphasis Panel, NIDCD Research Core Center P30.

Date: October 13, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Milcho Mincheff, MD, PhD, Scientific Review Administrator, Division of Extramural Activities, NIDCD/NIH, EPS, Room 400C, 6120 Executive Blvd., MSC 7180, Bethesda, MD 20892; 301-496-8693; mincheffm@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-7332 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: October 2-3, 2006.

Time: 7 p.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Louise L. Hsu, PhD, Health Scientist Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue/Suite

2C212, Bethesda, MD 20892, 301-496-7705, hsul@exmur.nia.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group, Biological Aging Review Committee.

Date: October 3-4, 2006.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Bita Nakhai, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, Gateway Building, 2C212 7201 Wisconsin Avenue, Bethesda, MD 20814, 301-402-7701, nakhaib@nia.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group, Behavior and Social Science of Aging Review Committee.

Date: October 5-6, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Jon E. Rolf, PhD, Scientific Review Administrator, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue/Room 2C212, Bethesda, MD 20814, 301-402-7703, rolfj@nia.nih.gov.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: October 5-6, 2006.

Time: 6:30 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Marriott, 7335 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Alicja L. Markowska, PhD, DSC, National Institute on Aging, National Institutes of Health, Gateway Building, 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301-496-9666, markowska@nia.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-7334 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the

provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, AD and Cognition.

Date: September 14, 2006.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Alicja L. Markowska, PhD, DSC, Scientific Review Office, National Institute on Aging, National Institutes of Health, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892. 301-496-9666. markowska@nia.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: August 25, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-7335 Filed 8-30-06; 8:45am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, PANDAS.

Date: September 22, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institutes of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892-9606, 301-443-7861, dsommers@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

August 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-7337 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., 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: Communication Disorders Review Committee.

Date: October 11-12, 2006.

Time: October 11, 2006, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Time: October 12, 2006, 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Sheo Singh, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301-496-8683.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: August 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-7339 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Cardiac Fibrosis Program Project.

Date: August 31, 2006.

Time: 1 p.m. to 2 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: YingYing Li-Smerin, PhD, MD, Scientific Review Administrator, Nat. Heart, Lung, and Blood Inst., Review Branch, National Institutes of Health, 6701 Rockledge Drive, Rockledge II, Room 7184, Bethesda, MD 20892-7924, 301/435-0275. lismerein@nhlbi.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Review of Depression and Cardiovascular Disease Program Project.

Date: September 22, 2006.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Holly Patton, PhD, Scientific Review Administrator, Review Branch/Division of Extramural Affairs, National Heart, Lung, and Blood Institute, Two Rockledge Center, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892. (301) 435-0280. pattonh@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mentored Career Development Award.

Date: September 25-26, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard Arlington Crystal City/Reagan Ntnl Airport, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Rina Das, PhD, Scientific Review Administrator, Review Branch, NHLBI, National Institutes of Health, 6701 Rockledge Drive, Room 7200, Bethesda, MD 20892. 301-435-0297. dasr2@nhlbi.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Cardiovascular Program Project.

Date: October 13, 2006.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Youngsuk Oh, PhD, Scientific Review Administrator, National Heart, Lung, and Blood Institute, Two Rockledge Centre, Room 7182, 6701 Rockledge Drive, Bethesda, MD 20817. 301-435-0273. yoh@mail.nih.gov.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, R21 NIH Exploratory Developmental Research Grant Program.

Date: October 27, 2006.

Time: 10 a.m. to 11:30 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Shelley S. Sehnert, PhD, Scientific Review Administrator, Review Branch, NIH/NHLBI, 6701 Rockledge Drive, Room 7206, Bethesda, MD 20892-7924. 301/435-0303. ssehnert@nhlbi.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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: August 24, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06-7338 Filed 8-30-06; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[CGD09-06-154]

Great Lakes Ballast Water Conference and Regional Waterways Management Forum

AGENCY: Coast Guard, DHS.

ACTION: Notice of conference and meeting.

SUMMARY: The Great Lakes Regional Waterways Management Forum will sponsor a conference on ballast water issues on September 27, 2006, and will hold a meeting the following day to address waterways management issues in the Great Lakes and the St. Lawrence Seaway. The conference and meeting are open to the public, but registration is required for the conference due to limited seating.

DATES: The Great Lakes Ballast Water Conference will be held September 27, 2006, from 8 a.m. to 6 p.m. The Great Lakes Regional Waterways Forum will meet September 28, 2006, from 8 a.m. to 4 p.m.

ADDRESSES: Both the conference and meeting will be held at the Crowne Plaza Hotel, 777 St. Clair Avenue, Cleveland, Ohio. Registration information for the conference should be mailed to Commander (dpw-1), Ninth Coast Guard District, 1240 E. 9th Street, Room 2069, Cleveland, OH 44199, or faxed to 216-902-6059.

FOR FURTHER INFORMATION CONTACT: If you have questions regarding this notice, call LT Regan Blomshield (dpw-1), Ninth Coast Guard District, telephone (216) 902-6050. Persons with disabilities requiring assistance to attend the conference or meeting should call LT Blomshield. To view the latest, detailed agenda for both the Ballast Water Conference and the Regional Waterways Management Forum, visit the USCG Web site: <http://www.uscg.mil/hq/g-m/mso/estandards.htm>.

SUPPLEMENTARY INFORMATION:

Registration and Participation: Registration for the conference is required due to limited seating. To register, please mail or fax your name, position title, organization, address,

phone and e-mail on an 8.5 x 11 inch piece of paper with a subject line "Conference Registration" to Commander (dpw-1), Ninth Coast Guard District, 1240 E. 9th Street, Room 2069, Cleveland, OH 44199. Registration may be faxed to 216-902-6059.

The public will have an opportunity to address the Forum members at the meeting on September 28. If you wish to be included in the Forum agenda, you must submit your request on or before September 18, 2006 to be considered.

Any written comments or requests should be submitted to Commander (dpw-1), Ninth Coast Guard District, 1240 E. 9th Street, Room 2069, Cleveland, OH 44199. Requests may be faxed to 216-902-6059 with the subject line: GL Waterways Forum. There is no guarantee that all requests will be included in the agenda.

Conference and Forum Meeting: The Great Lakes Waterways Management Forum is composed of senior leadership from U.S. and Canadian government agencies, the marine transportation industry, and non-government organizations. The Forum meets twice a year to identify and improve waterways management issues that involve the Great Lakes region. The 1-day conference is dedicated to the Great Lakes Ballast Water Conference, "Targeting Ballast Water Technology." The Ballast Water Conference will include speakers from industry, government and non-government organizations. Speakers will address the current development of ballast water treatment research, technology and protocol standards for preventing the introduction of aquatic invasive species into the Great Lakes.

The Forum meeting on September 28 will highlight current efforts of the Committee on Advanced Technology for Navigation Safety, including industry and government speakers on developing navigation technology, Automatic Identification Systems (AIS), and Electronic Chart Display and Information Systems (ECDIS). The Forum will also provide updates from the Canadian Coast Guard, Transport Canada, U.S. Coast Guard, NOAA and the Army Corps of Engineers on regional projects and operations.

Dated: August 23, 2006.

John E. Crowley, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District, Cleveland, Ohio.

[FR Doc. 06-7359 Filed 8-30-06; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5044-N-15]

Notice of Submission of Proposed Information Collection to OMB; Section 8 Management Assessment Program (SEMAP)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* October 30, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name/or OMB Control number and should be sent to: Aneita Waites, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4116, Washington, DC 20410-5000; e-mail Aneita_L_Waites@HUD.gov. This is not a toll-free number. Copies of the proposed forms and other available documents may be obtained from Ms. Waites.

FOR FURTHER INFORMATION CONTACT:

Aneita Waites, (202) 708-0713, extension 4114, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including

through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Section 8 Management Assessment Program (SEMAP).
OMB Approval Number: 2577-0215.
Form Numbers: HUD-42648.
Description of the Need for the Information and its Proposed Use: HUD will use public housing agency annual SEMAP certificates to rate and assess

PHA management capabilities and deficiencies in key program areas. PHAs designated as troubled must implement plans for improvements.

Members of the Affected Public: Respondents: State, Local, or Tribal Governments.

Frequency of Submission: Annually.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	2,565		1		13.5		34,720

Total Estimated Burden Hours: 34,720.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: August 24, 2006.

Merrie Nichols-Dixon,

Acting Deputy Assistant Secretary, Policy, Program and Legislative Initiatives.

[FR Doc. 06-7361 Filed 8-30-06; 8:45 am]

BILLING CODE 4210-67-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4883-N-03]

HUD Multifamily Rental Project and Health Care Facility Closing Documents; Status on Finalizing Closing Documents and Announcement of Meeting

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice; announcement of meeting.

SUMMARY: This notice responds to recent inquiries to the Department about the status of HUD's update of a comprehensive set of closing forms and documents for use in the Federal Housing Administration (FHA) multifamily rental project and health care facility (excluding hospitals) mortgage insurance programs. On August 2, 2004, HUD issued for review and public comment 36 proposed revised closing forms. The public comment period closed on October 1, 2004, and HUD received submissions from 25 commenters. This notice advises the housing industry and interested members of the public that these documents remain in development and are not ready for issuance.

Although the closing documents remain in development, HUD

understands the interest and concern of industry and other interested members of the public regarding the timetable for release of these documents in final form by HUD and the effective date of such forms. To address the interest and concerns regarding the status of development, this notice describes policy decisions that have been made on the closing documents, and the processes, which these documents must still undergo before final issuance. In addition to this notice, HUD will conduct a meeting, on Thursday, September 21, 2006, at HUD Headquarters, to address questions about the decisions that have been made and the processes that these documents must undergo before final issuance. HUD is inviting to this meeting, the 25 commenters, and, subject to room capacity limitations, other interested members of the public. HUD also will make phone lines available to expand the capacity of the members of the public that may participate in this meeting.

The purpose of this meeting is *not* for the purpose of reopening the public comment period on the closing documents. HUD will not accept new comments at the meeting, either orally or in writing, nor will HUD engage in a discussion of issues still under consideration. The purpose of the meeting is solely to brief the commenters and interested members of the public on the status of development of the revised closing forms. HUD believes that a briefing on the process of development of the forms will assist all interested parties in understanding the stages of review these forms must undergo prior to issuance. HUD intends to finalize and then implement the revised closing forms in calendar year 2007.

DATES: HUD will conduct the Closing Documents meeting on September 21, 2006.

ADDRESSES: The Closing Documents meeting will be held at 2 p.m. (Eastern

time) on September 21, 2006, at HUD Headquarters for which the address is the Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC.

Members of the public who are interested in attending this meeting in person or participating by phone should submit a request to HUD at the following e-mail address: FHAClosingDocsMeeting@hud.gov.

HUD will strive to honor requests on a first-come first-serve basis. However, HUD is also interested in ensuring that participation in this meeting, whether in person or by phone, reflects fair representation of the various sectors of the industry that will be affected by these closing documents. HUD therefore asks that parties submitting requests to participate in this meeting identify the basis for their interest in these closing documents.

Those who are confirmed to participate in this meeting, either in person or by phone, will receive additional information from HUD on how to participate in the meeting. Visitors attending the meeting will need to adhere to the security procedures of the HUD building.

FOR FURTHER INFORMATION CONTACT: Charles H. ("Hank") Williams, Office of Housing, Deputy Assistant Secretary for Multifamily Housing Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 6106, Washington, DC 20410-0500; telephone (202) 708-2495 (this is not a toll-free number); John J. Daly, Associate General Counsel for Insured Housing, Office of the General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 9226, Washington, DC 20410-0500; telephone (202) 708-1274 (this is not a toll-free number). Persons with hearing or speech disabilities may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877-8339.

To Request Participation in the Meeting: A request to participate in the

meeting must be submitted to the following e-mail address:
FHAClosingDocsMeeting@hud.gov.

SUPPLEMENTARY INFORMATION:

Background

On August 2, 2004, HUD published in the **Federal Register** (69 FR 42614) a notice that advised that, consistent with the Paperwork Reduction Act of 1995, HUD was publishing for public comment a comprehensive set of revised closing forms and documents for use in the FHA multifamily rental project and health care facility (excluding hospitals) programs. In addition to meeting the requirements of the Paperwork Reduction Act, HUD advised that it was seeking public comment for the purpose of receiving input from the lending industry and other interested parties in HUD's development and adoption of a set of instruments that offer the requisite protection to all parties in these FHA-insured mortgage programs while also being consistent with modern real estate practice and mortgage lending laws and procedures. The August 2, 2004, notice advised that HUD's closing forms were significantly outdated and needed a thorough review and update to reflect current HUD policies as well as current practices in real estate and mortgage financing transactions.

The August 2, 2004, notice followed an earlier informal solicitation of public comment on proposed revisions to the closing documents that were posted on HUD's Web site in March 2000. In response to the many comments received from the 2000 solicitation of public comment, significant revisions were made to the proposed closing documents and these revised documents were published in the **Federal Register** on August 2, 2004, for review and public comment.

Recent inquiries to HUD have asked whether issuance of these closing documents in final form is imminent, whether the revised documents will be required to be utilized upon 30 days following issuance in final form, and if so, that there would be sufficient time for industry to prepare for using the new closing documents.

Status of Update of Closing Documents

In response to the August 2, 2004, notice, HUD received 25 timely public comments. Although that is not a high number of public comments, the comments were very lengthy and detailed, and presented many individual comments and issues for HUD to consider in its revision of the closing documents, which had not been significantly revised in approximately

20 years. Several commenters offered their own edited versions of the closing documents with alternative language for HUD to consider. Additionally, changes suggested by commenters for certain documents would require changes to be made to other documents, and therefore a careful review of several documents was needed at times when a change was recommended only to one document.

The issuance of the closing documents in final form is not imminent. Although all comments submitted to HUD have been reviewed very carefully, the closing documents must still be reviewed by appropriate offices within HUD and then submitted to the Office of Management and Budget (OMB) for review. HUD recognizes the importance of these procedural safeguards and is committed to ensuring that the industry has sufficient time to make the transition to the new closing documents once they are issued in final.

In response to public comments on the proposed documents, the policy decisions that have been made include:

1. Health Care Facility (e.g., nursing homes) documents will be published again for public comment (e.g., on issues such as treatment of accounts receivable financing) as proposed documents;
2. Revised documents other than health care facilities (e.g., rental projects) will be published as final documents without further comment;
3. All revised documents will be updated periodically (e.g., every three (3) years to coincide with renewal of OMB numbers under the Paperwork Reductions Act);
4. Updates to revised documents, which are needed more frequently than periodic updates, will be made on a case-by-case basis;
5. Recourse liability for Key Principals will not be a HUD requirement, as proposed in the documents in the August 2, 2004, **Federal Register** notice;
6. A clear definition of "HUD Directives" will be provided; and
7. The effective date for the revised documents will provide time for processing pending FHA mortgage insurance applications as well as for training on the revised documents.

HUD has received requests that before issuing the final versions of the closing documents, HUD allow the industry and interested members of the public to review and comment on the documents a second time. Except for health care facility documents, HUD presently has no plans for a second round of comments (or a third round, considering the solicitation of comments in March 2000). Other inquirers have asked that,

if there were no further opportunity for public comment, would HUD provide a briefing and respond to questions on the revised documents before they are required to be used. HUD has provided briefings on other rules or policies of widespread interest or significant impact before proceeding to implementation, and believes that a briefing may be appropriate for these closing documents.

September 21, 2006, Meeting

In consideration of the widespread interest about the revised closing documents as well as substantial concern about the changes that HUD may make in the final documents, HUD has decided it will hold a briefing on the status of revisions to the closing documents, primarily to outline the procedural steps remaining in the development process. HUD has given serious consideration to the many comments received on the proposed revised documents issued in August 2004. As an expression of its appreciation to all those who took the time to submit careful and thoughtful comments, HUD invites the 25 commenters to the September 21, 2006, meeting. The names of the commenters are attached as an appendix to this notice.

HUD reiterates that the purpose of this meeting is not to solicit or accept new and/or additional public comments of the closing documents, generally, or the specific policy decisions listed above.

HUD is conscientious in its effort to keep the industry apprised of its progress and included in its deliberative process. In addition to the invitation to the commenters to attend the meeting on the closing documents, the meeting will be open to interested members of the public as described in the **ADDRESSES** section of this notice above. The names of all participants in the September 21, 2006, meeting will be posted to the HUD Web site, following the meeting, and HUD also will post a summary of this meeting.

Dated: August 24, 2006.

Brian D. Montgomery,
Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix—List of Commenters

1. Hirschler Fleischer, PC, Richmond, VA.
2. Fenigstein & Kaufman, PC, Los Angeles, CA.
3. Capital Funding Group, Inc., Baltimore, MD.
4. Berkshire Mortgage Finance, Bethesda, MD.
5. CW Capital, Needham, MA.

6. Alan D. Ross, Law Corporation, Encino, CA.
7. Kantor, Taylor, McCarthy, PC, Seattle, WA.
8. CNA Surety, Sioux Falls, SD.
9. PNC Multifamily Capital, San Francisco, CA.
10. National Association of Home Builders, Washington, DC.
11. Vorys, Sater, Seymour and Pease, LLP, Cincinnati, OH.
12. National Leased Housing Association, Washington, DC.
13. The Surety Association of America, Washington, DC.
14. Goulston & Storrs, Counsellors at Law, Washington, DC.
15. Nixon Peabody LLP, Washington, DC.
16. Coan & Lyons, Washington, DC.
17. AGM Financial Services, Inc., Baltimore, MD.
18. Boston Capital, Boston, MA.
19. Highland Mortgage Company, Raleigh, NC.
20. Guardian Management, Portland, OR.
21. American Arbitration Association, New York, NY.
22. P/R Mortgage & Investment Corp., Carmel, IN.
23. Committee on Healthcare Financing, Washington, DC.
24. Mortgage Bankers Association, Washington, DC.
25. M&T Realty Capital Corporation, Baltimore, MD.

[FR Doc. 06-7267 Filed 8-30-06; 8:45 am]

BILLING CODE 4210-67-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Liquor Control Ordinance of the Pawnee Nation of Oklahoma

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Liquor Control Ordinance of the Pawnee Nation of Oklahoma (Tribe). The Ordinance regulates and controls the possession, sale and consumption of liquor within the Pawnee Nation of Oklahoma including all land within the definition of "Indian country" as established and described by Federal law under the jurisdiction of the Tribe. This Ordinance allows for possession and sale of alcoholic beverages within the Pawnee Nation, and increases the ability of the tribal government to control the Tribe's liquor distribution and possession. At the same time it will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective on August 31, 2006.

FOR FURTHER INFORMATION CONTACT:

Terry Bruner, Deputy Regional Director, Southern Plains Regional Office, Bureau of Indian Affairs, WCD Office Complex, P.O. Box 368, Anadarko, OK 73005; Telephone (405) 247-1668; Fax: (405) 247-5611 or 247-9240; or Ralph Gonzales, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513-MIB, Washington, DC 20240; Telephone: (202) 513-7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83-277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice v. Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Pawnee Business Committee of the Pawnee Nation of Oklahoma (Business Committee) adopted its Liquor Ordinance by Resolution No. 02-01 on January 11, 2002. This is the first Liquor Ordinance passed by the Tribe. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within tribal lands of the Tribe.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Pawnee Nation of Oklahoma was duly adopted by the Business Committee on January 11, 2002.

Dated: August 23, 2006.

Michael D. Olsen,

Principal Deputy Assistant Secretary—Indian Affairs.

The Pawnee Nation of Oklahoma Liquor Ordinance reads as follows:

Pawnee Nation of Oklahoma Liquor Control Providing for the Regulation of Beer and Alcohol in the Indian Country of the Pawnee Nation of Oklahoma

Article I. Declaration of Public Policy and Purpose

Pursuant to Article IV, Section 1 of the Constitution of the Pawnee Nation of Oklahoma, the Pawnee Business Council is the supreme governing body of the Pawnee Nation of Oklahoma.

Pursuant to Article IV, Section 2 of the Constitution of the Pawnee Nation of Oklahoma, the Pawnee Business Council shall exercise all the inherent, statutory, and treaty powers of the Pawnee Nation of Oklahoma by the enactment of legislation, the transaction of business, and by otherwise speaking or acting on behalf of the Pawnee Nation of Oklahoma on all matters which the

Pawnee Nation of Oklahoma is empowered to act.

This document shall be known as the Pawnee Nation of Oklahoma Liquor Control Act. These laws are enacted to regulate the sale and distribution of liquor and beer products on All Properties under the jurisdiction of the Pawnee Nation of Oklahoma, and to generate revenue to fund needed tribal programs and services.

Revenue received by the Tribe under this Act, from whatever source, shall be expended for administrative costs incurred in the enforcement of this Act. Excess funds shall be subject to appropriation by the Pawnee Business Council for essential governmental and social services, including the use of revenues to combat alcohol abuse and its debilitating effects among individuals and family members of the Pawnee Nation of Oklahoma.

The Pawnee Business Council finds that tribal control and regulation of liquor is necessary to protect the health and welfare of tribal members, to address specific concerns relating to alcohol use in Pawnee Nation of Oklahoma Indian Country, and to achieve maximum economic benefit to the Tribe.

The introduction, possession and sale of liquor in Pawnee Nation of Oklahoma Indian Country is a matter of special concern to the Pawnee Business Council.

The Pawnee Business Council finds that a complete ban on liquor within Pawnee Nation of Oklahoma Indian Country is ineffective and unrealistic. However, it recognizes the need for strict regulation and control over liquor transactions within Pawnee Nation of Oklahoma Indian Country because of the many potential problems associated with the unregulated or inadequately regulated sale, possession, distribution and consumption of liquor.

Federal law forbids the introduction, possession, and sale of liquor in Indian Country except when the same is in conformity both with the laws of the State and the Pawnee Nation of Oklahoma, 18 U.S.C. 1161. As such, compliance with this Act shall be in addition to, and not substitute for, compliance with the laws of the State of Oklahoma.

It is in the best interests of the Pawnee Nation of Oklahoma to enact a tribal Act governing liquor sales in Pawnee Nation of Oklahoma Indian Country and which provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of Pawnee Nation of Oklahoma Indian Country. Further, the Tribe has determined that said

purchase, distribution and sale shall take place on designated Pawnee tribal land only.

Article II. Definitions

As used in this title, the following words shall have the following meanings unless the context clearly require otherwise:

(a) *Alcohol*. That substance known as ethyl alcohol, hydrated oxide of ethyl, alcohol, hydrated oxide of ethyl, ethanol, or spirits of wine, from whatever source or by whatever process produced.

(b) *Alcoholic Beverage*. This term is synonymous with the term liquor as defined in paragraph (1)(g) of this Article.

(c) *Bar*. Any establishment with special space and accommodations for the sale of liquor by the glass and for consumption on the premises as herein defined.

(d) *Beer*. Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water and containing the percent of alcohol by volume subject to regulation as an intoxicating beverage in the state where the beverage is located.

(e) *Liquor*. All fermented, spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, a part of which is fermented, and every liquid or solid or semisolid or other substance, patented or not, containing distilled or rectified spirits, potable alcohol, beer, wine, brandy, whiskey, rum, gin, aromatic bitters, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption and any liquid, semisolid, solid, or other substances, which contain more than one-half of one percent of alcohol.

(f) *Liquor Control Commission*. The Pawnee Nation Liquor Control Commission as established by Article III of this Act.

(g) *Liquor Store*. Any store at which liquor is sold and, for the purpose of this Act, includes stores where only a portion of which are devoted to sale of liquor or beer.

(h) *Malt Liquor*. Beer, strong beer, ale, stout or porter.

(i) *Package*. Any container or receptacle used for holding liquor.

(j) *Pawnee Business Council*. The governing body of the Pawnee Nation, as constituted by the Constitution of the Pawnee Nation of Oklahoma.

(k) *Pawnee Nation of Oklahoma Indian Country*. For the purposes of this Act, Pawnee Nation of Oklahoma Indian Country shall mean Indian Country as

defined by 18 U.S.C. 1151 as that term has been defined by courts of competent jurisdiction.

(l) *Public Place*. Federal, State, county, or tribal highways and roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining room of hotels, restaurants, theaters, gaming facilities, entertainment centers, stores, garages, and filling stations which are open to and/or generally used by the public and to which the public is permitted to have generally unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(m) *Sale and Sell*. The exchange, barter and traffic, including the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

(n) *Spirits*. Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent of alcohol by weight.

(o) *Tribal Court*. Refers to the Pawnee Nation of Oklahoma Tribal Court or the court of Indian Offenses.

(p) *Wine*. Any alcoholic beverage obtained by fermentation of the natural contents of fruits, vegetables, honey, milk or other products containing sugar, whether or not other ingredients are added, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than seventeen percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelia, not exceeding seventeen percent of alcohol by weight.

Article III. Pawnee Nation of Oklahoma Liquor Control Commission

(1) There is hereby established a Pawnee Nation of Oklahoma Liquor Control Commission, composed of a three-person committee.

(2) The Liquor Control Commission shall be appointed by the Pawnee Business Council.

(3) The Liquor Control Commission shall meet on call, but not less than once each calendar quarter, provided ten (10) days public notice of its meetings is given.

(4) The Liquor Control Commission shall receive a stipend in lieu of

expenses in an amount set by resolution of the Pawnee Business Council.

(5) Two members of the Liquor Control Commission shall constitute the quorum required to conduct any business.

Article IV. Powers and Duties of the Liquor Control Commission

(1) *Powers and Duties*. In furtherance of this Act, the Liquor Control Commission shall have the following powers and duties:

(a) Publish and enforce rules and regulations adopted by the Pawnee Business Council governing the sale, manufacture, distribution, and possession of alcoholic beverages within Pawnee Nation of Oklahoma Indian Country.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Liquor Control Commission to perform its function.

(c) Issue licenses permitting the sale or manufacture or distribution of liquor within Pawnee Nation of Oklahoma Indian Country.

(d) Hold hearings on violations of this Act or for the issuance of revocation of licenses hereunder.

(e) Bring suit in the Pawnee Nation of Oklahoma Tribal Court or other appropriate court to enforce this Act as necessary.

(f) Determine and seek damages for violation of this Act.

(g) Make such reports as may be required by the Pawnee Business Council.

(h) Collect taxes and fees levied or set by the Pawnee Business Council and keep accurate records, books and accounts.

(i) Adopt procedures which supplement these regulations and facilitate their enforcement. Such procedures shall include limitations on sales to minors, places where liquor may be consumed, identity of persons not permitted to purchase alcoholic beverages, hours and days when outlets may be open for business, and other appropriate matters and controls.

(2) *Limitation on Powers*. In the exercise of its powers and duties under this Act, the Liquor Control Commission and its individual members shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor or from any licensee.

(b) Waive the immunity of the Pawnee Nation of Oklahoma from suit without the express written consent and resolution of the Pawnee Business Council.

(3) *Inspection Rights*. The premises on which liquor is sold or distributed shall

be open for inspection by the Liquor Control Commission and/or its staff at all reasonable times for the purposes of ascertaining whether the rules and regulations of the Pawnee Business Council and this Act are being complied with.

Article V. Sales of Liquor

(1) *License Required.* A person or entity licensed by the Pawnee Nation of Oklahoma may make retail sales of liquor in their facility and the patrons of the facility may consume said liquor within the facility. The introduction and possession of liquor consistent with this Article shall also be allowed. All other purchases and sales of liquor within Pawnee Nation of Oklahoma Indian Country shall be prohibited. Sales of liquor and alcoholic beverages within Pawnee Nation of Oklahoma Indian Country may only be made at businesses that hold a Pawnee Nation of Oklahoma Liquor License.

(2) *Sales for Cash.* All liquor sales within Pawnee Nation of Oklahoma Indian Country shall be on a cash only basis and no credit shall be extended to any person, organization, or entity, except that this provision does not prevent the payment for purchases with use of credit cards such as Visa, Master Card, American Express, etc.

(3) *Sale for Personal Consumption.* All sales shall be for the personal use and consumption of the purchaser. Resale of any alcoholic beverages with Pawnee Nation of Oklahoma Indian Country is prohibited. Any person who is not licensed pursuant to this Act who purchases an alcoholic beverage within Pawnee Nation of Oklahoma Indian Country and sells it, whether in the original container or not, shall be guilty of a violation of this Act and shall be subjected to paying damages to the Pawnee Nation of Oklahoma as set forth herein.

Article VI. Licensing and Application

(1) *Procedure.* In order to control the proliferation of establishments within Pawnee Nation of Oklahoma Indian Country that sell or serve liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within Pawnee Nation of Oklahoma Indian Country must apply to the Liquor Control Commission for a license to sell or serve liquor.

(2) *Application.* Any enrolled member of the Pawnee Tribe twenty-one (21) years of age and older, or an enrolled member of a federally-recognized tribe twenty-one (21) years of age and older, or other person twenty-one years of age and older, may apply to the Liquor Control Commission for a license to sell

or serve liquor. Any person or entity applying for a license to sell or serve liquor within Pawnee Nation of Oklahoma Indian Country must fill in the application provided for this purpose by the Pawnee Nation of Oklahoma and pay such application fee as may be set from time to time by the Pawnee Business Council. Said application must be filled out completely in order to be considered. A separate application and license will be required for each location where the applicant intends to serve liquor.

(3) *Licensing Requirements.* The person applying for such license must make a showing once a year, and must satisfy the Liquor Control Commission that he/she is a person of good moral character, that he/she has never been convicted of violating any of the laws prohibiting the traffic in any spirituous, vinous, fermented or malt liquors; that he or she has never been convicted of violating any of the gambling laws of this State, or any other state, or of this or any other Indian Tribe; that he or she has not had preceding the date of his application for a license, a felony conviction of any of the Laws commonly called "prohibition laws;" and that he or she has not had any permit or license to sell any intoxicating liquors revoked in any county of this State, or any other State, or of any Indian Tribe.

(4) *Processing of Application.* The Liquor Control Commission shall receive and process applications and related matters. All actions by the Liquor Control Commission shall be by majority vote. A quorum of the Liquor Control Commission is that number of members set forth in Article III, paragraph (6) of this Act. The Liquor Control Commission may, by resolution, authorize a staff representative to issue licenses for the sale of liquor and beer products.

(5) *Issuance of License.* The Liquor Control Commission may issue a license if it believes that such issuance is in the best interests of the Pawnee Nation. The purpose of this Act is to permit liquor sales and consumption at facilities located on designated Pawnee Nation of Oklahoma Indian Country lands. Issuance of a license for any other purposes will not be considered to be in the best interests of the Pawnee Nation.

(6) *Period of License.* Each license shall be issued for a period not to exceed one (1) year from the date of issuance.

(7) *Renewal of License.* A licensee may renew its license if the licensee has complied in full with this Act; provided however, that the Liquor Control Commission may refuse to renew a

license if it finds that doing so would not be in the best interests of health and safety of the Pawnee Nation.

(8) *Revocation of License.* The Liquor Control Commission may suspend or revoke a license due to one or more violations of this Act upon notice and hearing at which the licensee is given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

(9) *Hearings.* Within fifteen (15) days after a licensee is mailed written notice of a proposed suspension or revocation of the license, of the imposition of fines or of other adverse action proposed by the Liquor Control Commission under this Act, the licensee may deliver to the Liquor Control Commission a written request for a hearing on whether the proposed action should be taken. A hearing on the issues shall be held before a person or persons appointed by the Liquor Control Commission and a written decision will be issued. Such decisions will be considered final unless an appeal is filed with the Tribal Court within fifteen (15) calendar days of the date of mailing the decision to the licensee. The Tribal Court will then conduct a hearing and will issue an order, which is final with no further right of appeal. All proceedings conducted under all sections of this Act shall be in accord with due process of law.

(10) *Non-transferability of Licenses.* Licenses issued by the Liquor Control Commission shall not be transferable and may only be utilized by the person or entity in whose name it is issued.

Article VII. Taxes

(1) *Sales Tax.* The Liquor Control Commission shall have the authority, as may subsequently be specified under tribal law, to collect tax levied or set by the Pawnee Business Council on each retail sale of alcoholic beverages within Pawnee Nation of Oklahoma Indian Country based upon a percent of the retail sale price. All taxes from the sale of alcoholic beverages within Pawnee Nation of Oklahoma Indian Country shall be deposited in the General Treasury of the Pawnee Nation of Oklahoma.

(2) *Taxes Due.* All taxes for the sale of liquor and alcoholic beverages within Pawnee Nation of Oklahoma Indian Country are due on or before the 15th day of the month following the end of the calendar quarter for which the taxes are due.

(3) *Delinquent Taxes.* Past due taxes shall accrue interest at 2% per month.

(4) *Reports.* Along with payment of the taxes imposed herein, the taxpayers

shall submit, in the form specified by the Liquor Control Commission, a quarterly accounting of all income from the sale or distribution of liquor, as well as for the taxes collected.

(5) *Audit.* As a condition of obtaining a license, an applicant must agree to the review or audit of its books and records relating to the sale of liquor and alcoholic beverages within Pawnee Nation of Oklahoma Indian Country. Said review or audit may be done periodically or when deemed necessary by the Tribe, to verify the accuracy of reports.

Article VIII. Rules, Regulations and Enforcement

(1) In any proceeding under this Act, conviction of one unlawful sale or distribution of liquor shall establish prima facie intent of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this Act.

(2) Any person who shall in any manner sell or offer for sale or distribution or transport liquor in violation of this Act shall be subject to civil damages assessed by the Liquor Control Commission.

(3) Any person within the boundaries of Pawnee Nation Indian Country who buys liquor from any person other than a properly licensed facility shall be guilty of a violation of this Act.

(4) Any person who keeps or possesses liquor upon his person or in any place or on premises conducted or maintained by his principal or agent with the intent to sell or distribute it contrary to the provisions of this Article, shall be guilty of a violation of this Act.

(5) Any person who knowingly sells liquor to a person under the influence of liquor shall be guilty of a violation of this Act.

(6) Any person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who shall knowingly permit any person to drink liquor in any public conveyance shall be guilty of an offense. Any person who shall drink liquor in a public conveyance shall be guilty of a violation of this Act.

(7) No person under the age of twenty-one (21) years shall consume, acquire or have in his possession any liquor or alcoholic beverage. No person shall permit any other person under the age of twenty-one (21) years to consume liquor on his premises or any premises under his control. Any person violating this prohibition shall be guilty of a separate violation of this Act for each and every drink so consumed.

(8) Any person who shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Act for each sale or drink provided.

(9) Any person who transfers in any manner an identification of age to a person under the age of twenty-one (21) years for the purpose of permitting such person to obtain liquor shall be guilty of an offense; provided, that corroborative testimony of a witness other than the underage person shall be a requirement of finding a violation of this Act.

(10) Any person who attempts to purchase an alcoholic beverage through the use of false or altered identification that falsely purports to show the individual to be over the age of twenty-one (21) years shall be guilty of violating this Act.

(11) Any person guilty of violation of this Act shall be liable to pay the Pawnee Nation of Oklahoma the amount of \$1,000 per violation as civil damages to defray the Pawnee Nation of Oklahoma's cost of enforcement of this Act.

(12) When requested by the provider of liquor, any person shall be required to present official documentation of the bearer's age, signature and photograph. Official documentation includes one of the following:

(a) Driver's license or identification card issued by any state department of motor vehicles;

(b) United States Active Duty Military identification card; or

(c) Passport.

(13) The consumption or possession of liquor on premises where such consumption or possession is contrary to the terms of this Act will result in a declaration that such liquor is contraband. Any tribal agent, employee or officer who is authorized by the Liquor Control Commission to enforce this Act shall seize all contraband and preserve it in accordance with provisions established for the preservation of impounded property. Upon being found in violation of the Act, the party owning or in control of the premises where contraband is found shall forfeit all right, title and interest in the items seized which shall become the property of the Pawnee Nation of Oklahoma.

Article IX. Abatement

(1) Any room, house, building, vehicle, structure, or other place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Act or of any other tribal law relating to the manufacture, importation, transportation, possession,

distribution and sale of liquor, and all property kept in and used in maintaining such place, is hereby declared a nuisance.

(2) The Chairman of the Liquor Control Commission or, if the Chairman fails or refuses to do so, by a majority vote, the Liquor Control Commission shall institute and maintain an action in the Tribal Court in the name of the Pawnee Nation of Oklahoma to abate and perpetually enjoin any nuisance declared under this Article. In addition to the other remedies at tribal law, the Tribal Court may also order the room, house, building, vehicle, structure, or place closed for a period of one (1) year or until the owner, lessee, tenant, or occupant thereof shall give bond or sufficient sum from \$1,000 to \$15,000, depending upon the severity of past offenses, the risk of offenses in the future, and any other appropriate criteria, payable to the Pawnee Nation of Oklahoma and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Act or of any other applicable tribal laws. If any conditions of the bond be violated, the bond may be applied to satisfy any amounts due to the Pawnee Nation of Oklahoma under this Act.

(3) In all cases where any person has been found in violation of this Act relating to the manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a nuisance any real estate or other property involved in the violation of the Act and violation of this Act shall be prima facie evidence that the room, house, vehicle, building, structure, or place against which such action is brought is a public nuisance.

Article X. Revenue

Revenue provided for under this Act, from whatever source, shall be expended for administrative costs incurred in the enforcement of this Act. Excess funds shall be subject to appropriation by the Business Council for essential and social services.

Article XI. Severability and Effective Date

(1) If any provision under this Act is determined by court review to be invalid, such determination shall not be held to render ineffectual the remaining portions of this Act or to render such provisions inapplicable to other persons or circumstances.

(2) This Act shall be effective on certification by the Secretary of the

Interior and its publication in the **Federal Register**.

(3) Any and all previous liquor control enactments of the Pawnee Business Council which are inconsistent with this Act are hereby rescinded.

Article XII. Amendment and Construction

(1) This Act may only be amended by vote of the Pawnee Business Council.

(2) Nothing in this Act shall be construed to diminish or impair in any way the rights or sovereign powers of the Pawnee Nation or its Tribal government other than the due process provision at Article VI (8), which provides that licensees have been revoked or suspended may seek review of that decision in Tribal Court.

[FR Doc. 06-7286 Filed 8-30-06; 8:45 am]

BILLING CODE 4310-4J-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK-964-1410-HY-P; F-14863-B]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Hee-yea-lingde Corporation. The lands are located in the vicinity of Grayling, Alaska, within the following townships:

T. 29 S., R. 6 W., Kateel River Meridian, Alaska
Secs. 1, 3, and 4.

Containing approximately 1,159 acres.

T. 34 N., R. 55 W., Seward Meridian (SM), Alaska

Secs. 32 through 35.

Containing approximately 2,325 acres.

T. 31 N., R. 56 W., SM

Secs. 5 through 8.

Containing approximately 2,410 acres.
Aggregating approximately 5,895 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited, when the surface estate is conveyed to Hee-yea-lingde Corporation. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until October 2, 2006 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513-7599.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907-271-5960, or by e-mail at ak.blm.conveyance@ak.blm.gov. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Branch of Adjudication II.

[FR Doc. 06-7274 Filed 8-30-06; 8:45 am]

BILLING CODE 4310-SS-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CACA-47658, CA-670-5101-ER-B204]

Notice of Intent To Prepare a Joint Environmental Impact Statement/ Report and Proposed Land Use Plan Amendment for the Proposed Sunrise Powerlink Project, San Diego and Imperial Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended, notice is hereby given that the Bureau of Land Management (BLM), together with the California Public Utilities Commission (CPUC), intend to prepare a joint Environmental Impact Statement and Environmental Impact Report (EIS/EIR), and a proposed land use plan amendment to the 1980 California Desert Conservation Area Plan, (CDCA Plan), as amended for the Sunrise Powerlink Project (Project) proposed by San Diego Gas & Electric Company (SDG&E). The project would consist of the construction and operation of one new 500 kilovolt (kV) and three new 230 kV transmission lines in Imperial and San Diego Counties. BLM is the lead Federal agency for the preparation of this EIS in compliance with the

requirements of NEPA. CPUC is the lead State of California agency for the preparation of this EIR in compliance with the requirements of the California Environmental Quality Act (CEQA).

DATES: This notice initiates the public participation and scoping processes for the EIS/EIR. A public scoping period of at least 30 days will commence on the date this notice is published in the **Federal Register**. To provide the public an opportunity to review the proposal and project information, BLM and CPUC expects to hold at least three public meetings, held at locations in Imperial and San Diego Counties. All public meetings will be announced through the local news media, mailings, and the BLM Web site (<http://www.ca.blm.gov>) at least 15 days prior to the event. Comments on issues, potential impacts, or suggestions for additional alternatives can be submitted in writing to the address listed below. In order to be included in the Draft EIS/EIR all comments must be received within 30 days of this publication or 15 days after the last public meeting is held, whichever is the later.

ADDRESSES: Comments and other correspondence should be sent to the BLM El Centro Field Office, attention Field Manager, 1661 S. 4th Street, El Centro, CA 92243; or by fax: (760) 337-4490. Documents pertinent to this proposal, including comments with the names and addresses of respondents, will be available for public review at the BLM El Centro Field Office, during regular business hours of 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the Draft EIS/EIR. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. BLM will not consider anonymous comments. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Lynda Kastoll, Realty Specialist, at the BLM El Centro Field Office, same address as listed above; Phone: (760) 337-4421; e-mail: lkastoll@ca.blm.gov.

SUPPLEMENTARY INFORMATION: SDG&E is proposing a new 500 kV transmission

line from the existing Imperial Valley Substation near the community of El Centro, to a new "Central" substation to be located somewhere in central San Diego County. SDG&E also proposes to build two new 230 kV lines connecting the Central substation to the existing Sycamore Canyon substation and one new 230 kV line between the Sycamore Canyon substation and the existing Peñasquitos Substation. The total length of the Project is estimated to be approximately 130 to 150 miles, of which roughly 40 to 60 miles would be located in Imperial County. The proposed 500 kV line transmission line would be constructed in part on BLM administered lands within the California Desert Conservation Area, as managed by the El Centro Field Office, and within San Diego County, as managed by the Palm Springs/South Coast Field Office. The remainder of the line would cross lands in various ownership, including private, State, and local agencies.

The proposed transmission line(s) will utilize 120–170 foot tall structures, spaced approximately 700–1,600 feet apart. It would occupy a right-of-way of approximately 200–300 feet in width. Existing disturbed corridors would be utilized to the extent feasible, to minimize potential environmental impacts. Where possible, SDG&E anticipates locating new facilities within or along existing rights-of-way. The 500 kV transmission line would traverse approximately 30 to 35 miles of BLM administered lands in Imperial County, and approximately one mile in San Diego County. A plan amendment to the CDCA Plan (1980) will be required because the Project would deviate from BLM designated utility corridors within the California Desert Conservation Area (Imperial County).

Through public scoping, BLM expects to identify various issues, potential impacts and mitigation measures, and alternatives to the proposed action. At present, BLM has identified a preliminary list of issues that will need to be addressed in this analysis, including the impacts of the proposed project on visual resources, agricultural lands, air quality, plant and animal species including special status species, cultural resources, and watersheds. Other issues identified by BLM are impacts to the public in the form of noise, traffic, accidental release of hazardous materials, and impacts to urban, residential, and recreational areas. Members of the public are invited to identify additional issues and concerns to be addressed.

BLM will analyze the proposed action and no action alternatives, as well as

other possible alternatives to the project. Your comments concerning the proposed project and feasible alternative locations, possible mitigation measures, and any other information relevant to the proposed action are encouraged. Additional informational meetings may be conducted throughout the process to keep the public informed of the progress of the EIS/EIR.

Dated: July 20, 2006.

J. Anthony Danna,

Deputy State Director, Natural Resources (CA-930).

[FR Doc. E6-14502 Filed 8-30-06; 8:45 am]

BILLING CODE 4310-40-P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items: Thomas Burke Memorial Washington State Museum, University of Washington, Seattle, WA; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the intent to repatriate cultural items in the possession of the Thomas Burke Memorial Washington State Museum (Burke Museum), University of Washington, Seattle, WA, that meet the definition of "unassociated funerary objects" under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

This notice replaces a Notice of Intent To Repatriate Cultural Items previously published in the **Federal Register** on December 28, 2005, (FR Doc. 05-24509, pages 76865–76866). This notice replacement is necessary, as reevaluation of the collection has resulted in a change in the number and description of the cultural items.

The 13 cultural items are 7 partial beaded necklaces (beads include glass trade beads, shell beads, and copper beads), 1 bracelet fragment, 3 sets of beads (1 of which includes 8 small bone fragments), 1 piece of twine, and 1 petrified twig.

At an unknown date, the 13 cultural items were removed from a small island

just upriver from Blalock Island in the lower Columbia River, Benton County, WA, by Mr. John Tomaske, an archeology graduate student of the University of Washington. In 1960, the cultural items were donated to the University of Washington Department of Anthropology, and subsequently transferred to the Burke Museum and accessioned in 1973 (Burke Accn. 1973–8). Accession information indicated the presence of burials at the site. According to Mr. Tomaske, the burials had previously been disturbed and exhibited evidence of cremation. The human remains are not in the possession of the Burke Museum.

The small island just upriver from Blalock Island described in museum records could be Cook's Island, which was formerly recorded as containing cremation burials. Archaeological evidence for Cook's Island supports the presence of cremation burials. Cremation and burial on islands in the Columbia River were customary practices of the Umatilla. It was also the practice of the Umatilla that individuals were buried with many of their personal belongings. The area surrounding Blalock Island was heavily utilized by the Umatilla, including ama'amapa, which served as a habitation area, burial site, and stronghold from enemies. On Blalock Island, and along the Washington side of the Columbia River, the Umatilla had a permanent camp, Yep-po-luc-sha (or Yep-po-kuc-sha), as well as a fishing area.

Burial practices and funerary objects described are consistent with historic practices of the present-day Confederated Tribes of the Umatilla Reservation, Oregon. The area surrounding Blalock Island is within the aboriginal territory of the Confederated Tribes of the Umatilla Reservation, Oregon and the land claims boundaries of the Indian Claims Commission decision of 1960.

Officials of the Burke Museum have determined that, pursuant to 25 U.S.C. 3001(3)(B), the 13 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. 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 funerary objects and the Confederated Tribes of the Umatilla Reservation, Oregon.

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Peter Lape, Burke Museum, University of Washington, Box 353010, Seattle, WA 98195-3010, telephone (206) 685-2282, October 2, 2006. Repatriation of the unassociated funerary objects to the Confederated Tribes of the Umatilla Reservation, Oregon may proceed after that date if no additional claimants come forward.

The Burke Museum is responsible for notifying the Confederated Tribes of the Umatilla Reservation, Oregon that this notice has been published.

Dated: August 14, 2006.
Sherry Hutt,
Manager, National NAGPRA Program.
 [FR Doc. 06-7278 Filed 8-30-06; 8:45 am]
BILLING CODE 4312-50-M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731-TA-344, 391-A, 392-A and C, 393-A, 394-A, 396, and 399-A (Second Review)]

Certain Bearings From China, France, Germany, Italy, Japan, Singapore, and the United Kingdom

Determinations

On the basis of the record ¹ developed in the subject five-year reviews, the

United States International Trade Commission (Commission) determines,² pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on the following types of bearings from China, France, Germany, Japan, and the United Kingdom would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Product	Country	Investigation No.
Tapered roller bearings	China ³	731-TA-344
Ball bearings	France	731-TA-392-A
Ball bearings	Germany	731-TA-391-A
Ball bearings	Italy	731-TA-393-A
Ball bearings	Japan	731-TA-394-A
Ball bearings	United Kingdom	731-TA-399-A

The Commission also determines that revocation of the antidumping duty orders on the following types of

bearings from France and Singapore would not be likely to lead to continuation or recurrence of material

injury to an industry in the United States within a reasonably foreseeable time.

Product	Country	Investigation No.
Ball bearings	Singapore ⁴	731-TA-396
Spherical plain bearings	France ⁵	731-TA-392-C

Background

The Commission instituted these reviews on June 1, 2005 (70 FR 31531) and determined on September 7, 2005 that it would conduct full reviews (70 FR 54568, September 15, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on October 18, 2005 (70 FR 60556).⁶ The hearing was held in Washington, DC, on May 2, 2006, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the

Secretary of Commerce on August 25, 2006. The views of the Commission are contained in USITC Publication 3876 (August 2006), entitled *Certain Bearings from China, France, Germany, Italy, Japan, Singapore, and the United Kingdom: Investigation Nos. 731-TA-344, 391-A, 392-A and C, 393-A, 394-A, and 399-A (Second Review)*.

By order of the Commission.
 Issued: August 28, 2006.
Marilyn R. Abbott,
Secretary to the Commission.
 [FR Doc. 06-7350 Filed 8-30-06; 8:45 am]
BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States v. Howard McKenzie & EBT Property Holding Co., Inc.*, No. 2:06-CV-02353, was lodged with the United States District Court for the District of South Carolina on August 23, 2006.

The proposed Consent Decree concerns a complaint filed by the United States against Howard McKenzie & EBT Property Holding Co., Inc., pursuant to sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311 and 1344, with respect to Defendants' alleged violations of the Clean Air Act by discharging pollutants into waters of

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commission Deanna Tanner Okun not participating.

³ Chairman Daniel R. Pearson dissenting.

⁴ Commissioner Charlotte R. Lane dissenting.

⁵ Commissioners Stephen Koplán and Charlotte R. Lane dissenting.

⁶ The schedule of the Commission's reviews and of the public hearing was revised on December 9, 2005 (70 FR 75482, December 20, 2005) and on May 4, 2006 (71 FR 27513, May 11, 2006).

the United States without a permit. The proposed Consent Decree resolves these allegations by requiring the restoration of the wetlands at issue and the payment of a civil penalty. The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Marvin J. Caughman, Assistant United States Attorney, Wachovia Building, Suite 500, 1441 Main Street, Columbia, South Carolina 29201 and refer to *United States v. Howard McKenzie & EBT Property Holding Co., Inc.*, No. 2:06-CV-02353.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of South Carolina, United States Courthouse, 901 Richland Lane, Columbia, South Carolina. In addition, the proposed Consent Decree may be viewed at <http://www.usdoj.gov/enrd/open.html>.

Stephen Samuels,

Assistant Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. 06-7265 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Notice is hereby given that on August 23, 2006 a proposed Consent Decree in *United States v. Mallinckrodt et al.*, Civil Action No. 4:02CV1488, was lodged with the United States District Court for the Eastern District of Missouri. In this action the United States sought recovery of response costs incurred by the Environmental Protection Agency at the Great Lakes Container Corporation Superfund Site located in St. Louis, Missouri. The Consent Decree requires Defendant Shell Oil Company to reimburse the United States \$228,630.00 in response costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, and should refer to *United States v. Mallinckrodt, et al.* D.J. Ref. 90-11-3-07280. The Consent Decree

may be examined at the Office of the United States Attorney, Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, 20th Floor, St. Louis, MO 63102, and at U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66025. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site, to http://www.usdoj.gov/enrd/Consent_Decree.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611 or by faxing or e-mailing a request to Tonia Fleetwood (tonia.fleetwood@usdoj.gov), fax no. (202) 514-0097, phone confirmation number (202) 514-1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of \$4.75 (without attachments) or \$5.75 (with attachments) for *United States v. Mallinckrodt, et al.* (25 cents per page reproduction cost) payable to the U.S. Treasury.

Bruce Gelber,

Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06-7295 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Extension of Comment Period on Consent Decree Under the Clean Water Act

Under 28 CFR 50.7, notice is hereby given that the comment period for the proposed Consent Decree lodged on June 22, 2006, with the United States District Court for the District of Puerto Rico in *United States v. Puerto Rico Aqueduct and Sewer Authority (PRASA)*, Civil Action No. 06-1624 (SEC), is being extended from August 7, 2006 through September 15, 2006. The original notice of this proposed settlement, which summarizes the settlement and identifies where copies of the Consent Decree may be obtained, was published in the **Federal Register** on July 7, 2006, Vol. 71, No. 130, Pg. 38660-38661. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20004-7611, and should refer to *United States v. PRASA*, Civil Action No. 06-1624 (SEC), D.J. Ref. 90-5-1-1-08385, and

should be received by September 15, 2006.

Bruce S. Gelber,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06-7296 Filed 8-30-06; 8:45am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on August 15, 2006, a proposed Consent Decree in *United States v. The Sherwin-Williams Company et al.*, Civil Action Number 00-2064, was lodged with the United States District Court for the Central District of Illinois.

The proposed consent decree resolves claims against The Sherwin-Williams Company, The Glidden Company, and Speciality Coatings Company, Inc. (collectively, "Defendants"), under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9607, for the reimbursement of response costs incurred and to be incurred by EPA, in connection with the release and threatened release of hazardous substances at the Cross Brothers Pail Recycling Superfund Site in Pembroke Township, Kankakee County, Illinois ("the Site").

Under the proposed Consent Decree, Defendants will reimburse the United States \$200,000 in outstanding past response costs at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, with a copy to Matthew A. Fogelson, Trial Attorney, U.S. Department of Justice, Environment and Natural Resources Division, Environmental Enforcement Section, 301 Howard Street, Suite 1050, San Francisco, CA 94105, and should refer to *United States v. The Sherwin-Williams Company et al.*, DOJ Ref. #90-11-2-477/1. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States

Attorney, 201 S. Vine Street, Suite 226, Urbana, Illinois 61801, and the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. During the public comment period, the Consent Decree may also be examined on the following Department of Justice Web site: http://www.usdoj.gov/enrd/Consent_Decrees.html. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044-7611, or by faxing or e-mailing a request to Tonia Fleetwood, tonia.fleetwood@usdoj.gov, Fax No. (202) 514-0097, phone confirmation number (202) 514-1547. To obtain a copy of the Consent Decree from the Consent Decree Library, please enclose a check in the amount of \$4.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

W. Benjamin Fisher,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06-7264 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-15-M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140-0075]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Transactions among licensees/permittees, limited.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 81, pages 24867-24868 on April 27, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 2, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public

burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)-395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Transactions Among Licensees/ Permittees, Limited.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: A licensed importer, licensed manufacturer, or licensed dealer may distribute explosive materials to a holder of a limited permit if the holder of such permit is a resident of the same State in which the licensee's business premise is located. A holder of a limited permit may receive explosive materials on no more than 6 separate occasions during the one-year period of the permit. A holder of a user permit may dispose of surplus stocks of explosive materials to the holder of a

limited permit who is a resident of the same State in which the premises of the holder of the user permit are located. A licensed importer, licensed manufacturer, licensed dealer or permittee, must, prior to delivering the explosive materials, obtain from the limited permittee a current list of the persons who are authorized to accept delivery of the explosive materials on behalf of the limited permittee.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents, who will complete the form within approximately 30 minutes.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 25,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 24, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6-14483 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number: 1140-0078]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Limited permittee transaction record.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 81, pages 24861-24862 on April 27, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 2, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Limited Permittee Transaction Record.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals or households. Abstract: The purpose of this collection is to ensure that records are available for tracing explosive materials when necessary and to ensure that limited permittees do not exceed their

maximum allotment of receipts of explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 5,000 respondents, who will spend approximately 5 minutes to receive, file, and forward the appropriate documentation.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 12,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 24, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6-14484 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number: 1140-0079]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Transactions among licensee/permittees and transactions among licensees and holders of user permits.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 81, page 24861 on April 27, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 2, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)-395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Transactions Among Licensee/ Permittees and Transactions Among Licensees and Holders of User Permits.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The Safe Explosives Act requires that an explosives distributor must verify the identity of the purchaser; an explosives purchaser must provide a copy of the license/permit to the distributor prior to the purchase of explosive materials; possessors of explosive materials must

provide a list of explosive storage locations; purchasers of explosive materials must provide a list of representatives authorized to purchase on behalf of the distributor; and an explosive purchaser must provide a statement of intended use of the explosives.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 50,000 respondents, who will take 30 minutes to comply with the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 25,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 24, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6-14485 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number: 1140-0081]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Appeals of background checks.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 81, pages 24864-24865 on April 27, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 2, 2006. This

process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Appeals of Background Checks.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Individuals. Abstract: The purpose of the collection is to allow applicants, employees, or other affected personnel the opportunity to appeal in writing the results of a background check conducted to satisfy their eligibility to possess explosive materials.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 500 respondents will spend 2 hours completing the required documentation for the appeal.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 1,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 24, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6-14487 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number: 1140-0082]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Certification of knowledge of state laws, submission of Water Pollution Act.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 81, page 24865 on April 27, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 2, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of

Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395-5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Certification of Knowledge of State Laws, Submission of Water Pollution Act.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. Other: None. Abstract: Persons who apply for a permit to purchase explosives intrastate must certify in writing that he is familiar with and understands all published State laws and local ordinances relating to explosive materials for the location in which he intends to do business and submit the certificate required by section 21 of the Federal Water Pollution Control Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to*

respond: There will be an estimated 50,000 respondents, will take a estimated time of 30 seconds to submit the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 416 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 24, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6-14488 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number: 1140-0083]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Application for limited permit.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 81, pages 24865-24866 on April 27, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until October 2, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Additionally, comments may be submitted to OMB via facsimile to (202)-395-7285.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application for Limited Permit.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: Any person who intends to acquire explosive materials from a licensee or permittee in the State in which that person resides on no more than 6 occasions per year, must obtain a limited permit from ATF.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 40,000 respondents will take 30 seconds to submit the required information.

(6) *An estimate of the total burden (in hours) associated with the collection:* There are an estimated 2,000 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States

Department of Justice, Policy and Planning Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: August 24, 2006.

Lynn Bryant,

Department Clearance Officer, United States Department of Justice.

[FR Doc. E6-14489 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-FY-P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[OMB Number 1117-0038]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: Recordkeeping for digital certificates of information.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until October 30, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Mark W. Caverly, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Reporting and recordkeeping for digital certificates.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:*

Form Numbers:

DEA Form 251: CSOS DEA Registrant Certificate Application.

DEA Form 252: CSOS Principal Coordinator/Alternate Coordinator Certificate Application.

DEA Form 253: CSOS Power of Attorney Certificate Application.

DEA Form 254: CSOS Certificate Application Registrant List Addendum. CSOS Certificate Revocation.

Component: Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Business or other for-profit.

Other: Non-profit, State and local government.

Abstract: Persons use these forms to apply for DEA-issued digital certificates to order Schedule I and II controlled substances. Certificates must be renewed upon renewal of the DEA registration to which the certificate is linked. Certificates may be revoked and/or replaced when information on which the certificate is based changes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that the rule will affect 98,000 registrants and 145,000 certificate holders. The average time for completing the application for a digital certificate to order controlled substances is estimated to be from 0.72 hours to 1.24 hours. Certificate renewal is estimated to take 0.083 hours.

(6) *An estimate of the total public burden (in hours) associated with the*

collection: As registrants adopt the electronic ordering, the annual burden hours would average 41,860 hours a year. During this period, DEA assumes that 70 percent of the certificate holders will apply for certificates.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 28, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. 06-7341 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-09-P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

[EOIR No. 157]

Revised General Practice Regarding First Briefing Deadline Extension Request for Detained Aliens

AGENCY: Board of Immigration Appeals, Executive Office for Immigration Review, Department of Justice.

ACTION: Notice.

SUMMARY: This notice updates an earlier advisal of a revised general practice to be followed by the Board of Immigration Appeals regarding briefing deadlines for cases before the Board in which the alien is detained. The former notice stated that the additional time period granted for a first briefing extension will generally be reduced from 21 days to 15 days, and the number of extension requests granted will generally be reduced from one per party to one per case. After further consideration, the 21 day briefing schedule will be retained. The number of extension requests granted per case, however, will still be generally reduced to one.

DATES: This notice is effective upon publication.

FOR FURTHER INFORMATION CONTACT:

Kevin Chapman, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041; telephone (703) 305-0470 (not a toll free call).

SUPPLEMENTARY INFORMATION: In an earlier notice, the Board of Immigration Appeals (Board) announced a change in its practice relating to briefing schedules in detained case. 71 FR 40151 (July 14,

2006). The commentary in that notice is incorporated herein by reference. In that notice, the Board stated that in cases involving detained aliens, it would henceforth normally grant only one extension request per case, as opposed to one extension request per party. It also reduced the amount of time generally granted for any briefing extension from 21 days to 15 days.

The Board received comments from a large number of entities claiming that the reduction in the amount of time for briefing extensions would have a negative effect on detained aliens with respect to securing representation. In particular, the commenters argued that this would have an adverse impact on the Board's Pro Bono Project.

The Board has reconsidered its policy change as to the amount of time granted for briefing extensions. The Board will continue to grant 21 day briefing extensions. As advised in the prior **Federal Register** notice, however, the Board will change its practice regarding the number of briefing extensions granted, and will generally grant only one briefing extension per case when the alien is detained.

Dated: August 22, 2006.

Lori Scialabba,

Chairman, Board of Immigration Appeals.

[FR Doc. 06-7268 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-30-M

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121-0237]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: Extension of currently approved collection, NCJRS Customer satisfaction surveys.

The Department of Justice (DOJ), Office of Justice Programs, has submitted the following extension of generic clearance for surveys to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection within the generic clearance extension is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until October 30, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or

associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact William Ballweber, (202) 305-2975, National Institute of Justice, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* DOJ requests three year extension of generic clearance to conduct customer satisfaction surveys.

(2) *Title of the Form/Collection:* Generic Clearance of NCJRS Customer Satisfaction Surveys.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Forms Numbers: NCJ-CR-01-00-NCJ-CR-01-06. Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Respondents will be current and potential users of agency products and services. Respondents may represent Federal agencies, State, local, and tribal governments, members of private organizations, research organizations, the media, non-profit organizations, international organizations, as well as faculty and students.

The purpose of such surveys is to assess needs, identify problems, and plan for programmatic improvements in

the delivery of agency products and services.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that there will be 75,195 total respondents for all surveys combined. It is estimated that mail surveys will average 10 minutes to complete; Web surveys will average 6 minutes; phone surveys will average 4 minutes to complete; and focus groups and teleconferences will average 90 minutes to complete.

(6) An estimate of the total public burden (in hours) associated with the collection is 21,894 hours. An estimate of the annual public burden associated with this collection is 7,298 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: August 28, 2006.

Lynn Bryant,

Department Clearance Officer, Department of Justice.

[FR Doc. 06-7340 Filed 8-30-06; 8:45 am]

BILLING CODE 4410-18-P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

August 23, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104-13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained from RegInfo.gov at <http://www.reginfo.gov/public/do/PRAMain> or by contacting Darrin King on 202-693-4129 (this is not a toll-free number)/e-mail: king.darrin@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Mine Safety and Health Administration (MSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, Telephone: 202-395-7316/Fax: 202-395-6974 (these are not a toll-free numbers), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Type of Review: Extension without change of currently approved collection.

Title: Petitions for Modification—Pertains to All Mines.

OMB Number: 1219-0065.

Frequency: On occasion.

Type of Response: Reporting and Third party disclosure.

Affected Public: Business or other for-profit.

Number of Respondents: 94.

Estimated Number of Annual Responses: Approximately 74 petitions are prepared by mine operators (these are included in the burden hour estimate) and approximately 20 are prepared by independent legal counsel (these are included in the cost estimate).

Average Response Time: 40 hours.

Estimated Annual Burden Hours: 2,960.
Total Annualized capital/startup costs: \$0.

Total Annual Costs (operating/maintaining systems or purchasing services): \$40,000.

Description: Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary of Labor (Secretary) to modify the application of a mandatory safety standard. A petition for modification may be granted if the Secretary determines (1) that an alternative method of achieving the results of the standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard, or (2) that the application of

the standard will result in a diminution of safety to the miners affected.

Under 30 CFR 44.9, mine operators must post a copy of each petition for modification concerning the mine on the mine's bulletin board and maintain the posting until a ruling on the petition becomes final. This applies only to mines for which there is no representative of miners.

Under 30 CFR 44.10, detailed guidance for filing a petition for modification is provided for the operator of the affected mine or any representative of the miners at that mine. The petition must be in writing, filed with the Director, Office of Standards, Regulations and Variances, and a copy of the petition served by the filing party (the mine operator or representative of miners) on the other party.

Under 30 CFR 44.11(a), the petition for modification must contain the petitioner's name and address; the mailing address and mine identification number of the mine or mines affected; the mandatory safety standard to which the petition is directed; a concise statement of the modification requested and whether the petitioner (1) proposes to establish an alternate method in lieu of the mandatory safety standard, or (2) alleges that application of the standard will result in diminution of safety to the miners affected, or (3) requests relief based on both grounds; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

Promptly upon receipt of a petition, MSHA publishes a notice in the **Federal Register** advising interested parties that they may provide comments or other relevant information on the proposed modification. Thereafter, MSHA conducts an investigation to determine the merits of the petition for the purpose of deciding whether or not to grant it and, if granted, whether there is a need for any additional terms or conditions.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 06-7347 Filed 8-30-06; 8:45 am]

BILLING CODE 4510-43-P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection for the ETA 227, Overpayment Detection and Recovery Activities; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension for collection of the ETA 227 Report, Overpayment Detection and Recovery Activities.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice or by accessing: <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 30, 2006.

ADDRESSES: Nancy Dean, U.S. Department of Labor, Employment and Training Administration, Room S4231, 200 Constitution Avenue, NW., Washington, DC 20210, Phone: (202) 693-3215 (This is not a toll-free number), Fax: (202) 693-3975, e-mail: dean.nancy@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Section 303(a)(1) of the Social Security Act requires a state's unemployment insurance (UI) law to include provisions for:

“Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due * * *”

Section 303(a)(5) of the Social Security Act further requires a state's UI law to include provisions for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *"

Section 3304(a)(4) of the Internal Revenue Code of 1954 provides that:

"all money withdrawn from the unemployment fund of the State shall be used solely in the payment of unemployment compensation * * *"

The Secretary of Labor has interpreted the above sections of federal law in Section 7511, Part V, ES Manual to further require a state's UI law to include provisions for such methods of administration as are, within reason, calculated (1) to detect benefits paid through error by the State Workforce Agency (SWA) or through willful misrepresentation or error by the claimant or others, (2) to deter claimants from obtaining benefits through willful misrepresentation, and (3) to recover benefits overpaid. The ETA 227 is used to determine whether SWAs meet these requirements.

The ETA-227 contains data on the number and amounts of fraud and non-fraud overpayments established, the methods by which overpayments were detected, the amounts and methods by which overpayments were collected, the amounts of overpayments waived and written off, the accounts receivable for overpayments outstanding, and data on criminal/civil actions.

These data are gathered by 53 SWAs and reported to the Department of Labor following the end of each calendar quarter. The overall effectiveness of SWAs' UI integrity efforts can be determined by examining and analyzing the data.

These data are also used by SWAs as a management tool for effective UI program administration.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The UI program paid approximately \$42 billion in benefits in 2004. Although the overpayment rate (fraud and non-fraud) derived from the ETA 227 is relatively low (less than 3.25 percent), high amounts of money are involved, and it is in the national interest to maintain the program's integrity. Therefore, we are proposing to extend the authorization to continue collecting data to measure the effectiveness of the benefit payment control programs in the SWAs.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Overpayment Detection and Recovery Activities.

OMB Number: 1205-0173.

Agency Form Number: ETA 227.

Affected Public: State Government.

Total Respondents: 53 state agencies.

Frequency: Quarterly.

Total Responses: 212.

Average Time per Response: 14 hours.

Estimated Total Burden Hours: 2,968.

Total Burden Cost (operating/maintaining): \$0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 24, 2006.

Dale Zeigler,

Deputy Administrator, Office of Workforce Security.

[FR Doc. 06-7346 Filed 8-30-06; 8:45 am]

BILLING CODE 4510-30-P

NATIONAL COUNCIL ON DISABILITY

International Watch Advisory Committee Meetings (Conference Calls)

Agency: National Council on Disability (NCD).

Time and Dates: 12 noon, Eastern Time, November 2, 2006; January 4, 2007; March 1, 2007; May 3, 2007; July 5, 2007; September 6, 2007.

Place: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

Status: All parts of these conference calls will be open to the public. Those interested in participating on conference calls should contact the appropriate staff member listed below. Due to limited resources, only a few telephone lines will be available for each conference call.

Agendas: Roll call, announcements, overview of accomplishments, planning, reports, new business, adjournment.

Contact Person for More Information:

Joan M. Durocher, Senior Attorney Advisor and Designated Federal Official, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202-272-2004 (voice), 202-272-2074 (TTY), 202-272-2022 (fax), jdurocher@ncd.gov (e-mail).

Accommodations: Those needing reasonable accommodations should notify NCD at least two weeks before this meeting.

International Watch Advisory Committee Mission: The purpose of NCD's International Watch is to share information on international disability issues and to advise NCD on developing policy proposals that will advocate for a foreign policy that is consistent with the values and goals of the Americans with Disabilities Act.

Language Translation: In accordance with E.O. 13166, Improving Access to Services for Persons with Limited English Proficiency, those people with disabilities who are limited English proficient and seek translation services for this meeting should notify NCD at least two weeks before this meeting.

Dated: August 24, 2006.

Mark S. Quigley,

Acting Executive Director and Director of Communications.

[FR Doc. E6-14492 Filed 8-30-06; 8:45 am]

BILLING CODE 6820-MA-P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-34438]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct Materials License No. 29-30390-01, for Unrestricted Release of the SFBC Taylor Technology, Incorporated Facility Located at 107 College Road East in Princeton, NJ

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Environmental Assessment and Finding of No Significant Impact for License Amendment.

FOR FURTHER INFORMATION CONTACT:

Steven R. Courtemanche, Health Physicist, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406-1415; telephone (610) 337-5075; fax number (610) 337-5269; or by e-mail: SRC@nrc.gov.

SUPPLEMENTARY INFORMATION:**I. Introduction**

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Byproduct Materials License No. 29-30390-01. This license is held by SFBC Taylor Technology, Inc. (the Licensee), for its locations of use located at 107 and 301D College Road East in Princeton, New Jersey. Issuance of the amendment would authorize release of the location of use at 107 College Road East in Princeton, New Jersey (the Facility) for unrestricted use while retaining authorization to conduct licensed activities at the 301D College Road East location of use. The Licensee requested this action in a letter dated May 1, 2006. The NRC has prepared an Environmental Assessment (EA) in support of this proposed action in accordance with the requirements of Title 10, Code of Federal Regulations (CFR), Part 51 (10 CFR Part 51). Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate with respect to the proposed action. The NRC plans to take this proposed action following the publication of this FONSI and EA in the **Federal Register**.

II. Environmental Assessment*Identification of Proposed Action*

The proposed action would approve the Licensee's May 1, 2006, license amendment request, resulting in release of the Facility for unrestricted use. License No. 29-30390-01 was issued on June 5, 1997, pursuant to 10 CFR part 30, and has been amended periodically since that time. This license authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities on laboratory bench tops and in hoods.

The Facility consists of 10,000 square feet of office space and laboratories and is located in a commercial area. Within the Facility, use of licensed materials was confined to the Mass Spectroscopy Laboratory (1,000 square feet), the Wet Laboratory (1,000 square feet), the Sample Log-In Area (350 square feet), and the Waste Storage Area (150 square feet).

On June 6, 2005, the Licensee ceased licensed activities in these areas and initiated a survey and decontamination of the Facility. Based on the Licensee's historical knowledge of the site and the conditions of the Facility, the Licensee determined that only routine decontamination activities, in accordance with their NRC-approved, operating radiation safety procedures, were required. The Licensee was not required to submit a decommissioning plan to the NRC because worker cleanup activities and procedures are consistent with those approved for routine operations. The Licensee conducted surveys of the Facility and provided information to the NRC to demonstrate that it meets the criteria in Subpart E of 10 CFR Part 20 for unrestricted release.

Need for the Proposed Action

The Licensee has ceased conducting licensed activities at the Facility and seeks the unrestricted use of its Facility.

Environmental Impacts of the Proposed Action

The historical review of licensed activities conducted at the Facility shows that such activities involved use of the following radionuclides with half-lives greater than 120 days: hydrogen-3 and carbon-14. Prior to performing the final status survey, the Licensee conducted decontamination activities, as necessary, in the areas of the Facility affected by these radionuclides.

The Licensee conducted a final status survey on April 11, 2006. This survey covered the Waste Storage Area, the Sample Log-in Area, the Wet Laboratory, and the Mass Spectroscopy Laboratory. The final status survey report was attached to the Licensee's amendment request dated May 1, 2006. The Licensee elected to demonstrate compliance with the radiological criteria for unrestricted release as specified in 10 CFR 20.1402 by performing radiological surveys and determining that the contamination in the Facility areas where licensed material was used would not expose an individual to 25 millirem per year of radiation by inhalation or ingestion. The Licensee thus determined the maximum amount of residual radioactivity on building surfaces, equipment, and materials that will satisfy the NRC requirements in Subpart E of 10 CFR Part 20 for unrestricted release. The Licensee's final status survey results were below 200 disintegrations per minute for a wipe of 100 square centimeters for the isotopes of Carbon-14 and tritium (Hydrogen-3), and are thus acceptable.

Based on its review, the staff has determined that the affected environment and any environmental impacts associated with the proposed action are bounded by the impacts evaluated by the "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities" (NUREG-1496) Volumes 1-3 (ML042310492, ML042320379, and ML042330385). Accordingly, there were no significant environmental impacts from the use of radioactive material at the Facility. The NRC staff reviewed the docket file records and the final status survey report to identify any non-radiological hazards that may have impacted the environment surrounding the Facility. No such hazards or impacts to the environment were identified. The NRC has found no other radiological or non-radiological activities in the area that could result in cumulative environmental impacts.

The NRC staff finds that the proposed release of the Facility for unrestricted use is in compliance with 10 CFR 20.1402. Based on its review, the staff considered the impact of the residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, this denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria

specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of New Jersey's Department of Environmental Protection for review on June 13, 2006. On June 29, 2006, the State of New Jersey's Department of Environmental Protection responded by letter. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NRC License No. 29-30390-01 inspection and licensing records [ADAMS Accession Nos. ML031130227, ML031250277, ML042980018, ML060890371, ML060960381, ML060960391, and ML060960509];

2. Request for unrestricted release of the facility at 107 College Road East, Princeton, New Jersey with survey results for SFBC Taylor Technologies,

Inc., dated May 1, 2006 [ADAMS Accession No. ML061280123];

3. Request for Additional Information (RAI) issued May 18, 2006, by the U.S. NRC [ADAMS Accession No. ML061390010];

4. SFBC Taylor Technology, Inc.'s response dated May 26, 2006, to U.S. NRC's RAI [ML061510154];

5. NUREG-1757, "Consolidated NMSS Decommissioning Guidance";

6. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination";

7. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions";

8. NUREG-1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities."

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr@nrc.gov. These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Region I, 475 Allendale Road, King of Prussia this 23rd day of August 2006.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. 06-7285 Filed 8-30-06; 8:45 am]

BILLING CODE 7590-01-P

NUCLEAR REGULATORY COMMISSION

[EA-06-155]

In the Matter of: All Licensees Identified in Attachment 1 and All Other Persons Who Seek or Obtain Access to Safeguards Information Described Herein; Order Imposing Fingerprinting and Criminal History Check Requirements for Access to Safeguards Information (Effective Immediately)

I

The Licensees identified in Attachment 1¹ to this Order hold

¹ Attachment 1 contains sensitive information and will not be released to the public.

licenses issued in accordance with the Atomic Energy Act (AEA) of 1954, as amended, by the U.S. Nuclear Regulatory Commission (NRC or Commission) or Agreement States, authorizing them to engage in an activity subject to regulation by the Commission or Agreement States. 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 Investigation (FBI) identification and criminal history records check of any person who is to be permitted to have access to Safeguards Information (SGI)². 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 licensee employees are exempted 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 a favorably-decided U.S. Government criminal history check within the last five (5) years, and individuals who have active federal security clearances (provided in either case that they make available the appropriate documentation), 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 SGI, as set forth by this Order, so that affected licensees can obtain and grant access to SGI. This Order also imposes requirements for access to SGI by any

² 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.

person³, from any person, whether or not a Licensee, Applicant, or Certificate Holder of the Commission or Agreement States.

Subsequent to the terrorist events of September 11, 2001, the NRC issued Orders requiring certain entities to implement Additional Security Measures (ASM) or Compensatory Measures (CM) for certain radioactive materials. The requirements imposed by these Orders, and certain measures licensees have developed to comply with the Orders, were designated by the NRC as SGI. For some materials licensees, the storage and handling requirements for the SGI have been modified from the existing 10 CFR part 73 SGI requirements for reactors and fuel cycle facilities that require a higher level of protection; such SGI is designated as Safeguards Information—Modified Handling (SGI-M). However, the information subject to the SGI-M handling and protection requirements is SGI, and licensees and other persons who seek or obtain access to such SGI are subject to this Order.

II

The Commission has broad statutory authority to protect and prohibit the unauthorized disclosure of SGI. Section 147 of the AEA grants the Commission explicit authority to issue such Orders as necessary to prohibit the unauthorized disclosure of SGI. Furthermore, Section 652 of the EPA Act 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 addition, as required by existing Orders, which remain in effect, no person may have access to SGI unless the person has an established need-to-know and satisfies the trustworthy and reliability requirements of those Orders.

In order to provide assurance that the Licensees identified in Attachment 1 are implementing appropriate measures to comply with the fingerprinting and criminal history check requirements for access to SGI, all Licensees identified in Attachment 1 shall implement the

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.

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 81, 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 30 and 73, *it is hereby ordered*, effective immediately, that all licensees identified in attachment 1 to this order and all other persons who seek or obtain access to safeguards information, as described above, shall comply with the requirements set forth in this order.

A. 1. No person may have access to Safeguards Information unless that person has a need-to-know the SGI, has been fingerprinted or who has a favorably-decided FBI identification and criminal history records check, 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 a favorably-decided U.S. Government criminal history check within the last five (5) years, or who has an active federal security clearance, provided in either case that the appropriate documentation is made available to the Licensee's NRC-approved reviewing official.

2. No person may have access to any Safeguards Information if the NRC has determined, based on fingerprinting and an FBI identification and criminal history records check, that the person may not have access to SGI.

B. No person may provide SGI to any other person except in accordance with Condition III.A. above. Prior to providing SGI to any person, a copy of this Order shall be provided to that person.

C. All Licensees identified in Attachment 1 to this Order shall comply with the following requirements:

1. The Licensee shall, within twenty (20) days of the date of this Order, establish and maintain a fingerprinting program that meets the requirements of Attachment 2 to this Order.

2. The Licensee shall, within twenty (20) days of the date of this Order, submit the fingerprints of one (1) individual who currently has access to SGI in accordance with the previously-issued NRC Orders, who continues to

need access to Safeguards Information, and who the Licensee nominates as the "reviewing official" for determining access to SGI by other individuals. The NRC will determine whether this individual (or any subsequent reviewing official) may have access to SGI and, therefore, will be permitted to serve as the Licensee's reviewing official.⁴ The Licensee may, at the same time or later, submit the fingerprints of other individuals to whom the Licensee seeks to grant access to SGI. Fingerprints shall be submitted and reviewed in accordance with the procedures described in Attachment 2 of this Order.

3. The Licensee may allow any individual who currently has access to SGI in accordance with the previously-issued NRC Orders to continue to have access to previously-designated SGI without being fingerprinted, pending a decision by the NRC-approved reviewing official (based on fingerprinting, an FBI criminal history records check and a trustworthy and reliability determination) that the individual may continue to have access to SGI. The Licensee shall make determinations on continued access to SGI by November 20, 2006, in part on the results of the fingerprinting and criminal history check, for those individuals that were previously granted access to SGI before the issuance of this Order.

4. The Licensee shall, in writing, within twenty (20) days of the date of this Order, notify the Commission, (1) if it is unable to comply with any of the requirements described in the Order, including Attachment 2, or (2) if compliance with any of the requirements is unnecessary in its specific circumstances. The notification shall provide the Licensee's justification for seeking relief from or variation of any specific requirement.

Licensee responses to C.1., C.2., C.3., and C.4. above shall be submitted to the Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. In addition, Licensee responses shall be marked as "Security-Related Information—Withhold Under 10 CFR 2.390."

The Director, Office of Nuclear Material Safety and Safeguards, may in writing, relax or rescind any of the above conditions upon demonstration of good cause by the Licensee.

⁴ The NRC's determination of this individual's access to SGI in accordance with the process described in Enclosure 3 to the transmittal letter of this Order is an administrative determination that is outside the scope of this Order.

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 Material Safety and Safeguards, 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, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Nuclear Material Safety and Safeguards, 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 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 21st day of August 2006.

For the Nuclear Regulatory Commission.

Jack R. Strosnider,

Director, Office of Nuclear Material Safety and Safeguards.

Attachment 1: List of Applicable Licensees—Redacted**Attachment 2: Requirements for Fingerprinting and Criminal History Checks of Individuals When Licensee's Reviewing Official is Determining Access to Safeguards Information***General Requirements*

Licensees shall comply with the requirements of this attachment.

A. 1. Each Licensee subject to the provisions of this attachment shall fingerprint each individual who is seeking or permitted access to Safeguards Information (SGI). The Licensee shall review and use the information received from the Federal Bureau of Investigation (FBI) and ensure that the provisions contained in the subject Order and this attachment are satisfied.

2. The Licensee shall notify each affected individual that the fingerprints will be used to secure a review of his/her criminal history record and inform the individual of the procedures for revising the record or including an explanation in the record, as specified in the "Right to Correct and Complete Information" section of this attachment.

3. Fingerprints need not be taken if an employed individual (e.g., a Licensee employee, contractor, manufacturer, or supplier) is relieved from the fingerprinting requirement by 10 CFR 73.59, has a favorably-decided U.S. Government criminal history check within the last five (5) years, or has an

active federal security clearance. Written confirmation from the Agency/ employer which granted the federal security clearance or reviewed the criminal history check must be provided. The Licensee must retain this documentation for a period of three (3) years from the date the individual no longer requires access to SGI associated with the Licensee's activities.

4. All fingerprints obtained by the Licensee pursuant to this Order must be submitted to the Commission for transmission to the FBI.

5. The Licensee shall review the information received from the FBI and consider it, in conjunction with the trustworthy and reliability requirements of the previously-issued NRC Orders, in making a determination whether to grant access to Safeguards Information to individuals who have a need-to-know the SGI.

6. The Licensee shall use any information obtained as part of a criminal history records check solely for the purpose of determining an individual's suitability for access to Safeguards Information.

7. The Licensee shall document the basis for its determination whether to grant access to SGI.

B. The Licensee shall notify the NRC of any desired change in reviewing officials. The NRC will determine whether the individual nominated as the new reviewing official may have access to Safeguards Information based on a previously-obtained or new criminal history check and, therefore, will be permitted to serve as the Licensee's reviewing official.

Prohibitions

A Licensee shall not base a final determination to deny an individual access to Safeguards Information solely on the basis of information received from the FBI involving: an arrest more than one (1) year old for which there is no information of the disposition of the case, or an arrest that resulted in dismissal of the charge or an acquittal.

A Licensee shall not use information received from a criminal history check obtained pursuant to this Order in a manner that would infringe upon the rights of any individual under the First Amendment to the Constitution of the United States, nor shall the Licensee use the information in any way which would discriminate among individuals on the basis of race, religion, national origin, sex, or age.

Procedures for Processing Fingerprint Checks

For the purpose of complying with this Order, Licensees shall, using an

appropriate method listed in 10 CFR 73.4, submit to the NRC's Division of Facilities and Security, Mail Stop T-6E46, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ) or, where practicable, other fingerprint records for each individual seeking access to Safeguards Information, to the Director of the Division of Facilities and Security, marked for the attention of the Division's Criminal History Check Section. Copies of these forms may be obtained by writing the Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (301) 415-5877, or by e-mail to forms@nrc.gov. Practicable alternative formats are set forth in 10 CFR 73.4. The Licensee shall establish procedures to ensure that the quality of the fingerprints taken results in minimizing the rejection rate of fingerprint cards due to illegible or incomplete cards.

The NRC will review submitted fingerprint cards for completeness. Any Form FD-258 fingerprint record containing omissions or evident errors will be returned to the Licensee for corrections. The fee for processing fingerprint checks includes one re-submission if the initial submission is returned by the FBI because the fingerprint impressions cannot be classified. The one free re-submission must have the FBI Transaction Control Number reflected on the re-submission. If additional submissions are necessary, they will be treated as initial submittals and will require a second payment of the processing fee.

Fees for processing fingerprint checks are due upon application. Licensees shall submit payment with the application for processing fingerprints by corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." [For guidance on making electronic payments, contact the Facilities Security Branch, Division of Facilities and Security, at (301) 415-7739]. Combined payment for multiple applications is acceptable. The application fee (currently \$27) is the sum of the user fee charged by the FBI for each fingerprint card or other fingerprint record submitted by the NRC on behalf of a Licensee, and an NRC processing fee, which covers administrative costs associated with NRC handling of Licensee fingerprint submissions. The Commission will directly notify Licensees who are subject to this regulation of any fee changes.

The Commission will forward to the submitting Licensee all data received

from the FBI as a result of the Licensee's application(s) for criminal history checks, including the FBI fingerprint record.

Right to Correct and Complete Information

Prior to any final adverse determination, the Licensee shall make available to the individual the contents of any criminal records obtained from the FBI for the purpose of assuring correct and complete information. Written confirmation by the individual of receipt of this notification must be maintained by the Licensee for a period of one (1) year from the date of the notification.

If, after reviewing the record, an individual believes that it is incorrect or incomplete in any respect and wishes to change, correct, or update the alleged deficiency, or to explain any matter in the record, the individual may initiate challenge procedures. These procedures include either direct application by the individual challenging the record to the agency (i.e., law enforcement agency) that contributed the questioned information, or direct challenge as to the accuracy or completeness of any entry on the criminal history record to the Assistant Director, Federal Bureau of Investigation Identification Division, Washington, DC 20537-9700 (as set forth in 28 CFR 16.30 through 16.34). In the latter case, the FBI forwards the challenge to the agency that submitted the data and requests that agency to verify or correct the challenged entry. Upon receipt of an official communication directly from the agency that contributed the original information, the FBI Identification Division makes any changes necessary in accordance with the information supplied by that agency. The Licensee must provide at least ten (10) days for an individual to initiate an action challenging the results of an FBI criminal history records check after the record is made available for his/her review. The Licensee may make a final SGI access determination based upon the criminal history record only upon receipt of the FBI's ultimate confirmation or correction of the record. Upon a final adverse determination on access to SGI, the Licensee shall provide the individual its documented basis for denial. Access to SGI shall not be granted to an individual during the review process.

Protection of Information

1. Each Licensee who obtains a criminal history record on an individual pursuant to this Order shall establish and maintain a system of files and

procedures for protecting the record and the personal information from unauthorized disclosure.

2. The Licensee may not disclose the record or personal information collected and maintained to persons other than the subject individual, his/her representative, or to those who have a need to access the information in performing assigned duties in the process of determining access to Safeguards Information. No individual authorized to have access to the information may re-disseminate the information to any other individual who does not have a need-to-know.

3. The personal information obtained on an individual from a criminal history record check may be transferred to another Licensee if the gaining Licensee receives the individual's written request to re-disseminate the information contained in his/her file, and the gaining Licensee verifies information such as the individual's name, date of birth, social security number, sex, and other applicable physical characteristics for identification purposes.

4. The Licensee shall make criminal history records, obtained under this section, available for examination by an authorized representative of the NRC to determine compliance with the regulations and laws.

5. The Licensee shall retain all fingerprint and criminal history records received from the FBI, or a copy if the individual's file has been transferred, for three (3) years after termination of employment or determination of access to SGI. After the required three (3) year period, these documents shall be destroyed by a method that will prevent reconstruction of the information in whole or in part.

[FR Doc. 06-7283 Filed 8-30-06; 8:45 am]

BILLING CODE 7590-01-P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This gives notice of OPM decisions granting authority to make appointments under Schedules A, B, and C in the excepted service as required by 5 CFR 6.6 and 213.103.

FOR FURTHER INFORMATION CONTACT: David Guilford, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202-606-1391.

SUPPLEMENTARY INFORMATION: Appearing in the listing below are the individual authorities established under Schedules A, B, and C between July 1, 2006, and July 31, 2006. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

Schedule A

213.3206 Department of Defense

(k) Business Transformation Agency.
(1) Fifty temporary or time-limited (not to exceed four years) positions, at grades GS-11-15. The authority will be used to appoint persons in the following series: Management and Program Analysis, GS-343; Logistics Management, GS-346; Financial Management and Programs, GS-501; Accounting, GS-510; Computer Engineering, GS-854; Business and Industry, GS-1101; Operations Research, GS-1515; Computer Science, GS-1550; General Supply, GS-2001; Supply Program Management, GS-2003; Inventory Management, GS-2010; and Information Technology, GS-2210. Effective July 14, 2006.

Schedule B

No Schedule B appointments were approved for July 2006.

Schedule C

The following Schedule C appointments were approved during July 2006:

Section 213.3303 Executive Office of the President

Office of Management and Budget

BOGS60159 Special Assistant to the Director, Office of Management and Budget. Effective July 05, 2006.

BOGS60158 Special Assistant to the Director, Office of Management and Budget. Effective July 21, 2006.

BOGS60160 Special Assistant and Portfolio Manager to the Administrator, E-Government and Information Technology. Effective July 24, 2006.

BOGS60026 Confidential Assistant to the Associate Director for General Government Programs. Effective July 31, 2006.

Office of National Drug Control Policy

QQGS60092 Special Assistant to the Deputy Director, Office of Demand Reduction to the Special Assistant to the Director. Effective July 7, 2006.

QQGS60093 Special Assistant to the Associate Director for Legislative Affairs. Effective July 20, 2006.

QQGS60094 Policy Analyst to the Associate Deputy Director, State and Local Affairs. Effective July 21, 2006.

QQGS60095 Confidential Assistant to the Associate Director Office of Legislative Affairs. Effective July 27, 2006.

Section 213.3304 Department of State

DSGS61097 Foreign Affairs Officer (Ceremonials) to the Chief of Protocol. Effective July 17, 2006.

DSGS61101 Deputy Assistant Secretary (Principal) to the Assistant Secretary. Effective July 17, 2006.

DSGS61102 Special Assistant to the Senior Advisor to the Secretary and White House Liaison. Effective July 17, 2006.

DSGS61103 Staff Assistant to the Under Secretary for Arms Control and Security Affairs. Effective July 17, 2006.

DSGS61105 Senior Advisor to the Ambassador-At-Large (War Crimes). Effective July 20, 2006.

DSGS61099 Special Assistant to the Chief of Staff. Effective July 21, 2006.

DSGS61106 Staff Assistant to the Assistant Secretary for Economic and Business Affairs. Effective July 21, 2006.

DSGS61055 Protocol Officer (Visits) to the Chief of Protocol. Effective July 24, 2006.

Section 213.3305 Department of the Treasury

DYGS00429 Executive Assistant to the Secretary. Effective July 6, 2006.

DYGS00474 Scheduler to the Chief of Staff. Effective July 6, 2006.

DYGS60277 Speechwriter to the Assistant Secretary (Public Affairs). Effective July 6, 2006.

DYGS00402 Deputy Chief of Staff to the Chief of Staff. Effective July 7, 2006.

DYGS00473 Director of Protocol to the Assistant Secretary (Management) and Chief Financial Officer. Effective July 14, 2006.

DYGS00407 Senior Advisor to the Assistant Secretary for Financial Markets. Effective July 17, 2006.

Section 213.3306 Office of the Secretary of Defense

DDGS1694 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective July 7, 2006.

DDGS16955 Special Assistant to the Deputy Under Secretary of Defense (Budget and Appropriations Affairs). Effective July 7, 2006.

DDGS16958 Confidential Assistant to the Principal Deputy Assistant Secretary of Defense for Public Affairs. Effective July 7, 2006.

DDGS16961 Research Assistant to the Assistant Secretary of Defense for Public Affairs. Effective July 7, 2006.

DDGS16963 Protocol Specialist to the Special Assistant to the Secretary of

Defense for Protocol. Effective July 7, 2006.

DDGS16957 Executive Assistant to the Special Assistant to the Assistant Secretary of Defense. Effective July 7, 2006.

DDGS16939 Director of Communications to the Principal Deputy Assistant Secretary of Defense (Legal Affairs). Effective July 17, 2006.

DDGS16968 Special Assistant to the Deputy Under Secretary of Defense for Business Transformation. Effective July 28, 2006.

DDGS16972 Staff Assistant to the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict). Effective July 28, 2006.

DDGS16973 Special Advisor to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective July 28, 2006.

Section 213.3307 Department of the Army

DWGS60020 Personal and Confidential Assistant to the Principal Deputy Assistant Secretary of the Army (Acquisition, Logistics and Technology) and Director for Iraq Reconstruction and Program Management. Effective July 5, 2006.

Section 213.3308 Department of the Navy

DNGS60074 Confidential Staff Assistant to the Deputy Assistant Secretary of the Navy (Financial Management and Comptroller). Effective July 21, 2006.

Section 213.3309 Department of the Air Force

DFGS60019 Special Assistant to the Assistant Secretary (Installations, Environment and Logistics). Effective July 05, 2006.

DFGS60019 Special Assistant to the Assistant Secretary (Installations, Environment and Logistics). Effective July 21, 2006.

Section 213.3310 Department of Justice

DJGS00043 Confidential Assistant to the Assistant Attorney General (Legislative Affairs). Effective July 19, 2006.

DJGS00114 Special Assistant to the Attorney General. Effective July 20, 2006.

DJGS00046 Research Assistant to the Director. Effective July 21, 2006.

DJGS00121 Senior Counsel to the Assistant Attorney General. Effective July 21, 2006.

DJGS00252 Director of Advance to the Attorney General. Effective July 21, 2006.

DJGS00120 Deputy Chief of Staff to the Assistant Attorney General. Effective July 25, 2006.

Section 213.3311 Department of Homeland Security

DMGS00540 Policy Analyst to the Assistant Secretary for International Affairs. Effective July 02, 2006.

DMGS00538 Scheduler and Protocol Coordinator to the Director of Scheduling and Advance. Effective July 17, 2006.

DMGS00544 Advance Representative to the Director of Scheduling and Advance. Effective July 17, 2006.

DMGS00547 Coordinator for State Affairs to the Chief of Staff. Effective July 19, 2006.

DMGS00539 Assistant Director of Legislative Affairs for Mass Transit and Immigration to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective July 20, 2006.

DMGS00543 Advance Representative to the Director of Scheduling and Advance. Effective July 20, 2006.

DMGS00545 Special Assistant to the Executive Director, Homeland Security Advisory Committees. Effective July 21, 2006.

DMGS00548 Special Assistant for Faith-Based and Community Initiatives to the Director of Faith-Based and Community Initiatives. Effective July 21, 2006.

DMGS00549 Special Assistant to the Assistant Secretary for Infrastructure Protection. Effective July 21, 2006.

DMGS00550 Confidential Assistant to the Deputy Secretary of the Department of Homeland Security. Effective July 21, 2006.

DMGS00551 Confidential Assistant to the Chief of Staff. Effective July 21, 2006.

DMGS00552 Confidential Assistant to the General Counsel. Effective July 24, 2006.

DMGS00554 Special Assistant to the Chief of Staff. Effective July 24, 2006.

Section 213.3312 Department of the Interior

DIGS01073 Associate Director for Programs to the Director, Take Pride In America. Effective July 21, 2006.

Section 213.3313 Department of Agriculture

DAGS00852 Special Assistant to the Under Secretary for Rural Development. Effective July 21, 2006.

DAGS00856 Confidential Assistant to the Chief, Natural Research Conservation Service. Effective July 24, 2006.

DAGS00858 Staff Assistant to the Administrator, Farm Service Agency. Effective July 28, 2006.

Section 213.3314 Department of Commerce

DCGS00398 Special Assistant to the Deputy Assistant Secretary for Domestic Operations. Effective July 17, 2006.

DCGS60312 Senior Advisor to the Deputy Assistant Secretary for Domestic Operations. Effective July 21, 2006.

Section 213.3315 Department of Labor

DLGS60199 Special Assistant to the Assistant Secretary for Public Affairs. Effective July 5, 2006.

DLGS60160 Speechwriter to the Assistant Secretary for Public Affairs. Effective July 7, 2006.

DLGS60116 Special Assistant to the Chief Financial Officer. Effective July 21, 2006.

DLGS60153 Special Assistant to the Deputy Under Secretary for International Affairs. Effective July 21, 2006.

DLGS60176 Special Assistant to the Associate Deputy Secretary for Communications. Effective July 21, 2006.

DLGS60195 Senior Advisor to the Assistant Secretary for Employment Standards. Effective July 21, 2006.

Section 213.3316 Department of Health and Human Services

DHGS60018 Deputy Director for Advance to the Director of Scheduling. Effective July 07, 2006.

DHGS60036 Confidential Assistant to the Director of Intergovernmental Affairs. Effective July 19, 2006.

DHGS60016 Confidential Assistant to the Director, Center for Faith Based and Community Initiatives. Effective July 24, 2006.

DHGS60015 Deputy Director, Center for Faith-Based and Community Initiatives to the Director, Center for Faith-Based and Community Initiatives. Effective July 28, 2006.

DHGS60037 Director, Trafficking Program to the Director, Office of Refugee Resettlement. Effective July 28, 2006.

DHGS60336 Confidential Assistant to the Deputy Assistant Secretary for Legislation (Human Services). Effective July 28, 2006.

Section 213.3317 Department of Education

DBGS00546 Special Assistant to the Director, Scheduling and Advance Staff. Effective July 6, 2006.

DBGS00547 Special Assistant to the Assistant Secretary for Civil Rights. Effective July 6, 2006.

DBGS00550 Confidential Assistant to the Director, White House Liaison. Effective July 6, 2006.

DBGS00551 Confidential Assistant to the Senior Policy Advisor to the Deputy Secretary. Effective July 6, 2006.

DBGS00552 Confidential Assistant to the Assistant Deputy Secretary for Safe and Drug-Free Schools. Effective July 6, 2006.

DBGS00549 Special Assistant to the Assistant Secretary for Special Education and Rehabilitative Services. Effective July 7, 2006.

DBGS00553 Deputy Secretary's Regional Representative, Region 9 to the Assistant Secretary, Office of Communications and Outreach. Effective July 19, 2006.

DBGS00554 Confidential Assistant to the Deputy Chief of Staff for Policy and Programs. Effective July 21, 2006.

DBGS00555 Confidential Assistant to the Assistant Secretary for Management. Effective July 24, 2006.

DBGS00556 Confidential Assistant to the Chief of Staff to the Deputy Secretary. Effective July 25, 2006.

Section 213.3323 Overseas Private Investment Corporation

PQGS06002 Confidential Assistant to the President and CEO. Effective July 17, 2006.

Section 213.3331 Department of Energy

DEGS00528 Special Assistant to the Senior Advisor. Effective July 7, 2006.

DEGS00529 Special Assistant to the Senior Advisor. Effective July 7, 2006.

DEGS00531 Senior Advisor to the Principal Deputy Assistant Secretary. Effective July 21, 2006.

DEGS00532 Special Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective July 21, 2006.

DEGS00530 Policy Advisor to the Principal Deputy Assistant Secretary. Effective July 25, 2006.

DEGS00533 Senior Policy Advisor to the Assistant Secretary for Environment, Safety and Health. Effective July 27, 2006.

Section 213.3332 Small Business Administration

SBGS60153 Deputy Associate Administrator for Intergovernmental Affairs to the Associate Administrator for Field Operations. Effective July 7, 2006.

SBGS00601 Associate Administrator for Field Operations to the Administrator. Effective July 28, 2006.

Section 213.3339 United States International Trade Commission

TCGS60030 Confidential Assistant to a Commissioner. Effective July 24, 2006.

Section 213.3343 Farm Credit Administration

FLOT60013 Executive Assistant to a Member, Farm Credit Administration Board. Effective July 18, 2006.

Section 213.3344 Occupational Safety and Health Review Commission

SHGS00004 Confidential Assistant to a Commission Member. Effective July 19, 2006.

Section 213.3351 Federal Mine Safety and Health Review Commission

FRGS60017 Confidential Assistant to the Chairman. Effective July 7, 2006.

Section 213.3360 Consumer Product Safety Commission

PSGS60064 Special Assistant (Legal) to a Commissioner. Effective July 25, 2006.

Section 213.3373 Trade and Development Agency

TDGS60002 Congressional Liaison to the Director. Effective July 5, 2006.

Section 213.3384 Department of Housing and Urban Development

DUGS60330 Special Policy Advisor to the Assistant Secretary for Community Planning and Development. Effective July 13, 2006.

DUGS60293 Staff Assistant to the President, Government National Mortgage Association. Effective July 17, 2006.

DUGS60502 Special Policy Advisor to the Assistant Secretary for Public and Indian Housing. Effective July 17, 2006.

DUGS60213 Staff Assistant to the Assistant Secretary for Policy Development and Research. Effective July 20, 2006.

Section 213.3394 Department of Transportation

DTGS60372 Deputy Assistant Secretary for Governmental Affairs to the Assistant Secretary for Governmental Affairs. Effective July 17, 2006.

Section 213.3371 Office of Government Ethics

GGGS02900 Confidential Assistant to the Director. Effective July 21, 2006.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218.

Office of Personnel Management.

Dan G. Blair,

Deputy Director.

[FR Doc. E6–14490 Filed 8–30–06; 8:45 am]

BILLING CODE 6325–39–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15a–5; SEC File No. 270–527; OMB Control No. 3235–0587.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the “Commission”) is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (“OMB”) for extension and approval.

Section 15(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–15(a)) (the “Investment Company Act” or “Act”) prohibits any person from serving as an investment adviser (or a subadviser) to a fund except under a written contract that the fund’s shareholders have approved. The Commission has granted exemptive relief, by order, to a number of registered open-end management investment companies (“funds”) whose investment advisers do not directly manage a portfolio of securities, but instead supervise one or more subadvisers, which are themselves responsible for the day-to-day management of the funds’ portfolios (“manager of managers funds”).¹ Sponsors have analogized subadvisers in a manager of managers arrangement to portfolio managers employed by a fund adviser who may be hired and fired without the consent of shareholders.

Proposed Rule 15a–5 (17 CFR 270.15a–5) and amendments to Form N–1A (17 CFR 239.15A, 17 CFR 274.11A) together would codify the orders we have issued for manager of managers funds, including many of their

conditions, allowing any fund that satisfies the conditions to enter into or materially amend a subadvisory contract without shareholder approval. To provide for the protection of fund shareholders, a fund that relied on the proposed rule would have to satisfy a number of conditions, some of which would result in information collection requirements.

For example, any fund that relied on the proposed rule would have to include certain provisions in all its advisory and subadvisory contracts. Specifically, all the fund’s subadvisory contracts for which shareholder approval is not sought would have to provide the principal adviser with the authority to terminate the subadvisory contract at any time, on no more than 60 days written notice, without payment of penalty.² In addition, the advisory contract between each principal adviser and the fund would have to require that the principal adviser supervise the activities of its subadvisers. These provisions are intended to ensure that only manager of managers funds (in which subadvisers resemble and perform the duties of a portfolio manager in a typical fund) are eligible for relief under the proposed rule and to allow the principal adviser to carry out its principal duties to the fund, the selection and monitoring of subadvisers, in an efficient manner.

During the first year after adoption of the rule, Commission staff estimates that each fund relying on the rule would incur an initial one-time burden to modify its existing contract with the principal adviser to require the principal adviser to supervise the activities of its subadvisers. Staff estimates this burden would be 5 hours per fund (4 hours by in-house counsel, 0.5 hours by fund directors, 0.5 hours by support staff).³ Commission staff estimates that 149 funds would have to modify their advisory contracts with their principal advisers to comply with the proposed rule, which would result in an estimated total of 745 burden hours and 149 responses.⁴

² Most subadvisory contracts already contain terms that allow the principal adviser to terminate the contract at any time. We therefore estimate there would be no burden hours or costs imposed on funds by this requirement.

³ These estimates are based on discussions with fund representatives.

⁴ These 149 funds include 125 funds that currently rely on exemptive orders, 14 funds that have filed an application for an exemptive order and, as explained *infra* note 5, 10 additional funds that we estimate would choose to rely on the proposed rule during the first year.

¹ In this notice, we use the term “subadviser” to mean a party that contracts with a fund’s principal adviser to provide investment advisory services to the fund, and the term “principal adviser” to mean a party that contracts directly with a fund to provide investment advisory services to the fund.

Commission staff estimates that after the first year, approximately 10 funds⁵ would spend, on average, 5 hours annually (4 hours by in-house counsel, 0.5 hours by fund directors, 0.5 hours by support staff) to modify their advisory contracts with their principal advisers to comply with the proposed rule. Thus, the Commission estimates these modifications would result in a total of 50 burden hours and 10 responses.

The proposed rule also would require funds to provide shareholders (and file with the Commission) an information statement within 90 days after entry into the subadvisory contract or after making a material change to a wholly-owned subsidiary's existing subadvisory contract. The information statement must describe the agreement and contain all of the information that shareholders would have received in a proxy statement had a shareholder vote been held. This information collection is needed to ensure that shareholders are aware of the identity of the subadvisers that would be making investment decisions for the fund and the terms of each subadvisory contract.

During the first 3 years after adoption of the proposed rule, Commission staff estimates that 179 funds⁶ would each spend 20 hours⁷ annually in preparing and distributing information statements. The total annual estimate for complying with the third party disclosure requirement of rule 15a-5 would be 3580 burden hours and 358 responses.

To arrive at the total information collection burden, staff has calculated a weighted average of the first year burden and the annual burden thereafter. Using a three-year period, the

⁵ Based on the number of manager of managers applications submitted since 1995, the staff estimates that 20 additional funds would seek to rely on the proposed rule each year. Approximately 10 of those funds would be funds whose securities have already been publicly offered, and therefore would need to modify their advisory contracts with principal advisers. We estimate that the 10 new funds that would rely on the proposed rule would incur no additional burden or costs to include these provisions in the initial advisory contract.

⁶ Commission staff estimates that 159 funds (including 125 funds that currently rely on exemptive orders, 14 funds that have filed an application for an exemptive order, and 20 additional funds that would have filed for exemptive relief during the first year after the rule's adoption) would rely on the proposed rule during the first year after its adoption. After the first year, the staff estimates that each year 20 additional funds would rely on the proposed rule.

⁷ Based on discussions with fund representatives, the Commission estimates that on average each fund would hire 2 new subadvisers per year. Therefore, funds would be required to send to shareholders 2 information statements per year. Based on discussions with fund representatives, the Commission estimates that each fund would spend 10 hours to prepare and mail each information statement.

estimated weighted annual average information collection burden is 3862 hours⁸ and 414 responses.⁹

The collections of information required by proposed rule 15a-5 would be voluntary because rule 15a-5 is an exemptive rule and, therefore, funds may choose not to rely on the proposed rule. The filings with the Commission required under the proposed rule would be available to the public. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid control number.

Written 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 collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: PRA_Mailbox@sec.gov.

Dated: August 23, 2006.

Jill M. Peterson,
Assistant Secretary.

[FR Doc. 06-7300 Filed 8-30-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 6c-7; SEC File No. 270-269; OMB Control No. 3235-0276.

⁸ This estimate is based on the following calculation: (4325 hours (year 1) + 3630 hours (year 2) + 3630 hours (year 3)) ÷ 3 = 3861.6 hours.

⁹ This estimate is based on the following calculation: (507 responses (year 1) + 368 responses (year 2) + 368 responses (year 3)) ÷ 3 = 414.3 responses.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collection of information discussed below.

Rule 6c-7 (17 CFR 270.6c-7) under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) ("1940 Act") provides exemption from certain provisions of Sections 22(e) and 27 of the 1940 Act for registered separate accounts offering variable annuity contracts to certain employees of Texas institutions of higher education participating in the Texas Optional Retirement Program. There are approximately 80 registrants governed by Rule 6c-7. The burden of compliance with Rule 6c-7, in connection with the registrants obtaining from a purchaser, prior to or at the time of purchase, a signed document acknowledging the restrictions on redeemability imposed by Texas law, is estimated to be approximately 3 minutes per response for each of approximately 2,600 purchasers annually (at an estimated \$70 per hour), for a total annual burden of 130 hours (at a total annual cost of \$9,100).

Rule 6c-7 requires that the separate account's registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) include a representation that Rule 6c-7 is being relied upon and is being complied with. This requirement enhances the Commission's ability to monitor utilization of and compliance with the rule. There are no recordkeeping requirements with respect to Rule 6c-7.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules or forms. The Commission does not include in the estimate of average burden hours the time preparing registration statements and sales literature disclosure regarding the restrictions on redeemability imposed by Texas law. The estimate of burden hours for completing the relevant registration statements are reported on the separate PRA submissions for those statements. (See the separate PRA submissions for Form N-3 (17 CFR 274.11b) and Form N-4 (17 CFR 274.11c).

Complying with the collection of information requirements of the rules is necessary to obtain a benefit. An agency may not conduct or sponsor, and a person is not required to respond to, a

collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: David_Roster@omb.eop.gov; and (ii) R. Corey Booth, Director/Chief Information Officer, Securities and Exchange Commission, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312, or send an e-mail to: PRA_Mailbox@sec.gov. Comments must be submitted to OMB within 30 days of this notice.

Dated: August 23, 2006.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06-7302 Filed 8-30-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 27469; 812-13297]

Claymore Exchange-Traded Fund Trust, et al.; Notice of Application

August 28, 2006.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 2(a)(32), 5(a)(1), 22(d), 22(e), and 24(d) of the Act and rule 22c-1 under the Act, under section 12(d)(1)(f) for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and (a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit (a) series of open-end management investment companies, to issue shares ("Fund Shares") that can be redeemed only in large aggregations ("Creation Unit Aggregations"); (b) secondary market transactions in Fund Shares to occur at negotiated prices; (c) dealers to sell Fund Shares to purchasers in the secondary market unaccompanied by a prospectus when prospectus delivery is not required by the Securities Act of 1933 ("Securities Act"); (d) certain series to pay redemption proceeds, under certain circumstances, more than

seven days after the tender of a Creation Unit Aggregation for redemption; (e) certain affiliated persons of the series to deposit securities into, and receive securities from, the series in connection with the purchase and redemption of Creation Unit Aggregations; and (f) certain registered management investment companies and unit investment trusts outside of the same group of investment companies as the series to acquire Fund Shares.

APPLICANTS: Claymore Exchange-Traded Fund Trust and Claymore Exchange-Traded Fund Trust 2 (the "Trusts"); Claymore Securities, Inc. ("Claymore"); and Claymore Advisers, LLC ("Claymore Advisors").

FILING DATES: The application was filed on May 27, 2006, and amended on July 24, 2006. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 15, 2006, and should be accompanied by proof of service on applicants, in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090; Applicants, 2455 Corporate West Drive, Lisle, IL 60532.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel at (202) 551-6812, or Michael W. Mundt, Senior Special Counsel, at (202) 551-6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Public Reference Desk, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549-0102, telephone (202) 551-5850.

Applicants' Representations

1. Each Trust is registered as an open-end management investment company

and is organized as a Delaware statutory trust that will offer multiple series (each series, a "Fund"). Claymore Exchange-Traded Fund Trust will offer and sell Fund Shares of five Funds, each of which will track an index of equity securities of domestic issuers and non-domestic issuers meeting the requirements for trading in U.S. markets. Claymore Exchange-Traded Fund Trust 2 will offer and sell Fund Shares of two Funds (collectively with the Funds offered by Claymore Exchange-Traded Fund Trust, the "Initial Funds"), each of which will track an index of foreign equity securities ("Foreign Funds").

2. Each of Claymore and Claymore Advisers is registered as an "investment adviser" under the Investment Advisers Act of 1940, as amended (the "Advisers Act"). Claymore Advisers will serve as the investment adviser to each of the Initial Funds (the "Adviser"). In the future, the Adviser may enter into sub-advisory agreements with other investment advisers to act as "sub-advisers" with respect to particular Funds. Any sub-adviser will be registered under the Advisers Act or exempt from registration. Claymore, a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act"), will serve as the principal underwriter and distributor for the Initial Funds (the "Distributor").

3. Each Fund will hold certain securities ("Portfolio Securities") selected to correspond generally to the price and yield performance, before fees and expenses, of a specified equity securities index (an "Underlying Index"). No entity that creates, compiles, sponsors or maintains an Underlying Index is or will be an affiliated person, as defined in section 2(a)(3) of the Act, or an affiliated person of an affiliated person, of the Trusts, the Adviser, the Distributor, promoter or any sub-adviser to a Fund. The Trusts may offer additional Funds in the future based on other Underlying Indices ("Future Funds"). Any Future Funds will (a) comply with the terms and conditions of any order granted pursuant to the application, and (b) be advised by the Adviser.

4. The investment objective of each Fund will be to provide investment results that correspond generally to the price and yield performance, before fees and expenses, of its Underlying Index. Intra-day values of the Underlying Index will be disseminated every 15 seconds throughout the trading day. A Fund will utilize either a "replication" or

“representative sampling” strategy.¹ A Fund using a “replication” strategy will invest in substantially all of the Component Securities in its Underlying Index in approximately the same weightings as in the Underlying Index. In certain circumstances, such as when there are practical difficulties or substantial costs involved in holding every security in an Underlying Index or when a Component Security is illiquid, a Fund may use a “representative sampling” strategy pursuant to which it will invest in some, but not all of the relevant Component Securities.² Applicants anticipate that a Fund that utilizes a “representative sampling” strategy will not track the performance of its Underlying Index with the same degree of accuracy as an investment vehicle that invests in every Component Security of the Underlying Index in the same weighting as the Underlying Index. Applicants expect that each Fund will have a tracking error relative to the performance of its Underlying Index of less than 5 percent.

5. Fund Shares will be sold at a price of between \$20 and \$60 per Fund Share in Creation Unit Aggregations of 50,000 Fund Shares. All orders to purchase Creation Unit Aggregations must be placed with the Distributor by or through a party that has entered into an agreement with the Trust and Distributor (“Authorized Participant”). An Authorized Participant must be either: (a) A broker-dealer or other participant in the continuous net settlement system of the National Securities Clearing Corporation (“NSCC”), a clearing agency registered with the Commission, or (b) a participant in the Depository Trust Company (“DTC”, and such participant, “DTC Participant”). Shares of each Fund generally will be sold in Creation Unit Aggregations in exchange for an in-kind deposit by the purchaser of a portfolio of securities designated by the Adviser to correspond generally to the price and yield performance, before fees

¹ Applicants represent that a Fund will normally invest at least 90% of its total assets in the component securities that comprise its Underlying Index (“Component Securities”) or, in the case of Foreign Funds, Component Securities and depository receipts representing such securities. Each Fund also may invest up to 10% of its assets in certain futures, options and swap contracts, cash and cash equivalents, as well as in stocks not included in its Underlying Index, but which the Adviser believes will help the Fund track its Underlying Index.

² Under the “representative sampling” strategy, the Adviser will seek to construct a Fund’s portfolio so that its market capitalization, industry weightings, fundamental investment characteristics (such as return variability, earnings valuation and yield) and liquidity measures perform like those of the Underlying Index.

and expenses, of the relevant Underlying Index (the “Deposit Securities”), together with the deposit of a relatively small specified cash payment (“Cash Component”). The Cash Component is generally an amount equal to the difference between (a) the net asset value (“NAV”) (per Creation Unit Aggregation) of the Fund and (b) the total aggregate market value (per Creation Unit Aggregation) of the Deposit Securities.³ Applicants state that in some circumstances it may not be practicable or convenient for a Fund to operate exclusively on an “in-kind” basis. The Trust reserves the right to permit, under certain circumstances, a purchaser of Creation Unit Aggregations to substitute cash in lieu of depositing some or all of the requisite Deposit Securities. An investor purchasing a Creation Unit Aggregation from a Fund will be charged a fee (“Transaction Fee”) to prevent the dilution of the interests of the remaining shareholders resulting from costs in connection with the purchase of Creation Unit Aggregations.⁴ The maximum Transaction Fees relevant to each Fund (including the maximum Transaction Fees) will be fully disclosed in the prospectus of such Fund (“Fund’s Prospectus”), and the method for calculating the Transaction Fees will be disclosed in each Fund’s Prospectus or statement of additional information (“SAI”). All orders to purchase Creation Unit Aggregations will be placed with the Distributor by or through an Authorized Participant, and it will be the Distributor’s responsibility to transmit such orders to the Trust. The Distributor also will be responsible for delivering the Fund’s Prospectus to those persons purchasing Creation Unit Aggregations, and for maintaining

³ The Trust will sell Creation Unit Aggregations of each Fund on any day that the New York Stock Exchange, the Exchange, a Fund, and the Custodian are open for business, including as required by section 22(e) of the Act (a “Business Day”). In addition to the list of names and amount of each security constituting the current Deposit Securities, it is intended that, on each Business Day, the Cash Component effective as of the previous Business Day, per outstanding Fund Share, will be made available. Any Exchange on which Fund Shares are listed will disseminate, every 15 seconds, during its regular trading hours, through the facilities of the Consolidated Tape Association, an approximate amount per Fund Share representing the sum of the estimated Cash Component effective through and including the previous Business Day, plus the current value of the Deposit Securities, on a per Fund Share basis.

⁴ Where a Fund permits a purchaser to substitute cash in lieu of depositing a portion of the requisite Deposit Securities, the purchaser may be assessed a higher Transaction Fee to cover the cost of purchasing such Deposit Securities, including brokerage costs, and part or all of the spread between the expected bid and the offer side of the market relating to such Deposit Securities.

records of both the orders placed with it and the confirmations of acceptance furnished by it. In addition, the Distributor will maintain a record of the instructions given to the Trust to implement the delivery of Fund Shares.

6. Purchasers of Fund Shares in Creation Unit Aggregations may hold such Fund Shares or may sell such Fund Shares into the secondary market. Fund Shares will be listed and traded on the American Stock Exchange, LLC, (“Amex”); Fund Shares of Future Funds will be listed and traded on a national securities exchange as defined in section 2(a)(26) of the Act or on the Nasdaq Stock Market (“Nasdaq”) (each, an “Exchange”). It is expected that one or more member firms of a listing Exchange will be designated to act as a specialist and maintain a market for Fund Shares on the Exchange (a “Specialist”), or if Nasdaq is the listing Exchange, one or more member firms of Nasdaq will act as a market maker (“Market Maker”) and maintain a market for Fund Shares.⁵ Prices of Fund Shares trading on an Exchange will be based on the current bid/offer market. Fund Shares sold in the secondary market will be subject to customary brokerage commissions and charges.

7. Applicants expect that purchasers of Creation Unit Aggregations will include institutional investors and arbitrageurs (which could include institutional investors). A Specialist, or Market Maker, in providing a fair and orderly secondary market for the Fund Shares, also may purchase Creation Unit Aggregations for use in its market-making activities. Applicants expect that secondary market purchasers of Fund Shares will include both institutional investors and retail investors.⁶ Applicants expect that the price at which Fund Shares trade will be disciplined by arbitrage opportunities created by the ability to continually purchase or redeem Creation Unit Aggregations at their NAV, which should ensure that Fund Shares will not trade at a material discount or premium in relation to their NAV.

⁵ If Fund Shares are listed on the Nasdaq, no particular Market Maker will be contractually obligated to make a market in Fund Shares, although Nasdaq’s listing requirements stipulate that at least two Market Makers must be registered as Market Makers in Fund Shares to maintain the listing. Registered Market Makers are required to make a continuous, two-sided market at all times or be subject to regulatory sanctions.

⁶ Fund Shares will be registered in book-entry form only. DTC or its nominee will be the registered owner of all outstanding Fund Shares. DTC or DTC Participants will maintain records reflecting beneficial owners of Fund Shares.

8. Fund Shares will not be individually redeemable, and owners of Fund Shares may acquire those Fund Shares from the Fund, or tender such Fund Shares for redemption to the Fund, in Creation Unit Aggregations only. To redeem, an investor will have to accumulate enough Fund Shares to constitute a Creation Unit Aggregation. Redemption orders must be placed by or through an Authorized Participant. An investor redeeming a Creation Unit Aggregation generally will receive (a) a portfolio of securities designated to be delivered for Creation Unit Aggregation redemptions on the date that the request for redemption is submitted ("Fund Securities"), which may not be identical to the Deposit Securities required to purchase Creation Unit Aggregations on that date, and (b) a "Cash Redemption Payment," consisting of an amount calculated in the same manner as the Cash Component, although the actual amount of the Cash Redemption Payment may differ from the Cash Component if the Fund Securities are not identical to the Deposit Securities on that day. An investor may receive the cash equivalent of a Fund Security in certain circumstances, such as if the investor is constrained from effecting transactions in the security by regulation or policy. A redeeming investor may pay a Transaction Fee, calculated in the same manner as a Transaction Fee payable in connection with purchases of Creation Unit Aggregations.

9. Neither the Trusts nor any individual Fund will be marketed or otherwise held out as an "open-end investment company" or a "mutual fund." Instead, each Fund will be marketed as an "exchange-traded fund," an "investment company," a "fund," or a "trust." All marketing materials that describe the method of obtaining, buying or selling Fund Shares, or refer to redeemability, will prominently disclose that Fund Shares are not individually redeemable and that the owners of Fund Shares may purchase or redeem Fund Shares from the Fund in Creation Unit Aggregations only. The same approach will be followed in the SAI, shareholder reports and investor educational materials issued or circulated in connection with the Fund Shares. The Funds will provide copies of their annual and semi-annual shareholder reports to DTC Participants for distribution to beneficial owners of Fund Shares.

Applicants' Legal Analysis

1. Applicants request an order under section 6(c) of the Act for an exemption from sections 2(a)(32), 5(a)(1), 22(d),

22(e), and 24(d) of the Act and rule 22c-1 under the Act, under section 12(d)(1)(J) for an exemption from sections 12(d)(1)(A) and (B) of the Act, and under sections 6(c) and 17(b) of the Act for an exemption from sections 17(a)(1) and 17(a)(2) of the Act.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction, or any class of persons, securities or transactions, from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) of the Act if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policies of the registered investment company and the general provisions of the Act. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provisions of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors.

Sections 5(a)(1) and 2(a)(32) of the Act

3. Section 5(a)(1) of the Act defines an "open-end company" as a management investment company that is offering for sale or has outstanding any redeemable security of which it is the issuer. Section 2(a)(32) of the Act defines a redeemable security as any security, other than short-term paper, under the terms of which the owner, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent. Because Fund Shares will not be individually redeemable, applicants request an order that would permit the Trusts to register as open-end management investment companies and issue Fund Shares that are redeemable in Creation Units Aggregations only. Applicants state that investors may purchase Fund Shares in Creation Unit Aggregations and redeem Creation Unit Aggregations from each Fund. Applicants further state that because the market price of Fund Shares will be disciplined by arbitrage opportunities, investors should be able to sell Fund Shares in the secondary

market at prices that do not vary substantially from their NAV.

Section 22(d) of the Act and Rule 22c-1 Under the Act

4. Section 22(d) of the Act, among other things, prohibits a dealer from selling a redeemable security, which is currently being offered to the public by or through a principal underwriter, except at a current public offering price described in the prospectus. Rule 22c-1 under the Act generally requires that a dealer selling, redeeming or repurchasing a redeemable security do so only at a price based on its NAV. Applicants state that secondary market trading in Fund Shares will take place at negotiated prices, not at a current offering price described in a Fund's Prospectus, and not at a price based on NAV. Thus, purchases and sales of Fund Shares in the secondary market will not comply with section 22(d) of the Act and rule 22c-1 under the Act. Applicants request an exemption under section 6(c) from these provisions.

5. Applicants assert that the concerns sought to be addressed by section 22(d) of the Act and rule 22c-1 under the Act with respect to pricing are equally satisfied by the proposed method of pricing Fund Shares. Applicants maintain that while there is little legislative history regarding section 22(d), its provisions, as well as those of rule 22c-1, appear to have been designed to (a) prevent dilution caused by certain riskless-trading schemes by principal underwriters and contract dealers, (b) prevent unjust discrimination or preferential treatment among buyers, and (c) ensure an orderly distribution of investment company shares by eliminating price competition from dealers offering shares at less than the published sales price and repurchasing shares at more than the published redemption price.

6. Applicants believe that none of these purposes will be thwarted by permitting Fund Shares to trade in the secondary market at negotiated prices. Applicants state that (a) secondary market trading in Fund Shares does not involve the Funds as parties and cannot result in dilution of an investment in Fund Shares, and (b) to the extent different prices exist during a given trading day, or from day to day, such variances occur as a result of third-party market forces, such as supply and demand. Therefore, applicants assert that secondary market transactions in Fund Shares will not lead to discrimination or preferential treatment among purchasers. Finally, applicants contend that the proposed distribution system will be orderly because arbitrage

activity will ensure that the difference between the market price of Fund Shares and their NAV remains narrow.

Section 24(d) of the Act

7. Section 24(d) of the Act provides, in relevant part, that the prospectus delivery exemption provided to dealer transactions by section 4(3) of the Securities Act does not apply to any transaction in a redeemable security issued by an open-end investment company. Applicants seek relief from section 24(d) to permit dealers selling Fund Shares to rely on the prospectus delivery exemption provided by section 4(3) of the Securities Act.⁷

8. Applicants state that Fund Shares are bought and sold in the secondary market in the same manner as closed-end fund shares. Applicants note that transactions in closed-end fund shares are not subject to section 24(d), and thus closed-end fund shares are sold in the secondary market without a prospectus. Applicants contend that Fund Shares likewise merit a reduction in the unnecessary compliance costs and regulatory burdens resulting from the imposition of the prospectus delivery obligations in the secondary market. Because Fund Shares will be listed on an Exchange, prospective investors will have access to information about the product over and above what is normally available about an open-end security. Applicants state that information regarding market price and volume will be continually available on a real time basis throughout the day on brokers' computer screens and other electronic services. The previous day's

⁷ Applicants state that they are not seeking relief from the prospectus delivery requirement for non-secondary market transactions, such as transactions in which an investor purchases Fund Shares from the Trusts or an underwriter. Applicants further state that each Fund's Prospectus will caution broker-dealers and others that some activities on their part, depending on the circumstances, may result in their being deemed statutory underwriters and subject them to the prospectus delivery and liability provisions of the Securities Act. For example, a broker-dealer firm and/or its client may be deemed a statutory underwriter if it purchases Creation Unit Aggregations from a Fund, breaks them down into the constituent Fund Shares, and sells those Fund Shares directly to customers, or if it chooses to couple the creation of a supply of new Fund Shares with an active selling effort involving solicitation of secondary market demand for Fund Shares. Each Fund's Prospectus will state that whether a person is an underwriter depends upon all of the facts and circumstances pertaining to that person's activities. Each Fund's Prospectus will caution dealers who are not "underwriters" but are participating in a distribution (as contrasted to ordinary secondary market trading transactions), and thus dealing with Fund Shares that are part of an "unsold allotment" within the meaning of section 4(3)(C) of the Securities Act, that they would be unable to take advantage of the prospectus delivery exemption provided by section 4(3) of the Securities Act.

price and volume information will be published daily in the financial section of newspapers. In addition, a website will be maintained that will include each Fund's Prospectus and SAI, the relevant Underlying Index for each Fund, and additional quantitative information that is updated on a daily basis, including the mid-point of the bid-ask spread at the time of the calculation of NAV ("Bid/Ask Price"),⁸ the NAV for each Fund, and information about the premiums and discounts at which the Fund Shares have traded.

9. Applicants will arrange for broker-dealers selling Fund Shares in the secondary market to provide purchasers with a product description ("Product Description") that describes, in plain English, the relevant Fund and the Fund Shares it issues. Applicants state that a Product Description is not intended to substitute for a full Fund's Prospectus. Applicants state that the Product Description will be tailored to meet the information needs of investors purchasing Fund Shares in the secondary market.

Section 22(e)

10. Section 22(e) generally prohibits a registered investment company from suspending the right of redemption or postponing the date of payment of redemption proceeds for more than seven days after the tender of a security for redemption. The principal reason for the requested exemption is that settlement of redemptions for the Foreign Funds is contingent not only on the settlement cycle of the United States market, but also on currently practicable delivery cycles in local markets for underlying foreign securities held by the Foreign Funds. Applicants state that local market delivery cycles for transferring certain foreign securities to investors redeeming Creation Unit Aggregations, together with local market holiday schedules, will under certain circumstances require a delivery process in excess of seven calendar days for the Foreign Funds. Applicants request relief under section 6(c) of the Act from section 22(e) to allow the Foreign Funds to pay redemption proceeds up to 14 calendar days (or, with respect to future Foreign Funds, within not more than the number of calendar days known to applicants as being the maximum number of calendar days required for such payment or satisfaction in the principal local foreign market(s) where transactions in Portfolio Securities of

⁸ The Bid-Ask Price per Fund Share of a Fund is determined using the highest bid and the lowest offer on the Exchange on which the Fund Shares are listed.

each such Fund customarily clear and settle) after the tender of a Creation Unit Aggregation for redemption. At all other times and except as disclosed in the relevant Fund's Prospectus and/or SAI, applicants expect that each Foreign Fund will be able to deliver redemption proceeds within seven days.⁹ With respect to future Foreign Funds, applicants seek the same relief from section 22(e) only to the extent that circumstances similar to those described in the application exist.

11. Applicants state that section 22(e) was designed to prevent unreasonable, undisclosed and unforeseen delays in the payment of redemption proceeds. Applicants assert that the requested relief will not lead to the problems that section 22(e) was designed to prevent. Applicants state that the SAI will disclose those local holidays (over the period of at least one year following the date of the SAI), if any, that are expected to prevent the delivery of redemption proceeds in seven calendar days, and the maximum number of days needed to deliver the proceeds for the relevant Foreign Fund.

Section 12(d)(1)

12. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring securities of an investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or, together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company. Section 12(d)(1)(B) of the Act prohibits a registered open-end investment company, its principal underwriter and any other broker-dealer from selling the investment company's shares to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by investment companies generally.

13. Applicants request an exemption to permit management investment companies ("Purchasing Management Companies") and unit investment trusts ("Purchasing Trusts") registered under the Act that are not part of the same "group of investment companies," as

⁹ Rule 15c6-1 under the Exchange Act requires that most securities transactions be settled within three business days of the trade. Applicants acknowledge that no relief obtained from the requirements of section 22(e) will affect any obligations applicants may have under rule 15c6-1.

defined in section 12(d)(1)(G)(ii) of the Act, as the Trusts (Purchasing Management Companies and Purchasing Funds collectively, "Purchasing Funds") to acquire shares of a Fund beyond the limits of section 12(d)(1)(A).¹⁰ Purchasing Funds exclude registered investment companies that are, or in the future may be, part of the same group of investment companies within the meaning of section 12(d)(1)(G)(ii) of the Act as the Funds. In addition, applicants seek relief to permit a Fund and the Distributor or any broker or dealer ("Broker") that is registered under the Exchange Act to knowingly sell shares of a Fund to a Purchasing Fund in excess of the limits of section 12(d)(1)(B). Applicants request that the relief sought apply to (a) Funds that are advised by the Adviser and in the same group of investment companies as the Trusts, (b) each Purchasing Fund that enters into an agreement with a Fund for the purchase of Fund Shares ("Purchasing Fund Agreement"), and (c) any Broker.¹¹

14. Each Purchasing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (the "Purchasing Fund Adviser") and may be advised by one or more investment advisers within the meaning of section 2(a)(20)(B) of the Act (each a "Sub-Adviser"). Any investment adviser to a Purchasing Fund will be registered under the Advisers Act or exempt from registration. Each Purchasing Trust will be sponsored by a sponsor ("Sponsor").

15. Applicants submit that the proposed conditions to the relief requested adequately address the concerns underlying the limits in section 12(d)(1)(A) and (B), which include concerns about undue influence, excessive layering of fees and overly complex structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

¹⁰ In addition to the Funds, applicants request that this relief apply to other exchange-traded funds ("ETFs") that are (1) advised by the Adviser or an entity controlling, controlled by, or under common control with the Adviser, and (2) part of the same "group of investment companies" as each Trust within the meaning of section 12(d)(1)(G)(ii) of the Act. Such open-end ETFs, collectively with the Funds, are referred to as "Open-end Funds," and unit investment trust ETFs are referred to as "UIT Funds."

¹¹ All parties that currently intend to rely on the requested relief from section 12(d)(1) are named as applicants. Any other party that relies on this relief in the future will comply with the terms and conditions of the application. A Purchasing Fund may rely on the requested order only to invest in the Funds and not in any other registered investment company.

16. Applicants believe that neither the Purchasing Funds nor a Purchasing Fund Affiliate would be able to exert undue influence over the Funds.¹² To limit the control that a Purchasing Fund may have over a Fund, applicants propose a condition prohibiting a Purchasing Fund Adviser or a Sponsor, any person controlling, controlled by, or under common control with a Purchasing Fund Adviser or Sponsor, and any investment company and any issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act that is advised or sponsored by a Purchasing Fund Adviser or Sponsor, or any person controlling, controlled by, or under common control with a Purchasing Fund Adviser or Sponsor ("Purchasing Fund Adviser/Sponsor Group") from controlling (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The same prohibition would apply to any Sub-Adviser, any person controlling, controlled by or under common control with the Sub-Adviser, and any investment company or issuer that would be an investment company but for sections 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) advised or sponsored by the Sub-Adviser or any person controlling, controlled by or under common control with the Sub-Adviser ("Sub-Adviser Group"). Applicants propose other conditions to limit the potential for undue influence over the Funds, including that no Purchasing Fund or Purchasing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to a Fund) will cause a Fund to purchase a security in any offering of securities during the existence of any underwriting or selling syndicate of which a principal underwriter is an Underwriting Affiliate ("Affiliated Underwriting"). An "Underwriting Affiliate" is a principal underwriter in any underwriting or selling syndicate that is an officer, director, member of an advisory board, Purchasing Fund Adviser, Sub-Adviser, employee or Sponsor of a Purchasing Fund, or a person of which any such officer, director, member of an advisory board, Purchasing Fund Adviser, Sub-Adviser, employee, or Sponsor is an affiliated person (except any person whose relationship to the Fund is covered by section 10(f) of the Act is not an Underwriting Affiliate).

¹² A "Purchasing Fund Affiliate" is a Purchasing Fund Adviser, Sub-Adviser, Sponsor, promoter, and principal underwriter of a Purchasing Fund, and any person controlling, controlled by, or under common control with any of those entities.

17. Applicants do not believe the proposed arrangement will involve excessive layering of fees. The board of directors or trustees of any Purchasing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged to the Purchasing Management Company are based on services provided that will be in addition to, rather than duplicative of, services provided under the advisory contract(s) of any Fund in which the Purchasing Management Company may invest. In addition, a Purchasing Fund Adviser or a trustee ("Trustee") or Sponsor of a Purchasing Trust will waive fees otherwise payable to it by the Purchasing Management Company or Purchasing Trust in an amount at least equal to any compensation (including fees received pursuant to any plan adopted by a Fund under rule 12b-1 under the Act) received by the Purchasing Fund Adviser or Trustee or Sponsor to the Purchasing Trust or an affiliated person of the Purchasing Fund Adviser, Trustee or Sponsor, from the Funds in connection with the investment by the Purchasing Management Company or Purchasing Trust in the Fund. Applicants state that any sales loads or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds set forth in Conduct Rule 2830 of the NASD.

18. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that no Fund may acquire securities of any investment company or company relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act. Applicants also represent that to ensure that Purchasing Funds comply with the terms and conditions of the requested relief from section 12(d)(1), any Purchasing Fund that intends to invest in a Fund in reliance on the requested order will be required to enter into a Purchasing Fund Agreement between the Fund and the Purchasing Fund. The Purchasing Fund Agreement will require the Purchasing Fund to adhere to the terms and conditions of the requested order and participate in the proposed transactions in a manner that addresses concerns regarding the requested relief. The Purchasing Fund Agreement also will include an acknowledgement from the Purchasing Fund that it may rely on the order only to invest in the Funds and not in any other investment company. The Purchasing Fund Agreement will further require any Purchasing Fund

that exceeds the 5% or 10% limitations in section 12(d)(1)(A)(ii) and (iii) to disclose in its prospectus that it may invest in ETFs, and to disclose, in "plain English," in its prospectus the unique characteristics of the Purchasing Funds investing in ETFs, including but not limited to the expense structure and any additional expenses of investing in ETFs.

Section 17(a)(1) and (2) of the Act

19. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, from selling any security to or purchasing any security from the company. Section 2(a)(3) of the Act defines "affiliated person" to include any person directly or indirectly owning, controlling or holding with power to vote 5% or more of the outstanding voting securities of the other person, any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with the power to vote by the other person, and any person directly or indirectly controlling, controlled by or under common control with the other person. Section 2(a)(9) of the Act provides that a control relationship will be presumed where one person owns more than 25% of another person's voting securities. Applicants state that if Creation Unit Aggregations of all of the Funds or of one or more particular Funds are held by twenty or fewer investors, including a Specialist or Market Maker, some or all of such investors will be 5% owners of the Fund, and one or more investors may hold in excess of 25% of the Fund. Such investors would be deemed to be affiliated persons of the Fund.

20. Applicants request an exemption from section 17(a) of the Act pursuant to sections 17(b) and 6(c) of the Act to permit persons that are affiliated persons of the Funds solely by virtue of holding 5 percent or more, or in excess of 25 percent of the outstanding Fund Shares of one or more Funds (or affiliated persons of such persons so long as they are not otherwise affiliated with the Funds) to effectuate purchases and redemptions "in-kind."

21. Applicants assert that no useful purpose would be served by prohibiting these types of affiliated persons from purchasing or redeeming Creation Unit Aggregations through "in-kind" transactions. The deposit procedures for both in-kind purchases and in-kind redemptions of Creation Unit Aggregations will be the same for all purchases and redemptions. Deposit Securities and Fund Securities will be valued in the same manner as Portfolio

Securities. Therefore, applicants state that in-kind purchases and redemptions will afford no opportunity for the affiliated persons of a Fund, or the affiliated persons of such affiliated persons, to effect a transaction detrimental to other holders of Fund Shares. Applicants also believe that in-kind purchases and redemptions will not result in self-dealing or overreaching of the Fund.

22. Applicants also seek relief from section 17(a) to permit a Fund that is an affiliated person of a Purchasing Fund because the Purchasing Fund holds 5% or more of the Fund Shares of the Fund to sell its Fund Shares to and redeem its Fund Shares from a Purchasing Fund.¹³ Applicants believe that any proposed transactions directly between the Funds and Purchasing Funds will be consistent with the policies of each Purchasing Fund. The purchase of Creation Unit Aggregations by a Purchasing Fund directly from a Fund will be accomplished in accordance with the investment restrictions of any such Purchasing Fund and will be consistent with the investment policies set forth in the Purchasing Fund's registration statement. The Purchasing Fund Agreement will require any Purchasing Fund that purchases Creation Unit Aggregations directly from a Fund to represent that the purchase of Creation Unit Aggregations from a Fund by a Purchasing Fund will be accomplished in compliance with the investment restrictions of the Purchasing Fund and will be consistent with the investment policies set forth in the Purchasing Fund's registration statement.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Applicants will not register a Future Fund of a Trust by means of filing a post-effective amendment to a Trust's registration statement or by any other means, unless either: (a) Applicants have requested and received with respect to such Future Fund, either exemptive relief from the Commission or a no-action letter from the Division of Investment Management of the Commission; or (b) the Future Fund will be listed on an Exchange without the need for a filing pursuant to rule 19b-4 under the Exchange Act.

¹³ Applicants believe that a Purchasing Fund will purchase Fund Shares in the secondary market and will not purchase or redeem Creation Unit Aggregations directly from a Fund. Nonetheless, a Purchasing Fund that owns 5% or more of a Fund could seek to transact in Creation Unit Aggregations directly with a Fund pursuant to the section 17(a) relief requested.

2. As long as the Trusts operate in reliance on the requested order, Fund Shares will be listed on an Exchange.

3. Neither the Trusts nor any Fund will be advertised or marketed as an open-end investment company or a mutual fund. Each Fund's Prospectus will prominently disclose that Fund Shares are not individually redeemable shares and will disclose that the owners of Fund Shares may acquire those Fund Shares from the Fund and tender those Fund Shares for redemption to the Fund in Creation Unit Aggregations only. Any advertising material that describes the purchase or sale of Creation Unit Aggregations or refers to redeemability will prominently disclose that Fund Shares are not individually redeemable, and that owners of Fund Shares may acquire those Fund Shares from the Fund and tender those Fund Shares for redemption to the Fund in Creation Unit Aggregations only.

4. The Web site maintained for each Fund, which will be publicly accessible at no charge, will contain the following information, on a per Fund Share basis, for each Fund: (a) The prior Business Day's NAV and the Bid/Ask Price, and a calculation of the premium or discount of the Bid/Ask Price at the time of calculation of the NAV against such NAV; and (b) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for each Fund will state that the Web site for the Fund has information about the premiums and discounts at which Fund Shares have traded.

5. The Fund's Prospectus and annual report for each Fund also will include: (a) the information listed in condition 4(b), (i) in the case of the Fund's Prospectus, for the most recently completed year (and the most recently completed quarter or quarters, as applicable) and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data, calculated on a per Fund Share basis for one, five and ten year periods (or life of the Fund): (i) The cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the relevant Underlying Index.

6. Before a Fund may rely on the order, the Commission will have approved, pursuant to rule 19b-4 under the Exchange Act, an Exchange rule requiring Exchange members and member organizations effecting transactions in Fund Shares to deliver a

Product Description to purchasers of Fund Shares.

7. Each Fund's Prospectus and Product Description will clearly disclose that, for purposes of the Act, Fund Shares are issued by the Fund, which is a registered investment company, and that the acquisition of Fund Shares by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Fund beyond the limits of section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a Purchasing Fund Agreement with the Fund regarding the terms of the investment.

8. The members of a Purchasing Fund's Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. The members of a Purchasing Fund's Sub-Advisory Group will not control (individually or in the aggregate) a Fund within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Fund Shares of a Fund, a Purchasing Fund's Advisory Group or a Purchasing Fund's Sub-Advisory Group, each in the aggregate, becomes a holder of more than 25% of the outstanding Fund Shares of a Fund, it will vote its Fund Shares in the same proportion as the vote of all other holders of the Fund Shares. This condition does not apply to the Purchasing Fund's Sub-Advisory Group with respect to a Fund for which the Purchasing Fund's Sub-Adviser or a person controlling, controlled by, or under common control with the Purchasing Fund Sub-Adviser acts as the investment adviser within the meaning of section 2(a)(20)(A) of the Act (in the case of an Open-end Fund) or as the sponsor (in the case of a UIT Fund).

9. No Purchasing Fund or Purchasing Fund Affiliate will cause any existing or potential investment by the Purchasing Fund in a Fund to influence the terms of any services or transactions between the Purchasing Fund or Purchasing Fund Affiliate and the Fund or a Fund Affiliate.

10. The board of directors or trustees of a Purchasing Management Company, including a majority of the disinterested directors or trustees, will adopt procedures reasonably designed to ensure that the Purchasing Fund Adviser and Purchasing Fund Sub-Adviser are conducting the investment program of the Purchasing Management Company without taking into account any consideration received by the Purchasing Management Company or a

Purchasing Fund Affiliate from a Fund or a Fund Affiliate in connection with any services or transactions.

11. No Purchasing Fund or Purchasing Fund Affiliate (except to the extent it is acting in its capacity as an investment adviser to an Open-end Fund or sponsor to a UIT Fund) will cause a Fund to purchase a security in any Affiliated Underwriting.

12. Before investing in a Fund in excess of the limits in section 12(d)(1)(A), each Purchasing Fund and the Fund will execute a Purchasing Fund Agreement stating, without limitation, that their boards of directors or trustees and their investment advisers or sponsors or trustees, as applicable, understand the terms and conditions of the order, and agree to fulfill their responsibilities under the order. At the time of its investment in shares of an Open-end Fund in excess of the limit in section 12(d)(1)(A)(i), a Purchasing Fund will notify the Open-end Fund of the investment. At such time, the Purchasing Fund will also transmit to the Fund a list of names of each Purchasing Fund Affiliate and Underwriting Affiliate. The Purchasing Fund will notify the Fund of any changes to the list of names as soon as reasonably practicable after a change occurs. The relevant Fund and the Purchasing Fund will maintain and preserve a copy of the order, the agreement, and the list with any updated information for the duration of the investment and for a period of not less than six years thereafter, the first two years in an easily accessible place.

13. The Purchasing Fund Adviser, Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by the Purchasing Fund in an amount at least equal to any compensation (including fees received under any plan adopted by an Open-end Fund under rule 12b-1 under the Act) received from a Fund by the Purchasing Fund Adviser, Trustee or Sponsor, or an affiliated person of the Purchasing Fund Adviser, Trustee or Sponsor, other than any advisory fees paid to the Purchasing Fund Adviser, Trustee or Sponsor, or its affiliated person by an Open-end Fund, in connection with the investment by the Purchasing Fund in the Fund. Any Purchasing Fund Sub-Adviser will waive fees otherwise payable to the Purchasing Fund Sub-Adviser, directly or indirectly, by the Purchasing Management Company in an amount at least equal to any compensation received from a Fund by the Purchasing Fund Sub-Adviser, or an affiliated person of the Purchasing Fund Sub-Adviser, other than any advisory fees paid to the Purchasing Fund Sub-

Adviser or its affiliated person by the Open-end Fund, in connection with the investment by the Purchasing Management Company in a Fund made at the direction of the Purchasing Fund Sub-Adviser. In the event that the Purchasing Fund Sub-Adviser waives fees, the benefit of the waiver will be passed through to the Purchasing Management Company.

14. Any sales charges and/or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds as set forth in Conduct Rule 2830 of the NASD.

15. Once an investment by a Purchasing Fund in the securities of a Fund exceeds the limit in section 12(d)(1)(A)(i) of the Act, the board of directors/trustees of an Open-end Fund ("Board"), including a majority of the disinterested Board members, will determine that any consideration paid by the Open-end Fund to a Purchasing Fund or a Purchasing Fund Affiliate in connection with any services or transactions: (a) Is fair and reasonable in relation to the nature and quality of the services and benefits received by the Fund; (b) is within the range of consideration that the Open-end Fund would be required to pay to another unaffiliated entity in connection with the same services or transactions; and (c) does not involve overreaching on the part of any person concerned. This condition does not apply with respect to any services or transactions between an Open-end Fund and its investment adviser(s), or any person controlling, controlled by, or under common control with such investment adviser(s).

16. The Board, including a majority of the disinterested Board members, will adopt procedures reasonably designed to monitor any purchases of securities by an Open-end Fund in an Affiliated Underwriting once the investment by a Purchasing Fund in the securities of the Fund exceeds the limit of section 12(d)(1)(A)(i) of the Act, including any purchases made directly from an Underwriting Affiliate. The Board will review these purchases periodically, but no less frequently than annually, to determine whether the purchases were influenced by the investment by the Purchasing Fund in the Open-end Fund. The Board will consider, among other things: (a) Whether the purchases were consistent with the investment objectives and policies of the Open-end Fund; (b) how the performance of securities purchased in an Affiliated Underwriting compares to the performances of comparable securities purchased during a comparable period of time in underwritings other than

Affiliated Underwritings or to a benchmark such as a comparable market index; and (c) whether the amount of securities purchased by the Fund in Affiliated Underwritings and the amount purchased directly from an Underwriting Affiliate have changed significantly from prior years. The Board will take any appropriate actions based on its review, including, if appropriate, the institution of procedures designed to assure that purchases of securities in Affiliated Underwritings are in the best interests of shareholders of the Open-end Fund.

17. Each Open-end Fund will maintain and preserve permanently in an easily accessible place a written copy of the procedures described in the preceding condition, and any modifications to such procedures, and will maintain and preserve for a period not less than six years from the end of the fiscal year in which any purchase in an Affiliated Underwriting occurred, the first two years in an easily accessible place, a written record of each purchase of securities in Affiliated Underwritings, once an investment by a Purchasing Fund in Fund Shares of the Fund exceeds the limits of section 12(d)(1)(A)(i) of the Act, setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the purchase, and the information or materials upon which the Board's determinations were made.

18. Before approving any advisory contract under section 15 of the Act, the board of directors or trustees of each Purchasing Management Company, including a majority of the disinterested directors or trustees, will find that the advisory fees charged under such contract are based on services provided that will be in addition to, rather than duplicative of, the services provided under the advisory contract(s) of any Open-end Fund in which the Purchasing Management Company may invest. These findings and their basis will be recorded fully in the minute books of the appropriate Purchasing Management Company.

19. No Fund will acquire securities of any other investment company or companies relying on sections 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06-7353 Filed 8-30-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC-27467]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

August 25, 2006.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of August, 2006. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch (tel. 202-551-5850). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 19, 2006, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

For Further Information Contact: Diane L. Titus at (202) 551-6810, SEC, Division of Investment Management, Office of Investment Company Regulation, 100 F Street, NE., Washington, DC 20549-4041.

Lebenthal Funds, Inc. [File No. 811-6170]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On May 1, 2006, applicant transferred its assets to corresponding series of Merrill Lynch Multi-State Municipal Series Trust, based on net asset value. Expenses of \$487,358 incurred in connection with the reorganization were paid by Fund Asset Management, L.P., applicant's investment adviser.

Filing Date: The application was filed on July 26, 2006.

Applicant's Address: Merrill Lynch Investment Management, L.P., 800 Scudders Mill Rd., Plainsboro, NJ 08536.

Oppenheimer International Large Cap Core Trust [File No. 811-21370]

Summary: Applicant seeks an order declaring that it has ceased to be an

investment company. On April 13, 2006, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of approximately \$20,499 incurred in connection with the liquidation were paid by applicant.

Filing Dates: The application was filed on April 21, 2006, and amended on August 16, 2006.

Applicant's Address: 6803 Tucson Way, Centennial, CO 80112.

MurphyMorris Investment Trust [File No. 811-21444]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On June 1, 2005, applicant transferred its assets to PMFM Core Advantage Portfolio Trust, a series of PMFM Investment Trust, based on net asset value. Expenses of approximately \$30,800 incurred in connection with the reorganization were paid by MuphyMorris Money Management Co., applicant's investment adviser.

Filing Dates: The application was filed on April 26, 2006, and amended on August 17, 2006.

Applicant's Address: 1551 Jennings Mill Rd., Suite 2400A, Bogart, GA 30622.

Columbia Short Term Bond Fund, Inc. [File No. 811-4842]; Columbia Fixed Income Securities Fund, Inc. [File No. 811-3581]

Summary: Each applicant seeks an order declaring that it has ceased to be an investment company. On September 23, 2005 and October 7, 2005, respectively, each applicant transferred its assets to a corresponding series of Columbia Funds Series Trust, based on net asset value. Expenses of approximately \$90,526 and \$109,747, respectively, incurred in connection with the reorganizations were paid by applicants and Columbia Management Advisors, LLC, applicants' investment adviser.

Filing Date: The applications were filed on June 23, 2006.

Applicants' Address: 1301 SW. Fifth Ave., Portland, OR 97201.

Columbia International Stock Fund, Inc. [File No. 811-7024]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 10, 2005, applicant transferred its assets to a corresponding series of Columbia Funds Series Trust I, based on net asset value. Expenses of approximately \$19,103 incurred in connection with the reorganization were paid by Columbia

Management Advisors, LLC, applicant's investment adviser.

Filing Dates: The application was filed on June 23, 2006, and amended on July 17, 2006.

Applicant's Address: 1301 SW Fifth Ave., Portland, OR 97201.

Columbia Funds Trust I [File No. 811-2214]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 27, 2006, applicant transferred its assets to a corresponding series of Columbia Funds Series Trust I, based on net asset value. Expenses of approximately \$114,620 incurred in connection with the reorganization were paid by Columbia Management Advisors, LLC, applicant's investment adviser.

Filing Date: The application was filed on June 23, 2006.

Applicant's Address: One Financial Center, Boston, MA 02111.

Meeder Advisor Funds [File No. 811-6720]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On December 27, 2004, applicant made a liquidating distribution to its shareholders, based on net asset value. Expenses of less than \$100 incurred in connection with the liquidation were paid by applicant. A notice of the filing of the application, which contained certain erroneous information, was previously issued on June 30, 2006 (Investment Company Act Release No. 27418).

Filing Dates: The application was filed on July 8, 2004, and amended on June 13, 2006 and August 21, 2006.

Applicant's Address: 6125 Memorial Dr., Dublin, OH 43017.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6-14500 Filed 8-30-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [71 FR 50109, August 24, 2006].

STATUS: Closed Meeting.

PLACE: 100 F Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Tuesday, August 29, 2006 at 10 a.m.

CHANGE IN THE MEETING: Deletion of Item.

The following item will not be considered during the Closed Meeting on Tuesday, August 29, 2006:

Requests for information in an investigative file.

The Commission determined that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551-5400.

Dated: August 29, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06-7387 Filed 8-29-06; 3:42 pm]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54357; File No. SR-MSRB-2006-06]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Revisions to the Series 51 Examination Program

August 24, 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 11, 2006, the Municipal Securities Rulemaking Board ("MSRB" or "Board"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the MSRB. The MSRB has designated the proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization pursuant to Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(f)(1) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(i).

⁴ 17 CFR 240.19b-4(f)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSRB is filing with the Commission revisions to the study outline for the Municipal Fund Securities Limited Principal Qualification Examination (Series 51) program.⁵ The proposed revisions update the material to reflect changes to the rules and regulations covered in the examination, and to provide more explicit references to these rules and regulations. The MSRB is not proposing any textual changes to its rules.

The revised study outline is available on the MSRB's Web site (<http://www.msrb.org>), at the MSRB's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the MSRB 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 MSRB 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

Section 15B(b)(2)(A) of the Act⁶ authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. The MSRB has developed examinations that are designed to establish that persons associated with brokers, dealers and municipal securities dealers that effect transactions in municipal securities have attained specified levels of competence and

⁵ The MSRB is also proposing corresponding revisions to the Series 51 question bank, but based upon instructions from the Commission staff, the MSRB is submitting SR-MSRB-2006-06 for immediate effectiveness pursuant to Section 19(b)(3)(A)(i) of the Act and Rule 19b-4(f)(1) thereunder, and is not filing the question bank for Commission review. See letter to Diane G. Klinke, General Counsel, MSRB, from Belinda Blaine, Associate Director, Division of Market Regulation, SEC, dated July 24, 2006. The question bank is available for Commission review.

⁶ 15 U.S.C. 78o-4(b)(2)(A).

knowledge. The MSRB periodically reviews the content of the examinations to determine whether revisions are necessary or appropriate in view of changes pertaining to the subject matter covered by the examinations.

MSRB Rule G-3(b)(iv) states that the municipal fund securities limited principal has responsibility to oversee the municipal securities activities of a securities firm or bank dealer solely as such activities relate to transactions in municipal fund securities. In this capacity, the municipal fund securities limited principal manages, directs or supervises one or more of the following activities relating to municipal fund securities: Underwriting, trading or selling municipal fund securities; rendering financial advisory or consultant services to issuers of municipal fund securities; research or investment advice, or communications with customers, about any of the activities named heretofore; maintaining records on activities in municipal fund securities; processing, clearing, and (in the case of securities firms) safekeeping of municipal fund securities; and training of principals and representatives.⁷ The only examination that qualifies a municipal fund securities limited principal is the Municipal Fund Securities Limited Principal Qualification Examination.

A committee of industry members and MSRB staff recently completed a review of the study outline for the Series 51 examination program. As a result of this review, the MSRB is proposing to update the content of the examination to cover certain rules or provisions of rules that were promulgated since the date that the outline was initially published (MSRB Rule G-21 and new Rule G-38 on solicitation of municipal securities business), and to delete coverage of rules or rule provisions that are obsolete (old Rule G-38 on consultants). Technical changes have been made to correct the citations for the rules that have been amended. The number of questions on each section of the examination will not change. The revised examination continues to cover areas of knowledge required for effective supervision of municipal fund securities activities. A summary of the changes to the study outline is provided below.

Part Two—Product Knowledge

- A reference to taxes imposed on withdrawals for non-qualified uses relating to 529 college savings plans was added.

- The description on deductibility of contributions relating to 529 college savings plans was expanded.

- A reference to the federal sunset provisions relating to 529 college savings plans was removed.

Part Three—General Supervision

- A reference to any recently enacted MSRB interpretations was added to the reference to any recently enacted rules governing general supervision.

Part Four—Fair Practice and Conflicts of Interest

- References to old Rule G-38, on consultants, were removed.
- New Rule G-38, on solicitation of municipal securities business, was added.
- A technical change was made to revise the title of Rule G-20.
- A rule cite was revised to Rule G-21(f).
- Rule G-21(e) regarding advertisements for municipal fund securities was added.
- A reference to any recently enacted MSRB interpretations was added to the reference to any recently enacted rules governing fair practice and conflicts of interest.

Part Five—Sales Supervision

- A reference to any recently enacted MSRB interpretations was added to the reference to any recently enacted rules governing sales supervision.

Part Six—Underwriting and Disclosure Obligations

- A reference to any recently enacted MSRB interpretations was added to the reference to any recently enacted rules governing underwriting and disclosure obligations.

Part Seven—Operations

- A reference to any recently enacted MSRB interpretations was added to the reference to any recently enacted rules governing operations.

The examination will continue to consist of 60 multiple-choice questions assigned to the seven areas of the examination as follows:

	Percent
Regulatory Structure	5
Product Knowledge	20
General Supervision	20
Fair Practice and Conflicts of Interest	15
Sales Supervision	20
Underwriting and Disclosure Obligations	10
Operations	10

Candidates will continue to be allowed one and one-half hours for each

testing session. Each question will continue to count one point, and each candidate must correctly answer 70 percent of the questions in order to receive a passing grade. Also, each candidate must have previously or concurrently qualified as a general securities principal or investment company/variable contracts limited principal in addition to passing the Series 51 Examination in order to gain qualification as a municipal fund securities limited principal.

2. Statutory Basis

The MSRB believes that the proposed revisions to the Series 51 examination program are consistent with the provisions of Section 15B(b)(2)(A) of the Act,⁸ which authorizes the MSRB to prescribe standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors. Section 15B(b)(2)(A) of the Act also provides that the Board may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the Board.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB 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, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act⁹ and Rule 19b-4(f)(1) thereunder,¹⁰ in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. MSRB proposes to implement the revised Series 51 examination program on September 15, 2006. At any time within 60 days of the

⁷ A municipal securities principal (Series 53) is also qualified to bear these responsibilities.

⁸ 15 U.S.C. 78o-4(b)(2)(A).

⁹ 15 U.S.C. 78s(b)(3)(A)(i).

¹⁰ 17 CFR 240.19b-4(f)(1).

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.¹¹

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-MSRB-2006-06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-MSRB-2006-06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the MSRB. 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-MSRB-2006-06 and should be submitted on or before September 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Nancy M. Morris,
Secretary.

[FR Doc. E6-14495 Filed 8-30-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54360; File No. SR-NASD-2006-088]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change Relating to Motions To Decide Claims Before a Hearing on the Merits

August 24, 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 the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Dispute Resolution, Inc. ("NASD Dispute Resolution") filed with the Securities and Exchange Commission ("SEC" or "Commission") on July 21, 2006, the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Dispute Resolution. 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 new Rule 12504 and new Rule 13504 of the NASD Code of Arbitration Procedure to address motions to decide claims before a hearing on the merits ("dispositive motions"). Below is the text of the proposed rule change. Proposed new language is *italic*; proposed deletions are in brackets.

* * * * *

12504. Motions To Decide Claims Before a Hearing on the Merits

(a) *Except as provided in Rule 12206, motions to decide a claim before a hearing are discouraged and may only be granted in extraordinary circumstances.*

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(b) *Motions under this rule must be made in writing. Unless the parties agree or the panel determines otherwise, motions under this rule must be served at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion.*

(c) *Motions under this rule will be decided by the full panel. The panel may not grant a motion under this rule unless a prehearing conference on the motion is held, or waived by the parties. Prehearing conferences to consider motions under this rule will be tape-recorded.*

(d) *The panel may issue sanctions under Rule 12212 if it determines that a party filed a motion under this rule in bad faith.*

* * * * *

13504. Motions To Decide Claims Before a Hearing on the Merits

(a) *Except as provided in Rule 13206, motions to decide a claim before a hearing are discouraged and may only be granted in extraordinary circumstances.*

(b) *Motions under this rule must be made in writing. Unless the parties agree or the panel determines otherwise, motions under this rule must be served at least 60 days before a scheduled hearing, and parties have 45 days to respond to the motion.*

(c) *Motions under this rule will be decided by the full panel. The panel may not grant a motion under this rule unless a prehearing conference on the motion is held, or waived by the parties. Prehearing conferences to consider motions under this rule will be tape-recorded.*

(d) *The panel may issue sanctions under Rule 13212 if it determines that a party filed a motion under this rule in bad faith.*

* * * * *

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.

¹¹ See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

(a) Background

NASD has filed a series of proposed rule changes with the SEC to amend the NASD Code of Arbitration Procedure ("current Code"). The proposed rule changes would revise the current Code language in accordance with the SEC's Plain English initiative, codify current practices, implement several substantive changes, and reorganize the current Code into three separate procedural codes: one relating to customer disputes ("Customer Code"), one relating to industry disputes ("Industry Code"), and one relating to mediations ("Mediation Code," and collectively with the Customer and Industry Codes, the "Code Rewrite"). Proposed Rules 12504 and 13504 initially were proposed as part of the Code Rewrite.

On June 23, 2005, the SEC published the Code Rewrite for comment in the **Federal Register**.³ The SEC received 51 comment letters on the Customer Code, one comment letter on the Industry Code, and one comment letter on the Mediation Code.⁴

On May 4, 2006, NASD filed a Response to Comments and Amendment No. 5 ("Amendment") to address the commenters' concerns with the Customer Code.⁵ The Amendment summarized the commenters' concerns and, where appropriate, responded to their concerns by proposing to clarify the meaning of some of the rules and to explain arbitration procedure under some of the proposed rules. The Amendment also requested that the

³ See Securities Exchange Act Rel. No. 51856 (Jun. 15, 2005); 70 FR 36442 (Jun. 23, 2005) (Customer Code); Securities Exchange Act Rel. No. 51857 (Jun. 15, 2005); 70 FR 36430 (Jun. 23, 2005) (Industry Code); and Securities Exchange Act Rel. No. 51855 (Jun. 15, 2005); 70 FR 36440 (Jun. 23, 2005); (Mediation Code).

⁴ The SEC approved the Mediation Code on October 31, 2005, and it became effective on January 30, 2006. See Securities Exchange Act Rel. No. 52705 (Oct. 31, 2005); 70 FR 67525 (Nov. 7, 2005) (SR-NASD-2004-013).

⁵ See Reorganization and Revision of NASD Rules Relating to Customer Disputes (visited Aug. 2, 2006); http://www.nasd.com/RulesRegulation/RuleFilings/2003RuleFilings/NASDW_009306. A similar amendment was filed to address the comment letter on the Industry Code. See Reorganization and Revision of NASD Arbitration Rules Relating to Industry Disputes (visited Aug. 2, 2006) http://www.nasd.com/RulesRegulation/RuleFilings/2004RuleFilings/NASDW_009295.

While none of the 51 commenters addressed specifically the Industry Code, many of the issues raised apply to the Industry Code, because the two codes contain similar rules and procedures. Thus, based on these comments, NASD made similar changes to the Industry Code, where applicable.

proposal be approved on an accelerated basis.

NASD posted the Amendment on its Web site shortly after it was filed. As of July 19, 2006, the SEC had received 105 comment letters opposing some aspects of the Amendment, and asking the SEC to deny NASD's request for accelerated approval.⁶ Several of the 105 comment letters objected to the Amendment because it proposed to include in the narrative section of the rule filing additional guidance relating to proposed rules 12504 and 13504, including examples of "extraordinary circumstances" in which a dispositive motion could be granted.

(b) Comments Received on the Description of Proposed Rules 12504 and 13504

NASD states that, based on some of the 51 comment letters received on the Customer Code⁷ and meetings with various constituents, it initially believed that the term "extraordinary circumstances" needed to be explained to clarify when Proposed Rules 12504 and 13504 would apply, and to provide more guidance to arbitrators on the standards to use when deciding a dispositive motion. NASD states that it raised this issue with its public and industry constituents and suggested that they develop language jointly to explain the term "extraordinary circumstances." NASD was unable to obtain consensus among its constituents. Thus, NASD proposed to insert the following narrative language in the Dispositive Motions section of the rule filing:

For purposes of this rule, if a party demonstrates affirmatively the legal defenses of, for example, accord and satisfaction, arbitration and award, settlement and release, or the running of an applicable statute of repose, the panel may consider these defenses to be extraordinary circumstances. In such cases, the panel may dismiss the arbitration claim before a hearing on the merits if the panel finds that there are no material facts in dispute concerning the defense raised, and there are no determinations of credibility to be made concerning the evidence presented.

The proposed narrative language has engendered substantial controversy. Of the 105 comment letters received on the Amendment, 22 specifically opposed the proposed narrative language. In general, these commenters contended that the proposed narrative language

⁶ See Comments on NASD File No. SR-NASD-2003-158, Notice of Filing of Proposed Rule Change and Amendments Nos. 1, 2, 3, and 4 Thereto to Amend NASD Arbitration Rules for Customer Disputes (visited Jul. 19, 2006) <http://www.sec.gov/rules/sro/nasd/nasd2003158.shtml>.

⁷ The comment letter received on the Industry Code did not address dispositive motions.

encourages, rather than discourages, the making of dispositive motions. The commenters also argued that the proposed language could increase investors' costs in defending against these types of motions, and could result in a loss of the major benefits of the arbitration process—cost effectiveness and expediency.

As noted, NASD has been unable to obtain a consensus among its constituents as to what constitutes "extraordinary circumstances" for purposes of Proposed Rules 12504 and 13504. Therefore, NASD is re-filing the original text of Proposed Rules 12504 and 13504 and the associated narrative language separately from the Customer and Industry Codes, but without the above narrative language that was proposed in the Amendment. NASD believes that addressing these provisions separately will give the public additional time to provide its input without delaying the Commission's review and final action on the remaining provisions of the Customer and Industry Codes.

(c) Proposed Rules 12504 and 13504: Motions To Dismiss a Claim Before a Hearing on the Merits

One recurring question in NASD arbitrations is whether, and to what extent, arbitrators should decide dispositive motions before a hearing on the merits. In its *Follow-up Report on Matters Relating to Securities Arbitration*, the General Accounting Office ("GAO") noted that while NASD's arbitration rules do not specifically provide for dispositive motions, case law generally supports the authority of arbitrators to grant motions to dismiss claims prior to the hearing on the merits.⁸

Generally, NASD believes that parties have the right to a hearing in arbitration. However, NASD also acknowledges that in certain extraordinary circumstances, it would be unfair to require a party to proceed to a hearing. Thus, the proposed rules would:

- Provide that, except for motions relating to the eligibility of claims under the current Code's six year time limit, motions that would resolve a claim before a hearing on the merits are discouraged, and may only be granted in extraordinary circumstances;
- Require that a prehearing conference before the full panel must be held to discuss the motion before the panel could grant it; and

⁸ U.S. General Accounting Office, *Follow-up Report on Matters Relating to Securities Arbitration* (April 11, 2003). GAO has since been renamed Government Accountability Office.

- Allow the panel to issue sanctions against a party for making a dispositive motion in bad faith.

NASD believes that this rule proposal, which was developed over several years with input from industry and public members of the NAMC, will provide necessary guidance to parties and arbitrators, and make the administration of arbitrations more uniform and transparent. NASD believes that the rule strikes the appropriate balance between allowing the dismissal of claims in limited, extraordinary circumstances and reinforcing the general principle that parties are entitled to a hearing in arbitration.

(2) Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must 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 rules will provide some guidelines for arbitrators and users of the forum concerning dispositive motions practice and will, thereby, make administration of arbitrations more uniform and transparent.

(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, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NASD did not solicit written comments. Comments received by the Commission prior to this filing are discussed above.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. In particular, the Commission solicits comment on whether the proposed rule change provides for arbitration procedures that are fair and consistent with the protection of investors for the resolution of their disputes. In addition, the Commission solicits comment on the questions included below.

(A) *Need for a Dispositive Motions Rule:* NASD has stated that, because the current Code provides no guidance with respect to whether arbitrators have the authority to grant dispositive motions, arbitrator decisions with respect to these motions lack uniformity. Should the current Code, or the Customer and Industry Codes, if adopted, contain a dispositive motions rule? Is the absence or presence of such a rule detrimental to the arbitration process, and if so, how? Assuming that arbitrator decisions with respect to dispositive motions lack uniformity, are there ways, other than through the proposed rule, to address this issue? Commenters are specifically invited to share quantifiable costs and benefits that they believe may result should the Commission approve or disapprove the proposed rules.

(B) *Proposed Rules:* NASD believes that Proposed Rules 12504 and 13504 strike the appropriate balance between the parties' right to have a hearing and the authority of arbitrators to dismiss claims in limited, extraordinary circumstances. Do the proposed rules strike an appropriate balance, or would they tend to favor one party over another?

(C) *Explanatory Language Regarding "Extraordinary Circumstances":* In connection with Proposed Rules 12504 and 13504, as initially filed with the Code Rewrite, some commenters stated that the absence of a definition for "extraordinary circumstances" would promote, rather than limit, abusive litigation tactics in arbitration.⁹ Others stated that the "extraordinary circumstances" standard is too vague,¹⁰

⁹ See, e.g., Letter from Jeff Sonn, Esq., Sonn & Erez (Jul. 14, 2005) ("Sonn letter"); Letter from Steven A. Stolle, Rohde & Van Kampen PLLC (Jul. 8, 2005); Letter from Rebecca Davis, Esquire, Tate, Lazarini & Beall, PLC (Jul. 14, 2005); and Letter from Mark A. Tepper (Jul. 14, 2005).

¹⁰ See, e.g., Letter from Barry D. Estell (May 15, 2006) and Letter from Daniel A. Ball, Selzer Gurvitch Rabin & Obecnay, Chtd. (July 14, 2005).

and/or recommended that the term be defined or described in the Code Rewrite.¹¹ As described in Section II.A.1.b, above, NASD proposed in Amendment No. 5 to provide explanatory language in the narrative portion of the Code Rewrite filing to clarify the rule language. Since Amendment No. 5 was filed, some commenters have opposed providing examples of "extraordinary circumstances" if the rule is approved.¹² Should additional guidance be provided for what constitutes "extraordinary circumstances"? Why or why not? If so, what type of additional guidance would be beneficial? Should a term other than "extraordinary circumstances" be used? If so, what would be a more useful term?

(D) *Standard of Pleading:* Some commenters have expressed concerns about dispositive motions being granted when statements of claim do not meet pleading requirements under civil procedure rules. NASD Rule 10314, however, requires only that the statement of claim specify "the relevant facts and the remedies sought."¹³ Should the proposed rule provide additional guidance in the context of dispositive motions concerning the relevant pleading standard in NASD arbitration?

(E) *Authority of Arbitrators to Limit Filing of Dispositive Motions:* The proposed rules provide that dispositive motions are "discouraged." One commenter suggested that the arbitration panel be given the authority to manage the arbitration proceeding by denying leave to make dispositive motions. Should NASD grant arbitrators this authority in the proposed rule?

(F) *Additional Suggestions:* Are there other ways in which the proposed rule could balance cost effectiveness and efficiency with the general principle that parties are entitled to a hearing in arbitration?

Comments may be submitted by any of the following methods:

¹¹ See, e.g., Letter from Tim Canning, Law Offices of Timothy A. Canning (Jul. 14, 2005); Letter from Scott C. Ilgenfritz (Jul. 14, 2005); Letter from Richard A. Karoly, Vice President and Senior Corporate Counsel, Charles Schwab & Co., Inc. (Jul. 14, 2005); and Sonn Letter.

¹² See, e.g., Letter from David E. Robbins, Kaufmann, Feiner, Yamin, Gildin & Robbins LLP (May 29, 2006) and Letter from Robert S. Banks, Jr., Public Investors Arbitration Bar Association (May 26, 2006).

¹³ See Letters from Jill I. Gross and Barbara Black, Directors of Advocacy, Pace Investor Rights Project (Jul. 14, 2005 and Jun. 6, 2006) ("Pace Letters") and Letter from Brian Lantagne, Chair, NASAA Broker-Dealer Arbitration Project Group (Jul. 19, 2006) ("NASAA Letter").

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-2006-088 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-2006-088. The file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549. Copies of such filing will also 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 SR-NASD-2006-088 and should be submitted on or before September 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁴

Nancy M. Morris,
Secretary.

[FR Doc. E6-14493 Filed 8-30-06; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

Release No. 34-54359; File No. SR-NYSE-2006-53]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Use of the Revised Uniform Application for Securities Industry Registration or Transfer (Form U4) and Revised Uniform Termination Notice for Securities Industry Registration (Form U5)

August 24, 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 4, 2006, the New York Stock Exchange LLC ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposed rule change as a "non-controversial" rule change pursuant to Section 19(b)(3)(A) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.⁵

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange submits to the Commission, for use by the Exchange, the recently revised Uniform Application for Securities Industry Registration or Transfer (Form U4) and revised Uniform Termination Notice for Securities Industry Registration (Form U5).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed

any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to adopt, for use by the Exchange, recently revised Forms U4 and U5⁶ (collectively, the "Forms"). These Forms are identical to those filed with the Commission by the National Association of Securities Dealers ("NASD") in 2005.⁷

The revised Forms, which are to be used by the Exchange as part of its registration and oversight of persons associated with member organizations, have been enhanced to provide more meaningful and detailed disclosure with respect to registration-related functions processed through the Central Registration Depository ("CRD") system. The CRD is an industry-wide automated system which allows for the efficient review and tracking of registered persons in the securities industry, such as changes in their work and disciplinary histories. Further, use of the revised Forms allows for integration of Form U4 and Form U5 information into branch office registration and reporting functions processed through the CRD system by linking registered persons to their designated branch office.

2. Statutory Basis

The Exchange believes that, insofar as Forms U4 and U5 and the CRD system are used by the various self-regulatory organizations, including the Exchange, their use is consistent with Section 6(b)(5) of the Act⁸ in fostering cooperation and coordination with persons engaged in regulating transactions in securities. Additionally, the Exchange believes that the information reported on the Forms will assist the Exchange in its

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ Certain additions and technical corrections were made throughout the discussion of the proposed rule change pursuant to conversations with NYSE staff. Telephone conversations between Cory Figman, Senior Special Counsel, Rule and Interpretive Standards, NYSE, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on August 10, 2006.

⁶ Form U4 is the "Uniform Application for Securities Industry Registration or Transfer" and Form U5 is the "Uniform Termination Notice for Securities Industry Registration." Form U4 has historically been the vehicle for the reporting of events that may reveal that a person is subject to a statutory disqualification. See Section 3(a)(39) of the Act, 15 U.S.C. 78c(a)(39).

⁷ See Securities Exchange Act Release No. 52544 (September 30, 2005), 70 FR 58764 (October 7, 2005) (SR-NASD-2005-030) and NASD Notice to Members 05-66.

⁸ 15 U.S.C. 78f(b)(5).

¹⁴ 17 CFR 200.30-3(a)(12).

responsibilities under Section 6(c) of the Act⁹ in evaluating whether an individual subject to a statutory disqualification or who cannot meet such standards of training, experience, and competence as are prescribed by the rules of the Exchange or those who have engaged in acts or practices inconsistent with just and equitable principles of trade should be denied membership.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act¹⁰ and Rule 19b-4(f)(6) thereunder.¹¹

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative prior to 30 days after the date of filing.¹² However, Rule 19b-4(f)(6)(iii)¹³ permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange provided the Commission with written notice of its intent to file this proposed rule change at least five business days prior to the date of filing of the proposed rule change. In addition, the Exchange has requested that the Commission waive the 30-day operative delay to allow the Exchange to utilize the U4 and U5 Forms without any undue delay. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because it would allow the

Exchange to immediately use the revised Forms U4 and U5, which are currently being used by NASD.¹⁴ For this reason, the Commission designates the proposal to be effective and operative upon filing with the Commission.¹⁵

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such proposed 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-NYSE-2006-53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSE-2006-53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference

Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE-2006-53 and should be submitted on or before September 21, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁶

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 06-7301 Filed 8-30-06; 8:45 am]

BILLING CODE 8010-01-P

DEPARTMENT OF STATE

[Public Notice 5428]

Overseas Buildings Operations; Industry Advisory Panel: Meeting Notice

The Industry Advisory Panel of the Overseas Buildings Operations will meet on Thursday, September 14, 2006 from 9:30 a.m. until 3:30 p.m. Eastern Standard Time. The meeting will be held at the Department of State, 2201 C Street, NW., (entrance on 23rd Street), Room 1105—Washington, DC. The majority of the meeting is devoted to an exchange of ideas between the Department's Bureau of Overseas Buildings Operations' senior management and the panel members, on design, operations and building maintenance. Members of the public are asked to kindly refrain from joining the discussion until Director Williams opens the discussion to the public. Please arrive no later than 9 a.m. (Security check-in desk opens at 8:30 a.m.)

Register by e-mailing: iapr@state.gov. Mail to: iapr@state.gov prior to September 6 (only one person per company may register). Your response should include your date of birth and social security number, which will be used by Diplomatic Security to issue a temporary pass to enter the building. If you have any questions, please contact Michael Sprague on 703/875-7173.

Charles E. Williams,

Director & Chief Operating Officer, Overseas Buildings Operations, Department of State.

[FR Doc. 06-7342 Filed 8-30-06; 8:45 am]

BILLING CODE 4710-24-M

⁹ 15 U.S.C. 78f(c).

¹⁰ 15 U.S.C. 78s(b)(3)(A).

¹¹ 17 CFR 240.19b-4(f)(6).

¹² *Id.*

¹³ 17 CFR 240.19b-4(f)(6)(iii).

¹⁴ See SR-NASD-2005-030, *supra* note.

¹⁵ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁶ 17 CFR 200.30-3(a)(12).

DEPARTMENT OF STATE

[Public Notice 5511]

Announcement of Meetings of the International Telecommunication Advisory Committee

Summary: This notice announces meetings of the International Telecommunication Advisory Committee (ITAC).

The International Telecommunication Advisory Committee (ITAC) will meet to prepare advice on proposed U.S. contributions to Study Group 13 (Next Generation Networks) of the International Telecommunication Union's Telecommunication Standardization Sector on Wednesday September 20, 2006, 10:30 a.m.—4 p.m. Eastern Time at the offices of COMTek, 14151 Newbrook Drive, Suite 400, Chantilly, VA 20151.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare advice on proposed U.S. contributions to Study Group 15 (Optical and other transport network infrastructures) of the International Telecommunication Union's Telecommunication Standardization Sector on Friday, October 13 starting 30 minutes after the closure of the closing plenaries of the ATIS OPTXS and NIPP technical subcommittees meeting at the Marriott Vancouver Pinnacle, 1128 West Hastings Street, Vancouver, British Columbia, Canada V6E 4R5.

The International Telecommunication Advisory Committee (ITAC) will meet to prepare advice on proposed U.S. contributions to Study Group 16 (Multimedia terminals, systems and applications) of the International Telecommunication Union's Telecommunication Standardization Sector on Thursday October 26, 2006, 10:30 a.m.—4 p.m. Eastern Time at the offices of COMTek, 14151 Newbrook Drive, Suite 400, Chantilly, VA 20151.

These meetings are open to the public, and conference bridges may be available. Further information may be obtained from the secretariat minardje@state.gov, telephone 202-647-3234.

Dated: August 25, 2006.

James G. Ennis,

Foreign Affairs Officer, International Communications & Information Policy, Multilateral Affairs, Department of State.
[FR Doc. 06-7343 Filed 8-30-06; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF STATE

[Public Notice 5512]

Advisory Committee on Transformational Diplomacy; Notice of Meeting

The Department of State announces a meeting of the Secretary of State's Advisory Committee on Transformational Diplomacy beginning on Wednesday September 6, 2006 and continuing on Thursday, September 7, 2006, at the U.S. Department of State at 2201 C Street, NW., Washington, DC. The Committee is composed of a group of prominent Americans from the private sector and academia who provide the Department with advice on its worldwide management operations, including structuring, leading, and managing large global enterprises, communicating governmental missions and policies to relevant publics, and better use of information technology.

The Committee will meet in open session from 5 p.m. to 6:45 p.m. on September 6, 2006. The Committee also will meet in open session from 8:15 a.m. until 12 p.m. on September 7, 2006. The Committee will meet in closed session from 12 p.m. to 12:30 p.m. It has been determined that this portion of the meeting will be closed to the public pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 552b(c)[1] and 552b(c)[4] because it is likely to involve discussion of classified information and may involve discussion of confidential business information.

The agenda for the September 6 open session will include an overview briefing about the Department of State and its mission. The agenda for the September 7 open session will include briefings on Public/Private Partnership Models, Workforce and Training, the State Department in 2012, Congressional Interaction, the Embassy of the Future and discussion on establishing working groups for the Committee. The agenda for the September 7 closed session will include matters related to the transformational diplomacy initiative.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public (including government employees and Department of State employees) desiring access to the open sessions should, no later than September 1, 2006, notify the Advisory Committee on Transformational Diplomacy (phone: 202-647-0093) of their name, date of birth; citizenship (country); ID number, *i.e.*, U.S. government ID (agency), U.S. military ID (branch), passport (country), or drivers license number (state);

professional affiliation, address, and telephone number.

Members of the public may file a written statement with the committee. All members of the public must use the "C" Street entrance, after going through the exterior screening facilities. One of the following valid IDs will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire session.

The Department of State regrets the delay in publication of this Notice. Unforeseen events prevented its earlier publication and the meeting date was determined by the rigorous demands of the Secretary of State's travel, foreign policy and public affairs schedule.

For more information, contact Madelyn Marchessault, Designated Federal Official of the Advisory Committee on Transformational Diplomacy at 202-647-0093 or at Marchessaultms@state.gov.

Dated: August 25, 2006.

Marguerite Coffey,

Acting Director, Office of Management Policy, Department of State.

[FR Doc. 06-7344 Filed 8-30-06; 8:45 am]

BILLING CODE 4710-35-P

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****Aviation Proceedings, Agreements Filed the Week Ending August 11, 2006**

The following Agreements were filed with the Department of Transportation under the Sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST-2006-25604.*Date Filed:* August 10, 2006.*Parties:* Members of the International Air Transport Association.*Subject:* TC31 South Pacific—Mail Vote 497, Passenger Revalidating Resolutions, *Intended Effective Date:* 1 October 2006, (Memo 0188).*Docket Number:* OST-2006-25613.*Date Filed:* August 11, 2006.*Parties:* Members of the International Air Transport Association.*Subject:* PTC12 USA-EUR 0199 dated 11 August 2006, Resolution 015h—USA Add-ons between USA and UK, (Memo

0199), *Intended Effective Date*: 1 October 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 06-7323 Filed 8-30-06; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending August 11, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST-2006-25577.

Date Filed: August 8, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 29, 2006.

Description: Application of Taga Air Charter Service, Inc. requesting authority to engage in scheduled passenger operations between the Northern Mariana Islands, Saipan, Tinian and Rota, eventually expanding to include service to Guam as a commuter air carrier.

Docket Number: OST-2006-25616.

Date Filed: August 11, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 1, 2006.

Description: Application of ELYSAIR SAS d/b/a ELYSAIR requesting a foreign air carrier permit to engage in (i) Scheduled foreign air transportation of persons, property and mail between any point or points in France and points in the United States coextensive with the rights provided under the bilateral agreement, and (ii) charter foreign air transportation of persons, property and

mail pursuant to the U.S.-France Air Transport Agreement and Part 212.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 06-7309 Filed 8-30-06; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 1 p.m. to 2:30 p.m. on Monday, September 25, 2006, at the Corporation's Administration Headquarters, Room 5424, 400 Seventh Street, SW., Washington, DC, via conference call. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Acting Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than September 20, 2006, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202-366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on August 28, 2006.

Craig H. Middlebrook,

Acting Administrator.

[FR Doc. 06-7363 Filed 8-30-06; 8:45 am]

BILLING CODE 4910-61-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34914]

DesertXpress Enterprises, LLC—Petition for Declaratory Order

AGENCY: Surface Transportation Board, DOT.

ACTION: Institution of declaratory order proceeding; request for comments.

SUMMARY: In response to a petition filed by DesertXpress Enterprises, LLC (DesertXpress), the Board is instituting a declaratory order proceeding under 5 U.S.C. 554(e) and 49 U.S.C. 721 to determine whether the Board's jurisdiction preempts state and local environmental review, land use restrictions, and other discretionary permitting requirements that might otherwise apply to DesertXpress' proposed construction of an interstate high speed passenger rail system between Victorville, CA, and Las Vegas, NV. No responses to the petition have been filed. The Board seeks public comment on this issue.

DATES: Comments are due October 16, 2006. Replies are due November 6, 2006.

ADDRESSES: Send an original and 10 copies of any comments, referring to STB Finance Docket No. 34914, to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001. In addition, send one copy of comments to DesertXpress' representative, Linda Morgan, Covington & Burling LLP, 1201 Pennsylvania Avenue, NW., Washington, DC 20004-2401.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565-1609. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1-800-877-8339].

SUPPLEMENTARY INFORMATION: DesertXpress' petition for declaratory order concerns its proposed project to construct an approximately 200-mile interstate high speed passenger rail system between Victorville and Las Vegas. Petitioner states that the project will involve the construction of significant lengths of new track and ancillary facilities, including two passenger stations and a 50-acre train maintenance and storage facility and operations center. DesertXpress states that the proposed route is planned alongside or within the median of Interstate 15 and will provide an alternative to automobile travel on that interstate. Petitioner anticipates that the project will utilize European high-speed trains which, traveling at speeds up to 125 miles per hour, will travel between the two termini in under 105 minutes.

According to petitioner, it has already initiated the Federal environmental review process, met with the Federal Railroad Administration (FRA) about the project, coordinated with the Board and FRA in the preparation of an Environmental Impact Statement, and entered into a Memorandum of Understanding with FRA and the Board.

DesertXpress adds that, in the near future, it will seek from the Board the necessary authority to construct the new line and related facilities and to conduct rail operations over the line.

DesertXpress argues that this project presumptively falls within the Board's jurisdiction over transportation by rail carriers as set forth at 49 U.S.C. 10901 and 10501. Petitioner therefore seeks an order from the Board declaring that this project is not subject to state and local environmental review, land use restrictions, and other discretionary permitting requirements in California and Nevada, including the California Environmental Quality Act, because they would impinge upon the federal regulation of interstate commerce. DesertXpress also asks that the Board act on this petition expeditiously to allow the project to advance as quickly and efficiently as possible.

Under 5 U.S.C. 554(e), the Board has discretionary authority to issue a declaratory order to terminate a controversy or remove uncertainty. A declaratory order proceeding is thus instituted in this proceeding to invite broad public comment. Any person seeking to participate in support of, or in opposition to, DesertXpress's proposal is invited to submit written comments to the Board regarding whether the agency's jurisdiction preempts state and local environmental review, land use restrictions, and other discretionary permitting requirements that might otherwise apply.

Board decisions, notices, and filings in this and other Board proceedings are available on our Web site at <http://www.stb.dot.gov>.

Decided: August 25, 2006.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. 06-7349 Filed 8-30-06; 8:45 am]
BILLING CODE 4915-01-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB-6 (Sub-No. 442X)]

BNSF Railway Company— Abandonment Exemption—in Boulder County, CO

BNSF Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 1.13-mile line of railroad extending between milepost 36.72 and milepost 35.59, near Longmont, in Boulder County, CO. The

line traverses United States Postal Service Zip Code 80501.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on September 30, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),² and trail use/rail banking requests under 49 CFR 1152.29 must be filed by September 11, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by September 20, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423-0001.

A copy of any petition filed with the Board should be sent to BNSF's representative: Sidney L. Strickland, Jr., Sidney Strickland and Associates, PLLC, 3050 K Street, NW., Suite 101, Washington, DC 20007.

¹ The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

² Each OFA must be accompanied by the filing fee, which currently is set at \$1,300. See 49 CFR 1002.2(f)(25).

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed a combined environmental report and historic report which addresses the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by September 5, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423-0001) or by calling SEA, at (202) 565-1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1-800-877-8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by August 31, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at <http://www.stb.dot.gov>.

Decided: August 23, 2006.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,
Secretary.

[FR Doc. E6-14409 Filed 8-30-06; 8:45 am]
BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY**Community Development Financial Institutions Fund****Proposed Collection; Comment Request: Community Development Financial Institutions Fund: Comment Request on Continuing Collection of Information From Community Development Financial Institutions Program Awardees, Native American CDFI Assistance Program Awardees, Native American Technical Assistance Program Awardees, Native American CDFI Development Program Awardees, and New Markets Tax Credit Program Allocates**

ACTION: Notice and request for comments.

SUMMARY: The Community Development Financial Institutions Fund (the Fund), a government corporation within the Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, is soliciting comments on continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law No. 104-13 (44 U.S.C. 3506(c)(2)(A)): (i) Community Development Financial Institutions Program Awardee Annual Report (OMB Number 1559-0006) (hereafter, the Annual Report), and (ii) Annual Survey: Institution Level Report; Transaction Level Report; IRS Compliance Questions (OMB Number 1559-0027) (the Annual Survey). The two documents comprise certain reporting requirements for participants in the Fund's Community Development Financial Institutions (CDFI) Program, Native American CDFI Assistance (NACA) Program, Native American Technical Assistance (NATA) Program, Native American CDFI Development (NACD) Program, and New Markets Tax Credits (NMTC) Program. This notice further serves to consolidate the Annual Report and the Annual Survey. The combined reports shall be referred to as the Annual Report. The Annual Report forms (and related documents, including the CDFI Program assistance agreement, the NACA/NATA/NACD Program assistance agreement, and the NMTC Program allocation agreement) may be found at the Fund's Web site at <http://www.cdfifund.gov>.

DATES: Written comments must be received on or before October 30, 2006 to be assured of consideration.

ADDRESSES: Comments on the Annual Report must be submitted in writing and sent to Donna Fabiani, Manager for Financial Strategies and Research, as

follows: (i) by mail to: Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (ii) by e-mail to: annualrptcomments@cdfi.treas.gov; or (iii) by fax to: 202/622-7754. Comments on the IRS Compliance Questions section of the Annual Report must be submitted in writing and sent to: Debbie Patel, Team Manager, LMSB: PQA: Post-Filing Team B, Internal Revenue Service, 801 9th St., NW., The Mint Building, M3-312, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Yoo Jin Na, Manager for Compliance Monitoring and Evaluation, as follows: (i) By mail to: Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; (ii) by e-mail to: annualrptcomments@cdfi.treas.gov; or (iii) by fax to: 202/622-7754.

SUPPLEMENTARY INFORMATION:

Title: Comment Request on Continuing Collection of Information from Community Development Financial Institutions Program Awardees, Native American CDFI Assistance Program Awardees, Native American Technical Assistance Program Awardees, Native American CDFI Development Program Awardees, and New Markets Tax Credit Program Allocates.

OMB Number: 1559-0006; OMB Number 1559-0027.

Abstract: The Fund's mission is to expand the capacity of financial institutions to provide credit, capital and financial services to underserved populations and communities in the United States. The Fund's strategic goal is to improve the economic conditions of underserved communities by providing capital and technical assistance to Community Development Financial Institutions (CDFIs), capital to insured depository institutions, and NMTC allocations to Community Development Entities (CDEs), which provide credit, capital, financial services, and development services to these markets. The Fund certifies entities as CDFIs and/or CDEs.

Annual Reporting Requirements: The Annual Report consists of quantitative information at the institution and transaction levels and is used to assess: (1) The awardee's activities in support of its Comprehensive Business Plan; (2) the awardee's approved use of the Fund's assistance; (3) the awardee's financial condition; (4) the socio-economic characteristics of awardee's borrowers/investees, loan and

investment terms, repayment status, and community development impacts; and (4) overall compliance with the terms and conditions of the assistance agreement entered into by the Fund and the awardee.

A CDFI Program awardee or a NACA/NATA/NACD Program awardee must submit an Annual Report that comprises several sections, depending on the program and the type of award. The specific components that comprise an awardee's Annual Report are set forth in the assistance agreement that the awardee enters into with the Fund in order to receive a CDFI Program or a NACA/NATA/NACD Program award. In summary:

1. A CDFI Program or NACA/NATA Program awardee that is a non-regulated entity and that receives Financial Assistance (FA) only must submit an Annual Report that comprises: (i) A Financial Report (Financial Statement) reviewed or audited by an independent certified public accountant; (ii) Single Audit A-133 (if applicable); (iii) an Institution Level Report (ILR) and a Transaction Level Report (TLR) (which include, among others, questions that measure the awardee's achievement of the Performance Goals and Measures set forth in its assistance agreement); (iv) a Uses of Financial Assistance and Matching Funds Report; and (v) if applicable, an Explanation of Noncompliance.

2. A CDFI Program or NACA/NATA Program awardee that is a regulated entity and that receives FA only must submit an Annual Report that comprises: (i) An ILR and a TLR; (ii) a Uses of Financial Assistance and Matching Funds Report; (iii) if applicable, an Explanation of Noncompliance; and (iv) if applicable, a Single Audit A-133.

3. A CDFI Program or NACA/NATA/NACD Program awardee that receives an award from the Fund that is in the form of an equity investment must also submit a Shareholder Report.

4. A CDFI Program or NACA/NATA/NACD Program awardee that receives Technical Assistance (TA) must submit an Annual Report that comprises: (i) The documents set forth in either (1) or (2) above, as applicable, if the awardee also receives FA; (ii) Uses of Technical Assistance Report; and (iii) OMB form 269A (Financial Status Report), which can be found on the Fund's Web site at <http://www.cdfifund.gov>.

A NMTC Program allocatee must submit an Annual Report that comprises: (i) A financial statement that has been audited by an independent certified public accountant; (ii) an ILR (including the IRS Compliance

Questions section), if the allocatee has issued any Qualified Equity Investments; and (iii) a TLR if the allocatee has issued any Qualified Low-Income Community Investments in the form of loans or investments. The components that comprise an allocatee's Annual Report are set forth in the allocation agreement that the allocatee enters into with the Fund in order to receive a NMTC Program allocation.

Current Action: N/A.

Type of review: Renewal (combining Annual Report, OMB 1559-0006, with Annual Survey, OMB 1559-0027).

Affected Public: Not-for-profit institutions, businesses or other for-profit institutions and tribal entities.

Burden: Estimated Number of Respondents: 423.

CDFI Annual Report: 233.

NMTC Annual Report: 190.

Estimated Annual Time Per

Respondent: 50.

CDFI Program TA awardees: 22 hours.

CDFI Program FA awardees: 62 hours.

NMTC Program allocatees: 65 hours.

Estimated Total Annual Burden

Hours: 14,184.

CDFI Program TA reports: 3,300 hours.

CDFI Program FA reports: 9,300 hours.

NMTC Program reports: 1,584 hours.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on all aspects of the information collections, but commentators may wish to focus particular attention on: (a) The portion of the requested information that CDFIs and CDEs currently collect and track electronically; (b) the effort and cost for CDFIs and CDEs to begin collecting and electronically tracking any required information not currently collected and tracked electronically (e.g., enhancing systems, purchasing new systems); (c) the cost for CDFIs and CDEs to operate and maintain the services/systems required to provide the required information; (d) ways to enhance the quality, utility, and clarity of the information to be collected; (e) whether the collection of information is necessary for the proper evaluation of the effectiveness and impact of the Fund's programs, including whether the information shall have practical utility; (f) ways to minimize the burden of the collection of information; and (g) the accuracy of the Fund's estimate of the burden of the collection of information.

Authority: 12 U.S.C. 4703, 4703 note, 4707, 4710, 4714, 4717; 26 U.S.C. 45D; 31 U.S.C. 321; and 12 CFR part 1805.

Dated: August 22, 2006.

Arthur A. Garcia,

Director, Community Development Financial Institutions Fund.

[FR Doc. E6-14491 Filed 8-30-06; 8:45 am]

BILLING CODE 4810-70-P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

NATIONAL CREDIT UNION ADMINISTRATION

FEDERAL TRADE COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); Office of Thrift Supervision (OTS), Treasury; National Credit Union Administration (NCUA); and Federal Trade Commission (FTC).

ACTION: Joint notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995, the OCC, the Board, the FDIC, the OTS, the NCUA, and the FTC (Agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. Pursuant to section 214(e) of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act or Act), the Agencies are requesting public comment on a proposed information collection concerning the "Survey of Information Sharing Practices with Affiliates" (Survey).

DATES: Comments must be submitted on or before October 30, 2006.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the Agencies. All comments, which should refer to the OMB control number, will be shared among the Agencies.

OCC: You may submit comments, identified by "Survey of Information Sharing Practices with Affiliates (1557-NEW)," by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *OCC Web site:* <http://www.occ.treas.gov>. Click on "Contact the OCC," scroll down and click on "Comments on Proposed Regulations."

- *Mail:* Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1-5, Attention: 1557-NEW, 250 E Street, SW., Washington, DC 20219.

- *Fax:* (202) 874-4448

- *E-mail:*

regs.comments@occ.treas.gov.

You may review comments by any of the following methods:

- *Viewing Comments Personally:* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874-5043.

- *Viewing Comments Electronically:* You may request that we send you an electronic copy of comments via e-mail or mail you a CD-ROM containing electronic copies by contacting the OCC at regs.comments@occ.treas.gov.

A copy of the comments may also be submitted to the OMB desk officer: OCC Desk Officer, by mail to U.S. Office of Management and Budget, 725 17th Street, NW., #10235, Washington, DC 20503, or by fax to (202) 395-6974.

Board: You may submit comments, identified by "Survey of Information Sharing Practices with Affiliates," by any of the following methods:

- *Agency Web Site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments on the <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* regs.comments@federalreserve.gov. Include docket number in the subject line of the message.

- *Fax:* 202-452-3819 or 202-452-3102.

- *Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted,

except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: Written comments should identify "Survey of Information Sharing Practices with Affiliates," as the subject and be submitted by any of the following methods:

- **Agency Web site:** <http://www.fdic.gov/regulations/laws/federal/propose.html>.

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** Comments@FDIC.gov.
- **Mail:** Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street, NW., Washington, DC 20429.

- **Hand Delivery/Courier:** Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Comments may be inspected and photocopied in the FDIC Public Information Center, Room E-1002, 3502 North Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 4:30 p.m. on business days.

OTS: You may submit comments, identified by "Survey of Information Sharing Practices with Affiliates (1550-NEW)," by any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **E-mail:** infocollection.comments@ots.treas.gov. Please include "Survey of Information Sharing Practices with Affiliates (1550-NEW)" in the subject line of the message and include your name and telephone number in the message.

- **Fax:** (202) 906-6518.
- **Mail:** Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: "Survey of Information Sharing Practices with Affiliates (1550-NEW)."

- **Hand Delivery/Courier:** Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Information Collection Comments, Chief Counsel's Office, "Survey of Information Sharing Practices with Affiliates (1550-NEW)."

Instructions: All comments received will be posted without change to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>,

including any personal information provided. **Docket:** For access to the docket to read comments received, go to <http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1>. In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906-5922, send an e-mail to public.info@ots.treas.gov, or send a facsimile transmission to (202) 906-7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

NCUA: You may submit comments by any of the following methods (please send comments by one method only):

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **NCUA Web Site:** <http://www.ncua.gov/RegulationsOpinionsLaws/proposedregs/proposedregs.html>. Follow the instructions for submitting comments.

- **E-mail:** Address to regcomments@ncua.gov. Include "[Your name] Comments on FACT Act 214(e) Study," in the e-mail subject line.

- **Fax:** (703) 518-6319. Use the subject line described above for e-mail.

- **Mail:** Address to Neil McNamara, Deputy Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428.

- **Hand Delivery/Courier:** Same as mail address.

FTC: Comments should refer to "Affiliate Sharing Study: FTC File No. P064802" and may be submitted by any of the following methods. However, if a given comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled "Confidential."¹ A copy of each comment should additionally be submitted—via facsimile, to (202) 395-6974—and addressed to: Office of Management and

Budget, Attention: Desk Officer for the Federal Trade Commission.

- **E-mail:** Comments filed in electronic form should be submitted as part of or as an attachment to e-mail messages directed to the following e-mail box: affiliatestudy@ftc.gov. To ensure that the Commission considers an electronic comment, you must send it to the above e-mail box.

- **Federal eRulemaking Portal:** If this notice appears at <http://www.regulations.gov>, you may also file an electronic comment through that Web site. The Commission will consider all comments that regulations.gov forwards to it.

- **Mail or Hand Delivery:** A comment filed in paper form should include "Affiliate Sharing Study: FTC File No. P064802" both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H-135 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed above. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at <http://www.ftc.gov/os/publiccomments.htm>. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at <http://www.ftc.gov/ftc/privacy.htm>.

FOR FURTHER INFORMATION CONTACT:

Additional information may be requested from:

OCC: Karen Furst, Policy Analyst, (202) 874-4509, Policy Analysis Division; Mary Gottlieb, OCC Clearance Officer or Camille Dickerson, Legal Technician, (202) 874-5090, Legislative and Regulatory Activities Division.

Board: Kathleen Conley, Supervisory Consumer Financial Services Analyst, (202) 452-2389; or Michelle Long,

¹ Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. See Commission Rule 4.9(c), 16 CFR 4.9(c).

Clearance Office, (202) 452-3829, Division of Research and Statistics. Telecommunications Device for the Deaf (TDD) users may call (202) 263-4869.

FDIC: Richard M. Schwartz, Counsel, (202) 898-7424; or Leneta G. Gregorie, Counsel, (202) 898-3719.

OTS: Marilyn K. Burton, OTS Clearance Officer, (202) 906-6467; or Donna Deale, Director of Holding Companies and Affiliates, (202) 906-7488.

NCUA: Regina M. Metz, Staff Attorney, Office of General Counsel, (703) 518-6540; or Matthew Biliouris, Program Officer, Examination and Insurance, (703) 518-6394.

FTC: Sandra Farrington, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, (202) 326-2531; or Margaret Patterson, Economist, Bureau of Economics, (202) 326-3472.

SUPPLEMENTARY INFORMATION:

Proposal for Approval of the Following New Collections of Information

Title: Survey of Information Sharing Practices with Affiliates.

Frequency of Response: Every three years.

Affected Public: Business or other for profit.

Type of Review: New collection.

OCC

OMB Number: 1557-NEW.

Form Number: N/A.

Estimated Number of Respondents: 40.

Estimated Average Time per Response: 10 hours.

Estimated Total Annual Burden: 400 hours.

Board

OMB Number: 7100-NEW.

Form Number: FR 3214e.

Estimated Number of Respondents: 60.

Estimated Average Time per Response: 10 hours.

Estimated Total Annual Burden: 600 hours.

FDIC

OMB Number: 3064-NEW.

Form Number: N/A.

Estimated Number of Respondents: 100.

Estimated Average Time per Response: 10 hours.

Estimated Total Annual Burden: 1,000 hours.

OTS

OMB Number: 1550-NEW.

Form Number: N/A.

Estimated Number of Respondents: 30.

Estimated Average Time per

Response: 10 hours.

Estimated Total Annual Burden: 300 hours.

NCUA

OMB Number: 3133-NEW.

Form Number: N/A.

Estimated Number of Respondents: 50.

Estimated Average Time per Response: 10.

Estimated Total Annual Burden: 500.

FTC

OMB Number: 3084-NEW.

Form Number: N/A.

Estimated Number of Respondents: 20.

Estimated Average Time per Response: 10 hours.

Estimated Total Annual Burden: 200 hours.

General Description of Report

This information collection is voluntary for financial institution respondents and authorized pursuant to 12 U.S.C. 481 and 484 (national banks); 12 U.S.C. 248(a)(1) (state member banks); 12 U.S.C. 1463 and 1464 (savings associations); and 12 U.S.C. 1819(a)(Eighth) (state non-member banks and state branches of any foreign bank). Confidentiality would be determined on a case-by-case basis. In gathering information from respondents under its jurisdiction, the FTC may use the compulsory authority granted to it in Section 6(b) of the Federal Trade Commission Act, 15 U.S.C. 46(b). Confidentiality will be protected in accordance with the FTC Act and the Commission's Rules of Practice.

Abstract

The study the Agencies propose will use a written Survey to be completed by financial institutions and other persons that are creditors or users of consumer reports ("respondents").² The Agencies will use the responses to the Survey to prepare an initial report to the Congress on information sharing practices by financial institutions, creditors, or users of consumer reports with their affiliates. The Agencies are required jointly to submit this report to the Congress together with any recommendations for legislative or regulatory action, pursuant to Section 214(e) of the FACT Act. A copy of the Board's draft survey of information sharing practices with affiliates will be made available, within

² Each respondent will provide information about more than one financial institution or other person that is a creditor or user of consumer reports. At a minimum, each respondent will be providing information about itself and at least one affiliate.

seven days after publication of this notice, on the Board's public Web site at: <http://www.federalreserve.gov/boarddocs/reportforms/review.cfm> under "Information Collections Out for Public Comment."

Background

The FACT Act became law on December 4, 2003. Pub. L. 108-159, 117 Stat. 1952. In general, the FACT Act amends the Fair Credit Reporting Act ("FCRA") to enhance the ability of consumers to combat identity theft, increase the accuracy of consumer reports, and allow consumers to exercise greater control regarding the type and amount of marketing solicitations they receive. To promote increasingly efficient national credit markets, the FACT Act also establishes uniform national standards in key areas of regulation regarding consumer report information. The Act contains a number of provisions intended to combat consumer fraud and related crimes, including identity theft, and to assist victims of these crimes. Finally, the Act requires the Agencies to conduct a number of studies.

Section 214(e) of the FACT Act requires the Agencies jointly to conduct regular studies of the consumer information sharing practices by financial institutions, and other persons that are creditors or users of consumer reports, with their affiliates. In that regard, Section 214(e) requires the Agencies to identify: (i) The purposes for which financial institutions and other creditors and users of consumer reports share consumer information; (ii) the types of information shared by such entities; (iii) the number of choices provided to consumers with respect to the control of such sharing, and the degree to which and manner in which consumers exercise such choices, if at all; and (iv) whether such entities share or may share personally identifiable transaction or experience information with affiliates for purposes—(I) That are related to employment or hiring including whether the person that is the subject of such information is given notice of such sharing, and the specific uses of such shared information; or (II) of general publication of such information.

The statute also requires the Agencies specifically to examine the information sharing practices that financial institutions and other creditors or users of consumer reports and their affiliates employ to make underwriting decisions or credit evaluations of consumers. The Agencies must jointly submit a report to the Congress on the results of the initial study together with any

recommendations for legislative or regulatory action. After the initial report, the Agencies must jointly submit follow-up reports to the Congress at least once every three years.

Proposed Survey Panel

The Agencies will select the survey panel based on whether the prospective respondent has affiliates with which it can share information, whether the prospective respondent is likely to be a user of consumer reports, and other factors.

Estimated Annual Burden Hours

Each respondent will complete a written Survey. In order to complete the Survey, the individual completing the form for the respondent will most likely need to consult staff in other parts of the organization and obtain data from recordkeeping systems. Based on the Agencies' expertise and experience, we estimate the consultations and the collection of data will take between four and eight hours per respondent. The Agencies estimate it will then take less than two hours for each respondent to complete the Survey. However, numerous factors are likely to influence the amount of time it will take a respondent to complete the Survey, including the number and type of affiliates, as well as the diversity of information sharing practices among affiliates. Based on the methodology proposed, the total burden imposed by the initial study, for all six agencies, will be approximately 3,000 hours.

Request for Comment

The Agencies invite comment on:

- a. Whether the information collections are necessary for the proper performance of the Agencies' functions, including whether the information has practical utility;
- b. The accuracy of the Agencies' estimates of the burden of the information collections, 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 information collections on respondents, including through the use of automated collection techniques or other forms of information technology.

In addition, the OCC invites comments on the following:

- aa. The specific data the Agencies should collect to prepare the report required by Section 214(e) of the Fact Act and the terminology that will best describe and correctly specify the data to be collected;

bb. If any data the Agencies should collect are not available, the type of proxy data the Agencies should request;

cc. The extent to which depository institutions currently track and are able to report on the methods (*e.g.*, telephone, online) used by consumers to opt-out of affiliate information sharing; and

dd. Information related to recordkeeping practices or other aspects of the data specification and survey development process.

Comments submitted in response to this notice will be shared among the Agencies. Unless otherwise afforded confidential treatment pursuant to Federal law, all comments will become a matter of public record.

Dated: August 22, 2006.

Stuart Feldstein,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, August 25, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 22nd day of August, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: August 21, 2006.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division, Office of Thrift Supervision.

Dated at Washington, DC, this 24th day of August, 2006.

By the National Credit Union Administration.

John Ianno,

Acting Secretary of the Board.

Dated at Washington, DC, this twenty-first day of August, 2006.

Federal Trade Commission.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06-7271 Filed 8-30-06; 8:45 am]

BILLING CODE 4810-33-P, 6210-01-P, 6714-01-P, 6720-01-P, 7335-01-P, 6750-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, September 26, 2006, at 11 a.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1-888-912-1227, or (414) 231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, September 26, 2006, at 11 a.m., Central Time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 231-2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or you can contact us at <http://www.improveirs.org>. This meeting is not required to be open to the public, but because we are always interested in community input we will accept public comments. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 231-2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: August 23, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 06-7351 Filed 8-30-06; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Merit Review Board will be held on September 19-20, 2006, at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia. The session is scheduled to begin at 8 a.m. and end at 3 p.m. on both days.

The Board advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed

projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public from 8 a.m. to 8:30 a.m. on September 19 for the discussion of administrative matters and the general status of the program. The sessions will be closed from 8:30 a.m. to 3 p.m. on September 19 and for the entire day on September 20 for the Board's review of research and development applications.

During the closed portions of the meeting, discussion and recommendations will include

qualifications of the personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as research information (the premature disclosure of which would be likely to compromise significantly the implementation of proposed agency action regarding such research projects). As provided by subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (125), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, a5 (202) 254-0183.

Dated: August 23, 2006.

By Direction of the Secretary.

E. Philip Riggan,

Committee Management Officer.

[FR Doc. 06-7356 Filed 8-30-06; 8:45 am]

BILLING CODE 8320-01-M



Federal Register

**Thursday,
August 31, 2006**

Part II

Department of Transportation

**Pipeline and Hazardous Materials Safety
Administration**

**49 CFR Parts 171, 172, 173, et al.
Hazardous Materials: Harmonization With
the United Nations Recommendations,
International Maritime Dangerous Goods
Code, and International Civil Aviation
Organization's Technical Instructions;
Proposed Rule**

DEPARTMENT OF TRANSPORTATION**Pipeline and Hazardous Materials Safety Administration**

49 CFR Parts 171, 172, 173, 175, 176, 178 and 180

[Docket No. PHMSA-06-25476 (HM-215)]

RIN 2137-AE16

Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: PHMSA proposes to amend the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. These revisions are necessary to harmonize the Hazardous Materials Regulations with recent changes to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods.

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

ADDRESSES: You may submit comments identified by the docket number (PHMSA-06-25476) by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Web Site:* <http://dms.dot.gov>.

Follow the instructions for submitting comments on the DOT electronic docket site.

- *Fax:* 1-202-493-2251.

- *Mail:* Docket Management System; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, PL-402, Washington, DC 20590-0001.

- *Hand Delivery:* PL-402 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Instructions: All submissions must include the agency name and docket

number or Regulatory Identification Number (RIN) for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. 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 under Regulatory Analyses and Notices.

Docket: For access to the docket to read background documents or comments received, go to <http://dms.dot.gov> at any time or to the Docket Management System (see **ADDRESSES**).

FOR FURTHER INFORMATION CONTACT: Charles Betts, Office of Hazardous Materials Standards, telephone (202) 366-8553, or Shane Kelley, International Standards, telephone (202) 366-0656, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION:

Contents

- I. Background
- II. Sunset Provision
- III. Overview of Proposed Changes in the NPRM
- IV. Overview of Amendments Not Being Considered for Adoption in This NPRM
- V. Section-by-Section
- VI. Regulatory Analyses and Notices
 - A. Statutory/Legal Authority for This Rulemaking
 - B. Executive Order 12866 and DOT Regulatory Policies and Procedures
 - C. Executive Order 13132
 - D. Executive Order 13175
 - E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies
 - F. Paperwork Reduction Act
 - G. Regulatory Identifier Number (RIN)
 - H. Unfunded Mandates Reform Act
 - I. Environmental Assessment
 - J. Privacy Act

I. Background

On December 21, 1990, the Research and Special Programs Administration (RSPA), the predecessor agency to the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) published a final rule (Docket HM-181; 55 FR 52402) based on the UN Recommendations on the Transport of Dangerous Goods, to comprehensively revise the Hazardous Materials Regulations (HMR), 49 CFR parts 171 to 180, for harmonization with the international standards. Since publication of the 1990 final rule, we have issued six additional international harmonization final rules, (Dockets

HM-215A, 59 FR 67390; HM-215B, 62 FR 24690; HM-215C, 64 FR 10742; HM-215D, 66 FR 33316; HM-215E, 68 FR 44992; and HM-215G, 69 FR 76044). The rules provided additional harmonization with international transportation requirements by more fully aligning the HMR with the corresponding biennial updates of the UN Recommendations, the IMDG Code and the ICAO Technical Instructions.

The UN Recommendations are not regulations, but rather are recommendations issued by the UN Committee of Experts on the Transport of Dangerous Goods (TDG) and on the Globally Harmonized System of Classification and Labelling of Chemicals (GHS). These recommendations are amended and updated biennially by the UN Committee of Experts. They serve as the basis for national, regional, and international modal regulations, including the International Maritime Organization's International Maritime Dangerous Goods Code (IMDG Code), and the International Civil Aviation Organization's Technical Instructions for the Transport of Dangerous Goods by Air (ICAO Technical Instructions).

The harmonization of domestic and international standards becomes increasingly important as the volume of hazardous materials transported in international commerce grows. Harmonization serves to facilitate international transportation, while maintaining appropriate protection of people, property, and the environment. Although the intent of the harmonization rulemakings is to align the HMR with international standards, we review and consider each amendment on its own merit. Each amendment is considered on the basis of its overall impact on transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without diminishing the level of safety currently provided by the HMR and without imposing undue burdens on the regulated public. In our efforts to continue aligning the HMR with international requirements, in this NPRM, we are proposing to incorporate changes into the HMR based on the Fourteenth revised edition of the UN Recommendations, Amendment 33 to the IMDG Code, and the 2007-2008 ICAO Technical Instructions which become effective January 1, 2007. We are also addressing petitions for rulemaking concerning harmonization with international standards and additional measures to facilitate international transportation.

II. Sunset Provision

To assure the HMR account for new technologies and updated business practices, PHMSA is considering whether certain requirements proposed in this NPRM should be afforded a "sunset" provision. If we adopt such a provision, certain amendments adopted through this rulemaking would expire after a fixed amount of time (e.g., 10 years) from the publication date of the final rule.

Harmonizing the HMR with international transportation requirements facilitates the transportation of hazardous materials in international commerce by eliminating the need for shippers and carriers to comply with two different sets of regulations. Certain standards that we are proposing to adopt by reference likely will be updated periodically in response to changes in international standards or may be replaced by other more relevant or technically superior standards. Future changes to these standards would have to consider whether to retain or extend the sunset date. If we choose to do nothing, a sunset provision would mean the HMR would revert to the language and requirements in effect before the issuance of the final rule. We are requesting comments on whether certain amendments should be tied to a sunset provision.

III. Overview of Proposed Changes in This NPRM

In this NPRM, we are proposing the following amendments to the HMR:

- Adoption of a single shipping paper description sequence (identification number, proper shipping name, hazard class or division, packing group). Currently, the HMR permit the shipping paper description sequence to start with either the identification number or the proper shipping name.
- Requirement to indicate the net quantity of hazardous material per package on the shipping paper if transportation is by aircraft. The HMR do not currently require this information on a shipping paper.
- Incorporation by reference of the updated ICAO Technical Instructions, IMDG Code, and UN Recommendations.
- Amendments to the Hazardous Materials Table (HMT) to add, revise, or remove certain proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, bulk packaging requirements, passenger and cargo aircraft maximum quantity limitations and vessels stowage provisions.
- Revision of the ORGANIC PEROXIDE label and placard.

- Revision of the classification criteria for PG III flammable liquids.
- Revision of the classification criteria and packing group assignment for Division 6.1 materials.
- Requirements for the transportation of fuel cells containing flammable liquid.
- Adoption of a one-packet limit for matches carried by airline passengers or crew members.

IV. Overview of International Standards Not Being Considered for Adoption in This NPRM

This NPRM proposes changes to the HMR based on amendments to the Fourteenth revised edition of the UN Recommendations, Amendment 33 to the IMDG Code, and the 2007–2008 ICAO Technical Instructions, which become effective January 1, 2007. However, we are not proposing to adopt all of the amendments to those documents into the HMR. In many cases, amendments to the international regulations have not been adopted because the framework or structure of the HMR makes adoption unnecessary. In other cases, we have handled, or will be handling, the amendments in separate rulemaking proceedings. For example, we addressed requirements related to the transportation of infectious substances in a final rule published June 2, 2006, under Docket HM–226A (71 FR 32244). Similarly, we adopted amendments relating to the use of UN cylinders and pressure vessels in a final rule published June 12, 2006, under Docket HM–220E (71 FR 33858).

If we have inadvertently omitted an amendment in this NPRM, we will attempt to include the omission in the final rule. However, our ability to make changes in a final rule is limited by requirements of the Administrative Procedure Act. In some instances, we can adopt a provision inadvertently omitted in the NPRM if it is clearly within the scope of changes proposed in the notice, does not require substantive changes from the international standard on which it is based, and imposes minimal or no cost impacts on persons subject to the requirement. Otherwise, in order to provide opportunity for notice and comment, the change must be proposed in an NPRM.

One of the goals of this rulemaking is to continue to maintain consistency between the HMR and the international requirements. We are not striving to make the HMR identical to the international regulations but rather to remove or avoid potential barriers to international transportation.

Below is a listing of those significant amendments to the international

regulations that we are not proposing to adopt in this NPRM with a brief explanation of why the amendment was not included:

- *Environmentally hazardous substances.* The UN Recommendations have not yet been adopted by ICAO and IMO. These changes will be considered in a separate rulemaking proceeding.
- *Hazardous materials security.* Like the HMR, the UN Recommendations require carriers, consignors and others engaged in the transport of "high consequence" dangerous goods to adopt, implement and comply with a security plan that addresses the transportation risks associated with these materials. A major difference between the HMR and the UN Recommendations is the quantity of hazardous material that triggers the requirement for a security plan. We are analyzing the differences and, based on our conclusions, will consider a separate rulemaking to address this issue.

- *Requirements for radioactive materials.* We are not proposing to adopt provisions pertaining to the transportation of Class 7 (radioactive) materials. Amendments to requirements pertaining to the transportation of Class 7 materials are based on changes contained in the International Atomic Energy Agency (IAEA) publication, "IAEA Safety Standards Series: Regulations for the Safe Transport of Radioactive Materials." Due to their complexity, these changes will be addressed in a separate rulemaking.

- *Default classification system for fireworks.* We are not proposing to adopt these provisions of the UN Recommendations because we do not believe the UN classification system provides an equivalent level of safety to the current HMR requirements. Under the HMR, fireworks must be classed and approved by the Associate Administrator for Hazardous Materials Safety; the approvals are based on American Pyrotechnic Association Standard 87–1.

- *Fuel cells.* We are not proposing to adopt provisions for the carriage of fuel cell cartridges in the passenger cabin of a passenger aircraft that were adopted by ICAO. Also, we are not proposing to adopt the packaging provisions for the transport of "Hydrogen in a metal hydride storage system," (UN3468), as adopted by ICAO. Currently, the HMR allow transportation of these storage systems by motor vehicle and rail under the terms of an exemption and by motor vehicle, rail, cargo vessel and cargo aircraft with approval of the Associate Administrator. These issues will be

considered in a separate rulemaking proceeding.

• *Marking of Limited Quantity shipments.* The ICAO Technical Instructions adopted a marking requirement for packages containing a limited quantity of hazardous material that consists of the identification number of the material placed within a square-on-point border. The marking is anticipated to become effective January 1, 2009. Except for transportation by aircraft, this marking is currently authorized under the HMR as an alternative to marking the proper shipping name on the package; we are allowing continued use of this marking to minimize transportation costs and provide flexibility.

V. Section-by-Section Review

Part 171

Section 171.7

Section 171.7 lists the standards incorporated by reference into the HMR. We propose to update the incorporation by reference materials for the ICAO Technical Instructions, the IMDG Code, the UN Recommendations and the UN Manual of Tests and Criteria. The updated editions of these standards become effective January 1, 2007.

The standards would be updated as follows:

- The ICAO Technical Instructions, 2007–2008 Edition.
- The IMDG Code, Amendment 33.
- The UN Recommendations, Fourteenth revised edition.
- The UN Manual of Tests and Criteria, Fourth revised edition (2003), and Addendum 2, (2004).

Section 171.14

This section lists specific transition periods for certain provisions adopted into the HMR. Paragraph (b) lists transitional provisions related to revised placarding requirements. In this NPRM, we propose to remove paragraph (b) because the transitional period has expired.

Paragraph (d) of this section specifies transition provisions for previously

adopted amendments intended to harmonize the HMR with international standards. We are proposing revisions to this paragraph to provide specific transitional provisions for certain of the amendments proposed in this NPRM. We are proposing an effective date of January 1, 2007, and a mandatory compliance date of January 1, 2008. We propose to permit voluntary compliance as of January 1, 2007, to correspond with the effective implementation dates of the 2007–2008 ICAO Technical Instructions and Amendment 33 of the IMDG Code. This authorization would allow shippers to prepare their international shipments in accordance with international standards that will become effective on January 1, 2007.

Paragraph (e) of this section contains an outdated transition provision. In this NPRM, we propose to replace the outdated transition provision with a new paragraph (e) that would permit use for domestic shipments of the shipping description sequences in effect on December 31, 2006, until January 1, 2009. See the § 172.202 preamble discussion for a complete explanation of the shipping description sequence issue.

Paragraph (f) of this section contains an outdated transitional provision. We propose to revise paragraph (f) by removing the current provision and adding a transitional provision to allow continued display of Division 5.2 labels and placards conforming to the specifications in effect on December 31, 2006, until January 1, 2011. See the §§ 172.407 and 172.427 preamble discussions for a complete explanation of this issue.

In new paragraph (g), we are proposing to allow continued use of the Class 3 and Division 6.1 classification criteria and packing group assignments in effect on December 31, 2006, until January 1, 2012. See §§ 173.120 and 174.133 preamble discussions for a complete explanation of this issue.

Part 172

Section 172.101

Section 172.101 contains the Hazardous Materials Table (HMT) and explanations for each of the columns in the HMT. Paragraph (d) of this section addresses column 3 of the HMT, which contains the hazard class or division for each specific material listed in the HMT. Paragraph (d)(4) addresses entries classed as combustible liquids. We are proposing to revise paragraph (d)(4) to revise the lower limit for classing a material as a combustible liquid from 60.5 °C (141 °F) to 60 °C (140 °F). This is consistent with recent changes to the classification of flammable liquids based on the GHS and adoption into the UN Recommendations.

The § 172.101 Hazardous Materials Table (HMT): In the § 172.101 Hazardous Materials Table (HMT), we are proposing to make various amendments. Readers should review all changes for a complete understanding of the proposed Table amendments. For purposes of the Government Printing Office’s typesetting procedures, proposed changes to the HMT will appear under three sections of the Table, “remove,” “add” and “revise.” Certain entries in the HMT, such as those with proposed revisions to the proper shipping names, will appear as a “remove” and “add.” Under this NPRM, the proposed amendments to the HMT for the purpose of harmonizing with international standards, unless otherwise stated, include, but are not limited to the following:

1. We propose to correct Column (7) Special provisions of the HMT by removing Special provision 101 which requires the name of the particular substance or article to be specified. With the introduction of the letter “G” for these materials in Column (1), requiring the n.o.s. and generic proper shipping names to be supplemented with the technical name of the hazardous material, Special provision 101 becomes obsolete and duplicative. The affected entries are as follows:

UN0349	Articles, explosive, n.o.s.
UN0350	Articles, explosive, n.o.s.
UN0351	Articles, explosive, n.o.s.
UN0352	Articles, explosive, n.o.s.
UN0353	Articles, explosive, n.o.s.
UN0354	Articles, explosive, n.o.s.
UN0355	Articles, explosive, n.o.s.
UN0356	Articles, explosive, n.o.s.
UN0462	Articles, explosive, n.o.s.
UN0463	Articles, explosive, n.o.s.
UN0464	Articles, explosive, n.o.s.
UN0465	Articles, explosive, n.o.s.
UN0466	Articles, explosive, n.o.s.
UN0467	Articles, explosive, n.o.s.
UN0468	Articles, explosive, n.o.s.

UN0469	Articles, explosive, n.o.s.
UN0470	Articles, explosive, n.o.s.
UN0471	Articles, explosive, n.o.s.
UN0472	Articles, explosive, n.o.s.
UN0382	Components, explosive train, n.o.s.
UN0383	Components, explosive train, n.o.s.
UN0384	Components, explosive train, n.o.s.
UN0461	Components, explosive train, n.o.s.
UN0357	Substances, explosive, n.o.s.
UN0358	Substances, explosive, n.o.s.
UN0359	Substances, explosive, n.o.s.
UN0473	Substances, explosive, n.o.s.
UN0474	Substances, explosive, n.o.s.
UN0475	Substances, explosive, n.o.s.
UN0476	Substances, explosive, n.o.s.
UN0477	Substances, explosive, n.o.s.
UN0478	Substances, explosive, n.o.s.
UN0479	Substances, explosive, n.o.s.
UN0480	Substances, explosive, n.o.s.
UN0481	Substances, explosive, n.o.s.
UN0485	Substances, explosive, n.o.s.
UN0482	Substances, explosive, very insensitive, n.o.s. or Substances, EVI, n.o.s.

2. Amendment 32 of the IMDG Code added a new segregation group for alkalis. For consistency with international regulations and in

response to a petition from Horizon Lines (P-1470), we are proposing to revise the Vessel Stowage Provisions in Column (10B) by adding Segregation

Code "52" (Stow "Separated from" acids) to certain entries. The affected entries are as follows:

UN2733	Amines, flammable, corrosive, n.o.s. or Polyamines, flammable, corrosive, n.o.s.
UN2671	Aminopyridines (<i>o</i> -; <i>m</i> -; <i>p</i> -).
UN1005	Ammonia, anhydrous.
UN3318	Ammonia solution, <i>relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.</i>
UN2672	Ammonia solutions, <i>relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia.</i>
UN2073	Ammonia solutions, <i>relative density less than 0.880 at 15 degrees C in water, with more than 35 percent but not more than 50 percent ammonia.</i>
UN3028	Batteries, dry, containing potassium hydroxide solid, <i>electric, storage.</i>
UN2795	Batteries, wet, filled with alkali, <i>electric storage.</i>
UN2797	Battery fluid, alkali.
UN2682	Caesium hydroxide.
UN2681	Caesium hydroxide solution.
UN1719	Caustic alkali liquids, n.o.s.
UN1160	Dimethylamine solution.
UN2379	1, 3-Dimethylbutylamine.
UN2382	Dimethylhydrazine, symmetrical.
UN1163	Dimethylhydrazine, unsymmetrical.
UN3253	Disodium trioxosilicate.
UN2491	Ethanolamine or Ethanolamine solutions.
UN2270	Ethylamine, aqueous solution with <i>not less than 50 percent but not more than 70 percent ethylamine.</i>
UN1604	Ethylenediamine.
UN2386	1-Ethylpiperidine.
UN2029	Hydrazine, anhydrous.
UN3293	Hydrazine, aqueous solution with <i>not more than 37 percent hydrazine, by mass.</i>
UN2030	Hydrazine, aqueous solutions, with <i>more than 37 percent hydrazine, by mass.</i>
UN2680	Lithium hydroxide.
UN2679	Lithium hydroxide, solution.
UN1235	Methylamine, aqueous solution.
UN1244	Methylhydrazine.
UN2399	1-Methylpiperidine.
UN1813	Potassium hydroxide, solid.
UN1814	Potassium hydroxide, solution.
UN2033	Potassium monoxide.
UN1922	Pyrrolidine.
UN2678	Rubidium hydroxide.
UN2677	Rubidium hydroxide solution.
UN1907	Soda lime with <i>more than 4 percent sodium hydroxide.</i>
UN1819	Sodium aluminate, solution.
UN2318	Sodium hydrosulfide, with <i>less than 25 percent water of crystallization.</i>
UN1823	Sodium hydroxide, solid.
UN1824	Sodium hydroxide solution.
UN1825	Sodium monoxide.
UN1849	Sodium sulfide, hydrated with <i>not less than 30 percent water.</i>
UN2320	Tetraethylenepentamine.

UN3073 Vinylpyridines, stabilized.

3. The entry "Aerosols, non-flammable, (each not exceeding 1 L capacity)," UN1950, would be revised by adding vessel storage location code "A" in Column (10A). This code was inadvertently removed in a final rule published under Docket HM-189Y (70 FR 56084; September 23, 2005).

4. The entry "Antimony trichloride, solid," UN1733, PG II, would be revised by adding Special provisions T3 and TP33. Special provision T3 specifies the applicable minimum test pressure, the minimum shell thickness, bottom opening requirements and pressure relief requirements when transporting this material in a UN portable tank. Special provision TP33 specifies requirements applicable to the transportation of this material in IM and UN Specification portable tanks.

5. The entry, "Articles, explosive, extremely insensitive or Articles, EEI," UN0486, would be revised by removing Special provision 101 which requires the name of the particular substance or article to be specified.

6. The entry "Benzyl bromide," UN1737, PG II, would be revised by removing the reference to § 173.153 "Exceptions for Division 6.1 (poisonous materials)" in Column (8A).

7. The entry "Benzyl chloride," UN1738, PG II, would be revised by removing the reference to § 173.153 "Exceptions for Division 6.1 (poisonous materials)" in Column (8A).

8. In accordance with changes in the Fourteenth revised edition of the UN Recommendations, we propose to remove the following entries:

- The entry "Carbon dioxide and nitrous oxide mixtures," UN1015;
- The entry "Carbon dioxide and oxygen mixtures, compressed," UN1014; and
- The entry "Carbon monoxide and hydrogen mixture, compressed," UN2600.

9. The entry, "Charges, shaped, flexible, linear," UN0288, would be revised by removing Special provision 101, which requires the name of the particular substance or article to be specified.

10. The entry "Chlorosilanes, corrosive, n.o.s.," UN2987, PG II, would be revised by removing the reference to § 173.154 "Exceptions for Class 8 (corrosive materials)" in Column (8A).

11. The entry "Chlorosilanes, flammable, corrosive, n.o.s.," UN2985, PG II, would be revised by removing the reference to § 173.150 "Exceptions for Class 3 (flammable) and combustible liquids" in Column (8A).

12. The entry "Chlorosilanes, toxic, corrosive, n.o.s.," UN3361, PG II, would be revised by removing the reference to § 173.153 "Exceptions for Division 6.1 (poisonous materials)" in Column (8A).

13. The entry "Chlorosilanes, toxic, corrosive, flammable, n.o.s.," UN3362, PG II, would be revised by removing the reference to § 173.153 "Exceptions for Division 6.1 (poisonous materials)" in Column (8A).

14. The entry "Chromium trioxide, anhydrous," UN1463, Column (6) would be revised by adding the Division 6.1 subsidiary hazard labeling requirement.

15. The entry "Compressed gas, n.o.s.," UN1956, would be revised by adding Special provision 77. Special provision 77 requires, for domestic transportation, a Division 5.1 subsidiary risk label when a carbon dioxide and oxygen mixture contains more than 23.5% oxygen.

16. The entry, "Contrivances, water-activated, with burster, expelling charge or propelling charge," UN0248, would be revised by removing Special provision 101, which requires the name of the particular substance or article to be specified. In addition, the letter "G" would be added to Column (1), requiring the proper shipping name to be supplemented with the technical name of the hazardous material.

17. The entry, "Contrivances, water-activated, with burster, expelling charge or propelling charge," UN0249, would be revised by removing Special provision 101, which requires the name of the particular substance or article to be specified. In addition, the letter "G" would be added to Column (1), requiring the proper shipping name to be supplemented with the technical name of the hazardous material.

18. The entry "Corrosive liquid, acidic, inorganic, n.o.s.," UN3264, PG II, would be revised by removing Special provision A6. Special provision A6 specifies that for combination packagings, if plastic inner packagings are used, they must be packed in tightly closed metal receptacles before packing in outer packagings. Special provision A6 applies only to the PG I entry of this material.

19. The proper shipping name for the entry "Crotonaldehyde, Stabilized," UN1143, would be revised to read "Crotonaldehyde or Crotonaldehyde, stabilized" and to add proposed new Special provision 175. New Special provision 175 specifies this material is required to be stabilized when in concentrations of not more than 99%.

The revision appears as a "Remove/Add" in this rulemaking.

20. The proper shipping name for the entry "Crotonic acid, liquid," UN2823, would be corrected to read "Crotonic acid, liquid" and the Identification Number would be revised to read "UN3472." This revision appears as a "Remove/Add" in this rulemaking.

21. The proper shipping name for the entry "Crotonic acid, solid," UN2823, would be corrected to read "Crotonic acid, solid," UN2823. This correction appears as a "Remove/Add" in this rulemaking.

22. In accordance with the ICAO Technical Instructions, the entry "Dangerous Goods in Machinery or Dangerous Goods in Apparatus," UN 3363, would be revised by adding quantity limits for transportation by aircraft. The quantity limits will be specified in a new Special provision A105.

23. The entry "Ethyltrichlorosilane," UN1196, PG II, would be revised by removing the reference to § 173.150 "Exceptions for Class 3 (flammable) and combustible liquids" in Column (8A).

24. The entry "Formic acid," UN1779, would be revised to read "Formic acid with more than 85% acid by mass" and the Class 3 subsidiary hazard would be added in Column (6). This revision appears as a "Remove/Add" in this rulemaking.

25. A new entry, "Formic acid with not less than 10% but not more than 85% acid by mass," UN3412, would be added.

26. A new entry, "Formic acid with not less than 5% but less than 10% acid by mass," UN3412, would be added.

27. A new entry, "Fuel cell cartridges containing flammable liquids," UN3473, would be added.

28. The entry "Hydrazine aqueous solutions, with more than 37% hydrazine, by mass" UN2030, PG I, would be revised by removing Special provision 151. Special provision 151 specifies that if this material meets the definition of a flammable liquid in § 173.120 of the HMR, a FLAMMABLE LIQUID label is required and the basic description on the shipping paper must indicate the Class 3 subsidiary hazard. Changes to the Fourteenth revised edition of the UN Recommendations removed this requirement. Shipping paper and labeling requirements for materials with subsidiary hazards are addressed in §§ 172.202 and 172.402, respectively. 28a. The entry "Hydrogen in a metal hydride storage system,"

UN3468, would be revised by amending Column (9B) to authorize 100 kg gross.

29. The entry "Hydrogen peroxide and peroxyacetic acid mixtures, stabilized with acids, water, and not more than 5 percent peroxyacetic acid," UN3149, would be revised by adding Special provision IP5. When this material is transported in an IBC, Special provision IP5 specifies the IBC must have a device to allow venting.

30. The entry "Hydrogen peroxide, aqueous solutions with more than 40 percent but not more than 60 percent hydrogen peroxide (stabilized as necessary)," UN2014, would be revised by adding Special provision IP5. When this material is transported in an IBC, Special provision IP5 specifies the IBC must have a device to allow venting.

31. The entry "Hydrogen peroxide, aqueous solutions with not less than 20 percent but not more than 40 percent hydrogen peroxide (stabilized as necessary)," UN2014, would be revised by adding Special provision IP5. When this material is transported in an IBC, Special provision IP5 specifies the IBC must have a device to allow venting.

32. The entry "Hydrogen peroxide, aqueous solutions with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary)," UN2984, would be revised by adding Special provision IP5. When this material is transported in an IBC, Special provision IP5 specifies the IBC must have a device to allow venting.

33. The entry "Hydrogen peroxide, stabilized or Hydrogen peroxide aqueous solutions, stabilized with more than 60 percent hydrogen peroxide," UN2015, would be revised by removing Special provision T10 and adding Special provision T9. When this material is transported in a UN portable tank, Special provision T10 requires the UN portable tank pressure relief device to comply with the requirements specified in § 178.275(g)(3) of the HMR. The proposed addition of Special provision T9 would remove this requirement.

34. For the entry "Hydrogen difluorides, n.o.s.," UN1740, PG II and III, the proper shipping name would be revised by to read "Hydrogen difluorides, solid, n.o.s." This revision appears as a "Remove/Add" in this rulemaking.

35. A new entry "Hydrogen difluorides, solution, n.o.s.," UN3471, PG II and III, would be added.

36. The entry "Hydroquinone, solid," UN2662, would be removed.

37. The entry "Hydroquinone solution," UN3435, would be removed.

38. The entry "Hypochlorite solutions," UN1791, PG II, would be

revised by adding Special provision IP5. When this material is transported in an IBC, Special provision IP5 specifies the IBC must have a device to allow venting.

39. For the entry "Lead phosphite, dibasic," UN2989, PG II, the quantity limitations in Columns (9A) and (9B) would be revised to read 15 kg and 50 kg, respectively.

40. For the entry "Lead phosphite, dibasic," UN2989, PG III, the quantity limitations in Columns (9A) and (9B) would be revised to read 25 kg and 100 kg, respectively.

41. The entry "Methylphenyldichlorosilane," UN2437, PG II, would be revised by removing the reference to § 173.154 "Exceptions for Class 8 (corrosive materials)" in Column (8A).

42. The entry "Motor fuel anti-knock mixtures," UN1649, would be corrected by removing the subsidiary hazard label requirement in Column (6).

43. The entry "Organometallic substance, solid, pyrophoric," UN3391, PG I, would be revised by correcting the Column (8B) Non-bulk packaging entry "181" to read "187."

44. The entry "Organometallic substance, solid, pyrophoric, water-reactive," UN3393, PG I, would be revised by correcting the Column (8B) Non-bulk packaging entry "181" to read "187."

45. A new entry, "Paint, corrosive, flammable (including paint, lacquer, enamel, stain, shellac, varnish, polish, liquid filler and liquid lacquer base)," UN3470, PG II, would be added.

46. A new entry "Paint, flammable, corrosive (including paint, lacquer, enamel, stain, shellac, varnish, polish, liquid filler and liquid lacquer base)," UN3469, PG I, II, and III, would be added.

47. The entry "Paint including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler and liquid lacquer base," UN1263, would be revised by adding the following Special provisions to the PG I, II, and III entries, respectively:

—TP27 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 4 bar (400 kPa) may be used provided the calculated test pressure is 4 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP28 to specify that when this material is transported in an IM or UN

Specification portable tank, a portable tank having a minimum test pressure of 2.65 bar (265 kPa) may be used provided the calculated test pressure is 2.65 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP29 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 1.5 bar (150.0 kPa) may be used provided the calculated test pressure is 1.5 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

48. The entry "Paint or Paint related materials," UN3066, would be revised by adding the following Special provisions to the PG II and III entries, respectively:

—TP28 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 2.65 bar (265 kPa) may be used provided the calculated test pressure is 2.65 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP29 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 1.5 bar (150.0 kPa) may be used provided the calculated test pressure is 1.5 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

49. A new entry, "Paint related material, corrosive, flammable (including paint thinning or reducing compound)," UN3470, PG II, would be added.

50. A new entry, "Paint related material, flammable, corrosive (including paint thinning or reducing compound)," UN3469, PG I, II, and III would be added.

51. The entry "Paint related material including paint thinning, drying, removing, or reducing compound," UN1263, would be revised by adding the following Special provisions to the PG I, II, and III entries, respectively:

—TP27 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 4 bar (400 kPa) may be used provided the calculated test pressure is 4 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP28 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 2.65 bar (265 kPa) may be used provided the calculated test pressure is 2.65 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

—TP29 to specify that when this material is transported in an IM or UN Specification portable tank, a portable tank having a minimum test pressure of 1.5 bar (150.0 kPa) may be used provided the calculated test pressure is 1.5 bar or less based on the maximum allowable working pressure of the material, as defined in § 178.275 of the HMR, where the test pressure is 1.5 times the maximum allowable working pressure.

52. The entry “Plastic molding compound in dough, sheet or extruded rope form evolving flammable vapor,” UN3314, PG III, would be revised by removing vessel stowage location A and adding location E in Column (10A), and by adding Vessel Stowage provisions 19, 25 and proposed new Vessel Stowage provision 144 in Column (10B).

53. The entry “Polymeric beads, expandable, evolving flammable vapor,” UN2211, PG III, would be revised by removing stowage location A and adding location E in Column (10A), and by adding Vessel Stowage provisions 19, 25 and proposed new Vessel Stowage provision 144 in Column (10B).

54. For the entry “Propionic acid,” UN1848, the proper shipping name would be revised to read, “Propionic acid with not less than 10% and less than 90% acid by mass.” This revision appears as a “Remove/Add” in this rulemaking.

55. A new entry, “Propionic acid with not less than 90% acid by mass,” UN3463, would be added.

56. The entry “Rare gases mixtures, compressed,” UN1979, would be removed.

57. The entry “Rare gases and oxygen mixtures, compressed,” UN1980, would be removed.

58. The entry “Rare gases and nitrogen mixtures, compressed,” UN1981, would be removed.

59. The proper shipping name “Regulated medical waste,” UN3291, would be removed and a new proper shipping name “Regulated medical waste, n.o.s. or Clinical waste unspecified, n.o.s. or (BIO) Medical waste, n.o.s.,” UN3291, would be added in its place.

60. For the international entry for “Sulfur,” UN1350, the quantity limitations in Columns (9A) and (9B) would be revised to read 25 kg and 100 kg, respectively.

61. The entry “Trimethylchlorosilane,” UN1298, PG II, would be revised by removing the reference to § 173.150 “Exceptions for Class 3 (flammable) and combustible liquids” in Column (8A).

Also, see § 172.102 for additional HMT amendments.

Appendix B to § 172.101

Appendix B to § 172.101 lists Marine Pollutants regulated under the HMR. For the entry “Copper chloride” we are proposing to add the designation “PP” to indicate that copper chloride is a severe marine pollutant. We are also proposing to correct an oversight by removing the entries “Alcohol C–13—C–15 poly (1–6) ethoxylate” and “1,2-Dichlorobenzene.” Removal of the entry “Alcohol C–13—C–15 poly (1–6) ethoxylate” was overlooked in a final rule published under Docket HM–215G (69 FR 76044; December 20, 2004) and removal of the entry “1,2-Dichlorobenzene” was overlooked in a final rule published under Docket HM–215D (66 FR 33316; June 21, 2001).

Section 172.102

Section 172.102 lists a number of special provisions applicable to the transportation of specific hazardous materials. Special provisions contain packaging provisions, prohibitions, and exceptions applicable to particular quantities or forms of hazardous materials. For consistency with international standards, we propose to amend § 172.102, Special provisions, as follows:

- Special provision 15 specifies the types of materials and packaging requirements for chemical kits and first aid kits. We propose to revise Special provision 15 to list examples that may be described as “Chemical kits” and “First aid kits.”

- Special provision 47 specifies requirements for mixtures of non-hazardous solids and flammable liquids. In accordance with the UN Recommendations, Special provision 47

would be revised to specify that, in addition to sealed packets, articles containing less than 10 mL of a Class 3 Packing Group II or III liquid absorbed into a solid material would be excepted from the HMR provided there is no free liquid in the packet.

- Special provision 77 applies to use of Division 5.1 subsidiary risk label. We propose to revise this special provision for consistency with the wording in the UN Recommendations. As proposed, Special provision 77 would no longer apply only to “domestic transportation.” Further, we propose to clarify that a Division 5.1 label is required if other oxidizing gases are present. Also, the provision would be applied to the entry “Compressed gas, n.o.s.,” UN1956, which is the most appropriate description for mixtures currently described as “Carbon dioxide and oxygen mixtures, compressed.” In this NPRM, we are proposing to remove the entry for “Carbon dioxide and oxygen mixtures, compressed,” which is consistent with its removal from the UN Recommendations.

- Special provision 146 would be amended to authorize the domestic classification of a material as environmentally hazardous if it is designated as such by foreign competent authorities. The provision as currently worded may be interpreted to only allow such classification for international shipments. Due to current differences in criteria for the classification of environmentally hazardous substances world-wide, we believe the amended provision will afford additional flexibility to industry and reduce shipping costs by allowing both domestic and international shipments to be treated identically.

- Special provision 147 applies to non-sensitized emulsions, suspensions and gels consisting primarily of a mixture of ammonium nitrate and fuel, intended to produce a Type E blasting explosive only after further processing prior to use. In accordance with the UN Recommendations, this special provision would be revised to specify the composition of mixtures for suspensions and gels and to specify these substances be tested in accordance with Test Series 8 of the UN Manual of Tests and Criteria.

- Special provision 166 authorizes non-friable, tablet form calcium hypochlorite, dry or hydrated, to be transported as a Packing Group III material. In accordance with the UN Recommendations, we propose to revise Special provision 166 to remove the authorization for “hydrated” non-friable tablet forms of calcium hypochlorite to be transported as a PG III material.

- A new Special provision 175 would be added to require stabilization for certain substances when transported in concentrations of not more than 99%.

- Special provision 101 would be removed. This special provision requires the name of the particular substance or article to be specified. With the introduction of the letter "G" in Column (1), which requires the n.o.s. and generic proper shipping names to be supplemented with the technical name of the hazardous material, Special provision 101 becomes obsolete.

- A new Special provision A105 would be added to specify the quantity of hazardous materials allowed in equipment or apparatus.

Section 172.202

Section 172.202 establishes requirements for shipping descriptions on shipping papers. Currently, the basic description of a hazardous material consists of the proper shipping name, hazard class, ID number and packing group, in that order. The HMR also authorize an alternative description sequence, which lists the identification number first, followed by the proper shipping name, hazard class, and packing group. Beginning January 1, 2007, the alternative shipping description sequence will be mandatory on shipping documents prepared according to the ICAO Technical Instructions and the IMDG Code. In this NPRM, we propose to adopt the alternative shipping description sequence. We are also proposing a 2-year transition period to allow offerors sufficient time to convert to the new shipping description sequence. Readers are invited to comment on this proposal, especially on the length of the transition period.

The description of a hazardous material on a shipping paper must include the total quantity of hazardous material (by mass or volume) covered by the description (*see* § 172.202(a)(5)). The majority of quantity limitations set forth for transportation by aircraft, in Columns (9A) and (9B), are "net" quantities. Section 175.75 limits the quantity of hazardous materials, expressed in net mass, aboard an aircraft. To facilitate compliance with the aircraft operator's requirements, we are proposing that, for transportation by aircraft, the total quantity per package be shown, expressed as net mass, except as otherwise specified. For example: UN1263, Paint, 3, PG II, 5 fiberboard boxes x 5 L each

Different size packages containing different quantities of the same hazardous material must be clearly identified. For example:

UN 1263, Paint, 3, PG II, 5 fiberboard boxes x 5 L, 6 fiberboard boxes x 10 L
Where the letter "G" follows the quantity in Column (9A) or (9B), the gross mass must be indicated, rather than the net quantity.

Also, we are proposing the following additional requirements:

- For empty uncleaned packaging, only the number and type of packaging must be shown;
- For chemical kits and first aid kits, the total net mass of hazardous materials must be shown. Where a kit contains solids and/or liquids, the net mass of liquids within the kit is to be calculated on a 1 to 1 basis, i.e., 1 liter equals 1 kilogram;
- For dangerous goods in machinery or apparatus, the individual total quantities of dangerous goods in solid, liquid or gaseous state, contained in the article must be shown;
- For dangerous goods transported in a salvage packaging, an estimate of the quantity of dangerous goods per package must be shown;
- For cylinders, the total quantity may be indicated by the number of cylinders, for example, "10 cylinders;"
- For items where "No Limit" is shown in Column (9A) or (9B) of the HMT, the quantity shown should be the net mass or volume of the material, except for UN2800, UN2807, UN3072, UN3166 and UN3173, where the quantity should be the gross mass of the article.

Section 172.312

Section 172.312 addresses marking requirements for liquid hazardous materials in non-bulk packagings. Specifically, the packaging must be marked with orientation arrows to indicate how the package should be oriented during transportation; the arrows indicate which end of the package is "up." Currently the HMR require orientation markings only on a non-bulk combination package with inner packagings that contain a liquid hazardous material, unless specifically excepted. In this NPRM, we propose to revise paragraph (a) to require orientation markings on single packagings fitted with vents and on open cryogenic receptacles intended for the transport of refrigerated liquefied gases. Also, we propose to require the size of the marking to be proportioned so that it is clearly visible in relation to the size of the package, and to require the color of the arrows to be either black or red on a suitable contrasting background. Currently, the HMR do not specify either size or color

requirements. Finally, we are proposing to add a new paragraph (c)(7) to except Class 7 radioactive materials in type A, IP-2, IP-3, B(U), B(M) or C packages from the orientation marking requirement.

Sections 172.407 and 172.427

Section 172.407 establishes specifications for package labels. Section 172.427 establishes requirements for the ORGANIC PEROXIDE label. In accordance with the UN Recommendations, we are proposing to revise the ORGANIC PEROXIDE label. The new label will reflect the fact that organic peroxides are highly flammable and will enable transport workers to readily distinguish peroxides from oxidizers with which they are generally not compatible. We also propose to allow labels meeting the specifications in effect on December 31, 2006, to continue to be displayed until January 1, 2011 (*see* § 171.14). Adoption of the redesigned label will eliminate the current requirement in § 172.402 for a package containing an organic peroxide to bear a FLAMMABLE LIQUID subsidiary label in addition to the ORGANIC PEROXIDE primary hazard class label.

Section 172.552

Section 172.552 establishes specific requirements for the ORGANIC PEROXIDE placard. In accordance with the UN Recommendations, in paragraph (b), we are proposing to revise the ORGANIC PEROXIDE placard. The new placard will reflect the fact that organic peroxides are highly flammable and will enable transport workers to readily distinguish peroxides from oxidizers with which they are generally not compatible. We also propose to allow placards meeting the specifications in effect on December 31, 2006, to continue to be displayed until January 1, 2011 (*see* § 171.14).

Part 173

Section 173.9

Section 173.9 sets forth requirements for transporting cargo that has been fumigated or is undergoing fumigation. Such shipments must have a FUMIGANT marking. As specified in this section, the FUMIGANT marking includes an indication of the material used for fumigation and the date and time the fumigant was applied. Currently, transport vehicles or freight containers containing fumigated cargoes are not required to show the date the fumigant transport vehicle or freight container was ventilated to remove harmful concentration of fumigant gas.

To minimize the possibility of an individual entering a fumigated transport vehicle or freight container prematurely, we are proposing to add the date of ventilation on the FUMIGANT marking. We are also proposing to revise the specifications for the FUMIGANT marking to allow either red or black marking on a white background. Finally, we are proposing to revise the section for clarity.

Sections 173.35, 173.120, 173.121, and Appendix H to Part 173

Section 173.35 sets forth requirements for transporting hazardous materials in intermediate bulk containers (IBCs); § 173.120 establishes classification criteria for flammable liquid (Class 3) materials; § 173.121 addresses packing group assignments for Class 3 materials; and Appendix H to Part 173 sets forth methods to test a material to determine its combustibility. We are proposing revisions in all of these sections to revise the upper limit for a PG III flammable liquid from 60.5 °C (141 °F) to 60 °C (140 °F). This is consistent with recent changes to the classification of flammable liquids based on the GHS and adoption into the UN Recommendations. PHMSA is also proposing a five-year transition period.

Section 173.115

The HMR define a Division 2.2 non-flammable gas as any material or mixture that “exerts in the packaging an absolute pressure of 280 kPa (40.6 psia) or greater at 20 °C (68 °F), * * *.” In paragraph (b)(1), we propose to add the phrase “or is a cryogenic liquid,” to clarify that a cryogenic liquid, whether or not it meets the definition of a Division 2.2 non-flammable gas, is subject to the HMR. This is consistent with the current requirements for cryogenic liquids in § 173.115(g).

Currently, paragraph (k)(5) of this section requires aerosols containing Class 8, PG III materials to be assigned a Class 8 subsidiary hazard. We are proposing to amend paragraph (k)(5) to specify that aerosols containing Class 8, PG II or PG III materials must be assigned a Class 8 subsidiary hazard.

Section 173.124

Section 173.124 establishes classification criteria for Division 4.1 (flammable solid), Division 4.2 (spontaneously combustible), and Division 4.3 (dangerous when wet) materials. We are proposing to require mixtures of oxidizing substances containing 5.0% or more combustible organic substances to be subject to the self-reactive substance classification

procedure. This will ensure that oxidizing substances containing 5.0% or more of combustible organic substances are also tested for their ability to self-react and to ensure that in such instances, these substances are appropriately classed for their self-reactive hazard.

Section 173.133

Section 173.133 establishes criteria for assignment of packing groups to poisonous (Division 6.1) materials. We are proposing to amend the toxicity criteria for consistency with the toxicity criteria adopted in the UN Recommendations on the basis of the limits established in the GHS. As a result, some materials that were not previously regulated under the HMR will be regulated as Division 6.1, Packing Group III; some materials currently regulated as Division 6.1, Packing Group I or II will be assigned to a different packing group; and some materials that were previously regulated as Division 6.1, Packing Group III will not be subject to regulation under the HMR. PHMSA is proposing a five year transition period.

The effect of these changes to packing group assignments for Division 6.1 materials is summarized as follows:

Material properties	Current PG assignment	Proposed PG assignment
Oral LD ₅₀ > 200, ≤ 300 (Solid)	Not regulated ...	III.
Oral LD ₅₀ > 300, ≤ 500 (Liquid)	III	Not regulated.
Dermal LD ₅₀ > 40, ≤ 50	II	I.
Inhalation toxicity by dusts and mists LC ₅₀ > 0.2, ≤ 0.5	I	II.
Inhalation toxicity by dusts and mists LC ₅₀ > 4, ≤ 10	III	Not regulated.

Sections 173.134 and 173.197

These sections are revised by replacing the wording “Regulated medical waste” with the wording “Regulated medical waste or clinical waste or (bio) medical waste.”

Section 173.136

Currently, the HMR define “corrosive material” to mean “a liquid or solid that causes full thickness destruction of human skin at the site of contact within a specified period of time. A liquid that has a severe corrosion rate on steel or aluminum based on the criteria in § 173.137(c)(2) is also a corrosive material.” Certain solids with a low melting point may become liquid during transportation, and others may be intentionally heated above their melting point and transported as a liquid in the molten state. We believe that the Class 8 definition should apply equally to liquids and to solids offered for

transportation or transported in a liquid state. Therefore, we are proposing to revise the definition of a “corrosive material” in paragraph (a), to include a solid material that is offered for transportation or transported as a liquid and has a severe corrosion rate on steel or aluminium.

Also, we are proposing to remove the grandfather provision in § 173.136(d) on the basis that it is no longer necessary because tests other than the one specified in the UN Manual of Tests and Criteria will be authorized. See the § 173.137 preamble discussion below.

Section 173.137

Section 173.137 establishes packing group criteria for corrosive (Class 8) materials. In a final rule published under Docket HM-215G (69 FR 76155; December 20, 2004), we revised the language in paragraph (c)(2) mandating the corrosion test in the UN Manual of

Tests and Criteria as the only acceptable test method for determining the corrosivity of a material. That was not our intent. In this NPRM, we are proposing to revise paragraph (c)(2) to specify that corrosivity may be determined in accordance with methods described in the UN Manual of Tests and Criteria, as well as other equivalent methods such as those described in ASTM G 31-72.

Section 173.159

Section 173.159 establishes transportation requirements for wet electric storage batteries. In accordance with the ICAO Technical Instructions, we are proposing to revise paragraphs (a), (c)(1), (c)(2), (c)(4), (c)(5), (d)(1) and (e)(2) to clarify that batteries may be protected against short circuits by the use of non-conductive caps that cover the entire terminal(s).

Section 173.166

Section 173.166 establishes transportation requirements for air bag inflators, air bag modules, and seat-belt pretensioners. Currently, paragraph (d)(1) excepts from the HMR air bag modules and seat-belt pretensioners approved by the Associate Administrator and installed in a motor vehicle or a completed motor vehicle component. We propose to revise paragraph (d)(1) to expand the exception to include air bag modules and seat-belt pretensioners installed in other means of conveyance, such as boats and aircraft, or their components.

Section 173.187

Section 173.187 establishes transportation requirements for pyrophoric solids, metals, or alloys, not otherwise specified (n.o.s.). We propose to revise this section for clarity and to correct an oversight by adding 4A steel boxes to the list of authorized packagings for pyrophoric solids, metals or alloys, n.o.s.

Section 173.216

Section 173.216 establishes transportation requirements for blue, brown, or white asbestos. Paragraph (c) of this section specifies packaging requirements for these materials. In paragraph (c), we are proposing to require bags or other non-rigid packages containing asbestos to be transported in rigid outer packages or closed freight containers.

Section 173.220

Section 173.220 establishes transportation requirements for internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles and equipment. For transportation by aircraft, the HMR impose a pressure limit of not more than 5% of the maximum allowable working pressure in any part of the system between the pressure receptacle and the shut off valve of a flammable gas powered vehicle. We are proposing to revise paragraph (b)(2)(ii)(B)(3) to specify that the pressure limit imposed applies to the entire closed system and that the maximum pressure allowed is 290 psig (2000 kPa). Also, consistently with the ICAO Technical Instructions, we are proposing to revise paragraphs (c) and (d) to clarify that batteries may be protected against short circuits by the use of non-conductive caps that cover the entire terminal(s).

Section 173.222

This section establishes requirements for hazardous materials in equipment, machinery and apparatus. Because of the addition of Special provision A105 in the HMT, the shipping paper requirements in paragraph (d) no longer apply to transportation by aircraft. We are proposing to revise paragraph (d) accordingly.

Section 173.224

Section 173.224 establishes packaging and control and emergency temperatures for self-reactive materials. The Self-Reactive Materials Table in paragraph (b)(7) of this section specifies self-reactive materials authorized for transportation without first being approved for transportation by the Associate Administrator for Hazardous Materials Safety and requirements for transporting these materials. In paragraph (b)(7), we propose to add a new entry "Acetone-pyrogallol copolymer 2-diazo-1-naphthol-5-sulphonate" to the Self-Reactive Materials Table.

Section 173.230

We are proposing to add a new packaging section (§ 173.230) for the transportation of "Fuel cell cartridges containing flammable liquids, UN 3473" including methanol or methanol/water solutions. For consistency with the ICAO Technical Instructions, we are proposing to require fuel cell cartridges containing flammable liquids, other than those packaged with equipment, to be packaged in specification packagings for all modes of transportation. Fuel cell cartridges packaged in or with equipment must be packaged in strong outer packagings.

Section 173.306

This section establishes transportation requirements for limited quantities of compressed gases. Paragraph (i) of this section excepts aerosols with capacities under 50 mL (1.7 oz) and pressures not exceeding 970 kPa (141 psig) at 55 °C (131 °F) from all HMR requirements. In this NPRM, we propose to expand this exception to aerosols with capacities of less than 50 mL (1.7 oz) and pressures of up to 290 psig (2000 kPa) provided the packagings conform to the general packaging requirements of § 173.24. The proposed amendment is not consistent with provisions of the UN Recommendations or the ICAO Technical Instructions, which do not limit the pressure within the aerosol or small receptacle. We are not convinced that aerosols should be excepted from all regulation when the pressure in the container exceeds 290 psig (2000 kPa).

Because the aerosols and small gas receptacles would not be subject to the shipping paper, package marking, or labeling requirements, a carrier might be unaware of the potential risks. In addition, to avoid confusion and further clarify the intent of this exception, we are proposing to revise paragraph (i) to specify that the 50 mL exception for aerosols does not apply to self-defense sprays. It was not our intent to authorize the use of this exception for self-defense sprays.

Also, we are proposing to add a new paragraph (j) to alert readers to additional exceptions for compressed gases in § 173.307.

Part 175

Section 175.10

Currently, safety matches or a lighter intended for use by a passenger or crew member are excepted from the HMR. In accordance with the ICAO Technical Instructions, in this NPRM, we are proposing to revise paragraph (a)(2) to limit the number of safety matches that may be carried on one's person or in carry-on baggage by a passenger or crewmember to one packet.

Section 175.78

Section 175.78 establishes requirements for stowing hazardous materials on an airplane. We propose to amend paragraph (c)(4) to clarify which explosive materials may be stowed together aboard an aircraft and to remove existing stowage references for explosive materials not authorized for transportation aboard aircraft under any circumstances.

Part 176

Section 176.76

Section 176.76 establishes requirements for vessel transportation of transport vehicles, freight containers, and portable tanks containing hazardous materials. Paragraph (f) includes requirements for portable tanks containing flammable liquids or gases. Consistently with recent changes to the classification of flammable liquids based on the GHS and adopted into the UN Recommendations discussed elsewhere in this preamble, we are proposing to revise paragraph (f)(2) to specify the new upper limit for a PG III flammable liquid to be 60 °C (140 °F).

Section 176.83

Section 176.83 establishes segregation requirements for hazardous materials transported by vessel. We are proposing to revise paragraph (a)(4) to identify materials of different hazard classes that do not react dangerously with each

other and, therefore, do not need to be segregated.

Section 176.84

Section 176.84 contains additional stowage and segregation requirements for hazardous materials on cargo and passenger vessels. Consistently with the 2004 Edition of the IMDG Code, incorporating Amendment 33–06, in the paragraph (b) Table of provisions, we are proposing to add a new Code “144.”

Code “144” would be added to the entries “Plastic molding compound *in dough, sheet or extruded rope from evolving flammable vapor*,” UN3314, and “Polymeric beads expandable, *evolving flammable vapor*,” UN2211, to specify these materials must be mechanically ventilated in accordance with SOLAS regulation II–2/19 (IBR; see § 171.7 of this subchapter) for flammable liquids with a flashpoint below 23 °C (73 °F) when stowed under deck.

Also, we are proposing to add a new note “2” following the Table. Note “2” provides an exception from the segregation requirements for Class 8, PG II and III materials, provided the substances do not react dangerously with each other and the quantities per package do not exceed 30 L (7.8 gallons) for liquids and 30 kg (66 lbs.) for solids. We are also proposing to revise Codes “26,” “27,” “52,” and “53” to add the new proposed note “2.” These provisions are consistent with the IMDG Code.

Part 178

Section 178.274

Section 178.274 establishes design, manufacturing, and test requirements for UN portable tanks. Currently, a prototype UN portable tank must be shown capable of absorbing the forces resulting from an impact not less than four times the maximum permissible gross weight of the fully loaded portable tank at a duration that is typical of the mechanical shocks experienced in rail transportation. Several standards describing methods acceptable for performing the impact test were previously listed in the UN Recommendations (6.7.3.15). The Fourteenth revised edition of the UN Recommendations includes a dynamic longitudinal impact test for portable tanks. All procedures, test requirements, processing and analysis of data are found in Section 41 of Addendum 2 to the UN Recommendations.

We propose to revise paragraph (j)(6) to require each UN portable tank design type be subjected to a dynamic longitudinal impact test to prove the

ability of the portable tank to withstand the effects of a longitudinal impact. This requirement would take effect on January 1, 2008, and is consistent with the international requirements. UN portable tanks impact-tested based on the criteria in effect on October 1, 2005, would not need to be retested.

Section 178.602

Section 178.602 establishes requirements for the preparation of packagings for testing to ascertain that the packaging conforms to the design requirements of the applicable specification. Currently, for the preparation of bags for the drop and stacking tests, paragraph (b) requires bags to be filled to the maximum mass at which they may be used. We are proposing to revise paragraph (b) to clarify that the preparation of bags for the drop and stacking tests only applies to bags containing solids.

Section 178.810

Section 178.810 establishes requirements for performing the drop test for IBCs. We are proposing to revise paragraph (b)(1) to clarify that metal, rigid plastic, and composite IBCs must be filled to not less than 95% of their maximum capacity when conducting drop tests for solids, and not less than 98% of their maximum capacity for liquids. Similarly, in paragraph (b)(2), we are proposing to require fiberboard and wooden IBCs to be filled with a solid material to not less than 95% of their maximum capacity. Also, we are proposing to add a new paragraph (b)(3) to require filling flexible IBCs to the maximum permissible gross mass and even distribution of the contents.

Part 180

Section 180.352

Section 180.352 establishes requirements for retesting and inspection of IBCs to ensure that they continue to conform to the applicable specification. We are proposing to revise paragraph (b) to specify that each IBC intended to contain solids that are loaded or discharged under pressure or intended to contain liquids must be tested in accordance with the leakproofness test prescribed in § 178.813 prior to its first use in transportation. For this test, the IBC is not required to have its closures fitted. These additions incorporate clarifications adopted in the Fourteenth revised edition of the UN Recommendations. We are proposing to editorially revise paragraph (g) for clarity.

VI. Regulatory Analyses and Notices

A. Statutory/Legal Authority for This Rulemaking

This proposed rule is published under the following statutory authorities:

1. 49 U.S.C. 5103(b) authorizes the Secretary of Transportation to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This proposed rule amends regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. To this end, as discussed in detail earlier in this preamble, the proposed rule amends the HMR to more fully align them with the biennial updates of the UN Recommendations, the IMDG Code and the ICAO Technical Instructions; this will facilitate the transport of hazardous materials in international commerce.

2. 49 U.S.C. 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities. This rule proposes to amend the HMR to maintain alignment with international standards by incorporating various amendments to facilitate the transport of hazardous material in international commerce. To this end, as discussed in detail earlier in this preamble, the rule proposes to incorporate changes into the HMR based on the Fourteenth revised edition of the UN Recommendations, Amendment 33 to the IMDG Code, and the 2007–2008 ICAO Technical Instructions, which become effective January 1, 2007. The continually increasing amount of hazardous materials transported in international commerce warrants the harmonization of domestic and international requirements to the greatest extent possible. Harmonization serves to facilitate international transportation; at the same time, harmonization ensures the safety of people, property, and the environment by reducing the potential for confusion and misunderstanding that could result if shippers and transporters were required to comply with two or more conflicting sets of regulatory requirements. While the intent of this rulemaking is to align the HMR with international standards, we review and consider each amendment on its own merit based on its overall impact on

transportation safety and the economic implications associated with its adoption into the HMR. Our goal is to harmonize without sacrificing the current HMR level of safety and without imposing undue burdens on the regulated public. Thus, as discussed in detail earlier in this preamble, there are several instances where we elected not to adopt a specific provision of the UN Recommendations, the IMDG Code or the ICAO Technical Instructions; further, we are maintaining a number of current exceptions for domestic transportation that should minimize the compliance burden on the regulated community.

B. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures of the Department of Transportation [44 FR 11034]. This proposed rule applies to offerors and carriers of hazardous materials, such as chemical manufacturers, chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, radiopharmaceutical companies, and training companies. Benefits resulting from the adoption of the amendments in this proposed rule include enhanced transportation safety resulting from the consistency of domestic and international hazard communications and continued access to foreign markets by U.S. manufacturers of hazardous materials.

The majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

We propose a delayed effective date and a one-year transition period to allow for training of employees and to ease any burden on entities affected by the amendments. The total net increase in costs to businesses in implementing the proposed rule is considered to be minimal. The costs are the result of reprogramming shipping paper computer programs, replacement of pre-printed forms for firms that do not use automated systems, and changes to package markings and labels. Initial start-up and inventory costs would result from these changes; however, the costs would be offset by greater long-term savings of conformance with one

set of regulations and a one year transition period. A regulatory evaluation is available for review in the public docket for this rulemaking.

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule preempts State, local and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous material transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125(b)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(1) The designation, description, and classification of hazardous material;

(2) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(3) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents;

(4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and

(5) The design, manufacture, fabrication, inspection, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified for use in transporting hazardous material in commerce.

This proposed rule addresses covered subject items (1), (2), (3), and (5) above and preempts State, local, and Indian tribe requirements not meeting the "substantively the same" standard. This proposed rule is necessary to incorporate changes adopted in international standards, effective January 1, 2007. If the changes in this proposed rule are not adopted in the HMR, U.S. companies, including numerous small entities competing in foreign markets, would be at an economic disadvantage. These companies would be forced to comply with a dual system of regulations. The changes in this proposed rulemaking are intended to avoid this result. Federal hazardous materials transportation law provides at section 5125(b)(2) that, if

DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA proposes the effective date of Federal preemption be 90 days from publication of a final rule in this matter in the **Federal Register**.

D. Executive Order 13175

This proposed rule was analyzed in accordance with the principles and criteria contained in Executive Order 13175 ("Consultation and Coordination with Indian Tribal Governments"). Because this proposed rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities, unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. This proposed rule facilitates the transportation of hazardous materials in international commerce by providing consistency with international standards. This proposed rule applies to offerors and carriers of hazardous materials, some of whom are small entities, such as chemical users and suppliers, packaging manufacturers, distributors, battery manufacturers, and training companies. As discussed above, under *Executive Order 12866*, the majority of amendments in this proposed rule should result in cost savings and ease the regulatory compliance burden for shippers engaged in domestic and international commerce, including trans-border shipments within North America.

Many companies will realize economic benefits as a result of these amendments. Additionally, the changes effected by this final rule will relieve U.S. companies, including small entities competing in foreign markets, from the burden of complying with a dual system of regulations. Therefore, I certify that these amendments will not, if promulgated, have a significant economic impact on a substantial number of small entities.

This proposed rule has been developed in accordance with Executive

Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number. Section 1320.8(d), Title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. PHMSA currently has two approved information collections affecting this proposed rule: OMB Control Number 2137–0557, “Approvals for Hazardous Materials” with 25,605 burden hours and \$562,837.40 burden costs; and OMB Control Number 2137–0613, “Subsidiary Hazard Class & Number/Type of Packagings” with 63,309 burden hours and \$216,705 burden costs.

This rule proposes minor editorial changes. However, there is no net increase in burden for OMB Control Number 2137–0557 or OMB Control Number 2137–0613. We estimate the total information collection and recordkeeping burden as follows:

“Approvals for Hazardous Materials”

OMB Number: 2137–0557.
Total Annual Number of Respondents: 3,523.
Total Annual Responses: 3,874.8.
Total Annual Burden Hours: 25,605.
Total Annual Burden Cost: \$562,837.40.

“Subsidiary Hazard Class & Number/Type of Packagings”

OMB Number: 2137–0613.
Total Annual Number of Respondents: 250,000.
Total Annual Responses: 6,337,500.
Total Annual Burden Hours: 17,604.
Total Annual Burden Cost: \$216,705.
Total First Year Burden Hours: 45,705.
Total First Year Burden Cost: \$1,115,992.

Requests for a copy of this information collection should be directed to Deborah Boothe or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–10), Pipeline and Hazardous Materials Safety Administration, Room 8422, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

H. Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$120.7 million or more to either State, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment. We developed an assessment to determine the effects of these revisions on the environment and whether a more comprehensive environmental impact statement may be required. Consistency in the regulations for the transportation of hazardous materials aids in shipper understanding of the requirements and permits shippers to more easily comply with safety regulations and avoid the potential for environmental damage or contamination. Our findings tentatively conclude that there are no significant environmental impacts associated with this proposed rule. Interested parties, however, are invited to review the Environmental Assessment available in the docket and to comment on what environmental impact, if any, the proposed regulatory changes would have.

J. Privacy Act

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the document (or signing the document, 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 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Incorporation by reference, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Incorporation by reference, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Incorporation by reference, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Incorporation by reference, Maritime carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Incorporation by reference, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Incorporation by reference, Motor carriers, Motor vehicle safety, Packaging and containers, Railroad safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR Chapter I is proposed to be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45 and 1.53; Pub. L. 101–410 section 4 (28 U.S.C. 2461 note); Pub. L. 104–134 section 31001.

2. In § 171.7, in the paragraph (a)(3) table, the following changes are made:

a. Under the entry “International Civil Aviation Organization (ICAO),” the

entry "Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2005–2006 Edition" is revised;

b. Under the entry "International Maritime Organization (IMO)," the entries "International Convention for the Safety of Life at Sea, (SOLAS) Amendments 2000, Chapter II–2/Regulation 19, 2001" and "International

Maritime Dangerous Goods Code (IMDG Code), 2004 Edition, Incorporating Amendment 32–04 (English Edition), Volumes 1 and 2" are revised;

c. Under the entry "United Nations," the entry "UN Recommendations on the Transport of Dangerous Goods, Thirteenth Revised Edition (2003), Volumes I and II" is revised;

d. Under the entry "United Nations," the entry "UN Recommendations on the

Transport of Dangerous Goods, Manual of Tests and Criteria, Fourth Revised Edition, (2003)" is revised.

The revisions read as follows:

§ 171.7 Reference material.

(a) * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
International Civil Aviation Organization (ICAO).	
Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), 2007–2008 Edition.	171.8; 171.11; 172.202; 172.401; 172.512; 172.602; 173.320; 175.33; 178.3.
International Maritime Organization (IMO).	
International Convention for the Safety of Life at Sea, (SOLAS) Amendments 2000, Chapter II–2/Regulation 19, 2001.	176.63; 176.84.
International Maritime Dangerous Goods Code (IMDG 2006 Edition, Incorporating Amendment 33–06 (English Edition), Volumes 1 and 2.	171.12; 172.202; 172.401; 172.502; 172.602; 173.21; 176.2; 176.5; 176.11; 176.27; 176.30; 178.3.
United Nations.	
UN Recommendations on the Transport of Dangerous Goods, Fourteenth revised edition (2005). Volumes I and II.	171.12; 172.202; 172.41; 172.502; 173.22; 173.24; 173.24b; 173.197; Part 173, appendix H; 178.274; 178.001.
UN Recommendations on the Transport of Dangerous Goods, Manual of Tests and Criteria, Fourth revised edition, (2003), and Addendum 2, (2004).	172.102; 173.21; 173.56; 173.57; 173.58; 173.115; 173.124; 173.125; 173.127; 173.128; 173.185; 178.274.

3. In § 171.14, paragraph (b) is removed and reserved; paragraphs (d) introductory text, (d)(1) and (d)(2) are revised; paragraphs (d)(7) and (d)(8) are removed; paragraphs (e) and (f) are revised; and new paragraph (g) is added to read as follows:

§ 171.14 Transitional provisions for implementing certain requirements.

(b) [Reserved]

(d) A final rule published in the **Federal Register** on [PUBLICATION DATE OF FINAL RULE], effective January 1, 2007, resulted in revisions to this subchapter. During the transition period, until January 1, 2008, as provided in paragraph (d)(1) of this section, a person may elect to comply with either the applicable requirements of this subchapter in effect on December 31, 2006, or the requirements published in the [PUBLICATION DATE OF FINAL RULE] final rule.

(1) *Transition dates.* The effective date of the final rule published on

[PUBLICATION DATE OF FINAL RULE] is January 1, 2007. A delayed compliance date of January 1, 2008, is authorized. Unless otherwise specified, on and after January 1, 2008, all applicable regulatory requirements adopted in the final rule in effect on January 1, 2007, must be met.

(2) *Intermixing old and new requirements.* Marking, labeling, placarding, and shipping paper descriptions must conform to either the old requirements of this subchapter in effect on December 31, 2006, or the new requirements of this subchapter in the final rule without intermixing communication elements, except that intermixing is permitted during the applicable transition period for packaging, hazard communication and handling provisions, as follows:

(i) If either shipping names or identification numbers are identical, a shipping paper may display the old shipping description even if the package is marked and labeled under the new shipping description;

(ii) If either shipping names or identification numbers are identical, a

shipping paper may display the new shipping description; and

(iii) Either old or new placards may be used regardless of whether old or new shipping descriptions, labels, and package markings are used.

(e) The shipping description sequences in effect on December 31, 2006, may be used until January 1, 2012.

(f) A Division 5.2 label and a Division 5.2 placard conforming to the specifications in §§ 172.427 and 172.552, respectively, of this subchapter in effect on December 31, 2006, may be used until January 1, 2011.

(g) The Class 3 and Division 6.1 classification criteria and packing group assignments in effect on December 31, 2006, may be used until January 1, 2012.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

4. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

5. In § 172.101, paragraph (d)(4) is revised and the Hazardous Materials Table is amended by removing, adding and revising, in the appropriate alphabetical sequence, to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

(d) * * *
(4) Each reference to a Class 3 material is modified to read “Combustible liquid” when that material is reclassified in accordance

with § 173.150(e) or (f) of this subchapter or has a flash point above 60 °C (140 °F) but below 93 °C (200 °F).
* * * * *

§ 172.101—HAZARDOUS MATERIALS TABLE

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.***)		(9) Quantity limitations		(10) Vessel stowage		
							(8A) Exceptions	(8B) Non-bulk	(8C) Bulk	(9A) Passenger aircraft/rail	(9B) Cargo aircraft only	(10A) Location	(10B) Other
	[Remove].												
*	Carbon dioxide and nitrous oxide mixtures.	2.2	UN1015	*	2.2	*	306	*	None	314, 315	75 kg	150 kg	A
*	Carbon dioxide and oxygen mixtures, compressed.	2.2	UN1014	*	2.2, 5.1	77, A14	306	*	304	314, 315	75 kg	150 kg	A
*	Carbon monoxide and hydrogen mixture, compressed.	2.3	UN2600	*	2.3, 2.1	6	None	*	302	302	Forbidden	Forbidden	D
*	Crotonaldehyde, stabilized.	6.1	UN1143	I	6.1, 3	2, B9, B14, B32, B74, B77, T20, TP2, TP13, TP38, TP45.	None	*	227	244	Forbidden	Forbidden	B
8	Crotonic acid, liquid	III	UN2823	III	8	IB8, T1	154	*	203	241	5 L	60 L	A
8	Crotonic acid, solid	III	UN2823	III	8	IB8, IP3, T1, TP33.	154	*	213	240	25 kg	100 kg	A
*	Formic acid	8	UN1779	II	8	B2, B28, IB2, T7, TP2.	154	*	202	242	1 L	30 L	A
*	Hydrogen difluoride, n.o.s.	8	UN1740	II	8	IB8, IP2, IP4, N3, N34, T3, TP33.	None	*	212	240	15 kg	50 kg	A
*	Hydroquinone, solid.	6.1	UN2662	III	6.1	IB8, IP3, N3, N34, T1, TP33.	154	*	213	240	25 kg	100 kg	A
*	Hydroquinone solution.	6.1	UN3435	III	6.1	IB3, T4, TP1	153	*	203	241	60 L	220 L	A
*	Propionic acid	8	UN1848	III	8	IB3, T4, TP1	154	*	203	241	5 L	60 L	A
*	Rare gases and nitrogen mixtures, compressed.	2.2	UN1981	*	2.2	*	306	*	302	None	75 kg	150 kg	A

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.***)		(9) Quantity limitations		(10) Vessel stowage	
							(8A) Exceptions	(8B) Non-bulk	(8C) Bulk	(9A) Passenger aircraft/rail	(9B) Cargo aircraft only	(10A) Location	(10B) Other
	Rare gases and oxygen mixtures, compressed.	* 2.2	UN1980	*	2.2	79	306	302	75 kg	150 kg	A	
	Rare gases mixtures, compressed.	* 2.2	UN1979	*	2.2		306	302	75 kg	150 kg	A	
	Regulated medical waste.	* 6.2	UN3291	II	6.2	A13	134	197	No limit	No limit	A	40.
	[ADD]:	*		*					*	*		
	Crotonaldehyde or Crotonaldehyde, stabilized.	* 6.1	UN1143	I	6.1, 3	2, 175, B9, B14, B32, B74, B77, T20, TP2, TP13, TP38, TP45.	None	227	Forbidden	Forbidden	B	40.
	Crotonic acid, liquid	8	UN3472	III	8	IB8, T1	154	203	5 L	60 L	A	12.
	Crotonic acid, solid	8	UN2823	III	8	IB8, IP3, T1, TP33.	154	213	25 kg	100 kg	A	12.
	Formic acid with not less than 10% but not more than 85% acid by mass.	* 8	UN3412	II	8	IB2, T7, TP2	154	202	1 L	30 L	A	40.
	Formic acid with not less than 5% but less than 10% acid by mass.	8	UN3412	III	8	IB3, T4, TP1	154	203	5 L	60 L	A	40.
	Formic acid with more than 85% acid by mass.	8	UN1779	II	8, 3	B2, B28, IB2, T7, TP2.	154	202	1 L	30 L	A	40.
	Fuel cell cartridges containing flammable liquids.	* 3	UN3473	II	3		150	230	5 L	60 L	A	
	Hydrogen difluoride, solid, n.o.s.	* 8	UN1740	II	8	IB8, IP2, IP4, N3, N34, T3, TP33.	None	212	15 kg	50 kg	A	25, 40, 52.
	Hydrogen difluoride solution, n.o.s.	8	UN3471	II	8, 6.1	IB8, IP3, N3, N34, T1, TP33.	154	213	25 kg	100 kg	A	25, 40, 52.
		8	UN3471	II	8, 6.1	IB2, T7, TP2	154	202	1 L	30 L	A	25, 40, 52.
		III			8, 6.1	IB3, T4, TP1	154	203	5 L	60 L	A	25, 40, 52.

<p>Paint, corrosive, flammable (including paint, lacquer, enamel, stain, shellac, varnish, polish, liquid filler and liquid lacquer base).</p>	<p>* 8 UN3470 II * 8, 3 * IB2, T7, TP2, TP8, TP28. * 154 * 202 * 243 * 1 L * 30 L B 40.</p>
<p>Paint related material corrosive, flammable (including paint thinning or reducing compound).</p>	<p>8 UN3470 II 8, 3 IB2, T7, TP2, TP8, TP28. 154 202 243 1 L 30 L B 40.</p>
<p>Paint, flammable, corrosive (including paint, lacquer, enamel, stain, shellac, varnish, polish, liquid filler and liquid lacquer base).</p>	<p>* 3 UN3469 I * 3, 8 * T11, TP2, TP27 None * 201 * 243 * 0.5 L 2.5 L E 40.</p>
<p>Paint related material, flammable, corrosive (including paint thinning or reducing compound).</p>	<p>3 UN3469 I 3, 8 T11, TP2, TP27 None 201 243 0.5 L 2.5 L E 40.</p>
<p>Propionic acid with not less than 90% acid by mass.</p>	<p>* 8 UN3463 II * 8, 3 * IB2, T7, TP2 154 * 202 * 243 1 L 30 L A. 40.</p>
<p>Propionic acid with not less than 10% and less than 90% acid by mass.</p>	<p>8 UN1848 III 8 IB3, T4, TP1 154 203 241 5 L 60 L A. 40.</p>
<p>Regulated medical waste, n.o.s. or Clinical waste, unspecified, n.o.s. or (BIO) Medical waste, n.o.s.</p>	<p>* 6.2 UN3291 II * 6.2 * A13 134 * 197 No limit No limit B 40.</p>

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.***)		(9) Quantity limitations		(10) Vessel stowage		
							(8A) Exceptions	(8B) Non-bulk	(8C) Bulk	(9A) Passenger aircraft/air-trail	(9B) Cargo aircraft only	(10A) Location	(10B) Other
	[Revise]:	*	*	*	*	*	*	*	*	*	*	*	
	Aerosols, non-flammable, (each not exceeding 1 L capacity).	*	2.2 UN1950	*	2.2	*	306	None	None	75 kg	150 kg	A	48, 87, 126.
G	Amines, flammable, corrosive, n.o.s. or Polyamines, flammable, corrosive, n.o.s.	*	3 UN2733	I	3, 8	T14, TP1, TP27	None	201	243	0.5 L	2.5 L	D	40, 52.
		*	II		3, 8	IB2, T11, TP1, TP27.	150	202	243	1 L	5 L	B	40, 52
		*	III		3, 8	B1, IB3, T7, TP1, TP28.	150	203	242	5 L	60 L	A	40, 52
	Aminopyridines (o-, m-, p-).	*	6.1 UN2671	II	6.1	IB8, IP2, IP4, T3, TP33.	153	212	242	25 kg	100 kg	B	12, 40, 52.
I	Ammonia, anhydrous.	2.3	UN1005		2.3, 8	4, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57.
D	Ammonia, anhydrous.	2.2	UN1005		2.2	13, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57.
D	Ammonia solution, relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.	2.2	UN3318		2.2	13, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57.
I	Ammonia solution, relative density less than 0.880 at 15 degrees C in water, with more than 50 percent ammonia.	2.3	UN3318		2.3, 8	4, T50	None	304	314, 315	Forbidden	Forbidden	D	40, 52, 57.
	Ammonia solutions, relative density between 0.880 and 0.957 at 15 degrees C in water, with more than 10 percent but not more than 35 percent ammonia.	8	UN2672	III	8	IB3, IP8, T7, TP1	154	203	241	5 L	60 L	A	40, 52, 85.

2.2	UN2073	.....	2.2	.....	306	.....	304	.....	314, 315	...	Forbidden	150 kg	.....	E	.....	40, 52, 57.
*	8	UN1733	.....	*	.....	IB8, IP2, IP4, T3, TP33.	*	.....	*	.....	*	15 kg	.....	A	.....	40.
*	1.6N	UN0486	.....	*	.....	1.6N	*	.....	*	.....	*	Forbidden	Forbidden	07.		
G	1.4S	UN0349	.....	.....	.....	1.4S	.....	.....	.....	.....	.....	25 kg	.....	100 kg	.....	05.
G	1.4B	UN0350	.....	.....	.....	1.4B	.....	.....	.....	.....	.....	Forbidden	Forbidden	06.		
G	1.4C	UN0351	.....	.....	.....	1.4C	.....	.....	.....	.....	.....	Forbidden	75 kg	.....	06.	
G	1.4D	UN0352	.....	.....	.....	1.4D	.....	.....	.....	.....	.....	Forbidden	75 kg	.....	06.	
G	1.4G	UN0353	.....	.....	.....	1.4G	.....	.....	.....	.....	.....	Forbidden	75 kg	.....	06.	
G	1.1L	UN0354	.....	.....	.....	1.1L	.....	.....	.....	.....	.....	Forbidden	Forbidden	08	.....	8E, 14E, 15E, 17E.
G	1.2L	UN0355	.....	.....	.....	1.2L	.....	.....	.....	.....	.....	Forbidden	Forbidden	08	.....	8E, 14E, 15E, 17E.
G	1.3L	UN0356	.....	.....	.....	1.3L	.....	.....	.....	.....	.....	Forbidden	Forbidden	08	.....	8E, 14E, 15E, 17E.
G	1.1C	UN0462	.....	.....	.....	1.1C	.....	.....	.....	.....	.....	Forbidden	Forbidden	07.		
G	1.1D	UN0463	.....	.....	.....	1.1D	.....	.....	.....	.....	.....	Forbidden	Forbidden	07.		
G	1.1E	UN0464	.....	.....	.....	1.1E	.....	.....	.....	.....	.....	Forbidden	Forbidden	07.		
G	1.1F	UN0465	.....	.....	.....	1.1F	.....	.....	.....	.....	.....	Forbidden	Forbidden	08.		
G	1.2C	UN0466	.....	.....	.....	1.2C	.....	.....	.....	.....	.....	Forbidden	Forbidden	07.		
G	1.2D	UN0467	.....	.....	.....	1.2D	.....	.....	.....	.....	.....	Forbidden	Forbidden	07.		
G	1.2E	UN0468	.....	.....	.....	1.2E	.....	.....	.....	.....	.....	Forbidden	Forbidden	07.		
G	1.2F	UN0469	.....	.....	.....	1.2F	.....	.....	.....	.....	.....	Forbidden	Forbidden	08.		
G	1.3C	UN0470	.....	.....	.....	1.3C	.....	.....	.....	.....	.....	Forbidden	Forbidden	07.		
G	1.4E	UN0471	.....	.....	.....	1.4E	.....	.....	.....	.....	.....	Forbidden	75 kg	.....	06.	
G	1.4F	UN0472	.....	.....	.....	1.4F	.....	.....	.....	.....	.....	Forbidden	Forbidden	08.		

Ammonia solutions, relative density less than 0.880 at 15 degrees C in water, with more than 35 percent but not more than 50 percent ammonia.

Antimony trichloride, solid.

Articles, explosive, extremely insensitive or Articles, EEI.

Articles, explosive, n.o.s.

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage		
							Exceptions (8A)	Non-bulk (8B)	Bulk (8C)	Passenger aircraft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)	
*	Batteries, dry, containing potassium hydroxide solid, <i>electric, storage.</i>	8	UN3028	III	8	*	None	213	None	*	25 kg gross	230 kg gross	A	52.
*	Batteries, wet, filled with alkali, <i>electric storage.</i>	8	UN2795	III	8	*	159	159	*	30 kg gross	No limit	A	52.	
*	Battery fluid, alkali	8	UN2797	II	8	*	154	202	*	1 L	30 L	A	29, 52.	
*	Benzyl bromide	6.1	UN1737	II	6.1, 8	*	None	202	*	243	1 L	30 L	D	13, 40.
6.1	Benzyl chloride	6.1	UN1738	II	6.1, 8	*	None	202	*	243	1 L	30 L	D	13, 40.
*	Caesium hydroxide	8	UN2682	II	8	*	154	212	*	240	15 kg	50 kg	A	29, 52.
*	Caesium hydroxide solution.	8	UN2681	II	8	*	154	202	*	242	1 L	30 L	A	29, 52.
*	Caustic alkali liquids, n.o.s.	8	UN1719	II	8	*	154	202	*	242	1 L	30 L	A	29, 52.
1.1D	Charges, shaped, flexible, linear.	1.1D	UN0288	II	1.1D	*	None	62	*	None	Forbidden	Forbidden	07..	
*	Chlorosilanes, corrosive, n.o.s.	8	UN2987	II	8	*	None	202	*	242	1 L	30 L	C	40.
3	Chlorosilanes, flammable, corrosive, n.o.s.	3	UN2985	II	3, 8	*	None	201	*	243	1 L	5 L	B	40.
6.1	Chlorosilanes, toxic, corrosive, n.o.s.	6.1	UN3361	II	6.1, 8	*	None	202	*	243	1 L	30 L	C	40.
6.1	Chlorosilanes, toxic, corrosive, flammable, n.o.s.	6.1	UN3362	II	6.1, 3, 8	*	None	202	*	243	1 L	30 L	C	40, 125.

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.***)		(9) Quantity limitations		(10) Vessel stowage		
							(8A) Exceptions	(8B) Non-bulk	(8C) Bulk	(9A) Passenger aircraft/rail	(9B) Cargo aircraft only	Location	Other
	Dimethylhydrazine, unsymmetrical.	6.1	UN1163	I	6.1, 3, 8	2, B7, B9, B14, B32, B74, T20, TP2, TP13, TP38, TP45.	None	227	244	Forbidden	Forbidden	D	21, 38, 40, 52, 100.
*	Disodium trioxosilicate.	8	UN3253	III	8	IB8, IP3, T1, TP33.	154	213	240	25 kg	100 kg	A	52.
*	Ethanolamine or Ethanolamine-solutions.	8	UN2491	III	8	IB3, T4, TP1	154	203	241	5 L	60 L	A	52.
*	Ethylamine, aqueous solution with not less than 50 percent but not more than 70 percent ethylamine.	3	UN2270	II	3, 8	IB2, T7, TP1	150	202	243	1 L	5 L	B	40, 52.
*	Ethylenediamine	8	UN1604	II	8, 3	IB2, T7, TP2	154	202	243	1 L	30 L	A	40, 52.
*	1-Ethylpiperidine	3	UN2386	II	3, 8	IB2, T7, TP1	150	202	243	1 L	5 L	B	52.
*	Ethyltrichlorosilane	3	UN1196	II	3, 8	A7, IB1, N34, T7, TP2, TP13.	None	202	243	1 L	5 L	B	40.
*	Hydrazine, anhydrous.	8	UN2029	I	8, 3, 6.1	A3, A6, A7, A10, B7, B16, B53.	None	201	243	Forbidden	2.5 L	D	40, 52, 125.
*	Hydrazine, aqueous solution, with not more than 37 percent hydrazine, by mass.	6.1	UN3293	III	6.1	IB3, T4, TP1	153	203	241	60 L	200 L	A	52.
*	Hydrazine, aqueous solutions, with more than 37% hydrazine, by mass.	8	UN2030	I	8, 6.1	B16, B53, T10, TP2, TP13.	None	201	243	Forbidden	2.5 L	D	40, 52.
II					8, 6.1	B16, B53, IB2, T7, TP2, TP13.	None	202	243	Forbidden	30 L	D	40, 52
III					8, 6.1	B16, B53, IB3, T4, TP1.	None	203	241	5 L	60 L	D	40, 52

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.**)		(9) Quantity limitations			(10) Vessel stowage	
							Exceptions (8A)	Non-bulk (8B)	Bulk (8C)	Passenger aircraft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)
	Lithium hydroxide ..	* 8	UN2680	II	8	IB8, IP2, IP4, T3, TP33.	*	212	240	15 kg	50 kg	A	52.
	Lithium hydroxide, solution.	8	UN2679	II	8	B2, IB2, T7, TP2	154	202	242	1 L	30 L	A	29, 52.
		III			8	IB3, T4, TP2	154	203	241	5 L	60 L	A	29, 52, 96.
	Methylamine, aqueous solution.	* 3	UN1235	II	3, 8	B1, IB2, T7, TP1	*	202	243	1 L	5 L	E	52, 135.
	Methylhydrazine	* 6.1	UN1244	I	6.1, 3, 8	1, B7, B9, B14, B30, B72, B77, N34, T22, TP2, TP13, TP38, TP44.	*	226	244	Forbidden	Forbidden	D	21, 40, 49, 52, 100.
	Methylphenyldichlorosilane.	* 8	UN2437	II	8	IB2, T7, TP2, TP13.	*	202	242	1 L	30 L	C	40.
	1-Methylpiperidine	3	UN2399	II	3, 8	IB2, T7, TP1	150	202	243	1 L	5 L	B	52.
	Motor fuel anti-knock mixtures.	* 6.1	UN1649	I	6.1	14, 151, B9, B90, T14, TP2, TP13.	*	201	244	Forbidden	30 L	D	25, 40.
G	Organometallic substance, solid, pyrophoric.	* 4.2	UN3391	I	4.2	T21, TP7, TP33	*	187	244	Forbidden	Forbidden	D.	
	Paint including paint, lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler and liquid lacquer base.	* 3	UN1263	I	3	T11, TP1, TP8, TP27.	*	201	243	1 L	30 L	E.	
		II			3	149, B52, IB2, T4, TP1, TP8, TP28.	150	173	242	5 L	60 L	B.	
		III			3	B1, B52, IB3, T2, TP1, TP29.	150	173	242	60 L	220 L	A.	
	Paint or Paint related materials.	8	UN3066	II	8	B2, IB2, T7, TP2, TP28.	154	173	242	1 L	30 L	A.	
		III			8	B52, IB3, T4, TP1, TP29.	154	173	241	5 L	60 L	A.	

Paint related material including paint thinning, drying, removing, or reducing compound.	3	UN1263	....	I	.....	3	.....	T11, TP1, TP8, TP27.	150	.....	201	.....	243	.....	1 L	.....	30 L	.....	E.	
			II	.....	3	.....	149, B52, IB2, T4, TP1, TP8, TP28.	150	.....	173	.....	242	.....	242	.....	5 L	.....	60 L	.....	B.
			III	.....	3	.....	B1, B52, IB3, T2, TP1, TP29.	150	.....	173	.....	242	.....	242	.....	60 L	.....	220 L	.....	A.
	*	UN3314	....	III	.....	9	.....	32, IB8, IP3, IP7, T1, TP33.	155	.....	221	.....	221	.....	100 kg	.....	200 kg	.....	E	19, 25, 85, 87, 144.
	*	UN2211	....	III	.....	9	.....	32, IB8, IP3, IP7, T1, TP33.	155	.....	221	.....	221	.....	100 kg	.....	200 kg	.....	E	19, 25, 85, 87, 144.
	*	UN1813	....	II	.....	8	.....	IB8, IP2, IP4, T3, TP33.	154	.....	212	.....	240	.....	15 kg	.....	50 kg	.....	A	52.
	*	UN1814	....	II	.....	8	.....	B2, IB2, T7, TP2	154	.....	202	.....	242	.....	1 L	.....	30 L	.....	A	52.
	*	UN2033	....	II	.....	8	.....	IB3, T4, TP1	154	.....	203	.....	241	.....	5 L	.....	60 L	.....	A	52.
	*	UN1922	....	II	.....	3, 8	.....	IB2, T7, TP1	150	.....	202	.....	243	.....	1 L	.....	5 L	.....	B	40, 52.
	*	UN2678	....	II	.....	8	.....	IB8, IP2, IP4, T3, TP33.	154	.....	212	.....	240	.....	15 kg	.....	50 kg	.....	A	29, 52.
	*	UN2677	....	II	.....	8	.....	B2, IB2, T7, TP2	154	.....	202	.....	242	.....	1 L	.....	30 L	.....	A	29, 52.
	*	UN1907	....	III	.....	8	.....	IB3, T4, TP1	154	.....	203	.....	241	.....	5 L	.....	60 L	.....	A	29, 52.
	*	UN1819	....	II	.....	8	.....	IB8, IP3, T1, TP33.	154	.....	213	.....	240	.....	25 kg	.....	100 kg	.....	A	52.
	*	UN2318	....	II	.....	4.2	.....	A7, A19, A20, IB6, IP2, T3, TP33.	None	.....	212	.....	241	.....	15 kg	.....	50 kg	.....	A	52.
	*	UN2318	....	III	.....	8	.....	IB3, T4, TP1	154	.....	203	.....	241	.....	5 L	.....	60 L	.....	A	52.
	*	UN2318	....	II	.....	4.2	.....	A7, A19, A20, IB6, IP2, T3, TP33.	None	.....	212	.....	241	.....	15 kg	.....	50 kg	.....	A	52.

§ 172.101—HAZARDOUS MATERIALS TABLE—Continued

(1) Symbols	(2) Hazardous materials descriptions and proper shipping names	(3) Hazard class or division	(4) Identification numbers	(5) PG	(6) Label codes	(7) Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations			(10) Vessel stowage	
							Exceptions (8A)	Non-bulk (8B)	Bulk (8C)	Passenger aircraft/rail (9A)	Cargo aircraft only (9B)	Location (10A)	Other (10B)	
	Sodium hydroxide, solid.	8	UN1823	II	8	IB8, IP2, IP4, T3, TP33.	*	212	240	15 kg	50 kg	A	52.	
	Sodium hydroxide solution.	8	UN1824	II	8	B2, IB2, N34, T7, TP2.		202	242	1 L	30 L	A	52.	
		III			8	IB3, N34, T4, TP1.		203	241	5 L	60 L	A	52.	
	Sodium monoxide	8	UN1825	II	8	IB8, IP2, IP4, T3, TP33.	*	212	240	15 kg	50 kg	A	52.	
	Sodium sulfide, hydrated with not less than 30 percent water.	8	UN1849	II	8	IB8, IP2, IP4, T3, TP33.	*	212	240	15 kg	50 kg	A	26, 52.	
G	Substances, explosive, n.o.s.	1.1L	UN0357	II	1.1L		*	62	None	Forbidden	Forbidden		8E, 14E, 15E, 17E.	
G	Substances, explosive, n.o.s.	1.2L	UN0358	II	1.2L			62	None	Forbidden	Forbidden		8E, 14E, 15E, 17E.	
G	Substances, explosive, n.o.s.	1.3L	UN0359	II	1.3L			62	None	Forbidden	Forbidden		8E, 14E, 15E, 17E.	
G	Substances, explosive, n.o.s.	1.1A	UN0473	II	1.1A	111		62	None	Forbidden	Forbidden	12.		
G	Substances, explosive, n.o.s.	1.1C	UN0474	II	1.1C			62	None	Forbidden	Forbidden	10.		
G	Substances, explosive, n.o.s.	1.1D	UN0475	II	1.1D			62	None	Forbidden	Forbidden	10.		
G	Substances, explosive, n.o.s.	1.1G	UN0476	II	1.1G			62	None	Forbidden	Forbidden	08.		
G	Substances, explosive, n.o.s.	1.3C	UN0477	II	1.3C			62	None	Forbidden	Forbidden	10.		
G	Substances, explosive, n.o.s.	1.3G	UN0478	II	1.3G			62	None	Forbidden	Forbidden	08.		
G	Substances, explosive, n.o.s.	1.4C	UN0479	II	1.4C			62	None	Forbidden	75 kg	09.		
G	Substances, explosive, n.o.s.	1.4D	UN0480	II	1.4D			62	None	Forbidden	75 kg	09.		
G	Substances, explosive, n.o.s.	1.4S	UN0481	II	1.4S			62	None	25 kg	75 kg	05.		
G	Substances, explosive, n.o.s.	1.4G	UN0485	II	1.4G			62	None	Forbidden	75 kg	08.		
G	Substances, explosive, very insensitive, n.o.s. or Substances, EVI, n.o.s.	1.5D	UN0482	II	1.5D			62	None	Forbidden	Forbidden	10.		

I	Sulfur	4.1	UN1350	....	III	.....	4.1	.....	30, IB8, IP3, T1, TP33.	None	.....	240	.....	25 kg	.....	100 kg	.....	A	.....	19, 74.
	Tetraethylenepent- amine.	8	UN2320	....	III	.....	8	.....	IB3, T4, TP1	154	.....	241	.....	5 L	.....	60 L	.....	A	.....	52.
	Trimethylchloro-sil- ane.	3	UN1298	....	II	.....	3, 8	.....	A3, A7, B77, IB2, N34, T7, TP2, TP13.	None	.....	243	.....	1 L	.....	5 L	.....	E	.....	40.
	Vinylpyridines, sta- bilized.	6.1	UN3073	....	II	.....	6.1, 3, 8	.....	IB1, T7, TP2, TP13.	153	.....	243	.....	1 L	.....	30 L	.....	B	.....	40, 52.
		*			*		*		*			*		*		*		*		*

* * * * *

6. In Appendix B to § 172.101, the List of Marine Pollutants, the entry "Copper chloride" is amended by adding the designation "PP" in Column (1) and the entries "Alcohol C-13-C-15 poly (1-6) ethoxylate" and "1,2-Dichlorobenzene" are removed.

7. In § 172.102, paragraph (c)(1), Special provisions 15, 47, 77, 147, and 166 are revised; new Special provision 175 is added; Special provision 101 is removed; and in paragraph (c)(2), new Special provision A105 is added.

The revisions and additions read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

15 This entry applies to "Chemical kits" and "First aid kits" containing one or more compatible items of hazardous materials in boxes, cases, etc. that, for example, are used for medical, analytical, diagnostic, testing, or repair purposes. For transportation by aircraft, materials forbidden for transportation by passenger aircraft or cargo aircraft may not be included in the kits. Chemical kits and first aid kits are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings. Chemical kits and first aid kits are also excepted from the labeling and placarding requirements of this subchapter, except when offered for transportation or transported by air. Chemical and first aid kits may be transported in accordance with the consumer commodity and ORM exceptions in § 173.156, provided they meet all required conditions. Kits that are carried on board transport vehicles for first aid or operating purposes are not subject to the requirements of this subchapter.

* * * * *

47 Mixtures of solids that are not subject to this subchapter and flammable liquids may be transported under this entry without first applying the classification criteria of Division 4.1, provided there is no free liquid visible at the time the material is loaded or at the time the packaging or transport unit is closed. Except when the liquids are fully absorbed in solid material contained in sealed bags, each packaging must correspond to a design type that has passed a leakproofness test at the Packing Group II level. Small inner packagings consisting of sealed packets and articles containing less than

10 mL of a Class 3 liquid in Packing Group II or III absorbed onto a solid material are not subject to this subchapter provided there is no free liquid in the packet or article.

* * * * *

77 Mixtures containing not more than 23.5% oxygen by volume may be transported under this entry when no other oxidizing gases are present. A Division 5.1 subsidiary risk label is not required for any concentrations within this limit.

* * * * *

146 This description may be used for a material that poses a hazard to the environment but does not meet the definition for a hazardous waste or a hazardous substance, as defined in § 171.8 of this subchapter, or any hazard class, as defined in Part 173 of this subchapter, if it is designated as environmentally hazardous by another Competent Authority. This provision may be used for both domestic and international shipments.

147 This entry applies to non-sensitized emulsions, suspensions, and gels consisting primarily of a mixture of ammonium nitrate and fuel, intended to produce a Type E blasting explosive only after further processing prior to use. The mixture for emulsions typically has the following composition: 60-85% ammonium nitrate; 5-30% water; 2-8% fuel; 0.5-4% emulsifier or thickening agent; 0-10% soluble flame suppressants; and trace additives. Other inorganic nitrate salts may replace part of the ammonium nitrate. The mixture for suspensions and gels typically has the following composition: 60-85% ammonium nitrate; 0-5% sodium or potassium perchlorate; 0-17% hexamine nitrate or monomethylamine nitrate; 5-30% water; 2-15% fuel; 0.5-4% thickening agent; 0-10% soluble flame suppressants; and trace additives. Other inorganic nitrate salts may replace part of the ammonium nitrate. These substances must satisfactorily pass Test Series 8 of the UN Manual of Tests and Criteria, Part I, Section 18 (IBR, see § 171.7 of this subchapter), and may not be classified and transported unless approved by the Associate Administrator.

* * * * *

166 When transported in non-friable tablet form, calcium hypochlorite, dry, may be transported as a Packing Group III material.

* * * * *

175 This substance must be stabilized when in concentrations of not more than 99%.

(2) * * *

Code/Special Provisions

* * * * *

A105 The total net quantity of dangerous goods contained in one package, excluding magnetic material, must not exceed the following:

- a. 1 kg (2.2 pounds) in the case of solids;
 - b. 0.5 L (0.1 gallons) in the case of liquids;
 - c. 0.5 kg (1.1 pounds) in the case of Division 2.2 gases; or
 - d. any combination thereof.
8. In § 172.202, paragraphs (a) and (b) are revised to read as follows:

§ 172.202 Description of hazardous material shipping papers.

(a) The shipping description of a hazardous material on the shipping paper must include:

- (1) The identification number prescribed for the material as shown in Column (4) of the § 172.101 table;
- (2) The proper shipping name prescribed for the material in Column (2) of the § 172.101 table;
- (3) The hazard class or division number prescribed for the material, as shown in Column (3) of the § 172.101 table. Except for combustible liquids, the subsidiary hazard class(es) or subsidiary division number(s) must be entered in parentheses immediately following the primary hazard class or division number.

In addition—

- (i) The words "Class" or "Division" may be included preceding the primary and subsidiary hazard class or division numbers.
- (ii) The hazard class need not be included for the entry "Combustible liquid, n.o.s."
- (iii) For domestic shipments, primary and subsidiary hazard class or division names may be entered following the numerical hazard class or division, or following the basic description.

(4) The packing group in Roman numerals, as designated for the hazardous material in Column (5) of the § 172.101 table. Class 1 (explosives) materials, self-reactive substances, organic peroxides and entries that are not assigned a packing group are excepted from this requirement. The packing group may be preceded by the letters "PG" (for example, "PG II"); and

(5) Except for transportation by aircraft, the total quantity of hazardous materials covered by the description must be indicated (by mass or volume, or by activity for Class 7 materials) and must include an indication of the applicable unit of measurement. For example, "200 kg" or "50 L." The following provisions also apply:

(i) For Class 1 materials, the quantity must be the net explosive mass. For an explosive that is an article, such as Cartridges, small arms, the net explosive mass may be expressed in terms of the net mass of either the article or the explosive materials contained in the article.

(ii) For hazardous materials in salvage packaging, an estimate of the total quantity is acceptable.

(iii) The following are excepted from the requirements of paragraph (a)(5) of this section:

(A) Bulk packages, provided some indication of the total quantity is shown, for example, "1 cargo tank" or "2 IBCs."

(B) Cylinders, provided some indication of the total quantity is shown, for example, "10 cylinders."

(C) Packages containing only residue.

(6) For transportation by aircraft, the total net mass per package must be shown unless a gross mass is indicated in Columns (9A) or (9B) of the § 172.101 table in which case the total gross mass per package must be shown. The following provisions also apply:

(i) For empty, uncleaned packaging, only the number and type of packaging must be shown;

(ii) For chemical kits and first aid kits, the total net mass of hazardous materials must be shown. Where the kits contain solids and/or liquids, the net mass of liquids within the kits is to be calculated on a 1 to 1 basis, *i.e.*, 1 L equals 1 kg;

(iii) For dangerous goods in machinery or apparatus, the individual total quantities of dangerous goods in solid, liquid or gaseous state, contained in the article must be shown;

(iv) For dangerous goods transported in a salvage packaging, an estimate of the quantity of dangerous goods per package must be shown;

(v) For cylinders, total quantity may be indicated by the number of cylinders, for example, "10 cylinders;"

(vi) For items where "No Limit" is shown in Column (9A) or (9B) of the § 172.101 table, the quantity shown should be the net mass or volume of the material, except for UN2800, UN2807, UN3072, UN3166 and UN3173 where the quantity should be the gross mass of the article.

(7) The number and type of packages must be indicated. The type of packages must be indicated by description of the package (for example, "12 drums"). Indication of the packaging specification number ("1H1") may be included in the description of the package (for example, "12 1H1 drums" or "12 drums (UN 1A1)"). Abbreviations may be used for indicating packaging types (for example,

"cyl." for "cylinder") provided the abbreviations are commonly accepted and recognizable.

(b) Except as provided in this subpart, the basic description specified in paragraphs (a)(1), (2), (3) and (4) of this section must be shown in sequence with no additional information interspersed. For example, "UN2744, Cyclobutyl chloroformate, 6.1, (8, 3), PG II."

* * * * *

9. In § 172.312, paragraphs (a) introductory text, and (a)(2) introductory text are revised and a new paragraph (c)(7) is added to read as follows:

§ 172.312 Liquid hazardous materials in non-bulk packaging.

(a) Except as provided in this section, each non-bulk combination package having inner packagings containing liquid hazardous materials, single packaging fitted with vents, or open cryogenic receptacle intended for the transport of refrigerated liquefied gases must be:

(1) * * *

(2) Legibly marked with package orientation markings that are similar to the illustration shown in this paragraph, on two opposite vertical sides of the package with the arrows pointing in the correct upright direction. The arrows must be either black or red on white or other suitable contrasting background and clearly visible commensurate with the size of the package. Depicting a rectangular border around the arrows is optional.

* * * * *

(c) * * *

(7) Class 7 radioactive material in type A, IP-2, IP-3, B(U), B(M) or C packages.

10. In § 172.407, paragraph (d)(2)(i) is amended by removing "; and" at the end of the paragraph and inserting a period in its place, and paragraph (d)(2)(i) is added to read as follows:

§ 172.407 Label specifications.

* * * * *

(d) * * *

(2) * * *

(iii) White may be used for the symbol for the ORGANIC PEROXIDE label.

* * * * *

11. Section 172.427 is revised to read as follows:

§ 172.427 ORGANIC PEROXIDE label.

(a) Except for size and color, the ORGANIC PEROXIDE label must be as follows:



(b) In addition to complying with § 172.407, the background on the ORGANIC PEROXIDE label must be red in the top half and yellow in the lower half.

12. Section 172.552 is revised to read as follows:

§ 172.552 ORGANIC PEROXIDE placard.

(a) Except for size and color, the ORGANIC PEROXIDE placard must be as follows:



(b) In addition to complying with § 172.519, the background on the ORGANIC PEROXIDE placard must be red in the top half and yellow in the lower half. The text, division number and inner border must be black; the symbol may be either black or white.

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

13. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

14. Section 173.9 is revised to read as follows:

§ 173.9 Transport vehicles or freight containers containing lading which has been fumigated.

(a) For the purpose of this section, not including 49 CFR part 387, a rail car, freight container, truck body, or trailer in which the lading has been fumigated with any material, or is undergoing fumigation, is a package containing a hazardous material.

(b) No person may offer for transportation or transport a rail car, freight container, truck body, or trailer in which the lading has been fumigated or treated with any material, or is undergoing fumigation, unless the

FUMIGANT marking specified in paragraph (e) of this section is prominently displayed so that it can be seen by any person attempting to enter the interior of the transport vehicle or freight container. For domestic transportation, a hazard warning label authorized by EPA under 40 CFR part 156 may be used as an alternative to the FUMIGANT marking.

(c) No person may affix or display on a rail car, freight container, truck body,

or trailer the FUMIGANT marking specified in paragraph (e) of this section, unless the lading has been fumigated or is undergoing fumigation.

(d) The FUMIGANT marking required by paragraph (b) of this section must remain on the rail car, freight container, truck body, or trailer until the rail car, freight container, truck body, or trailer has been completely ventilated either by opening the doors of the unit or by mechanical ventilation to ensure no

harmful concentration of gas remains after fumigation has been completed.

(e) *FUMIGANT marking.* (1) The FUMIGANT marking must consist of red or black letters on a white background that is at least 30 cm (11.8 inches) wide and at least 25 cm (9.8 inches) high. Except for size and color, the FUMIGANT marking must be as follows:

DANGER



THIS UNIT IS UNDER FUMIGATION
WITH * _____ APPLIED ON

Date _____

Time _____

Ventilated on _____

DO NOT ENTER

(2) The “*” shall be replaced with the technical name of the fumigant.

(f) A closed cargo transport unit that has been fumigated is not subject to any other provisions of this subchapter if it—

(1) Has been completely ventilated either by opening the doors of the unit or by mechanical ventilation after fumigation, and

(2) Displays the FUMIGANT marking, including the date of ventilation.

(g) For international shipments, transport documents should indicate the date of fumigation, type and amount of fumigant used, and instructions for disposal of any residual fumigant, including fumigation devices.

(h) Any person subject to the requirements of this section, solely due to the fumigated lading, must be informed of the requirements of this section and the safety precautions necessary to protect themselves and others in the event of an incident or accident involving the fumigated lading.

(i) Any person who offers for transportation or transports a rail car, freight container, truck body or trailer that is subject to this subchapter solely because of the hazardous materials designation specified in paragraph (a) of this section is not subject to any

requirements of this subchapter other than those contained in this section.

§ 173.35 [Amended]

15. In § 173.35, in paragraph (k), the wording “60.5 °C (141 °F)” is removed and the wording “60 °C (140 °F)” is added in its place.

16. In § 173.115, paragraphs (b)(1) and (k)(5) are revised to read as follows:

§ 173.115 Class 2, Divisions 2.1, 2.2, and 2.3—Definitions.

* * * * *

(b) * * *

(1) Exerts in the packaging an absolute pressure of 280 kPa (40.6 psia) or greater at 20 °C (68 °F), or is a cryogenic liquid, and

* * * * *

(k) * * *

(5) When the contents are classified as Division 6.1, PG III or Class 8, PG II or III, the aerosol must be assigned a subsidiary hazard of Division 6.1 or Class 8, as appropriate.

* * * * *

§ 173.120 [Amended]

17. In § 173.120, in paragraphs (a) introductory text, (a)(2) and (b)(1), the wording “60.5 °C (141 °F)” is removed

and the wording “60 °C (140 °F)” is added each place it appears.

§ 173.121 [Amended]

18. In § 173.121, in the paragraph (a) table, in Column (2), for the entry Packing group “III,” the wording “≥23 °C, ≤60.5 °C (≥ 73 °F, ≤141 °F)” is removed and the wording “≥23 °C, ≤60 °C (≥73 °F, ≤140 °F)” is added in its place.

19. In § 173.124, a new paragraph (a)(2)(i)(D)(3) is added to read as follows:

§ 173.124 Class 4, Divisions 4.1, 4.2 and 4.3—Definitions.

(a) * * *

(2) * * *

(i) * * *

(D) * * *

* * * * *

(3) It is an oxidizing substance in Division 5.1 containing less than 5.0% combustible organic substances; or

* * * * *

20. In § 173.133, in paragraph (a)(1), the table is revised to read as follows:

§ 173.133 Assignment of packing group and hazard zones for Division 6.1 materials.

(a) * * *

(1) * * *

Packing group	Oral toxicity LD ₅₀ (mg/kg)	Dermal toxicity LD ₅₀ (mg/kg)	Inhalation toxicity by dusts and mists LC ₅₀ (mg/L)
I	≤5.0	≤50	≤0.2.
II	>5.0 and ≤50	>50 and ≤200	>0.2 and ≤2.0.
III	>50 and ≤300	>200 and ≤1000	>2.0 and ≤4.0.

* * * * *
 21. In § 173.134, paragraph (a)(5) is revised to read as follows:

§ 173.134 Class 6, Division 6.2—Definitions and exceptions.

(a) * * *
 (5) *Regulated medical waste or clinical waste or (bio) medical waste* means a waste or reusable material derived from the medical treatment of an animal or human, which includes diagnosis and immunization, or from biomedical research, which includes the production and testing of biological products. Regulated medical waste or clinical waste or (bio) medical waste containing a Category A infectious substance must be classed as an infectious substance, and assigned to UN 2814 or UN 2900, as appropriate.
 * * * * *

22. In § 173.136, paragraph (d) is removed and the last sentence in paragraph (a) is revised and to read as follows:

§ 173.136 Class 8—Definitions.

(a) * * * A liquid, or a solid offered for transportation or transported as a liquid, that has a severe corrosion rate on steel or aluminum based on the criteria in § 173.137(c)(2) is also a corrosive material.
 * * * * *

23. In § 173.137, paragraph (c)(2) is revised to read as follows:

§ 173.137 Class 8—Assignment of packing group.

(c) * * *
 (2) That do not cause full thickness destruction of intact skin tissue but exhibit a corrosion on steel or aluminum surfaces exceeding 6.25 mm (0.25 inch) a year at a test temperature of 55 C (130 F). The corrosion may be determined in accordance with the UN Manual of Tests and Criteria (IBR, see § 171.7 of this subchapter) or other equivalent test methods.

24. In § 173.159, paragraphs (a), (c)(1), (c)(2), (c)(4), (c)(5), (d)(1) and (e)(2) are revised to read as follows:

§ 173.159 Batteries, wet.

(a) Electric storage batteries, containing electrolyte acid or alkaline corrosive battery fluid, must be

completely protected so that short circuits will be prevented (e.g., by the use of non-conductive caps that entirely cover the terminals); they may not be packed with other materials except as provided in paragraphs (g) and (h) of this section and in §§ 173.220 and 173.222. For transportation by aircraft, the packaging for wet cell batteries must incorporate an acid-or alkali-proof liner, or include a supplementary packaging with sufficient strength and be adequately sealed to prevent leakage of electrolyte fluid in the event of spillage.
 * * * * *

(c) * * *
 (1) Electric storage batteries protected against short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals) and firmly secured to skids or pallets capable of withstanding the shocks normally incident to transportation, are authorized for transportation by rail, highway, or water. The height of the completed unit must not exceed 1½ times the width of the skid or pallet. The unit must be capable of withstanding, without damage, a superimposed weight equal to two times the weight of the unit or, if the weight of the unit exceeds 907 kg (2000 pounds), a superimposed weight of 1814 kg (4000 pounds). Battery terminals must not be relied upon to support any part of the superimposed weight.

(2) Electric storage batteries weighing 225 kg (500 pounds) or more, consisting of carriers' equipment, may be shipped by rail when mounted on suitable skids and protected against short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals). Such shipments may not be offered in interchange service.
 * * * * *

(4) Not more than four batteries not over 7 kg (15 pounds) each, packed in strong outer fiberboard or wooden boxes. Batteries must be securely cushioned and packed to prevent short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals). The maximum authorized gross weight is 30 kg (65 pounds).

(5) Not more than five batteries not over 4.5 kg (10 pounds) each, packed in strong outer fiberboard or wooden boxes. Batteries must be securely cushioned and packed to prevent short

circuits (e.g., by the use of non-conductive caps that entirely cover the terminals). The maximum authorized gross weight is 30 kg (65 pounds).
 * * * * *

(d) * * *
 (1) The battery must be protected against short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals) and securely packaged;
 * * * * *

(e) * * *
 (2) The batteries must be loaded or braced so as to prevent damage and short circuits in transit (e.g., by the use of non-conductive caps that entirely cover the terminals);
 * * * * *

25. In § 173.166, paragraph (d)(1) is revised to read as follows:

§ 173.166 Air bag inflators, air bag modules and seat-belt pretensioners.

(d) * * *
 (1) An air bag module or seat-belt pretensioner that has been approved by the Associate Administrator and is installed in a motor vehicle, aircraft, boat or other transport conveyance or its completed components, such as steering columns or door panels, is not subject to the requirements of this subchapter.
 * * * * *

26. Section 173.187 is revised to read as follows:

§ 173.187 Pyrophoric solids, metals or alloys, n.o.s.

Packagings for pyrophoric solids, metals, or alloys, n.o.s. must conform to the requirements of part 178 of this subchapter at the packing group performance level specified in the § 172.101 Table. These materials must be packaged as follows:

(a) In steel boxes (4A) and contain not more than 15 kg (33 pounds) each.

(b) In wooden boxes (4C1, 4C2, 4D, or 4F) with inner metal receptacles which have a positive (not friction) means of closure and contain not more than 15 kg (33 pounds) each.

(c) In fiberboard boxes (4G) with inner metal receptacles which have a positive (not friction) means of closure and contain not more than 7.5 kg (17 pounds) each.

(d) In steel drums (1A1 or 1A2) with a gross mass not exceeding 150 kg (331 pounds) per drum.

(e) In plywood drums (1D) with inner metal receptacles which have a positive (not friction) means of closure and contain not more than 15 kg (33 pounds) each.

(f) In fiber drums (1G) with inner metal receptacles which have a positive (not friction) means of closure and contain not more than 15 kg (33 pounds) each.

(g) In specification cylinders, as prescribed for any compressed gas, except for Specifications 8 and 3HT.

27. In § 173.197, paragraph (a), the first sentence in paragraph (b), and the first sentence in paragraph (e)(2) are revised to read as follows:

§ 173.197 Regulated medical waste.

(a) *General provisions.* Non-bulk packagings, Large Packagings, and non-specification bulk outer packagings used for the transportation of regulated medical waste or clinical waste or (bio) medical waste must be rigid containers meeting the provisions of subpart B of this part.

(b) * * * Except as provided in § 173.134(c) of this subpart, non-bulk packagings for regulated medical waste or clinical waste or (bio) medical waste must be UN standard packagings conforming to the requirements of Part 178 of this subchapter at the Packing Group II performance level. * * *

(e) * * *
 (2) * * * Liquid regulated medical waste or clinical waste or (bio) medical waste transported in a Large Packaging, Cart, or BOP must be packaged in a rigid inner packaging conforming to the provisions of subpart B of this part.

28. In § 173.216, paragraph (c)(3) is revised and paragraph (c)(4) is removed to read as follows:

§ 173.216 Asbestos, blue, brown or white.

(c) * * *
 (3) Bags or other non-rigid packagings which are dust and sift proof must be placed in rigid outer packagings or closed freight containers.

29. In § 173.220, paragraphs (b)(2)(ii)(B)(3), (c) and (d) are revised to read as follows:

§ 173.220 Internal combustion engines, self-propelled vehicles, mechanical equipment containing internal combustion engines, and battery powered vehicles or equipment.

(b) * * *
 (2) * * *
 (ii) * * *
 (B) * * *
 (3) In no part of the closed system shall the pressure exceed 5% of the maximum allowable working pressure of the system or 290 psig (2000 kPa), whichever is less; and

(c) *Battery powered or installed.* Batteries must be securely installed, and wet batteries fastened in an upright position. Batteries must be protected against short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals) and leakage or removed and packaged separately under § 173.159. Battery powered vehicles, machinery or equipment including battery powered wheelchairs and mobility aids are excepted from the requirements of this subchapter when transported by rail, highway or vessel.

(d) *Lithium batteries.* Except as provided in § 172.102, Special provision A102, of this subchapter, vehicles and machinery powered by primary lithium

batteries that are transported with these batteries installed are forbidden aboard passenger-carrying aircraft. Lithium batteries contained in vehicles or engines must be securely fastened to the battery holder of the vehicle or engine, and be protected in such a manner as to prevent damage and short circuits (e.g., by the use of non-conductive caps that entirely cover the terminals). Lithium batteries must be of a type that have successfully passed each test in the UN Manual of Tests and Criteria as specified in § 173.185, unless approved by the Associate Administrator. Equipment, other than vehicles or engines, containing lithium batteries must be transported in accordance with § 173.185.

30. In § 173.222, paragraph (d) is revised to read as follows:

§ 173.222 Dangerous goods in equipment, machinery or apparatus.

(d) Except for transportation by aircraft, when a package contains hazardous materials in two or more of the categories listed in paragraphs (c)(1) through (c)(3) of this section the total quantity required by § 172.202(c) of this subchapter to be entered on the shipping paper must be the aggregate quantity of all hazardous materials, expressed as net mass.

31. In § 173.224, in paragraph (b)(7), a new entry is added in appropriate alphabetical order to read as follows:

§ 173.224 Packaging and control and emergency temperatures for self-reactive materials.

(b) * * *
 (7) * * *

SELF-REACTIVE MATERIALS TABLE

Self-reactive substance	Identification No.	Concentration— (%)	Packing method	Control temperature—(°C)	Emergency temperature	Notes
(1)	(2)	(3)	(4)	(5)	(6)	(7)
Acetone-pyrogallol copolymer 2-diazo-1-naphthol-5-sulphonate	3228	100	OP8			
* * * * *	*	*	*		*	*

32. A new section § 173.230 is added to subpart E to read as follows:

§ 173.230 Fuel cell cartridges containing flammable liquids.

(a) A fuel cell cartridge is a container that stores fuel for controlled discharge

into fuel cell powered equipment through a valve. The cartridge must be designed and constructed to prevent the fuel from leaking during normal conditions of transportation and be free of electric charge generating components.

(b) Fuel cell cartridges containing flammable liquids including methanol or methanol/water solutions must conform to the following:

(1) The fuel cell cartridge design type without its packaging must be shown to pass an internal pressure test at a pressure of 15 psig (100 kPa);

(2) Fuel cell cartridges must be packaged in outer packagings which meet the requirements of part 178 at the Packing Group II performance level and conform to the general packaging requirements of subpart B of part 173; the following are authorized: 1A2, 1B2, 1D, 1G, 1H2, 4C1, 4C2, 4D, 4F, 4G, or 4H2.

(c) Fuel cell cartridges packed in or with equipment are excepted from the packaging requirements in paragraph (b)(2) if the cartridges are packed in a strong outer packaging conforming to the requirements of §§ 173.24 and 173.24a. For cartridges installed in equipment, the equipment may be considered the outer packaging if it provides an equivalent level of protection. The packaging need not conform to performance requirements of part 178 of this subchapter. The cartridges must be protected against damage that may be caused by the movement or placement of the equipment and the cartridges within the outer packaging.

33. In § 173.306, paragraph (i) is revised and a new paragraph (j) is added to read as follows:

§ 173.306 Limited quantities of compressed gases.

* * * * *

(i) *Aerosols and receptacles small, containing gas with a capacity of less than 50 mL.* Aerosols, as defined in § 171.8 of this subchapter, and receptacles small, containing gas, with a capacity not exceeding 50 mL (1.7 oz.) and with a pressure not exceeding 970 kPa (141 psig) at 55 °C (131 °F), containing no hazardous materials other than a Division 2.2 gas, are not subject to the requirements of this subchapter. The pressure limit may be increased to 2000 kPa (290 psig) at 55 °C (131 °F) provided the aerosols are transported in outer packages that conform to the packaging requirements of Subpart B of this part. This provision does not apply to a self-defense spray (e.g., pepper spray).

(j) For additional exceptions, also see § 173.307.

Appendix H to Part 173 [Amended]

34. In Appendix H to Part 173, under heading 5. Procedure, in paragraph (h), the wording “60.5 °C (141 °F)” is removed and the wording “60 °C (140 °F)” is added each place it appears.

PART 175—CARRIAGE BY AIRCRAFT

35. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 44701; 49 CFR 1.53.

36. In § 175.10, in paragraph (a)(2) introductory text, the first sentence is revised to read as follows:

§ 175.10 Exceptions.

* * * * *

(a) * * *
(2) One packet of safety matches or a lighter intended for use by an individual when carried on one’s person or in carry-on baggage only. * * *

* * * * *

37. In § 175.78, paragraph (c)(4) is revised to read as follows:

§ 175.78 Stowage compatibility of cargo.

* * * * *

(c) * * *
(4) **Note 1.** “Note 1” at the intersection of a row and column means the following:

(i) Only Division 1.4, Compatibility Group S, explosives are permitted to be transported aboard a passenger aircraft. Only certain Division 1.3, Compatibility Groups C and G, and Division 1.4, Compatibility Groups B, C, D, E, G and S, explosives may be transported aboard a cargo aircraft.

(ii) Explosives in Compatibility Group S may be stowed with explosives in all compatibility groups.

(iii) Except as otherwise provided in this Note, explosives of different compatibility groups may be stowed together whether or not they belong to the same division.

(iv) Division 1.4B and Division 1.3 explosives may not be stowed together. Division 1.4 explosives must be loaded into separate unit load devices and, when stowed aboard the aircraft, the unit load devices must be separated by other cargo with a minimum separation of 2 m (6.5 feet). When not loaded in unit load devices, Division 1.4 and Division 1.3 explosives must be loaded into different, non-adjacent loading positions and separated by other cargo with a minimum separation of 2 m (6.5 feet).

* * * * *

PART 176—CARRIAGE BY VESSEL

38. The authority citation for part 176 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

§ 176.76 [Amended]

39. In § 176.76, in paragraph (f)(2), the wording “141 °F” is removed and the wording “60 °C (140 °F)” is added in its place.

40. In § 176.83, paragraph (a)(4) is revised to read as follows:

§ 176.83 Segregation.

(a) * * *
(4) Segregation is not required:
(i) Between hazardous materials of different classes which comprise the same substance but vary only in their water content (for example, sodium sulfide in Division 4.2 or Class 8) or quantity for Class 7 materials; or

(ii) Between hazardous materials of different classes which comprise a group of substances that do not react dangerously with each other. The following materials are grouped by compatibility:

(A) Hydrogen peroxide, aqueous solutions *with not less than 8 percent but less than 20 percent hydrogen peroxide (stabilized as necessary)*; Hydrogen peroxide, aqueous solutions *with not less than 20 percent but not more than 40 percent hydrogen peroxide*; Hydrogen peroxide, aqueous solutions *with more than 40 percent but not more than 60 percent hydrogen peroxide*; Hydrogen peroxide and peroxyacetic acid mixtures, *stabilized with acids, water and not more than 5 percent peroxyacetic acid*; Organic peroxide type D, liquid; Organic peroxide type E, liquid; Organic peroxide type F, liquid; and

(B) Dichlorosilane, Silicon tetrachloride, and Trichlorosilane.

* * * * *

41. In § 176.84, in paragraph (b), in the Table of provisions, Codes “26,” “27,” “52” and “53” are revised, a new Code “144” is added in appropriate numerical order, and following the table, a new note “2” is added to read as follows:

§ 176.84 Other requirements for stowage and segregation for cargo vessels and passenger vessels.

* * * * *

(b) * * *

Code	Provisions
* * * * *	
26	Stow “away from” acids. ²
27	Stow “away from” alkaline compounds. ²
* * * * *	
52	Stow “separated from” acids. ^{1,2}
53	Stow “separated from” alkaline compounds. ²
* * * * *	
144	When stowed under deck, mechanical ventilation shall be in accordance with SOLAS regulation II-2/19 (II-2/54) for flammable liquids with flashpoint below 23 °C (73 °F).

Code	Provisions
* * *	* * *

² Class 8 materials in PG II or III that otherwise are required to be segregated from one another may be transported in the same cargo transport unit, whether in the same packaging or not, provided the substances do not react dangerously with each other to cause combustion and/or evolution of considerable heat, or of flammable, toxic or asphyxiant gases, or the formation of corrosive or unstable substances; and the package does not contain more than 30 L (7.8 gallons) for liquids or 30 kg (66 lbs.) for solids.

PART 178—SPECIFICATIONS FOR PACKAGINGS

42. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

43. In § 178.274, paragraph (j)(6) is revised to read as follows:

§ 178.274 Specifications for UN portable tanks.

* * * * *

(j) * * *

(6) Effective January 1, 2008, each new UN portable tank design type meeting the definition of “container” in the Convention for Safe Containers (CSC) (see 49 CFR 450.3(a)(2)) must be subjected to the dynamic longitudinal impact test prescribed in Part IV, Section 40 of the UN Manual of Tests and Criteria (see IBR, § 171.7 of this subchapter). A UN portable tank design type impact-tested prior to January 1, 2008, in accordance with the requirements of this section in effect on October 1, 2005, need not be retested. UN portable tanks used for the dedicated transportation of “Helium, refrigerated liquid,” UN 1963, and “Hydrogen, refrigerated liquid,” UN 1966, that are marked “NOT FOR RAIL TRANSPORT” in letters of a minimum height of 10 cm (4 inches) on at least two sides of the portable tank are excepted from the dynamic longitudinal impact test.

* * * * *

§ 178.602 [Amended]

44. In § 178.602, in paragraph (b), the second sentence is amended by adding the wording “containing solids” after the word “Bags”.

45. In § 178.810, paragraph (b) is revised to read as follows:

§ 178.810 Drop test.

* * * * *

(b) *Special preparation for the drop test.* (1) Metal, rigid plastic, and composite IBCs intended to contain solids must be filled to not less than 95 percent of their maximum capacity, or if intended to contain liquids, to not less than 98 percent of their maximum capacity. Pressure relief devices must be removed and their apertures plugged or rendered inoperative.

(2) Fiberboard and wooden IBCs must be filled with a solid material to not less than 95 percent of their maximum capacity; the contents must be evenly distributed.

(3) Flexible IBCs must be filled to the maximum permissible gross mass; the contents must be evenly distributed.

(4) Rigid plastic IBCs and composite IBCs with plastic inner receptacles must be conditioned for testing by reducing the temperature of the packaging and its contents to –18 °C (0 °F) or lower. Test liquids must be kept in the liquid state, if necessary, by the addition of anti-freeze. Water/anti-freeze solutions with a minimum specific gravity of 0.95 for testing at –18 °C (0 °F) or lower are considered acceptable test liquids, and may be considered equivalent to water for test purposes. IBCs conditioned in this way are not required to be conditioned in accordance with § 178.802.

* * * * *

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5128; 49 CFR 1.53.

47. In § 180.352, paragraphs (b) introductory text, (b)(1) and (g) are revised to read as follows:

§ 180.352 Requirements for retest and inspection of IBCs.

* * * * *

(b) *Test and inspections for metal, rigid plastic, and composite IBCs.* Each IBC is subject to the following test and inspections:

(1) Each IBC intended to contain solids that are loaded or discharged under pressure or intended to contain liquids must be tested in accordance with the leakproofness test prescribed in § 178.813 of this subchapter prior to its first use in transportation and every 2.5 years thereafter, starting from the date of manufacture or the date of a repair conforming to paragraph (d)(1) of this section. For this test, the IBC is not required to have its closures fitted.

* * * * *

(g) *Record retention.* (1) The owner or lessee of the IBC must keep records of periodic retests, initial and periodic inspections, and tests performed on the IBC if it has been repaired or remanufactured.

(2) Records must include design types and packaging specifications, test and inspection dates, name and address of test and inspection facilities, names or name of any persons conducting test or inspections, and test or inspection specifics and results.

(3) Records must be kept for each packaging at each location where periodic tests are conducted, until such tests are successfully performed again or for at least 2.5 years from the date of the last test. These records must be made available for inspection by a representative of the Department on request.

Issued in Washington, DC, on August 23, 2006.

Under authority delegated in 49 CFR part 106.

Robert A. McGuire,
Associate Administrator for Hazardous Materials Safety.

[FR Doc. 06–7200 Filed 8–30–06; 8:45 am]

BILLING CODE 4910–60–P



Federal Register

**Thursday,
August 31, 2006**

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

**Migratory Bird Hunting; Early Seasons
and Bag and Possession Limits for
Certain Migratory Game Birds in the
Contiguous United States, Alaska, Hawaii,
Puerto Rico, and the Virgin Islands; Final
Rule**

DEPARTMENT OF THE INTERIOR**Fish and Wildlife Service****50 CFR Part 20**

RIN 1018-AU42

Migratory Bird Hunting; Early Seasons and Bag and Possession Limits for Certain Migratory Game Birds in the Contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands**AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Final rule.

SUMMARY: This rule prescribes the hunting seasons, hours, areas, and daily bag and possession limits of mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Taking of migratory birds is prohibited unless specifically provided for by annual regulations. This rule permits taking of designated species during the 2006–07 season.

DATES: This rule is effective on September 1, 2006.**FOR FURTHER INFORMATION CONTACT:** Brian Millsap, Chief, or Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358-1714.**SUPPLEMENTARY INFORMATION:****Regulations Schedule for 2006**

On April 11, 2006, we published in the **Federal Register** (71 FR 18562) a proposal to amend 50 CFR part 20. The proposal provided a background and overview of the migratory bird hunting regulations process, and dealt with the establishment of seasons, limits, the proposed regulatory alternatives for the 2006–07 duck hunting season, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K. On May 30, 2006, we published in the **Federal Register** (71 FR 30786) a second document providing supplemental proposals for early- and late-season migratory bird hunting regulations frameworks and the regulatory alternatives for the 2006–07 duck hunting season. The May 30 supplement also provided detailed information on the 2006–07 regulatory schedule and announced the Service Migratory Bird

Regulations Committee (SRC) and Flyway Council meetings.

On June 21 and 22, 2006, we held open meetings with the Flyway Council Consultants at which the participants reviewed information on the current status of migratory shore and upland game birds and developed recommendations for the 2006–07 regulations for these species plus regulations for migratory game birds in Alaska, Puerto Rico, and the Virgin Islands, special September waterfowl seasons in designated States, special sea duck seasons in the Atlantic Flyway, and extended falconry seasons. In addition, we reviewed and discussed preliminary information on the status of waterfowl as it relates to the development and selection of the regulatory packages for the 2006–07 regular waterfowl seasons. On July 28, 2006, we published in the **Federal Register** (71 FR 43008) a third document specifically dealing with the proposed frameworks for early-season regulations.

On July 26–27, 2006, we held open meetings with the Flyway Council Consultants at which the participants reviewed the status of waterfowl and developed recommendations for the 2006–07 regulations for these species. Proposed hunting regulations were discussed for late seasons. We published proposed frameworks for the 2006–07 late-season migratory bird hunting regulations on August 24, 2006, in the **Federal Register** (71 FR 50224). On August 29, 2006, we published a fifth document in the **Federal Register** which contained final frameworks for early migratory bird hunting seasons from which wildlife conservation agency officials from the States, Puerto Rico, and the Virgin Islands selected early-season hunting dates, hours, areas, and limits.

The final rule described here is the sixth in the series of proposed, supplemental, and final rulemaking documents for migratory game bird hunting regulations and deals specifically with amending subpart K of 50 CFR part 20. It sets hunting seasons, hours, areas, and limits for mourning, white-winged, and white-tipped doves; band-tailed pigeons; rails; moorhens and gallinules; woodcock; common snipe; sandhill cranes; sea ducks; early (September) waterfowl seasons; mourning doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; youth waterfowl hunting day; and some extended falconry seasons.

National Environmental Policy Act 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 (FSSES 88–14),” filed with the Environmental Protection Agency on June 9, 1988. We published a 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, as we announced in a March 9, 2006, **Federal Register** notice (71 FR 12216).

Endangered Species Act Consideration

Section 7 of the Endangered Species Act, as amended (16 U.S.C. 1531–1543; 87 Stat. 884), provides that, “The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act” (and) shall “insure that any action authorized, funded, or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat * * *.” Consequently, we conducted formal consultations to ensure that actions resulting from these regulations would not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. Findings from these consultations are included in a biological opinion, which concluded that the regulations are not likely to adversely affect any endangered or threatened species. Additionally, these findings may have caused modification of some regulatory measures previously proposed, and the final frameworks reflect any such modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection at the address indicated under **ADDRESSES**.

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 1990–96, updated in 1998, and updated again in 2004. It is further discussed under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected welfare 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>.

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 1990–95. 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 outlined above, this rule has an annual effect on the economy of \$100 million or more. However, because it 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, 44 U.S.C. 3501 *et seq.* 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 surveys associated with the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 2/29/2008). 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 Survey and assigned clearance number 1018–0023 (expires 11/30/2007). 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

In promulgating this rule, we have determined that it 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 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 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.

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, in the April 11 proposed rule (71 FR 18562) we solicited proposals for 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. The resulting proposals will be contained in a separate proposed rule. By virtue of these actions, we have consulted with all the Tribes affected by this rule.

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 at any time. 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.

Regulations Promulgation

The rulemaking process for migratory game bird hunting must, by its nature, operate under severe time constraints. However, we intend that the public be given the greatest possible opportunity to comment. Thus, when the preliminary proposed rulemaking was

published, we established what we believed were the longest periods possible for public comment. In doing this, we recognized that when the comment period closed, time would be of the essence. That is, if there were a delay in the effective date of these regulations after this final rulemaking, States would have insufficient time to select season dates and limits, to communicate those selections to us, and to establish and publicize the necessary regulations and procedures to implement their decisions. We therefore find that "good cause" exists, within the terms of 5 U.S.C. 553(d)(3) of the Administrative Procedure Act, and these regulations will, therefore, take effect immediately upon publication. Accordingly, with each conservation agency having had an opportunity to participate in selecting the hunting seasons desired for its State or Territory on those species of migratory birds for which open seasons are now prescribed, and consideration having been given to

all other relevant matters presented, certain sections of title 50, chapter I, subchapter B, part 20, subpart K, are hereby amended as set forth below.

List of Subjects in 50 CFR Part 20

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

Dated: August 25, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

■ For the reasons set out in the preamble, title 50, chapter I, subchapter B, part 20, subpart K of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

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

Authority: 16 U.S.C. 703–712 and 16 U.S.C. 742 a–j, Pub. L. 106–108.

BILLING CODE 4310–55–P

-Note - The following annual hunting regulations provided for by §§20.101 through 20.106 and 20.109 of 50 CFR 20 will not appear in the Code of Federal Regulations because of their seasonal nature.

2. Section 20.101 is revised to read as follows:

§20.101 Seasons, limits, and shooting hours for Puerto Rico and the Virgin Islands.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset.

CHECK COMMONWEALTH REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Puerto Rico

	Season Dates	Limits	
		Bag	Possession
Doves and Pigeons			
Zenaida, white-winged, and mourning doves	Sept. 2-Oct. 30	15	15
Scaly-naped pigeons	Sept. 2-Oct. 30	5	5
Ducks	Nov. 11-Dec. 18 & Jan. 13-Jan. 29	6 6	12 12
Common Moorhens	Nov. 11-Dec. 18 & Jan. 13-Jan. 29	6 6	12 12
Common Snipe	Nov. 11-Dec. 18 & Jan. 13-Jan. 29	8 8	16 16

Restrictions: In Puerto Rico, the season is closed on the ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, purple gallinule, American coot, and Caribbean coot, white-crowned pigeon and plain pigeon. Hunting is closed in the area known as Caño Tiburones.

Closed Areas: Closed areas are described in the July 28, 2006, Federal Register (71 FR 43008).

(b) Virgin Islands

	Season Dates	Limits	
		Bag	Possession
Zenaida doves	Sept. 1-Sept. 30	10	10
Ducks	CLOSED		

Restrictions: In the Virgin Islands, the seasons are closed for ground or quail doves, pigeons, ruddy duck, white-cheeked pintail, West Indian whistling duck, fulvous whistling duck, masked duck, and purple gallinule.

Closed Areas: Ruth Cay, just south of St. Croix, is closed to the hunting of migratory game birds.

3. Section 20.102 is revised to read as follows:

§20.102 Seasons, limits, and shooting hours for Alaska.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset. Area descriptions were published in the July 28, 2006, Federal Register (71 FR 43008).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Area Seasons	Dates
North Zone	Sept. 1-Dec. 16
Gulf Coast Zone	Sept. 1-Dec. 16
Southeast Zone	Sept. 1-Dec. 16
Pribilof & Aleutian Islands Zone	Oct. 8-Jan. 22
Kodiak Zone	Oct. 8-Jan. 22

Daily Bag and Possession Limits						
Area	Ducks (1)	Dark Geese (2)(3)	Light Geese (2)	Brant	Common Snipe	Sandhill Cranes (4)
North Zone	10-30	4-8	4-8	2-4	8-16	3-6
Gulf Coast Zone	8-24	4-8	4-8	2-4	8-16	2-4
Southeast Zone	7-21	4-8	4-8	2-4	8-16	2-4
Pribilof and Aleutian Islands Zone	7-21	4-8	4-8	2-4	8-16	2-4
Kodiak Zone	7-21	4-8	4-8	2-4	8-16	2-4

(1) The basic duck bag limits may include no more than 1 canvasback daily, 3 in possession, and may not include sea ducks. In addition to the basic duck limits, sea duck limits of 10 daily, 20 in possession, singly or in the aggregate, including no more than 6 each of either harlequin or long-tailed ducks, are allowed. Special sea duck limits will be available to non-residents, but at lower daily limits than residents, and they may take no more than a possession limit of 20 per season, including no more than 4 each of harlequin and long-tailed ducks, black, surf, and white-winged scoters, and king and common eiders. Sea ducks include scoters, common and king eiders, harlequin ducks, long-tailed ducks, and common and red-breasted mergansers. The season for Steller's and spectacled eiders is closed statewide.

(2) Dark geese include Canada and white-fronted geese. Light geese include snow geese and Ross' geese. Separate limits apply to brant. The season for emperor geese is closed Statewide.

(3) In Units 5 and 6, the taking of Canada geese is only permitted from September 28 through December 16. In the Middleton Island portion of Unit 6, the taking of Canada geese is by special permit only, with a maximum of 10 permits and a daily bag and possession limit of 1. In Unit 9(D) and the Unimak Island portion of Unit 10, the limits for dark geese are 6 daily and 12 in possession. In Units 9(E) and 18, the limit for dark geese is 4 daily, including no more than 2 Canada geese.

(4) In Unit 17, the daily bag limit for sandhill cranes is 2 and the possession limit is 4.

Falconry: The total combined bag and possession limit for migratory game birds taken with the use of a falcon under a falconry permit is 3 per day, 6 in possession, and may not exceed a more restrictive limit for any species listed in this subsection.

Special Tundra Swan Season: In Units 17, 18, 22, and 23, there will be a tundra swan season from September 1 through October 31 with a season limit of 3 tundra swans per hunter. This season is by registration permit only; hunters will be issued 1 permit allowing the take of up to 3 tundra swans. Hunters will be required to file a harvest report after the season is completed. Up to 500 permits may be issued in Unit 18, 300 permits each in Units 22 and 23, and 200 permits in Unit 17.

4. Section 20.103 is revised to read as follows:

§20.103 Seasons, limits, and shooting hours for doves and pigeons.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 28, 2006, Federal Register (71 FR 43008).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

(a) Doves

Note: Unless otherwise specified, the seasons listed below are for mourning doves only.

	Season Dates	Bag	Limits Possession
<u>EASTERN MANAGEMENT UNIT</u>			
<u>Alabama (1)</u>			
North Zone			
12 noon to sunset	Sept. 16 only	15	15
½ hour before sunrise to sunset	Sept. 17-Oct. 7 & Nov. 4-Nov. 18 & Dec. 16-Jan. 7	15 15 15	15 15 15
South Zone			
12 noon to sunset	Oct. 7 only	12	12
½ hour before sunrise to sunset	Oct. 8-Nov. 5 & Nov. 23-Nov. 26 & Dec. 9-Jan. 13	12 12 12	12 12 12
<u>Delaware</u>			
12 noon to sunset	Sept. 1-Sept. 23	12	24
½ hour before sunrise to sunset	Oct. 16-Oct. 28 Dec. 13-Jan. 15	12 12	24 24
<u>Florida (1)</u>			
12 noon to sunset	Oct. 7-Oct. 30	12	24
½ hour before sunrise to sunset	Nov. 11-Nov. 26 & Dec. 9-Jan. 7	12 12	24 24
<u>Georgia</u>			
12 noon to sunset	Sept. 2 & Oct. 7	12	24
½ hour before sunrise to sunset	Sept. 3-Sept. 16 & Oct. 8-Oct. 16 & Nov. 23-Jan. 6	12 12 12	24 24 24
<u>Illinois</u>			
sunrise to sunset	Sept. 1-Oct. 21 & Nov. 4-Nov. 12	15 15	30 30
<u>Indiana</u>			
	Sept. 1-Oct. 15 & Nov. 10-Nov. 24	15 15	30 30
<u>Kentucky (1)</u>			
11 a.m. to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Oct. 15 & Nov. 23-Nov. 28 Dec. 30-Jan. 7	15 15 15	30 30 30
<u>Louisiana (1)</u>			
12 noon to sunset	Sept. 2-Sept. 3 & Oct. 14-Oct. 15 & Dec. 16-Dec. 17	12 12 12	24 24 24

	Season Dates	Limits	
		Bag	Possession
<u>Louisiana (cont.)</u>			
1/2 hour before sunrise to sunset	Sept. 4-Sept. 10 & Oct. 16-Nov. 19 & Dec. 18-Jan. 8	12 12 12	24 24 24
<u>Maryland</u>			
12 noon to sunset	Sept. 1-Oct. 14	12	24
1/2 hour before sunrise to sunset	Nov. 11-Nov. 24 & Dec. 23-Jan. 3	12 12	24 24
<u>Michigan</u>			
CLOSED			
<u>Mississippi (1)</u>			
North Zone	Sept. 2-Sept. 24 & Oct. 7-Oct. 28 & Dec. 30-Jan. 13	15 15 15	30 30 30
South Zone	Sept. 23-Oct. 15 & Nov. 11-Dec. 2 & Dec. 23-Jan. 6	15 15 15	30 30 30
<u>North Carolina</u>			
12 noon to sunset	Sept. 2-Sept. 9	12	24
1/2 hour before sunrise to sunset	Sept. 10-Oct. 7 & Nov. 20-Nov. 25 & Dec. 18-Jan. 13	12 12 12	24 24 24
<u>Ohio</u>			
	Sept. 1-Oct. 15 & Nov. 11-Nov. 25	15 15	30 30
<u>Pennsylvania</u>			
12 noon to sunset	Sept. 1-Sept. 30 & Oct. 21-Nov. 24 & Dec. 26-Dec. 30	12 12 12	24 24 24
<u>Rhode Island</u>			
12 noon to sunset	Sept. 24-Oct. 8	12	24
1/2 hour before sunrise to sunset	Oct. 21-Nov. 19 & Dec. 27-Jan. 11	12 12	24 24
<u>South Carolina</u>			
12 noon to sunset	Sept. 2-Sept. 4	12	24
1/2 hour before sunrise to sunset	Sept. 5-Oct. 7 & Nov. 18-Nov. 25 & Dec. 21-Jan. 15	12 12 12	24 24 24

	Season Dates	Limits	
		Bag	Possession
<u>Tennessee</u>			
12 noon to sunset	Sept. 1 only	15	30
½ hour before sunrise to sunset	Sept. 2-Sept. 26 & Oct. 7-Oct. 22 & Dec. 16-Jan. 2	15 15 15	30 30 30
<u>Virginia</u>			
12 noon to sunset	Sept. 2-Sept. 23	12	24
½ hour before sunrise to sunset	Oct. 7-Nov. 4 & Dec. 28-Jan. 15	12 12	24 24
<u>West Virginia</u>			
12 noon to sunset	Sept. 1 only	12	24
½ hour before sunrise to sunset	Sept. 2-Oct. 7 & Oct. 23-Nov. 4 & Dec. 18-Jan. 6	12 12 12	24 24 24
<u>Wisconsin</u>			
	Sept. 1-Oct. 30	15	30
<u>CENTRAL MANAGEMENT UNIT</u>			
<u>Arkansas</u>			
	Sept. 2-Sept. 24 & Oct. 7-Oct. 22 & Dec. 16-Jan. 5	15 15 15	30 30 30
<u>Colorado (1)</u>			
	Sept. 1-Oct. 30	15	30
<u>Kansas (1)</u>			
	Sept. 1-Oct. 14 Nov. 1-Nov. 16	15 15	30 30
<u>Minnesota</u>			
	Sept. 1-Oct. 30	15	30
<u>Missouri (1)</u>			
	Sept. 1-Nov. 9	12	24
<u>Montana</u>			
	Sept. 1-Oct. 30	15	30
<u>Nebraska (1)</u>			
	Sept. 1-Oct. 30	15	30
<u>New Mexico (1)</u>			
North Zone	Sept. 1-Oct. 30	15	30
South Zone	Sept. 1-Sept. 30 & Dec. 1-Dec. 30	15 15	30 30

	Season Dates	Bag	Limits	
				Possession
<u>North Dakota</u>	Sept. 1-Oct. 30	15		30
<u>Oklahoma (1)</u>	Sept. 1-Oct. 30	15		30
<u>South Dakota</u>	Sept. 1-Oct. 30	15		30
<u>Texas (2)</u>				
North Zone	Sept. 1-Oct. 30	15		30
Central Zone	Sept. 1-Oct. 30 & Dec. 26-Jan. 4	12		24
South Zone				
Special Area	Sept. 22-Nov. 12 & Dec. 26-Jan. 8	12		24
(Special Season)				
12 noon to sunset	Sept. 2-Sept. 3 & Sept. 9-Sept. 10	12		24
Remainder of the South Zone	Sept. 22-Nov. 12 & Dec. 26-Jan. 12	12		24
<u>Wyoming</u>	Sept. 1-Oct. 30	15		30
<u>WESTERN MANAGEMENT UNIT</u>				
<u>Arizona (3)</u>	Sept. 1-Sept. 15 & Nov. 24-Jan. 7	10		20
<u>California (4)</u>	Sept. 1-Sept. 15 & Nov. 11-Dec. 25	10		20
<u>Idaho</u>	Sept. 1-Sept. 30	10		20
<u>Nevada (4)</u>	Sept. 1-Sept. 30	10		20
<u>Oregon</u>	Sept. 1-Sept. 30	10		20
<u>Utah (4)</u>	Sept. 1-Sept. 30	10		20
<u>Washington</u>	Sept. 1-Sept. 15	10		20
<u>OTHER POPULATIONS</u>				
<u>Hawaii (5)</u>	Nov. 4-Nov. 26 & Dec. 2-Dec. 25 & Dec. 30-Jan. 15	10		10

(1) The daily bag limit is for mourning and white-winged doves in the aggregate.

(2) In Texas, the daily bag limit is either 15 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 60-day season or 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 2 may be white-tipped doves with a maximum 70-day season. Possession limits are twice the daily bag limit. During the special season in the Special White-winged Dove Area of the South Zone, the daily bag limit is 12 mourning, white-winged, and white-tipped doves in the aggregate, of which no more than 4 may be mourning doves and 2 may be white-tipped doves. Possession limits are twice the daily bag limit.

(3) In Arizona, during September 1 through 15, the daily bag limit is 10 mourning and white-winged doves in the aggregate, of which no more than 6 may be white-winged doves. During November 18 through January 1, the daily bag limit is 10 mourning doves. The possession limit is twice the daily bag limit. See State regulations for restrictive shooting hours in certain areas.

(4) In Utah and the areas of California and Nevada open to white-winged dove hunting, the daily bag limit is 10 and the possession limit is 20 mourning and white-winged doves in the aggregate.

(5) In Hawaii, the season is only open on the island of Hawaii. The daily bag and possession limits are 10 mourning doves, spotted doves and chestnut-bellied sandgrouse in the aggregate. Shooting hours are from one-half hour before sunrise through one-half hour after sunset. Hunting is permitted only on weekends and State holidays.

(b) Band-tailed Pigeons

	Season Dates	Limits	
		Bag	Possession
<u>Arizona</u>			
Units 12A, 12B, 13A, & 13B	Sept. 15-Oct. 8	5	10
Rest of State	Sept. 22-Oct. 8	5	10
<u>California</u>			
North Zone	Sept. 16-Sept. 24	2	4
South Zone	Dec. 16-Dec. 24	2	4
<u>Colorado</u>			
	Sept. 1-Sept. 30	5	10
<u>New Mexico (1)</u>			
North Zone	Sept. 1-Sept. 20	5	10
South Zone	Oct. 1-Oct. 20	5	10
<u>Oregon</u>			
	Sept. 15-Sept. 23	2	4
<u>Utah (2)</u>			
	Sept. 1-Sept. 30	5	10
<u>Washington</u>			
	Sept. 15-Sept. 23	2	4

(1) In New Mexico, each band-tailed pigeon hunter must have a band-tailed pigeon hunting permit issued by the State.

(2) In Utah, each band-tailed pigeon hunter must have either a band-tailed pigeon hunting permit or a special bird permit stamp issued by the respective State.

5. Section 20.104 is revised to read as follows:

§20.104 Seasons, limits, and shooting hours for rails, woodcock, and common snipe.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 28, 2006, Federal Register (71 FR 43008).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
Daily bag limit	25 (1)	15 (2)	3	8
Possession limit	25 (1)	30 (2)	6	16

ATLANTIC FLYWAY

<u>Connecticut</u> (3)	Sept. 5-Nov. 11	Sept. 5-Nov. 11	Oct. 20-Nov. 18	Oct. 20-Nov. 18
<u>Delaware</u>	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 20-Dec. 9 & Dec. 21-Dec. 30	Nov. 20-Jan.31
<u>Florida</u>	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 16-Jan. 14	Nov. 1-Feb. 15
<u>Georgia</u>	Sept. 7-Oct. 13 & Nov. 4-Dec. 3	Sept. 7-Oct. 13 & Nov. 4-Dec. 3	Dec. 16-Jan. 14	Nov. 15-Feb. 28
<u>Maine</u>	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 16
<u>Maryland</u>	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Nov. 3-Nov. 24 & Jan. 13-Jan. 20	Sept. 27-Nov. 24 & Dec. 11-Jan. 27
<u>Massachusetts</u> (4)	Sept. 1-Nov. 9	Closed	Deferred	Sept. 1-Dec. 16
<u>New Hampshire</u>	Closed	Closed	Oct. 1-Oct. 30	Sept. 15-Oct. 30
<u>New Jersey</u> (5)				
North Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Oct. 19-Nov. 11	Sept. 16-Dec. 30
South Zone	Sept. 1-Nov. 8	Sept. 1-Nov. 8	Nov. 11-Nov. 25 & Dec. 22-Dec. 30	Sept. 16-Dec. 30

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
<u>New York</u> (6)	Sept. 1-Nov. 9	Closed	Oct. 6-Nov. 4	Sept. 1-Nov. 9
<u>North Carolina</u>	Sept. 1-Nov. 9	Sept. 1-Nov. 9	Dec. 15-Jan. 13	Nov. 14-Feb. 28
<u>Pennsylvania</u> (1)(7)	Sept. 1-Nov. 9	Closed	Oct. 14-Nov. 11	Oct. 14-Nov. 18
<u>Rhode Island</u> (8)	Sept. 2-Nov. 10	Sept. 2-Nov. 10	Nov. 2-Dec. 1	Sept. 2-Nov. 10
<u>South Carolina</u>	Sept. 6-Sept. 12 & Oct. 6-Dec. 7	Sept. 6-Sept. 12 & Oct. 6-Dec. 7	Jan. 2-Jan. 31	Nov. 14-Feb. 28
<u>Vermont</u>	Closed	Closed	Deferred	Deferred
<u>Virginia</u>	Sept. 8-Nov. 16	Sept. 8-Nov. 16	Nov. 4-Nov. 18 & Dec. 23-Jan. 6	Oct. 4-Oct. 9 & Oct. 23-Jan. 31
<u>West Virginia</u>	Sept. 1-Nov. 9	Closed	Oct. 20-Nov. 18	Sept. 1-Dec. 16
<u>MISSISSIPPI FLYWAY</u>				
<u>Alabama</u> (9)	Nov. 24-Jan. 28	Nov. 24-Jan. 28	Dec. 18-Jan. 31	Nov. 14-Feb. 28
<u>Arkansas</u>	Sept. 1-Nov. 9	Closed	Nov. 11-Dec. 25	Nov. 1-Feb. 15
<u>Illinois</u> (10)	Sept. 9-Nov. 17	Closed	Oct. 21-Dec. 4	Sept. 9-Dec. 24
<u>Indiana</u> (11)	Sept. 1-Nov. 9	Closed	Oct. 14-Nov. 27	Sept. 1-Dec. 16
<u>Iowa</u> (12)	Sept. 2-Nov. 10	Closed	Oct. 7-Nov. 20	Sept. 2-Nov. 26
<u>Kentucky</u>	Sept. 1-Nov. 9	Closed	Oct. 21-Dec. 4	Sept. 20-Nov. 5 & Nov. 23-Jan. 21
<u>Louisiana</u> (13)	Sept. 15-Sept. 30	Sept. 15-Sept. 30	Dec. 18-Jan. 31	Deferred
<u>Michigan</u> (14)	Sept. 15-Nov. 14	Closed	Sept. 23-Nov. 6	Sept. 15-Nov. 14
<u>Minnesota</u>	Sept. 1-Nov. 4	Closed	Sept. 23-Nov. 6	Sept. 1-Nov. 4
<u>Mississippi</u>	Oct. 7-Dec. 15	Oct. 7-Dec. 15	Dec. 16-Jan. 29	Nov. 11-Feb. 25
<u>Missouri</u>	Sept. 1-Nov. 9	Closed	Oct. 15-Nov. 28	Sept. 1-Dec. 16
<u>Ohio</u>	Sept. 1-Nov. 9	Closed	Oct. 14-Nov. 26	Sept. 1-Nov. 26 & Dec. 9-Dec. 28
<u>Tennessee</u>	Deferred	Closed	Oct. 28-Dec. 11	Nov. 14-Feb. 28

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
<u>Wisconsin</u>	Deferred	Closed	Sept. 23-Nov. 6	Deferred
<u>CENTRAL FLYWAY</u>				
<u>Colorado</u>	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
<u>Kansas</u>	Sept. 1-Nov. 9	Closed	Oct. 14-Nov. 27	Sept. 1-Dec. 16
<u>Montana</u>	Closed	Closed	Closed	Sept. 1-Dec. 16
<u>Nebraska (15)</u>	Sept. 1-Nov. 9	Closed	Sept. 23-Nov. 6	Sept. 1-Dec. 16
<u>New Mexico</u>	Sept. 16-Nov. 24	Closed	Closed	Oct. 7-Jan. 21
<u>North Dakota</u>	Closed	Closed	Sept. 23-Nov. 5	Sept. 16-Nov. 26
<u>Oklahoma</u>	Sept. 1-Nov. 9	Closed	Nov. 1-Dec. 15	Oct. 1-Jan. 15
<u>South Dakota (16)</u>	Closed	Closed	Closed	Sept. 1-Oct. 31
<u>Texas</u>	Sept. 16-Sept. 24 & Nov. 4-Jan. 3	Sept. 16-Sept. 24 & Nov. 4-Jan. 3	Dec. 18-Jan. 31	Nov. 4-Feb. 18
<u>Wyoming</u>	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
<u>PACIFIC FLYWAY</u>				
<u>Arizona</u>	Closed	Closed	Closed	Deferred
<u>California</u>	Closed	Closed	Closed	Oct. 21-Feb. 4
<u>Colorado</u>	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16
<u>Idaho:</u>				
Area 1	Closed	Closed	Closed	Deferred
Area 2	Closed	Closed	Closed	Deferred
<u>Montana</u>	Closed	Closed	Closed	Sept. 1-Dec. 16
<u>Nevada</u>	Closed	Closed	Closed	Deferred
<u>New Mexico</u>	Sept. 16-Nov. 24	Closed	Closed	Oct. 7-Jan. 21
<u>Oregon</u>	Closed	Closed	Closed	Deferred
<u>Utah</u>	Closed	Closed	Closed	Oct. 7-Jan. 20

	Sora and Virginia Rails	Clapper and King Rails	Woodcock	Common Snipe
<u>Washington</u>	Closed	Closed	Closed	Deferred
<u>Wyoming</u>	Sept. 1-Nov. 9	Closed	Closed	Sept. 1-Dec. 16

- (1) The bag and possession limits for sora and Virginia rails apply singly or in the aggregate of these species.
- (2) All bag and possession limits for clapper and king rails apply singly or in the aggregate of the two species and, unless otherwise specified, the limits are in addition to the limits on sora and Virginia rails in all States. In Connecticut, Delaware, Maryland, and New Jersey, the limits for clapper and king rails are 10 daily and 20 in possession.
- (3) In Connecticut, the daily bag and possession limits may not contain more than 1 king rail. The common snipe daily bag and possession limits are 3 and 6, respectively.
- (4) In Massachusetts, the sora rail limits are 5 daily and 5 in possession; the Virginia rail limits are 10 daily and 10 in possession.
- (5) In New Jersey, the season for king rails is closed by State regulation.
- (6) In New York, the rail daily bag and possession limits are 8 and 16, respectively. Seasons for sora and Virginia rails and common snipe are closed on Long Island.
- (7) In Pennsylvania, the daily bag and possession limits for rails are 3 and 6, respectively.
- (8) In Rhode Island, the sora and Virginia rails limits are 5 daily and 10 in possession, singly or in the aggregate; the clapper and king rail limits are 5 daily and 10 in possession, singly or in the aggregate; the common snipe limits are 5 daily and 10 in possession.
- (9) In Alabama, the rail limits are 15 daily and 15 in possession, singly or in the aggregate.
- (10) In Illinois, shooting hours are from sunrise to sunset.
- (11) In Indiana, the sora rail limits are 25 daily and 25 in possession. The season on Virginia rails is closed.
- (12) In Iowa, the limits for sora and Virginia rails are 12 daily and 24 in possession.
- (13) In Louisiana, additional days occurring after September 30 will be published with the late season selections.
- (14) In Michigan, the aggregate limits for sora and Virginia rails are 8 daily and 16 in possession.
- (15) In Nebraska, the rail limits are 10 daily and 20 in possession.
- (16) In South Dakota, the snipe limits are 5 daily and 15 in possession.

6. Section 20.105 is amended by revising paragraphs (a) through (f) to read as follows:

§20.105 Seasons, limits, and shooting hours for waterfowl, coots, and gallinules.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Shooting and hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 28, 2006, Federal Register (71 FR 43008).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-seasons regulations for further information.

(a) Common Moorhens and Purple Gallinules

	Season Dates	Limits	
		Bag	Possession
<u>ATLANTIC FLYWAY</u>			
<u>Delaware</u>	Sept. 1-Nov. 9	15	30
<u>Florida</u> (1)	Sept. 1-Nov.9	15	30
<u>Georgia</u>	Deferred	--	-
<u>New Jersey</u>	Sept. 1-Nov. 8	10	20
<u>New York</u>			
Long Island	Closed	--	-
Remainder of State	Sept. 1-Nov. 9	8	16
<u>North Carolina</u>	Sept. 1-Nov. 9	15	30
<u>Pennsylvania</u>	Sept. 1-Nov. 9	3	6
<u>South Carolina</u>	Sept. 6-Sept. 12 & Oct. 6-Dec. 7	15 15	30 30
<u>Virginia</u>	Deferred	--	-
<u>West Virginia</u>	Deferred	--	-
<u>MISSISSIPPI FLYWAY</u>			
<u>Alabama</u>	Nov. 24-Jan. 28	15	15
<u>Arkansas</u>	Sept. 1-Nov. 9	15	30
<u>Kentucky</u>	Sept. 1-Nov. 9	15	30

	Season Dates	Limits	
		Bag	Possession
<u>Louisiana (2)</u>	Sept. 15-Sept. 30	15	30
<u>Michigan</u>	Deferred	--	--
<u>Minnesota</u>	Deferred	--	--
<u>Mississippi</u>	Oct. 7-Dec. 15	15	30
<u>Ohio</u>	Sept. 1-Nov. 9	15	30
<u>Tennessee</u>	Deferred	--	--
<u>Wisconsin</u>	Deferred	--	-
<u>CENTRAL FLYWAY</u>			
<u>New Mexico</u>			
Zone 1	Oct. 7-Dec. 15	1	2
Zone 2	Oct. 7-Dec. 15	1	2
<u>Oklahoma</u>	Sept. 1-Nov. 9	15	30
<u>Texas</u>	Sept. 16-Sept. 24 & Nov. 4-Jan. 3	15 15	30 30
<u>Wyoming</u>	Deferred	--	-
<u>PACIFIC FLYWAY</u>			
All States	Deferred	--	-

(1) The season applies to common moorhens only.

(2) Additional days occurring after September 30 will be published with the late season selections.

(b) Sea Ducks (scoter, eider, and oldsquaw ducks in Atlantic Flyway).

Within the special sea duck areas, the daily bag limit is 7 scoter, eider, and oldsquaw ducks, singly or in the aggregate, of which no more than 4 may be scoters. Possession limits are twice the daily bag limit. These limits may be in addition to regular duck bag limits only during the regular duck season in the special sea duck hunting areas.

	Season Dates	Limits	
		Bag	Possession
<u>Connecticut</u> (1)	Sept. 20-Jan. 20	5	10
<u>Delaware</u>	Sept. 18-Jan. 19	7	14
<u>Georgia</u>	Deferred	--	--
<u>Maine</u>	Deferred	--	-
<u>Maryland</u>	Deferred	--	--
<u>Massachusetts</u>	Deferred	--	--
<u>New Hampshire</u> (2)	Oct. 1-Jan. 15	7	14
<u>New Jersey</u>	Sept. 16-Jan. 16	7	14
<u>New York</u>	Oct. 14-Jan. 28	7	14
<u>North Carolina</u>	Deferred	--	-
<u>Rhode Island</u>	Oct. 7-Jan. 21	7	14
<u>South Carolina</u>	Deferred	--	--
<u>Virginia</u>	Deferred	--	-

NOTE: Notwithstanding the provisions of this Part 20, the shooting of crippled waterfowl from a motorboat under power will be permitted in Maine, Massachusetts, New Hampshire, Rhode Island, Connecticut, New York, Delaware, Virginia and Maryland in those areas described, delineated, and designated in their respective hunting regulations as special sea duck hunting areas.

(1) In Connecticut, the daily bag limit may include no more than 4 scoters or 4 oldsquaws.

(2) In New Hampshire, the daily bag limit may include no more than 4 scoters, 4 eiders, or 4 oldsquaws.

(c) Early (September) Duck Seasons.

Note: Unless otherwise specified, the seasons listed below are for teal only.

	Season Dates	Limits	
		Bag	Possession
<u>ATLANTIC FLYWAY</u>			
<u>Delaware</u> (1)(2)	Sept. 21-Sept. 30	4	8
<u>Florida</u> (3)	Sept. 23-Sept. 27	4	8

	Season Dates	Limits	
		Bag	Possession
<u>Georgia</u>	Sept. 16-Sept. 24	4	8
<u>Maryland</u> (1)	Sept. 14-Sept. 23	4	8
<u>North Carolina</u> (1)	Sept. 14-Sept. 23	4	8
<u>South Carolina</u> (4)	Sept. 22-Sept. 30	4	8
<u>Virginia</u> (1)	Sept. 16-Sept. 25	4	8
<u>MISSISSIPPI FLYWAY</u>			
<u>Alabama</u>	Sept. 9-Sept. 24	4	8
<u>Arkansas</u> (4)	Sept. 15-Sept. 30	4	8
<u>Illinois</u> (4)	Sept. 9-Sept. 24	4	8
<u>Indiana</u> (4)	Sept. 1-Sept. 16	4	8
<u>Iowa</u> (5)			
North Zone	Sept. 23-Sept. 27	--	--
South Zone	Sept. 23-Sept. 27	--	--
<u>Kentucky</u> (3)	Sept. 20-Sept. 24	4	8
<u>Louisiana</u>	Sept. 15-Sept. 30	4	8
<u>Mississippi</u>	Sept. 15-Sept. 30	4	8
<u>Missouri</u> (4)	Sept. 9-Sept. 24	4	8
<u>Ohio</u> (4)	Sept. 2-Sept. 17	4	8
<u>Tennessee</u> (3)	Sept. 9-Sept. 13	4	8
<u>CENTRAL FLYWAY</u>			
<u>Colorado</u> (1)	Sept. 9-Sept. 17	4	8
<u>Kansas</u>			
Low Plains	Sept. 9-Sept. 24	4	8
High Plains	Sept. 16-Sept. 23	4	8
<u>Nebraska</u> (1)			
Low Plains	Sept. 9-Sept. 24	4	8
High Plains	Sept. 9-Sept. 17	4	8
<u>New Mexico</u>	Sept. 16-Sept. 24	4	8

	Season Dates	Limits	
		Bag	Possession
<u>Oklahoma</u>	Sept. 9-Sept. 24	4	8
<u>Texas</u>	Sept. 9-Sept. 24	4	8

(1) Area restrictions. See State regulations.

(2) In Delaware, the shooting hours are from ½ hour before sunrise to 10:00 a.m.

(3) In Florida, Kentucky, and Tennessee, the daily bag limit is 4 wood ducks and teal in the aggregate, of which no more than 2 may be wood ducks. The possession limit is twice the daily bag limit.

(4) Shooting hours are from sunrise to sunset.

(5) In Iowa, the September season is part of the regular season, and limits will conform to those set for the regular season.

(d) Special Early Canada Goose Seasons.

	Season Dates	Limits	
		Bag	Possession
<u>ATLANTIC FLYWAY</u>			
<u>Connecticut</u>			
North Zone	Sept. 5-Sept. 30	15	30
South Zone	Sept. 15-Sept. 30	15	30
<u>Delaware</u>	Sept. 1-Sept. 15	15	30
<u>Florida</u> (1)	Sept. 2-Sept. 27	5	10
<u>Georgia</u>	Sept. 2-Sept. 24	5	10
<u>Maine</u>	Sept. 5-Sept. 25	4	8
<u>Maryland</u>			
Eastern Unit	Sept. 1-Sept. 15	8	16
Western Unit	Sept. 1-Sept. 25	8	16
<u>Massachusetts</u>			
Central Zone	Sept. 5-Sept. 25	5	10
Coastal Zone	Sept. 5-Sept. 25	5	10
Western Zone	Sept. 5-Sept. 25	5	10
<u>New Hampshire</u>	Sept. 5-Sept. 25	5	10
<u>New Jersey</u>	Sept. 1-Sept. 30	15	30

	Season Dates	Limits	
		Bag	Possession
<u>New York</u>			
Lake Champlain Zone	Sept. 5-Sept. 25	5	10
Northeastern Zone	Sept. 1-Sept. 25	8	16
Western Zone	Sept. 1-Sept. 25	8	16
Southeastern Zone	Sept. 1-Sept. 25	8	16
Long Island Zone (3)	Sept. 5-Sept. 30	8	16
<u>North Carolina</u> (4)	Sept. 1-Sept. 30	8	16
<u>Pennsylvania</u>			
Pymatuning Zone (5)	Sept. 1-Sept. 25	8	16
Rest of State (6)	Sept. 1-Sept. 25	8	16
<u>Rhode Island</u>	Sept. 1-Sept. 30	8	16
<u>South Carolina</u>			
Early-Season Hunt Unit	Sept. 1-Sept. 30	15	30
<u>Vermont</u>			
Lake Champlain Zone (7)	Sept. 5-Sept. 25	5	10
Interior Vermont Zone (7)	Sept. 5-Sept. 25	5	10
Connecticut River Zone (7)	Sept. 5-Sept. 25	5	10
<u>Virginia</u>	Sept. 1-Sept. 25	5	10
<u>West Virginia</u>	Sept. 1-Sept. 16	5	10
<u>MISSISSIPPI FLYWAY</u>			
<u>Alabama</u>	Sept. 1-Sept. 15	5	10
<u>Illinois</u>			
Northeast Zone	Sept. 1-Sept. 15	5	10
North Zone	Sept. 1-Sept. 15	2	4
Central Zone	Sept. 1-Sept. 15	2	4
South Zone	Sept. 1-Sept. 15	2	4
<u>Indiana</u>	Sept. 1-Sept. 15	5	10
<u>Iowa</u>			
South Goose Zone			
Des Moines Goose Zone	Sept. 1-Sept. 15	3	6
Cedar Rapids/Iowa City			
Goose Zone	Sept. 1-Sept. 15	3	6
Remainder of South Zone	Sept. 9-Sept. 10	2	4
North Goose Zone	Sept. 9-Sept. 10	2	4

	Season Dates	Limits	
		Bag	Possession
<u>Kentucky</u> (3)	Sept. 2-Sept. 10	2	4
<u>Michigan</u>			
Upper Peninsula	Sept. 1-Sept. 10	3	6
Lower Peninsula:			
Huron, Saginaw, and Tuscola Counties	Sept. 1-Sept. 10	3	6
Remainder	Sept. 1-Sept. 15	3	6
<u>Minnesota</u>			
Twin Cities Metro Zone	Sept. 2-Sept. 22	5	10
Southeast Goose Zone	Sept. 2-Sept. 22	2	4
Five Goose Zone	Sept. 2-Sept. 22	5	10
Northwest Goose Zone	Sept. 2-Sept. 15	5	10
<u>Mississippi</u> (9)	Sept. 1-Sept. 15	5	10
<u>Ohio</u> (3)	Sept. 1-Sept. 15	3	6
<u>Tennessee</u>	Sept. 1-Sept. 15	5	10
<u>Wisconsin</u>	Sept. 1-Sept. 15	5	10
<u>CENTRAL FLYWAY</u>			
<u>Nebraska</u> (3)			
Sept. Canada Goose Unit	Sept. 9-Sept. 19	5	10
<u>North Dakota</u>	Sept. 1-Sept. 15	5	10
<u>Oklahoma</u>	Sept. 9-Sept. 18	3	6
<u>South Dakota</u> (3):			
Unit A	Sept. 1-Sept. 10	5	10
Unit B	Sept. 1-Sept. 22	5	10
Unit C	Sept. 9-Sept. 22	5	10
<u>PACIFIC FLYWAY</u>			
<u>Colorado</u> :	Sept. 2-Sept. 10	3	6
<u>Oregon</u> :			
Northwest Zone	Sept. 9-Sept. 19	5	10
Southwest Zone (10)	Sept. 9-Sept. 14	5	10
East Zone (10)	Sept. 9-Sept. 14	5	10

	Season Dates	Limits	
		Bag	Possession
<u>Washington:</u>			
Mgmt. Area 2B	Sept. 1-Sept. 15	5	10
Mgmt. Areas 1 & 3	Sept. 9-Sept. 14	5	10
Mgmt. Area 4 & 5	Sept. 9-Sept. 10	3	6
Mgmt. Area 2A	Sept. 9-Sept. 14	3	6
<u>Wyoming</u>	Sept. 1-Sept. 8	2	4

(1) In Florida, the September Canada goose season is only open in the Florida waters of Lake Seminole in Jackson County that are south of State Route 2, north of the Jim Woodruff Dam, and east of State Route 2.

(2) State permit required.

(3) See State regulations for additional information.

(4) In North Carolina, in the area of Dare County that included Roanoke Island, 1,000 yards around Roanoke Island, and 1,000 yards both north and south of Highway 64 causeway between Roanoke Island and Bodie Island, the daily bag and possession limits are 2 and 4, respectively.

(5) In Pennsylvania, in the Pymatuning Zone, geese may only be taken on Pymatuning State Park Reservoir and an area to extend 100 yards inland from the shoreline of the reservoir, excluding the area east of SR 3011 (Hartstown Road).

(6) In Pennsylvania, in the area of Lancaster and Lebanon Counties north of the Pennsylvania Turnpike, east of SR 501 to SR 419, south of SR 419 to the Lebanon-Berks County line, west of the Lebanon-Berks County line and the Lancaster-Berks County line to SR 1053, west of SR 1053 to the Pennsylvania Turnpike, the daily bag limit is 1 goose with a possession limit of 2 geese. On State Game Lands No. 46 (Middle Creek Wildlife Mgmt Area), the season is closed.

(7) In Vermont, in Addison County, the daily bag and possession limit is 2 and 4, respectively.

(8) In Vermont, the Connecticut River Zone set by New Hampshire, is the same as the New Hampshire Inland Zone.

(9) In Mississippi, the season is closed on Roebuck Lake in Leflore County.

(10) In Oregon, the season is closed in the Southcoast Zone and the Klamath County Zone.

(e) Regular Goose Seasons.

Note: Bag and possession limits will conform to those set for the regular season.

Season Dates

MISSISSIPPI FLYWAY

Michigan (1)

Canada:

MVP Zone

Upper Peninsula

Lower Peninsula

SJBP Zone

Sept. 18-Nov. 6

Deferred

Deferred

 Season Dates

Michigan (cont.)

White-fronted and Brant
Light geese

Deferred
Deferred

Wisconsin

Horicon Zone
Collins Zone
Exterior Zone

Sept. 16-Sept. 30
Sept. 16-Sept. 30
Sept. 16-Sept. 30

(1) In Michigan, season dates for the Muskegon Wastewater, Saginaw County, Allegan County, and Tuscola/Huron Goose Management Units in the South Zone will be established in the late-season regulatory process.

(f) Youth Waterfowl Hunting Days

The following seasons are open only to youth hunters. Youth hunters must be accompanied into the field by an adult at least 18 years of age. This adult cannot duck hunt but may participate in other open seasons.

Definitions

Youth Hunters: Includes youths 15 years of age or younger.

The Atlantic Flyway: Includes Connecticut, Delaware, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Vermont, Virginia, and West Virginia.

The Mississippi Flyway: Includes Alabama, Arkansas, Illinois, Indiana, Iowa, Kentucky, Louisiana, Michigan, Minnesota, Mississippi, Missouri, Ohio, Tennessee, and Wisconsin.

The Central Flyway: Includes Colorado (east of the Continental Divide), Kansas, Montana (Blaine, Carbon, Fergus, Judith Basin, Stillwater, Sweetgrass, Wheatland, and all counties east thereof), Nebraska, New Mexico (east of the Continental Divide except that the Jicarilla Apache Indian Reservation is in the Pacific Flyway), North Dakota, Oklahoma, South Dakota, Texas, and Wyoming (east of the Continental Divide).

The Pacific Flyway: Includes Arizona, California, Colorado (west of the Continental Divide), Idaho, Montana (including and to the west of Hill, Chouteau, Cascade, Meagher, and Park Counties), Nevada, New Mexico (the Jicarilla Apache Indian Reservation and west of the Continental Divide), Oregon, Utah, Washington, and Wyoming (west of the Continental Divide including the Great Divide Basin).

Note: Bag and possession limits will conform to those set for the regular season.

 Season Dates

ATLANTIC FLYWAY

Connecticut

Deferred

	Season Dates
<u>Delaware</u> Ducks, geese, and coots	Oct. 21
<u>Florida</u>	Deferred
<u>Georgia</u> Ducks, geese, mergansers, coots, moorhens, and gallinules	Nov. 11 & 12
<u>Maine</u> Ducks, mergansers, and coots	Sept. 23
<u>Maryland (1)</u> Ducks, mergansers, coots, and Canada geese	Deferred
<u>Massachusetts</u>	Deferred
<u>New Hampshire</u> Ducks, geese, mergansers, and coots	Sept. 23 & 24
<u>New Jersey</u> Ducks, geese, mergansers, coots, moorhens, and gallinules	
North Zone	Sept. 30
South Zone	Nov. 10 & 11
Coastal Zone	Oct. 28
<u>New York</u> Ducks, mergansers, coots, brant, and Canada geese (2)	
Long Island Zone	Nov. 11 & 12
Lake Champlain Zone	Sept. 23 & 24
Northeastern Zone	Sept. 23 & 24
Southeastern Zone	Sept. 23 & 24
Western Zone	Oct. 8 & 9
<u>North Carolina</u>	Deferred
<u>Pennsylvania</u> Ducks, mergansers, Canada geese, coots, and moorhens	Sept. 23
<u>Rhode Island</u> Ducks, mergansers and coots	Oct. 28 & 29
<u>South Carolina</u>	Deferred
<u>Vermont</u> Ducks, mergansers and coots	Sept. 23 & 24
<u>Virginia</u>	Deferred
<u>West Virginia (3)</u> Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 23

Season Dates

MISSISSIPPI FLYWAYAlabama

Ducks, mergansers, coots, geese, moorhens, and gallinules

Feb. 10 & 11

Arkansas

Deferred

Illinois

Ducks, geese, mergansers, and coots

North Zone

Oct. 14 & 15

Central Zone

Oct. 21 & 22

South Zone

Nov. 11 & 12

Indiana

Deferred

Iowa

Ducks, geese, mergansers, and coots

North Zone

Oct. 7 & 8

South Zone

Oct. 7 & 8

Kentucky

Ducks, geese, mergansers, coots, moorhens, and gallinules

East Zone

Nov. 4 & 5

West Zone

Feb. 3 & 4

Louisiana

Deferred

Michigan

Ducks, geese, mergansers, coots, moorhens, and gallinules

Sept. 16 & 17

Minnesota (4)

Ducks, geese, mergansers, coots, moorhens, and gallinules

Sept. 16

Mississippi

Deferred

Missouri

Deferred

Ohio

Deferred

Tennessee

Deferred

Wisconsin

Ducks, geese, mergansers, coots, moorhens, and gallinules

Sept. 16 & 17

CENTRAL FLYWAYColorado

Ducks, dark geese, mergansers, and coots

Mountain/Foothills Zone

Sept. 23 & 24

Eastern Plains Zone

Oct. 21 & 22

	Season Dates
<u>Kansas</u> (5)	Deferred
<u>Montana</u> Ducks, geese, mergansers, and coots	Sept. 23 & 24
<u>Nebraska</u> (6) Ducks, geese, mergansers, and coots	Sept. 30 & Oct. 1
<u>New Mexico</u> Ducks, geese, mergansers, coots, and gallinules North Zone South Zone	Sept. 30 & Oct. 1 Oct. 14 & 15
<u>North Dakota</u> Ducks, geese, mergansers, and coots	Sept. 16 & 17
<u>Oklahoma</u>	Deferred
<u>South Dakota</u> (7) Ducks, Canada geese, mergansers, and coots	Sept. 16 & 17
<u>Texas</u>	Deferred
<u>Wyoming</u> Ducks, geese, mergansers, coots, and gallinules Zone 1 Zone 2	Sept. 30 Sept. 23
 <u>PACIFIC FLYWAY</u>	
<u>Arizona</u> Ducks, geese, mergansers, coots, moorhens, and gallinules North Zone South Zone	Sept. 30 Feb. 3
<u>California</u> Ducks, geese, mergansers, coots, moorhens, and gallinules Northeastern Zone Colorado River Zone Southern Zone Southern San Joaquin Valley Zone Balance-of-State Zone	Sept. 23 & 24 Deferred Deferred Deferred Deferred
<u>Colorado</u> Ducks, geese, mergansers, and coots	Oct. 28 & 29
<u>Idaho</u> Ducks, Canada geese, mergansers, and coots	Sept. 30 & Oct. 1

Season Dates

<u>Montana</u>	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 23 & 24
<u>Nevada</u>	Deferred
<u>New Mexico</u>	
Ducks, mergansers, and coots	Oct. 7-Oct. 8
<u>Oregon (8)</u>	
Ducks, Canada geese, mergansers, coots, moorhens, and gallinules	Sept. 23 & 24
<u>Utah</u>	
Ducks, geese, mergansers, coots, moorhens, and gallinules	Sept. 30
<u>Washington</u>	
Ducks, Canada geese, mergansers, and coots	Sept. 23 & 24
<u>Wyoming</u>	
Ducks, dark geese, mergansers, coots, and moorhens	Sept. 16

(1) In Maryland, the accompanying adult must be at least 21 years of age and possess a valid Maryland hunting license (or be exempt from the license requirement). This accompanying adult may not shoot or possess a firearm.

(2) In New York, the daily bag limit for Canada geese is 2.

(3) In West Virginia, the accompanying adult must be at least 21 years of age.

(4) In Minnesota, the Canada goose limit is 5, except that in the Twin Cities, Southeast, and Northwest Goose Zones, Swan Lake Area, and Carlos Avery Wildlife Management Area the limit is 1.

(5) In Kansas, the adult accompanying the youth must possess any licenses and/or stamps required by law for that individual to hunt waterfowl.

(6) In Nebraska, see State regulations for additional information on the daily bag limit.

(7) In South Dakota, the limit for Canada geese is 3, except in areas where the Special Early Canada goose season is open. In those areas, the limit is the same as for that special season.

(8) In Oregon, the Canada goose season is closed for the youth hunt in the Northwest Special Permit Goose Zone and the Northwest General Zone.

7. Section 20.106 is revised to read as follows:

§20.106 Seasons, limits, and shooting hours for sandhill cranes.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), shooting and hawking hours, and daily bag and possession limits on the species designated in this section are as follows:

Shooting and Hawking hours are one-half hour before sunrise until sunset, except as otherwise noted. Area descriptions were published in the July 28, 2006, Federal Register (71 FR 43008).

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Note: States with deferred seasons may select those seasons at the same time they select waterfowl seasons in August. Consult late-season regulations for further information.

	Season Dates	Bag	Limits	
				Possession
<u>CENTRAL FLYWAY</u>				
<u>Colorado</u> (1)	Sept. 30-Nov. 26	3		6
<u>Kansas</u> (2)(3)(7)	Nov. 8-Jan. 4	3		6
<u>Montana</u>				
Regular Season Area (1)	Sept. 23-Nov. 19	3		6
Special Season Area (5)	Sept. 9-Sept. 17		1 per season	
<u>New Mexico</u>				
Regular Season Area (1)	Oct. 31-Jan. 31	3		6
Middle Rio Grande Valley Area (5)(6)(7)	Oct. 28-Oct. 29 & Nov. 18-Nov. 19 & Dec. 9-Dec. 10 & Jan. 13-Jan. 14	1 1 1 1		2 2 2 2
Southwest Area (5)(6)(7)	Nov. 4-Nov. 5 & Jan. 6-Jan. 7	2 2		4 4
Estancia Valley (6)(7)	Oct. 28-Oct. 29 & Nov. 4-Nov. 5	2 2		4 4
<u>North Dakota</u> (2)				
Area 1	Sept. 16-Nov. 12	3		6
Area 2	Sept. 16-Oct. 22	2		4
<u>Oklahoma</u> (1)	Deferred	--		-
<u>South Dakota</u> (1)	Sept. 23-Nov. 19	3		6
<u>Texas</u> (1)	Deferred	--		-

	Season Dates	Bag	Limits	
				Possession
<u>Wyoming</u>				
Regular Season Area (1)(7) Riverton-Boysen Unit (Area 4) (5)(7)	Sept. 16-Nov. 12	3		6
Big Horn and Park Counties (Area 6) (5)(7)	Sept. 16-Oct. 6		1 per season	
	Sept. 16-Oct. 1		1 per season	
<u>PACIFIC FLYWAY</u>				
<u>Arizona</u> (5)	Nov. 3-Nov. 5 & Nov. 7-Nov. 9 & Nov. 11-Nov. 13 & Nov. 15-Nov. 17 & Nov. 24-Nov. 26			2 per season 2 per season 2 per season 2 per season 2 per season
<u>Idaho</u> (5)	Sept. 1-Sept. 15	2		9 per season
<u>Montana</u>				
Special Season Area (5)	Sept. 9-Sept. 17		1 per season	
<u>Utah</u> (5)				
Rich County	Sept. 2-Sept. 10		1 per season	
Cache County	Sept. 2-Sept. 10		1 per season	
Eastern Box Elder County	Sept. 2-Sept. 10		1 per season	
Uintah County	Sept. 23-Oct. 1		1 per season	
<u>Wyoming</u> (5)(7)				
Bear River Area (Area 1)	Sept. 1-Sept. 8		1 per season	
Salt River Area (Area 2)	Sept. 1-Sept. 8		1 per season	
Eden-Farson Area (Area 3)	Sept. 1-Sept. 8		1 per season	

(1) Each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit available without cost from conservation agencies in the States where crane hunting seasons are allowed. The permit must be displayed to any authorized law enforcement official upon request.

(2) In Kansas and North Dakota, each hunter participating in a regular sandhill crane hunting season must obtain and carry in his or her possession while hunting sandhill cranes a valid Federal sandhill crane hunting permit issued and validated by the State. The permit must be displayed to any authorized law enforcement official upon request.

(3) In Kansas, beginning on the opening day and continuing through November 30, shooting hours are from one-half hour after sunrise until 2:00 p.m. Beginning on December 1 and continuing through the close of the season, shooting hours are from sunrise until 2:00 p.m.

(4) In Kansas, each person desiring to hunt sandhill cranes in Kansas is required to pass an annual, on-line sandhill crane identification examination.

(5) Hunting is by State permit only.

(6) In New Mexico, the seasonal bag limit is 2 in the Middle Rio Grande Valley Area, 4 in the Estancia Valley, and 8 in the Southwest Area.

(7) Shooting hours are one-half hour before sunrise to sunset.

8. Section 20.109 is revised to read as follows:

§20.109 Extended seasons, limits, and hours for taking migratory game birds by falconry.

Subject to the applicable provisions of the preceding sections of this part, areas open to hunting, respective open seasons (dates inclusive), hawking hours, and daily bag and possession limits for the species designated in this section are prescribed as follows:

Hawking hours are one-half hour before sunrise until sunset except as otherwise noted. Area descriptions were published in the July 28, 2006, Federal Register (71 FR 43008). For those extended seasons for ducks, mergansers, and coots, area descriptions were published in the August 24, 2006, Federal Register (71 FR 50224) and will be published again in a September 2006 Federal Register.

CHECK STATE REGULATIONS FOR AREA DESCRIPTIONS AND ANY ADDITIONAL RESTRICTIONS.

Daily bag limit 3 migratory birds, singly or in the aggregate.

Possession limit 6 migratory birds, singly or in the aggregate.

These limits apply to falconry during both regular hunting seasons and extended falconry seasons -- unless further restricted by State regulations. The falconry bag and possession limits are not in addition to regular season limits. Unless otherwise specified, extended falconry for ducks does not include sea ducks within the special sea duck areas. Only extended falconry seasons are shown below. Many States permit falconry during the gun seasons. Please consult State regulations for details.

For ducks, mergansers, coots, geese, and some moorhen seasons; additional season days occurring after September 30 will be published with the late-season selections. Some States have deferred selections. Consult late-season regulations for further information.

	Extended Falconry Dates
<u>ATLANTIC FLYWAY</u>	
<u>Delaware</u>	
Mourning doves	Sept. 25-Oct. 15 & Jan. 16-Jan. 31
Rail	Nov. 10-Dec. 16
Woodcock	Oct. 1-Oct. 7 & Feb. 1-Mar. 3
Snipe	Feb. 1-Mar. 3

Extended Falconry Dates

Virginia (cont.)

Woodcock Oct. 17-Nov. 3 &
Nov. 19-Dec. 22 &
Jan. 7-Jan. 31

MISSISSIPPI FLYWAY

Illinois

Mourning doves Oct. 22-Nov. 3 &
Nov. 13-Dec. 16

Rails Sept. 1-Sept. 8 &
Nov. 18-Dec. 16

Woodcock Sept. 1-Oct. 20 &
Dec. 5-Dec. 16

Indiana

Mourning doves Oct. 16-Nov. 9 &
Jan. 1-Jan. 22

Woodcock Sept. 23-Oct. 13 &
Nov. 28-Jan. 7

Ducks, mergansers, and coots (1)
North Zone Sept. 27-Sept. 30

Louisiana

Mourning doves Sept. 11-Oct. 13 &
Nov. 20-Nov. 23

Woodcock Oct. 28-Dec. 17 &
Feb. 1-Feb. 11

Minnesota

Woodcock Sept. 1-Sept. 22 &
Nov. 7-Dec. 16

Rails and snipe Nov. 5-Dec. 16

Missouri

Mourning and white-winged doves Nov. 10-Dec. 16

Ducks, mergansers, and coots Sept. 9-Sept. 24

Extended Falconry Dates

Ohio

Ducks	Sept. 2 -Sept. 17
-------	-------------------

Tennessee

Mourning doves	Sept. 27-Oct. 7 & Oct. 24-Nov. 28
----------------	--------------------------------------

Ducks (1)	Sept. 15-Sept. 29
-----------	-------------------

Wisconsin

Rails, snipe, moorhens, and gallinules (1)	Sept. 1-Sept. 22
--	------------------

Woodcock	Sept. 1-Sept. 22
----------	------------------

Ducks, mergansers, and coots	Sept. 16-Sept. 17
------------------------------	-------------------

CENTRAL FLYWAYMontana (2)

Ducks, mergansers, and coots (1)	Sept. 21-Sept. 29
----------------------------------	-------------------

Nebraska

Ducks, mergansers, and coots	
High Plains	Sept. 9-Sept. 17 & Sept. 30-Oct. 1
Low Plains	Sept. 2-Sept. 24

New Mexico

Doves	
North Zone	Oct. 31-Nov. 12 & Nov. 27-Dec. 30
South Zone	Oct. 1-Nov. 12 & Nov. 27-Nov. 30

Band-tailed pigeons	
North Zone	Sept. 21-Dec. 16
South Zone	Oct. 21-Jan. 15

Ducks and coots	Sept. 16-Sept. 24
-----------------	-------------------

Sandhill cranes	
Regular Season Area	Oct. 17-Oct. 30
Estancia Valley Area	Oct. 28-Nov. 26

Extended Falconry Dates

New Mexico (cont.)

Common moorhens	Dec. 16-Jan. 21
Sora and Virginia rails	Nov. 25-Dec. 31

North Dakota

Ducks, mergansers, and coots	Sept. 4-Sept. 8 & Sept. 11-Sept. 15
Snipe	Sept. 1-Sept. 15

South Dakota

Ducks, mergansers, and coots (1)	
High Plains	Sept. 4-Sept. 11
Low Plains	
North Zone	Sept. 4-Sept. 15 & Sept. 18-Sept. 22
Middle Zone	Sept. 4-Sept. 15 & Sept. 18-Sept. 22
South Zone	Sept. 4-Sept. 15 & Sept. 18-Sept. 30

Texas

Mourning and white-winged doves	Nov. 19-Dec. 25
Rails and gallinules	Jan. 4-Feb. 9
Woodcock	Nov. 24-Dec. 17 & Feb. 1-Mar. 10

Wyoming

Rails	Nov. 10-Dec. 16
Ducks, mergansers, and coots (1)	
Zone 1	Sept. 27-Oct. 6
Zone 2	Sept. 20-Sept. 29

PACIFIC FLYWAY

Arizona

Doves	Sept. 18-Nov. 4
-------	-----------------

Extended Falconry Dates

Idaho

Mourning doves Nov. 1-Jan. 16

New Mexico

Doves

North Zone

Oct. 31-Nov. 12 &
Nov. 27-Dec. 30

South Zone

Oct. 1-Nov. 12 &
Nov. 27-Nov. 30

Band-tailed pigeons

North Zone

Sept. 21-Dec. 16

South Zone

Oct. 21-Jan. 15

Oregon (3)

Mourning doves

Oct. 1-Dec. 16

Band-tailed pigeons

Sept. 1-Sept. 14 &
Sept. 24-Dec. 16Utah

Doves and band-tailed pigeons

Oct. 1-Dec. 16

Washington

Mourning doves

Oct. 1-Dec. 31

Wyoming

Rails

Nov. 10-Dec. 16

Ducks, mergansers,
and coots (1)

Sept. 16

(1) Additional days occurring after September 30 will be published with the late-season selections.

(2) In Montana, the bag limit is 2 and the possession limit is 6.

(3) In Oregon, no more than 1 pigeon daily in bag or possession.



Federal Register

**Thursday,
August 31, 2006**

Part IV

Department of Transportation

Federal Aviation Administration

**14 CFR Parts 404, 413, and 420
Miscellaneous Changes to Commercial
Space Transportation Regulations; Final
Rule**

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 404, 413, and 420**

[Docket No. FAA-2005-21234, Amendment Nos. 404-3, 413-8, and 420-2]

RIN 2120-A145

Miscellaneous Changes to Commercial Space Transportation Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends FAA regulations governing commercial space transportation. These changes are necessary to reflect a statutory change, capture current practice and to correct errors in a table. The purpose of the changes is to give the public and the regulated industry accurate and current information.

DATES: These amendments become effective October 2, 2006.

FOR FURTHER INFORMATION CONTACT: Michelle Murray, Office of Commercial Space Transportation, Space Systems Development Division (AST-100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-7892; facsimile (202) 267-5473, e-mail Michelle.Murray@faa.gov.

SUPPLEMENTARY INFORMATION:**Availability of Rulemaking Documents**

You can get an electronic copy using the Internet by:

- (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (<http://dms.dot.gov/search>);
- (2) Visiting the Office of Rulemaking's Web page at http://www.faa.gov/regulations_policies/; or
- (3) Accessing the Government Printing Office's Web page at <http://www.access.gpo.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Make sure to identify the amendment number or docket number of this rulemaking.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If

you are a small entity and you have a question regarding this document, you may contact a local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

Authority for This Rulemaking

The Commercial Space Launch Act of 1984, as codified and amended at 49 U.S.C. Subtitle IX—Commercial Space Transportation, ch. 701, Commercial Space Launch Activities, 49 U.S.C. 70101-70121 (the Act), authorizes the Department of Transportation and thus the FAA, through delegations (See 64 FR 19586, Apr. 21, 1999) to oversee, license and regulate commercial launch and reentry activities and the operation of launch and reentry sites as carried out by U.S. citizens or within the United States. 49 U.S.C. 70104, 70105. The Act directs the FAA to exercise this responsibility consistent with public health and safety, safety of property, and the national security and foreign policy interests of the United States. 49 U.S.C. 70105. The FAA is also responsible for encouraging, facilitating and promoting commercial space launches by the private sector. 49 U.S.C. 70103. A 1996 National Space Policy recognizes the Department of Transportation as the lead Federal agency for regulatory guidance regarding commercial space transportation activities.

The rules that we are adopting are part of the Commercial Space Transportation Regulations and fall within the authority above.

Background

On May 19, 2005, the FAA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (70 FR 29164). Readers should refer to the NPRM for additional background information. We received comments from eight sources, including five individuals, one corporation, the International Astronomical Union, and the American Astronomical Society. These comments are discussed in detail later in this preamble.

Discussion of the Rules Adopted*Section 404.3 Waiver of the Requirement for a License*

The Commercial Space Act of 1998 (Pub. L. 105-303) modified section 70105(b)(3) of the Commercial Space Launch Act to allow the Associate Administrator to waive the requirement to obtain a license for an individual

applicant. The Associate Administrator must determine that the waiver is in the public interest and will not jeopardize the public health and safety, the safety of property, or any national security or foreign policy interest of the United States. We are amending our regulations to reflect this authority.

Section 404.5 Petition for Reconsideration

The FAA amends 14 CFR 404.5 by adding a process for reconsidering a denial of a waiver or petition. The addition of a license waiver process to 14 CFR 404.3 highlighted the fact that our existing petition processes do not allow for reconsideration of a denial of a waiver or petition.

Currently, 14 CFR 404.5(b) allows the Associate Administrator for Commercial Space Transportation to grant a petition for a waiver if the waiver is in the public interest and will not jeopardize public health and safety, the safety or property, or any national security or foreign policy interest of the United States. Existing 14 CFR 404.5(c) provides that if the Associate Administrator determines that the petition does not justify granting the waiver, the petition is denied.

14 CFR 404.5(e) will allow a petitioner to request reconsideration of a petition denial within 60 days of the date of the denial. For FAA to accept the petition, it will have to show one of the following:

- The petitioner has a significant additional fact and a reason for not presenting it in the original petition,
- The FAA made an important factual error in the denial of the original petition, or
- The denial by the FAA is not in accordance with applicable law and regulations.

Section 413.7(c) Signature and Certification of Accuracy of an Application

Existing 14 CFR 413.7(c)(1) requires that an application for licensed activities must be legibly signed, dated, and certified as true, complete, and accurate by an officer authorized to act for the corporation (italics added) in licensing matters. To reduce the burden of licensing on the commercial space industry, the FAA amends 14 CFR 413.7(c)(1) to allow corporations to designate a person to sign applications who is not an officer of the corporation. For large corporations, the requirement for an officer of the company to submit an application is often difficult. Getting the original application signed by an officer may not be difficult, but the final application usually includes additional

information. It is sometimes difficult for all of the additional information or data to be signed by an officer of the corporation. The application process will be streamlined if an officer of a corporation can delegate his or her responsibility in licensing matters.

Part 420 Appendix C, Correction of Table C-3

Appendix C to part 420 provides a method for a launch site operator applicant to estimate the expected casualty (Ec) for a representative launch vehicle using a flight corridor generated either by appendix A or appendix B to part 420. As part of the calculation, a casualty area lookup table is used. Recent analysis has shown that expected casualty values generated by appendix C are inaccurate due to incorrect casualty areas in Table C-3. We are replacing the lookup table with corrected casualty areas, which in turn will produce more reasonable Ec values. The new values will be, on average, an order of magnitude lower than their original counterparts. This change will affect launch site applicants who wish to use the appendix C method to comply with part 420. To date, no one has applied for a launch site operator license using the appendix C method.

Prohibition of Obtrusive Space Advertising

The NPRM contained a definition of "obtrusive space advertising" that was proposed to be added to the definitions section in 14 CFR 401.5. We proposed adding to 14 CFR 415.51 a requirement that the FAA would review a payload proposed for launch to determine if the launch of the payload will result in obtrusive space advertising. Section 415.51, as proposed, would also have placed a prohibition on the launch of a payload if it resulted in obtrusive space advertising. We intended the proposal to address the statutory requirements contained in the National Aeronautics and Space Administration Authorization Act of 2000 (Public Law 106-391 of October 30, 2000), which amended 49 U.S.C. chapter 701.

Advertising from space is a new form of communication that had the potential to become widespread as the space industry developed. Prior to the enactment of Public Law 106-391, this form of advertisement had been used on such activities as placing advertising logos on uniforms, launch vehicles, launch facilities, and launch infrastructure. Outer space offered the possibility to promote messages in entirely new ways. Objects placed in orbit, if large enough, could be seen by people around the world for long

periods of time greatly increasing the value of advertising. However, their visibility in the sky could have adverse effects on the general public, astronomers, and other components of the space industry. Large advertisements could destroy the darkness of the night sky. Their size and light emissions could impede astronomical observations that rely on a dark celestial environment. Their size and light could also cause interference with the satellite control systems that use star trackers and sun sensors for guidance and navigation.

Congress responded to the potential conflict in the use of outer space by these competing interests by enacting Public Law 106-391, which banned all obtrusive space advertising. Obtrusive space advertising, as defined in 49 U.S.C. 70102, is "advertising in outer space that is capable of being recognized by a human being on the surface of the Earth without the aid of a telescope or other technological device."

The language we proposed in the NPRM for the definition of "obtrusive space advertising" was the same as that contained in § 70102. After reviewing the comments and the language of the statute the FAA is withdrawing the proposal to change § 401.5 and § 415.51 as proposed in the NPRM because we determined that the regulatory prohibition is not necessary. The statutory prohibitions are sufficient to prevent the launch of a payload containing obtrusive space advertising.

Discussion of Comments

We received several comments on the proposal, which were exclusively in the area of obtrusive space advertising and almost evenly divided between two opposite positions. Comments from Kyle Bennett, David L. Williamson, and Christopher G. Modzelewski were generally opposed to the proposed obtrusive space advertising prohibition. Alternatively, comments from Carla M. Beaudet, Nickolaus E. Leggett and representatives of the American Astronomical Society (AAS), and the International Astronomical Union (IAU) generally supported the obtrusive space advertising prohibition. Finally, comments from Randall Clague represented a moderate position. After reviewing the public comments, two major areas of contention became apparent between the opposing groups.

The first area of contention exists between commenters who believe that obtrusive space advertising will degrade the quality of the night sky versus those who believe the economic benefit derived from allowing obtrusive space advertising is too great to prohibit it.

Ms. Beaudet and representatives from the AAS and IAU believe that obtrusive space advertising will lower the quality of the night sky. Ms. Beaudet compares obtrusive space advertising to ugly billboards along highways. Alternatively, Mr. Bennett and Mr. Williamson believe that forms of advertising that may be classified as obtrusive could be important funding sources for commercial space endeavors. Mr. Bennett and Mr. Modzelewski believe that the proposed prohibition will not stop deployment of obtrusive space advertising but will simply drive companies overseas to purchase launch services in countries that do not have similar restrictions on the launch of obtrusive space advertising.

The second area of contention exists between commenters who believe the proposed definition of "obtrusive space advertising" is not encompassing enough and those who believe it is too encompassing. The AAS and IAU believe that obtrusive space advertising will obscure astronomical observations. In addition, the IAU seeks a more restrictive quantitative definition. Alternatively, Mr. Modzelewski and Mr. Williamson believe that the proposed definition is too encompassing and fails to take into consideration certain solutions that may mitigate the perceived "obtrusive" aspects of space advertising. Mr. Clague proposes a quantitative tool that could provide a bright line test for identifying obtrusive space advertising. His tool utilizes three basic characteristics of light sources including, brightness, size, and dwell time to determine a visual nuisance value.

After reviewing the comments, the FAA is withdrawing the proposal to change § 401.5 and § 415.51 in the NPRM because it has determined that the regulatory prohibition is not necessary. We believe the statutory prohibitions are sufficient to prevent the launch of a payload containing obtrusive space advertising.

Section 70109a(a) stops the FAA from issuing, transferring, or waiving the launch license requirements for the launch of a payload containing any material to be used for the purposes of obtrusive space advertising. This statutory provision requires the FAA to follow the intent of Congress and refrain from involvement in an attempt to legally launch a payload containing obtrusive space advertising. If an applicant approaches the FAA in an attempt to launch a payload containing obtrusive space advertising, the FAA will rely on the existing regulatory authority of 14 CFR 415.51, 415.57, and

415.59 to review the payload. The FAA will consider factors of brightness, size, and dwell time in making a determination. If after considering these factors, the FAA determines that the payload contains obtrusive space advertising, then the applicant will be notified of the statutory prohibition as provided in 14 CFR 415.61. Section 70109a(b) prohibits holders of a license from launching a payload containing any material to be used for purposes of obtrusive space advertising. This provision covers existing license holders.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this final rule.

Economic Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96-39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis for U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect

and the basis for it be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows.

The final rule regarding license waivers amends 14 CFR 404.3 to allow the FAA to waive the requirement for a license when the Associate Administrator for Commercial Space Transportation determines that waiving the requirement for a license is in the public interest and will not jeopardize public health and safety, the safety of property, or any national security or foreign policy interest of the United States. The license waiver amendment will codify current practice and procedures as established in the Commercial Space Act of 1998. Since the amendment will codify current practice and procedures, there should be no costs or benefits.

The final rule will amend 14 CFR 404.5 to allow for reconsideration of a denial of a waiver. This change will provide due process to a person whose petition for a waiver or exemption was denied by the FAA. There is the potential for a cost savings if the petitioner can show that the FAA has made a factual error or has not correctly applied existing law to a waiver request.

The final rule regarding the delegation of signing off for licensing matters amends 14 CFR 413.7(c) to allow corporations to designate a duly appointed person to sign in licensing matters who is not an officer of the corporation. Currently, only an officer authorized to act for the corporation in licensing matters has this signature authority. The rule will reduce the burden of licensing on the commercial space transportation industry by allowing corporations to delegate this authority to a person other than a corporate officer. The rule will expedite the licensing process because if the corporate officer were not available the delegated person could act in his or her place. The overall impact could result in a cost savings.

The rule will change Table C-3 of Appendix C in part 420 to correct values of the effective casualty area. An effective casualty area is defined in 14 CFR 420.5 as the aggregate casualty area of each piece of debris created by a launch vehicle failure at a particular point on its trajectory. Launch site applicants seeking a license to operate a site where guided expendable launch vehicles may be launched use these casualty areas to calculate the expected casualty of a proposed vehicle along a specified flight corridor. Recent analysis has shown that expected casualty values

generated by appendix C are inaccurate due to incorrect casualty areas in Table C-3. We are replacing the lookup table with corrected casualty areas, which in turn will produce more reasonable expected casualty values. The new values will be, on average, an order of magnitude lower than their original counterparts. The rule will affect launch site operator or license applicants who wish to use Appendix C to comply with part 420. Launch vehicle operators will not be affected by this rule because each vehicle they propose to launch from a site will require the use of their vehicle-specific attributes instead of the above mentioned table values when calculating the effective casualty area.

The rule will allow for more accurate estimates of expected casualty calculations for the launch of a guided expendable launch vehicle. The primary benefit from the change is that more sites will initially qualify for a launch site operator license. Since this final rule merely revises and clarifies FAA rulemaking procedures, the expected outcome will have a minimal impact with possible cost savings to the industry, and a regulatory evaluation was not prepared.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354) (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration. The RFA covers a wide-range of small entities, including small business, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the

factual basis for this determination, and the reasoning should be clear.

This final rule amends FAA regulations governing commercial space transportation. These changes are necessary to reflect a statutory change, capture current practice and to correct errors in a table. The purpose of the changes is to give the public and the regulated industry accurate and current information. These miscellaneous changes to the commercial space transportation regulations will have minimal cost impact. Therefore, as the FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96-39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that it will have only a domestic impact and therefore no effect on any trade-sensitive activity.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action." The FAA currently uses an inflation-adjusted value of \$128.1 million in lieu of \$100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government, and therefore will not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312(d) and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a "significant energy action" under the executive order because it is not a "significant regulatory action" under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 14 CFR Parts 404, 413, and 420

Aviation safety, Environmental protection, Space transportation and exploration.

The Amendment

■ For the reasons stated in the preamble, the Federal Aviation Administration amends Chapter III of Title 14, Code of Federal Regulations as follows:

PART 404—REGULATIONS AND LICENSING REQUIREMENTS

■ 1. The authority citation for part 404 continues to read as follows:

Authority: 49 U.S.C. 70101-70121.

■ 2. Revise § 404.3 to read as follows:

§ 404.3 Filing of petitions to the Associate Administrator.

(a) Any person may petition the Associate Administrator to:

(1) Issue, amend, or repeal a regulation to eliminate as a requirement for a license or permit any requirement of Federal law applicable to commercial space launch and reentry activities and the operation of launch and reentry sites;

(2) Waive any such requirement in the context of a specific application for a license or permit; or

(3) Waive the requirement for a license.

(b) Each petition filed under this section must:

(1) Be submitted in duplicate to the: (i) Office of Commercial Space Transportation, Federal Aviation Administration, 800 Independence Avenue, SW., Room 331, Washington, DC 20591; or

(ii) Documentary Services Division, Attention Docket Section, Room 4107, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

(2) Set forth the text or substance of the regulation or amendment proposed, the regulation to be repealed, the licensing or permitting requirement to be eliminated or waived, or the type of license or permit to be waived;

(3) In the case of a petition for a waiver of a particular licensing or permitting requirement, explain the nature and extent of the relief sought;

(4) Contain any facts, views, and data available to the petitioner to support the action requested; and

(5) In the case of a petition for a waiver, be submitted at least 60 days before the proposed effective date of the waiver unless good cause for later submission is shown in the petition.

(c) A petition for rulemaking filed under this section must contain a summary, which the Associate Administrator may cause to be published in the **Federal Register**, which includes:

(1) A brief description of the general nature of the action requested; and

(2) A brief description of the pertinent reasons presented in the petition for instituting the rulemaking.

(d) A petition filed under this section may request, under 14 CFR 413.9, that the Department withhold certain trade secrets or proprietary commercial or financial data from public disclosure.

■ 3. Amend § 404.5 by adding new paragraph (e) to read as follows:

§ 404.5 Action on petitions.

* * * * *

(e) *Reconsideration.* Any person may petition FAA to reconsider a denial of a petition the person had filed. The petitioner must send a request for reconsideration within 60 days after being notified of the denial to the same address to which the original petition went. For FAA to accept the petition, the petitioner must show the following:

(1) There is a significant additional fact and the reason it was not included in the original petition;

(2) FAA made an important factual error in our denial of the original petition; or

(3) The denial by the FAA is not in accordance with the applicable law and regulations.

PART 413—LICENSE APPLICATION PROCEDURES

■ 4. The authority citation for part 413 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

■ 5. Revise § 413.7(c)(1) to read as follows:

§ 413.7 Application.

* * * * *

(c) * * *

(1) *For a corporation:* An officer or other individual duly authorized to act for the corporation in licensing matters.

* * * * *

PART 420—LICENSE TO OPERATE A LAUNCH SITE

■ 6. The authority citation for part 420 continues to read as follows:

Authority: 49 U.S.C. 70101–70121.

■ 7. Revise Table C–3 of Appendix C to part 420 to read as follows:

* * * * *

Appendix C to Part 420—Risk Analysis

TABLE C–3.—EFFECTIVE CASUALTY AREA (MILES²) AS A FUNCTION OF IIP RANGE (NM)

Instantaneous impact point range (nautical miles)	Orbital launch vehicles				Suborbital launch vehicles
	Small	Medium	Medium large	Large	Guided
	0–49	3.14 x 10 ⁻²	1.28 x 10 ⁻¹	4.71 x 10 ⁻²		8.59 x 10^{-2}	4.3 x 10^{-1}
50–1749	2.47 x 10 ⁻²	2.98 x 10 ⁻²	9.82 x 10 ⁻³	2.45 x 10 ⁻²	1.3 x 10 ⁻¹
1750–5000	3.01 x 10 ⁻⁴	5.52 x 10 ⁻³	7.82 x 10 ⁻³	1.14 x 10 ⁻²	3.59 x 10 ⁻⁶

* * * * *

Issued in Washington, DC on August 16, 2006.

Marion C. Blakey,
Administrator.

[FR Doc. 06–7354 Filed 8–30–06; 8:45 am]

BILLING CODE 4910–13–P

226.....46388
 268.....44555
 611.....44410

Proposed Rules:
 204.....46411

14 CFR

13.....47077
 23.....44181, 44182, 49987,
 51457
 25.....48449, 48451, 48453,
 48457
 39.....43352, 43961, 43962,
 43964, 44185, 44883, 45363,
 45364, 45367, 45368, 45370,
 46389, 46390, 46393, 46395,
 47697, 47702, 47706, 47707,
 47711, 47714, 47717, 47725,
 48461, 48463, 48466, 48793,
 49326, 49328, 49332, 49335,
 49337, 49339, 50331, 50333,
 50335, 50506, 51095, 51459,
 51465, 51467
 43.....44187
 71.....43354, 43355, 43356,
 43357, 44188, 44885, 46076,
 46077, 47078, 47079, 47727,
 49343, 51096, 51097
 93.....51382
 95.....51469
 97.....44560, 44562, 48470,
 50336
 294.....49344
 401.....50508
 404.....51968
 406.....50508
 413.....46847, 50508, 51968
 414.....46847
 415.....50508
 417.....50508
 420.....51968
 1213.....49989
 1274.....51713

Proposed Rules:
 35.....43674
 39.....43386, 43390, 43676,
 43997, 44933, 44935, 44937,
 45447, 45449, 45451, 45454,
 45457, 45467, 45471, 45744,
 46128, 46413, 47154, 47752,
 47754, 48487, 48490, 48493,
 48838, 49385
 71.....43678, 43679, 43680,
 46130, 46131, 46132, 46133,
 48495, 50376
 93.....51360

15 CFR
 734.....51714
 738.....51714
 740.....51714
 742.....51714
 746.....51714
 748.....51714
 750.....51714
 752.....51714
 764.....44189, 51714
 772.....51714
 774.....51714

Proposed Rules:
 740.....44943
 742.....44943
 744.....44943
 748.....44943
 922.....46134

16 CFR
 305.....45371

Proposed Rules:
 437.....46878
 Ch. II.....46415
 1307.....45904
 1407.....50003
 1410.....45904
 1500.....45904
 1515.....45904

17 CFR
 210.....47056
 228.....47056
 229.....47056
 240.....47056
 249.....47056
Proposed Rules:
 4.....49387
 38.....43681
 210.....47060
 228.....47060
 229.....47060
 240.....47060
 249.....47060

18 CFR
 33.....45736
 42.....43564, 46078
 260.....51098
Proposed Rules:
 35.....48496
 410.....48497

19 CFR
 10.....44564
 12.....51724
 163.....44564
 178.....44564
Proposed Rules:
 4.....43681
 101.....47156
 103.....49391
 122.....43681
 178.....49391
 181.....49391

20 CFR
 416.....45375
Proposed Rules:
 404.....44432, 46983
 617.....50760
 618.....50760
 665.....50760
 671.....50760

21 CFR
 101.....47439, 51726
 172.....47729
 341.....43358
 510.....43967
 520.....43967
 529.....43967, 51727
 558.....44886
 1301.....51105
 1308.....51115
 1309.....51105

Proposed Rules:
 20.....48840, 51276
 25.....48840
 50.....51143
 106.....43392
 107.....43392
 201.....48840, 51276
 202.....48840

207.....48840, 51276
 225.....48840
 226.....48840
 310.....51146
 314.....51276
 330.....51276
 500.....48840
 510.....48840
 511.....48840
 514.....51276
 515.....48840, 51276
 516.....48840
 558.....48840
 589.....48840
 601.....51276
 607.....51276
 610.....51276
 1271.....51276
 1310.....46144

22 CFR
 41.....50338
 51.....46396
Proposed Rules:
 41.....46155
 53.....46155

24 CFR
Proposed Rules:
 15.....46986
 91.....44860
 570.....44860
 3286.....47157

25 CFR
Proposed Rules:
 15.....45174
 18.....45174
 150.....45174
 152.....45174
 179.....45174
 224.....48626
 502.....44239
 546.....44239
 547.....46336

26 CFR
 1.....43363, 43968, 44466,
 44887, 45379, 47079, 47080,
 47443, 48473, 48474, 49992,
 51471, 51727
 31.....44466
 602.....47443

Proposed Rules:
 1.....43398, 43998, 44240,
 44247, 44600, 45474, 46415,
 46416, 47158, 47459, 47461,
 48590, 50007, 50378, 51155
 31.....44247, 47461
 300.....51179, 51538
 602.....45474

27 CFR
 555.....46079
Proposed Rules:
 555.....46174

28 CFR
 32.....46028
 503.....51748

29 CFR
 100.....47732
 1614.....43643
 1910.....50122

1915.....50122
 1926.....50122
 1956.....47081
 2700.....44190
 2704.....44190
 2705.....44190
 4022.....47090
 4044.....47090

Proposed Rules:
 1625.....46177

30 CFR
 218.....51749
 241.....51749
 250.....46398
 254.....46398
 290.....51749
 816.....51684
 817.....51684
 924.....50339
 948.....50843
 950.....50849

Proposed Rules:
 202.....46879
 206.....46879
 210.....46879
 217.....46879
 218.....46879
 938.....50868

31 CFR
 50.....50341
 208.....44584
 315.....46856
 341.....46856
 346.....46856
 351.....46856
 352.....46856
 353.....46856
 359.....46856
 360.....46856
 560.....48795

32 CFR
 71.....49348
 105.....49348
 154.....51474
 199.....47091, 50347
 243.....49348
 362.....43652
 505.....46052

Proposed Rules:
 199.....48864
 312.....44602
 318.....44603
 323.....46180
 536.....46260
 537.....45475

33 CFR
 100.....43366, 44210, 44213,
 46858, 47092, 47094, 48475,
 51117, 51752, 51756
 117.....43367, 43653, 44586,
 44914, 45386, 45387, 47096,
 47737, 48477, 49348, 50349,
 51480
 125.....44915
 138.....47737
 165.....43655, 43973, 43975,
 44215, 44217, 45387, 45389,
 45391, 45393, 45736, 46101,
 46858, 47098, 47452, 47454,
 47456, 47738, 47740, 48477,
 48797, 49993, 49995, 51754

Proposed Rules:
 100.....43400, 47159

101.....48527	716.....47130	Proposed Rules:	225.....46409
103.....48527	Proposed Rules:	67.....45497, 45498	242.....44928
104.....48527	9.....51542	45 CFR	252.....46409
105.....48527	49.....48694	Proposed Rules:	253.....44926
106.....48527	51.....48694	5b.....46432	3001.....48800
110.....45746, 46181	52.....45482, 45485, 46428,	706.....51546	3002.....48800
117.....48498, 51540	46879, 47161, 48870, 49393,	1621.....48501	3003.....48800
125.....48527	50875, 51181, 51545, 51546,	46 CFR	3006.....48800
165.....43402, 44250, 50009,	51792, 51793	1.....48480	3011.....48800
51788	55.....47758, 48879	5.....48480	3016.....48800
34 CFR	59.....44522	10.....48480	3022.....48800
300.....46540	60.....45487	12.....48480	3023.....48800
301.....46540	61.....45487	13.....48480	3024.....48800
600.....45666	62.....51790	Proposed Rules:	3027.....48800
668.....45666, 48799	63.....45487, 47670	10.....48527	3028.....48800
673.....45666	72.....49254	12.....48527	3031.....48800
674.....45666, 48799	75.....49254	15.....48527	3035.....48800
675.....45666, 48799	81.....44944, 45492, 51546	296.....49399	3042.....48800
676.....45666, 48799	82.....49395	47 CFR	3052.....48800
682.....45666, 48799	86.....51542	1.....43842	3053.....48800
685.....45666, 48799	122.....44252	15.....49376	Proposed Rules:
690.....48799	261.....48500	54.....43667	4.....49405
691.....48799	262.....48500	64.....43667, 47141, 47145,	7.....50011
Proposed Rules:	300.....46429	49380	12.....50011
280.....48866	412.....44252	73.....45425, 45426, 47150,	39.....50011
Ch. VI.....47756	41 CFR	47151, 49381, 50001, 51516	204.....46434
36 CFR	301-10.....49373	Proposed Rules:	235.....46434
242.....43368, 46400, 49997,	301-11.....49373	Ch. I.....45510, 49400	252.....46434
51758	301-50.....49373	1.....43406, 48506, 50379	1804.....43408
Proposed Rules:	301-52.....49373	2.....43406, 43682, 43687,	1852.....43408
Ch. I.....50871	301-71.....49373	48506	49 CFR
242.....46417, 46423, 46427	301-73.....49373	4.....43406	40.....49382
37 CFR	Proposed Rules:	6.....43406, 48506	171.....44929
1.....44219	61-300.....44945	7.....43406, 48506	173.....51122
201.....45739, 46402	42 CFR	9.....43406, 48506	180.....51122
212.....46402	409.....47870	11.....43406	211.....51517
Proposed Rules:	410.....47870	13.....43406, 48506	222.....47614
201.....45749	411.....45140	15.....43406	229.....47614
38 CFR	412.....47870, 48354	17.....43406	350.....50862
3.....44915	413.....47870	18.....43406	369.....45740
59.....46103	414.....47870, 48354	20.....43406, 48506	390.....50862
Proposed Rules:	424.....47870, 48354	22.....43406, 48506	392.....50862
21.....50872	431.....51050	24.....43406, 48506	563.....50998
39 CFR	457.....51050	25.....43406, 43687	571.....51129, 51132, 51522,
Proposed Rules:	485.....47870	27.....43406, 48506	51768
111.....48868	489.....47870	52.....43406	572.....45427
40 CFR	505.....47870	53.....43406	585.....51768
9.....45720, 47330, 51481	1001.....45110	54.....43406	594.....43985
52.....43978, 43979, 44587,	Proposed Rules:	63.....43406	1420.....45740
46403, 46860, 47742, 47744,	405.....48982	64.....43406	1507.....44223
49999, 51117, 51120, 51489,	410.....48982, 49506	68.....43406, 48506	1572.....44874
51761, 51766	411.....48982	73.....43406, 43703, 45511,	Proposed Rules:
81.....44920, 46105, 51489	414.....44082, 48982, 49502	48506, 50380	107.....46884
86.....51481	415.....48982	74.....43406, 48506	110.....44955
155.....45720	416.....49506	76.....43406, 50380	171.....51894
156.....47330	419.....49506	78.....43406, 48506	172.....51894
165.....47330	421.....49506	79.....43406	173.....51894
180.....43658, 43660, 43664,	424.....48982	80.....48506	175.....51894
43906, 45395, 45400, 45403,	484.....44082	87.....48506	176.....51894
45408, 45411, 45415, 46106,	485.....49506	90.....43406, 48506, 49401	178.....44955, 51894
46110, 46117, 46123, 47101,	488.....49506	95.....43406, 43682, 48506	180.....51894
49350, 49354, 49358, 49364,	43 CFR	97.....43406, 48506	223.....50276
49368, 50350, 50354, 51500,	Proposed Rules:	101.....43406, 48506	238.....50276
51505, 51510	4.....45174	48 CFR	389.....46887
300.....43984, 47747, 48479,	30.....45174	Ch. 1.....44546, 44549	392.....51547
48799	415.....47763	6.....44546	531.....49407
302.....47106	3200.....46879	12.....44546	601.....44957
355.....47106	3280.....46879	26.....44546	1111.....43703
712.....47122	3900.....50378	52.....44546, 50862	1114.....43703
	44 CFR	204.....44926	1115.....43703
	64.....45424, 47748, 50359,	212.....46409	1244.....43703
	50856	219.....44926	1515.....48527
			1570.....48527
			1572.....48527

50 CFR	223.....50361	46409, 48483, 48485, 50002,	100 .....46416, 46423, 46427
17.....46864	229.....48802	51532, 51784, 51785	216.....44001
18.....43926	404.....51134	680.....44231	224.....46440
20 .....45964, 48802, 51406,	622.....45428, 48483	Proposed Rules:	300.....45752
51930	635 .....45428, 48483, 51529	10.....50194	600.....46364
21.....45964	648 .....44229, 46871, 51531,	17 .....43410, 44960, 44966,	622.....43706, 50012
100 .....43368, 46400, 49997,	51779	44976, 44980, 44988, 46994,	648.....43707, 48903
51758	660.....44590, 48824	47765, 48883, 48900, 51549	665.....46441
222.....50361	679 .....43990, 44229, 44230,	20.....47461, 50224	
	44231, 44591, 44931, 46126,	32.....46258	

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT AUGUST 31, 2006**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:
Gypsy moth; published 8-31-06

COMMERCE DEPARTMENT Industry and Security Bureau

Export administration regulations:
Commerce Control List—
Libya and Iraq; designations as state sponsors of terror; revisions; published 8-31-06

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Fishery and conservation management:
Northeastern United States fisheries—
Northeast multispecies; published 8-31-06

Fishery conservation and management:
Northeastern United States fisheries—
Summer flounder; published 8-30-06

ENERGY DEPARTMENT Federal Energy Regulatory Commission

Electric utilities (Federal Power Act):
Long-term transmission rights; public utilities operated by regional transmission organizations and independent system operators; published 8-1-06
Correction; published 8-11-06

HEALTH AND HUMAN SERVICES DEPARTMENT**Food and Drug Administration**

Animal drugs, feeds, and related products:
Gentamicin sulfate intrauterine solution; published 8-31-06

Food for human consumption:

Food labeling—

Trans fatty acids in nutrition labeling, nutrient content claims, and health claims; published 8-31-06

Human drugs:

Cold, cough, allergy, bronchodilator, and antiasthmatic products (OTC)—

Nasal decongestant drug products; final monograph; amendment; published 8-1-06

HOMELAND SECURITY DEPARTMENT**Coast Guard**

Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:

Lake Erie and Cleveland Harbor, OH; published 8-9-06

Mackinac Bridge and Straits of Mackinac, MI; published 8-9-06

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Grant and Cooperative Agreement Handbook:

Resource sharing requirements; published 8-31-06

PERSONNEL MANAGEMENT OFFICE

Employee responsibilities and conduct; published 8-1-06

TRANSPORTATION DEPARTMENT**Federal Aviation Administration**

Airworthiness directives:
Eurocopter Canada Ltd.; published 7-27-06

TREASURY DEPARTMENT Internal Revenue Service

Income taxes:
MACRS property and computer software; special depreciation allowance; published 8-31-06

COMMENTS DUE NEXT WEEK**AGRICULTURE DEPARTMENT****Animal and Plant Health Inspection Service**

Animal welfare:

Animal identification standards; comments due by 9-6-06; published 3-10-06 [FR 06-02380]

Plant-related quarantine, foreign

Shelled garden peas from Kenya; comments due by 9-5-06; published 7-6-06 [FR E6-10551]

AGRICULTURE DEPARTMENT**Food and Nutrition Service**

Food distribution programs:

Donated foods in child nutrition programs, Nutrition Services Incentive Program, and charitable institutions; distribution, management, and use; comments due by 9-7-06; published 6-8-06 [FR 06-05143]

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans with Disabilities Act; implementation:

Accessibility guidelines—
Passenger vessels; comments due by 9-5-06; published 7-7-06 [FR E6-10576]

COMMERCE DEPARTMENT Foreign-Trade Zones Board

Applications, hearings, determinations, etc.:

Georgia
Eastman Kodak Co.; x-ray film, color paper, digital media, inkjet paper, entertainment imaging, and health imaging; Open for comments until further notice; published 7-25-06 [FR E6-11873]

COMMERCE DEPARTMENT National Oceanic and Atmospheric Administration

Marine mammals:

Taking and importing—
Eglin Air Force Base, FL; precision strike weapons testing and training; comments due by 9-5-06; published 8-3-06 [FR E6-12556]

COMMERCE DEPARTMENT Patent and Trademark Office

Practice and procedure:

Information disclosure statement requirements and other related matters; proposed changes; comments due by 9-8-06; published 7-10-06 [FR 06-06027]

COMMODITY FUTURES TRADING COMMISSION

Commodity Exchange Act:

Designated contract markets; conflicts of

interest in self-regulation and self-regulatory organizations; acceptable practices; comments due by 9-7-06; published 7-7-06 [FR 06-06030]

DEFENSE DEPARTMENT

Federal Acquisition Regulation (FAR):

Emergency acquisitions; comments due by 9-5-06; published 7-5-06 [FR 06-05964]

EDUCATION DEPARTMENT

Grants and cooperative agreements; availability, etc.:

Postsecondary education—
Federal Student Aid Programs; comments due by 9-8-06; published 8-9-06 [FR 06-06696]

ENVIRONMENTAL PROTECTION AGENCY

Air pollutants, hazardous; national emission standards:

Volatile organic compounds emissions standards—
Lithographic printing, letterpress printing, and flexible packaging printing materials, etc.; control techniques guidelines; comments due by 9-5-06; published 8-4-06 [FR 06-06640]

Air programs:

Ambient air quality standards, national—
8-hour ozone standard; early action compact areas; effective date extension; comments due by 9-8-06; published 8-9-06 [FR E6-12960]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:

Arizona
Correction; comments due by 9-7-06; published 8-8-06 [FR E6-12756]

Correction; comments due by 9-7-06; published 8-8-06 [FR E6-12762]

Air quality implementation plans; approval and promulgation; various States:

West Virginia; comments due by 9-8-06; published 8-9-06 [FR E6-12969]

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Federal-State Joint Board on Universal Service; IP-enabled services; comments due by 9-8-06; published 7-10-06 [FR 06-06059]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Thrift Savings Plan:

Court orders and legal processes affecting Thrift Savings Plan accounts; comments due by 9-8-06; published 8-9-06 [FR E6-12895]

FEDERAL TRADE COMMISSION

Appliances, consumer, energy consumption and water use information in labeling and advertising:

Ceiling fans; appliance labeling; comments due by 9-8-06; published 6-21-06 [FR 06-05591]

Energy Policy and Conservation Act:

Recycled oil; test procedures and labeling standards; comments due by 9-4-06; published 7-6-06 [FR E6-10503]

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Emergency acquisitions; comments due by 9-5-06; published 7-5-06 [FR 06-05964]

HOMELAND SECURITY DEPARTMENT

Coast Guard

Regattas and marine parades:

Annual Gasparilla Marine Parade; comments due by 9-5-06; published 7-7-06 [FR E6-10583]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—
Alabama beach mouse; comments due by 9-7-06; published 8-8-06 [FR E6-12317]

Migratory bird hunting:

Seasons, limits, and shooting hours; establishment, etc.; comments due by 9-5-06; published 8-24-06 [FR 06-07027]

INTERIOR DEPARTMENT

Minerals Management Service

Royalty management:

Oil, gas, coal, and geothermal resources produced on Federal and Indian leases; production and royalty reporting; comments due by 9-5-06; published 7-7-06 [FR 06-05988]

JUSTICE DEPARTMENT

Bankruptcy Abuse and

Consumer Protection Act:

Nonprofit budget and credit counseling agencies and personal financial management instructional course providers; United States Trustees approval; comments due by 9-4-06; published 7-5-06 [FR E6-10234]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Emergency acquisitions; comments due by 9-5-06; published 7-5-06 [FR 06-05964]

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public availability and use:

Research room and museum hours; changes; comments due by 9-8-06; published 7-25-06 [FR E6-11763]

SECURITIES AND EXCHANGE COMMISSION

Securities:

Client commission practices; interpretative guidance; comments due by 9-7-06; published 7-24-06 [FR 06-06410]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air traffic operating and flight rules, etc.:

Special awareness training for persons flying under visual flight rules within 100 nautical miles of Washington, DC metropolitan area; comments due by 9-5-06; published 7-5-06 [FR 06-05997]

Airworthiness directives:

Airbus; comments due by 9-5-06; published 8-8-06 [FR E6-12834]

Boeing; comments due by 9-5-06; published 7-19-06 [FR E6-11413]

Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 9-5-06; published 8-8-06 [FR E6-12832]

Fuji Heavy Industries, Ltd.; comments due by 9-8-06; published 8-9-06 [FR E6-12953]

Stemme GmbH & Co.; comments due by 9-8-06; published 8-9-06 [FR E6-12943]

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Planning assistance and standards:

Statewide and metropolitan transportation planning; comments due by 9-7-06; published 6-9-06 [FR 06-05145]

TRANSPORTATION DEPARTMENT

Federal Transit Administration

Planning assistance and standards:

Statewide and metropolitan transportation planning; comments due by 9-7-06; published 6-9-06 [FR 06-05145]

TREASURY DEPARTMENT

Fiscal Service

Financial Management Service:

Federal agency disbursements management—
Victims of disasters and emergencies; Federal payments delivery; facilitation; comments due by 9-6-06; published 8-7-06 [FR E6-12689]

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Expatriated entities and their foreign parents; Section 7874 guidance; cross-reference; public hearing; comments due by 9-4-06; published 6-6-06 [FR E6-08698]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202-741-6043. This list is also available online at <http://www.archives.gov/federal-register/laws.html>.

The text of laws is not published in the **Federal**

Register but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202-512-1808). The text will also be made available on the Internet from GPO Access at <http://www.gpoaccess.gov/plaws/index.html>. Some laws may not yet be available.

H.R. 4646/P.L. 109-273

To designate the facility of the United States Postal Service located at 7320 Reseda Boulevard in Reseda, California, as the "Coach John Wooden Post Office Building". (Aug. 17, 2006; 120 Stat. 773)

H.R. 4811/P.L. 109-274

To designate the facility of the United States Postal Service located at 215 West Industrial Park Road in Harrison, Arkansas, as the "John Paul Hammerschmidt Post Office Building". (Aug. 17, 2006; 120 Stat. 774)

H.R. 4962/P.L. 109-275

To designate the facility of the United States Postal Service located at 100 Pitcher Street in Utica, New York, as the "Captain George A. Wood Post Office Building". (Aug. 17, 2006; 120 Stat. 775)

H.R. 5104/P.L. 109-276

To designate the facility of the United States Postal Service located at 1750 16th Street South in St. Petersburg, Florida, as the "Morris W. Milton Post Office". (Aug. 17, 2006; 120 Stat. 776)

H.R. 5107/P.L. 109-277

To designate the facility of the United States Postal Service located at 1400 West Jordan Street in Pensacola, Florida, as the "Earl D. Hutto Post Office Building". (Aug. 17, 2006; 120 Stat. 777)

H.R. 5169/P.L. 109-278

To designate the facility of the United States Postal Service located at 1310 Highway 64 NW in Ramsey, Indiana, as the "Wilfred Edward 'Cousin Willie' Sieg, Sr. Post Office". (Aug. 17, 2006; 120 Stat. 778)

H.R. 5540/P.L. 109-279

To designate the facility of the United States Postal Service located at 217 Southeast 2nd Street in Dimmitt, Texas, as the "Sergeant Jacob Dan Dones Post Office". (Aug. 17, 2006; 120 Stat. 779)

H.R. 4/P.L. 109-280

Pension Protection Act of
2006 (Aug. 17, 2006; 120
Stat. 780)

Last List August 17, 2006

**Public Laws Electronic
Notification Service
(PENS)**

PENS is a free electronic mail
notification service of newly

enacted public laws. To
subscribe, go to [http://
listserv.gsa.gov/archives/
publaws-l.html](http://listserv.gsa.gov/archives/publaws-l.html)

Note: This service is strictly
for E-mail notification of new
laws. The text of laws is not
available through this service.

PENS cannot respond to
specific inquiries sent to this
address.