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Presidential Documents

Title 3—

The President

Proclamation 8052 of September 15, 2006

National Farm Safety and Health Week, 2006

By the President of the United States of America

A Proclamation

Generations of farmers and ranchers have strengthened our Nation and enriched our communities by providing us with food, raw materials, and energy. National Farm Safety and Health Week is an opportunity to celebrate their contributions to America and raise awareness about potential hazards these workers and their families face. This year's theme, ''Prepare to Prevent,'' underscores the importance of injury prevention, preparedness, and safety on farms and ranches.

Farming and ranching are challenging occupations. Agricultural workers often work long hours and are exposed to many dangers associated with heavy machinery, tools, livestock, chemicals, and extreme weather conditions. By identifying hazards and taking preventive measures, farmers and ranchers can create a safer environment for themselves and their employees. Wearing protective gear can help prevent injuries, and farm machinery can be equipped with safety devices to decrease accidents. Agricultural workers can also take steps to make their workplace safer by training family members and staff in first aid and other emergency response techniques.

Our country depends on farmers and ranchers to help provide an abundant and safe food supply for our citizens and for the world, and we are grateful to them for their significant contributions to the economic prosperity of our great Nation. By raising awareness about injury prevention and safety in the workplace, farmers and ranchers can protect their employees, families, and themselves, and continue their good work to help America stay productive and prosperous.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 17 through September 23, 2006, as National Farm Safety and Health Week. I call upon the agencies, organizations, and businesses that serve America's agricultural workers to continue to strengthen their commitment to promoting farm safety and health programs. I also urge all Americans to honor our agricultural heritage and to recognize our farmers and ranchers for their remarkable contributions to our Nation's prosperity and strength.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–7952
Filed 9–19–06; 8:45 am]
Billing code 3195–01–P

Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8053 of September 15, 2006

Literacy Day, 2006

By the President of the United States of America

A Proclamation

The ability to read is the gateway to educational excellence and a key to success in any democratic society. On Literacy Day, we recognize the vital importance of literacy to our Nation and affirm our commitment to helping improve the lives of the men, women, and children in America and around the world who cannot read.

Our society has a responsibility to ensure individuals have the educational opportunities to learn to read. Literacy is a basic requirement for healthy societies and enables people to better care for themselves and their families. Reading also encourages participation in the democratic process and helps people reach their full potential through self-reliance and independence.

My Administration is committed to helping children and adults gain the reading skills they need to succeed in life. Through No Child Left Behind programs such as Reading First, Early Reading First, and Striving Readers, we are challenging the soft bigotry of low expectations and helping to provide students with the foundation to achieve their dreams. Reading also helps adults to be better consumers, and wider literacy increases economic participation, which helps to create more stable and vibrant economies. The White House Conference on Global Literacy, led by First Lady Laura Bush, is working to promote literacy for individuals of all ages and help give people around the world the skills necessary for success. By increasing literacy, we can help change lives and equip all people with the knowledge and tools to excel in the 21st century.

On Literacy Day, we recognize the great value of reading and encourage individuals around the world to take an active role in promoting literacy. Together, we can build a stronger society and a bright future for people everywhere.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim September 18, 2006, as Literacy Day. I call upon the people of the United States to observe this day with programs and activities that advance literacy for Americans and all the people of the world. By donating books to local libraries, volunteering to tutor, supporting international literacy programs, and fostering a learning environment in the home, citizens across this great Nation can make a difference and help their fellow Americans and people throughout the world enjoy the benefits of literacy.

IN WITNESS WHEREOF, I have hereunto set my hand this fifteenth day of September, in the year of our Lord two thousand six, and of the Independence of the United States of America the two hundred and thirty-first.

[FR Doc. 06–7953
Filed 9–19–06; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
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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.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1653

Court Orders and Legal Processes Affecting Thrift Savings Plan Accounts

AGENCY: Federal Retirement Thrift Investment Board

ACTION: Final rule.

SUMMARY: The Executive Director, Federal Retirement Thrift Investment Board (Agency) is adopting as final, the Agency's proposed rule amending the Thrift Savings Plan's (TSP's) regulations to improve processing of court orders that seek to divide a TSP account pursuant to a divorce. The final rule limits the types of court orders the Agency will accept to either one that requires payment of a specific dollar amount or that requires payment of a stated percentage or fraction of the account. The Agency will no longer accept formula court orders.

EFFECTIVE DATE: This final rule is effective January 1, 2007.

FOR FURTHER INFORMATION CONTACT: Merritt Willing on (202) 942–1660.

SUPPLEMENTARY INFORMATION: The Agency administers the TSP, which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. sections 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

On August 9, 2006, the Agency published a proposed rule with request for comments in the **Federal Register** (71 FR 45437). The Agency received no comments on the proposed rule.

The rule limits acceptable court orders that divide a TSP account to those that either require payment of a specific dollar amount or that require payment of a stated percentage or fraction of the account. The Agency will no longer accept formula-based court orders because they are overly complex and often are not acceptable by the Agency or, if acceptable, would result in payments that were not anticipated by either party to the order. As a consequence, the parties must return to court and obtain an amended order. Additionally, the formula court order requires the Agency to interpret the order and results in considerable administrative expense. These expenses are borne by all TSP participants.

The rule will make it easier for the parties in a divorce to ensure that the Agency will divide a TSP account in accordance with their wishes. The rule simplifies the types of court orders the Agency will accept. The rule also contains model paragraphs that attorneys can use to ensure that, in drafting orders, the language they select will both produce the intended result and meet the Agency's processing requirements.

The rule will ensure accuracy of court order payments and will ensure that the administrative expenses of the court order program are reasonable for a retirement savings plan.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal Government.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. sections 602, 632, 653, 1501–1571, the effects of this regulation on State, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under § 1532 is not required.

Submission to Congress and the Government Accountability Office

Pursuant to 5 U.S.C. 801(a)(1)(A), the Agency submitted 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 before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1653

Alimony, Child support, Claims, Government employees, Pensions, Retirement.

Gary A. Amelio,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons set forth in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1653—COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNTS

■ 1. The authority citation for part 1653 continues to read as follows:

Authority: 5 U.S.C. 8435, 8436(d), 8437(e), 8439(a)(3), 8474(b)(5), and 8474(c)(1).

■ 2. Amend § 1653.2 by revising paragraphs (a)(3)(ii), (iii), and (iv) to read as follows:

§ 1653.2 Qualifying retirement benefits court order.

(a) * * *

(3) * * *

(i) * * *

(ii) A stated percentage or fraction of the account; or

(iii) A survivor annuity as provided in 5 U.S.C. 8435(d).

(iv) The following examples would qualify to require payment from the TSP, although ambiguous or conflicting language used elsewhere could cause the order to be rejected.

Example (1). ORDERED: [payee's name, Social Security number (SSN), and address] is awarded $_____ from the [civilian or uniformed services] Thrift Savings Plan account of [participant's name, SSN, and address].

Example (2). ORDERED: [payee's name, SSN, and address] is awarded _____% of the [civilian and/or uniformed services] Thrift Savings Plan account[s] of [participant's name, SSN, and address] as of [date].

Example (3). ORDERED: [payee's name, SSN, and address] is awarded [fraction] of the [civilian and/or uniformed services] Thrift Savings Plan account[s] of [participant's name, SSN, and address] as of [date].

Note: The following optional language can be used in conjunction with any of the above examples. FURTHER ORDERED: Earnings will be paid on the amount of the entitlement under this ORDER until payment is made.

* * * * *

[FR Doc. 06–7925 Filed 9–19–06; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service, USDA

7 CFR Part 3411

RIN 0524–AA32

National Research Initiative Competitive Grants Program—Revisions to Administrative Provisions

AGENCY: Cooperative State Research, Education, and Extension Service, USDA.

ACTION: Final rule.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) is updating and making technical corrections to the administrative provisions for the National Research Initiative Competitive Grants Program (NRICGP). In addition, CSREES is revising 7 CFR 3411.3(d), the ''Eligibility requirements'' for NRICGP Postdoctoral Fellowships, New Investigator Awards, and Strengthening Awards, and 7 CFR 3411.4(c)(8), the Agency instructions to applicants preparing project budgets for NRICGP conference grants and postdoctoral fellowships. CSREES anticipates the changes to the eligibility requirements will increase the impact of the Agricultural Research Enhancement Awards, while the changes to the budget instructions will facilitate additional conference and postdoctoral fellowship awards.

DATES: *Effective date:* September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Gail McLean at (202) 401–6060 or via electronic mail at *gmclean@csrees.usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

The Cooperative State Research, Education, and Extension Service (CSREES) revises the administrative provisions for the National Research Initiative Competitive Grants Program (NRICGP), which was authorized in section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), (7 U.S.C. 450i(b)). Some of the revisions are mere technical corrections, including updates to the Agency's name. Other revisions reflect the Agency's developing capabilities to exchange proposal and grant data electronically. Finally, CSREES is substantively revising the eligibility requirements for Agricultural Research Enhancement Awards (7 CFR 3411.3(d)) and the Agency's instructions to applicants preparing project budgets for NRICGP conference grants and postdoctoral fellowships (7 CFR 3411.4(c)(8)).

CSREES published a Proposed Rule (71 FR 32479, June 6, 2006) on this topic and received three comments from the public by the August 7, 2006 deadline. The Agency is not revising the Proposed Rule based on these comments. Two of the comments supported the proposed changes, agreeing they would create additional flexibility for, and increase the competitiveness and continuity of funding at small and minority serving university research programs. The third comment was an expression of concern that the Agency might fund illegal aliens with NRICGP funds, which the Proposed Rule neither suggests nor encourages.

The Agricultural Research Enhancement Awards are intended to help institutions develop competitive research programs and to attract scientists to research in agriculture, food, and environmental sciences. To increase the impact of the Agricultural Research Enhancement Awards, CSREES is changing the eligibility requirements for Postdoctoral Fellowships, New Investigator Awards, and Strengthening Awards. Anticipated impacts include, (1) for Postdoctoral Fellowships, improved funding continuity and potentially more postdoctoral scientists entering into an agricultural research career; (2) for New Investigator Awards, improved project design and increased probability of a successful agricultural research program; and (3) for Strengthening Awards, improved research project continuity and more incentive for researchers to stay at USDA-Experimental Program for Stimulating Competitive Research (EPSCoR) or small/mid-sized institutions. The revisions to Agency instructions regarding the preparation of project budgets apply narrowly and should optimize the use of NRICGP funds for scientific meetings and for postdoctoral researchers.

Postdoctoral Fellowships

Previously, provisions indicated a postdoctoral fellowship applicant should not have received a doctoral degree before January 1 of the fiscal year three years prior to the submission of the proposal and not later than June 15 of the fiscal year during which the proposal is submitted (7 CFR 3411.3(d)(1)(i)). In the past, NRICGP proposal submission dates were grouped together and occurred within an approximate range of three to four months. As a result, applicants had similar amounts of time from the date they submitted their proposals until they were notified of awards. This was important because applicants used the time to arrange for postdoctoral positions and ensure continuity of funding for their postdoctoral research.

Now, however, NRICGP proposal submission dates are spread throughout the year. The old provisions put at a disadvantage postdoctoral fellowship applicants to NRICGP programs with proposal submission dates that are later in the fiscal year than the doctoral degree cutoff date of June 15. In order to ensure the availability of their awards, applicants to these programs may wait a year between receiving their doctoral degrees and applying for the postdoctoral fellowships. The gap in funding can result in postdoctoral researchers leaving agricultural research because they cannot find a laboratory with sufficient funding to support them during this interim.

CSREES is revising the provisions for NRICGP postdoctoral fellowships to base cutoff dates for receipt of doctoral degrees on proposal due dates for specific NRICGP programs. This change adds equity to the process and allows applicants sufficient time to make arrangements for financial support of their postdoctoral research prior to graduation. In doing so, it should further the engagement of the best and brightest young scientists in agricultural research.

New Investigator Awards

The previous provisions required that, in addition to the Project Director, all co-Project Directors must meet NRICGP New Investigator Award eligibility requirements (7 CFR 3411.3(d)(2)). When evaluating the scientific merit of a proposal, reviewers frequently suggest that New Investigators work with established investigators. Established investigators can provide valuable expertise on scientific subjects and

experimental methods that New Investigators need for successful research projects. The interaction between New Investigators and established investigators can be more than simple collaboration and require sharing of funds and significant interaction. The previous eligibility requirements for New Investigator Awards inhibited, if not prevented, these close relationships. CSREES is revising the eligibility requirements for New Investigator Awards so that they apply to Project Directors only. As the Project Director, the New Investigator maintains the primary responsibility for the research and the funding.

Previously, applicants were ineligible for New Investigator Awards if they had received competitively awarded Federal research funds beyond the level of pre- or postdoctoral research awards (7 CFR 3411.3(d)(2)). As a result, CSREES was not able to make New Investigator Awards to former recipients of NRICGP seed grants. NRICGP seed grants are relatively small awards that enable investigators to collect preliminary data they can use to prepare standard research grant applications. Seed grant eligibility is limited to faculty with appointments at (1) small and mid-sized degree-granting institutions that are not in the top 100 most successful institutions; and (2) degree-granting institutions eligible for USDA-EPSCoR funding. CSREES is revising the NRICGP New Investigator Award provisions so that former recipients of NRICGP seed grants are eligible to apply for these funds. By allowing investigators who received seed grants to remain eligible for New Investigator Awards, CSREES hopes to increase the chances that beginning scientists will achieve funding and continuation of agricultural research projects.

Strengthening Awards

According to the previous eligibility requirements for Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards, no investigators on the Proposal Cover Page may have received a USDA NRICGP competitive research grant within the last 5 years (7 CFR 3411.3(d)(3)(ii)(A)). CSREES is removing this restriction so that investigators from eligible institutions can apply for these types of Strengthening Awards regardless of having received NRICGP awards in the past. The Agency believes this will increase the likelihood that investigators at institutions in EPSCoR states, and those at institutions with small to mid-sized enrollment, will have the funding stability necessary for successful agricultural research programs. Often researchers from these institutions have difficulty renewing strengthening awards. Although their projects have important scientific merit, they tend to be limited in size and scope due to, for example, teaching commitments, equipment access, and smaller numbers of students and postdoctoral researchers. Thus, these proposals do not compete well against projects from larger research institutions that have more resources and personnel. This change will improve funding continuity and provide incentives for established researchers to stay at EPSCoR or small/mid-sized institutions. In doing so, it will strengthen the institutions and the future of agricultural research through increased opportunities for students to participate in active, successful agricultural research projects.

The previous provisions required that, in addition to the Project Director, all co-Project Directors must meet NRICGP Strengthening Award eligibility requirements (7 CFR 3411.3(d)(3)(ii)(B)). As with a similar restriction placed on New Investigators, this requirement unnecessarily hampers close relationships between investigators who can provide expertise needed to successfully complete a project. CSREES is revising the eligibility requirements for these types of NRICGP Strengthening Awards so that they apply to Project Directors only.

Indirect Costs—Conference Awards and Postdoctoral Fellowships

CSREES is adding language to 7 CFR 3411.4(c)(8) that prohibits indirect costs for conference awards and postdoctoral fellowships. Previously, CSREES restricted conference awardees' recovery of indirect costs to 20% of total Federal funds, as provided in Section 709 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006 (Pub. L. 109–97). Conference awards support meetings that bring together scientists to identify research needs, update information, or advance an area of research. Typically, these awards are modest. They rarely exceed $10,000, but are recognized as integral to research efforts. Where grantees incur administrative costs relative to sponsoring such conferences (especially in off-site locations), the Agency believes the administrative costs are negligible.

In accordance with its fiscal year 2006 Request for Applications (RFA) for NRICGP (available at *http://www.csrees.usda.gov/funding/rfas/nri_rfa.html*), CSREES allowed postdoctoral fellowship awardees to request an institutional allowance (not to exceed $2,400 per year) or indirect costs within the $125,000 maximum award limit. Postdoctoral fellowship applicants primarily request funds for salary support, although they are allowed to request other expenditures (*e.g.*, supplies, travel, and publication) if they properly justify them. These awards allow postdoctoral researchers to develop independent research projects they can take with them to career-track positions. Postdoctoral fellowships play an important role in attracting and supporting beginning researchers in agricultural sciences. For postdoctoral fellowships, CSREES will continue to indicate in its annual NRICGP RFA a maximum institutional allowance, and, in accordance with revised administrative provisions, the Agency will make this allowance available to awardees in lieu of indirect costs.

Paperwork Reduction Act of 1995—Information Collection

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collection of information requirements contained in this Final Rule have been approved (OMB Approval No. 0524–0039).

Regulatory Flexibility Act

USDA certifies that this Final Rule will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, Public Law 96–354, as amended (5 U.S.C. 601, *et seq.*) because it is a Federal assistance program, not a regulatory regime, and the majority of awards will be made to colleges and universities that do not qualify as small entities.

Executive Order 12866

This rule has been reviewed under Executive Order 12866 and has been determined to be nonsignificant as it will not create a serious inconsistency or otherwise interfere with an action planned by another agency; will not materially alter the budgetary impact of entitlement, grants, user fees, or loan programs, or rights and obligations of the recipients thereof; and will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this Executive Order. This rule will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health, or safety, or State, local, or tribal governments or communities.

Unfunded Mandates Reform Act

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), the Department assessed the effects of this rulemaking action on State, local, and tribal government, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector. Therefore, a statement under Section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

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:

(1) Does not have an annual effect on the economy of $100 million or more;

(2) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

(3) 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.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with the Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; (3) no administrative proceedings are required before bringing any judicial action regarding this rule.

Executive Order 13132

In accordance with Executive Order 13132, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The policies contained in this rule do not have any substantial direct effect on policymaking discretion of 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. Nor does this rule impose substantial direct compliance costs on State and local governments.

Executive Order 12372

For the reasons set forth in the Final Rule Related Notice for 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of the Executive Order 12372 which requires intergovernmental consultation with State and local officials. This program does not directly affect State and local governments.

Executive Order 13175

The policies contained in this rulemaking do not have tribal implications and thus no further action is required under Executive Order 13175.

List of Subjects in 7 CFR Part 3411

Agricultural research, Grant programs—agriculture, Reporting and recordkeeping requirements.

■ For the reasons stated in the preamble, the Cooperative State Research, Education, and Extension Service amends 7 CFR 3411 to read as set forth below:

PART 3411—NATIONAL RESEARCH INITIATIVE COMPETITIVE GRANTS PROGRAM

■ 1. The authority citation for part 3411 continues to read as follows:

Authority: Sec. 2(i) of the Act of August 4, 1965, as amended (7 U.S.C. 450i(i)).

Subpart A—General

■ 2. Revise paragraph (a) of § 3411.1 to read as follows:

§ 3411.1 Applicability of regulations.

(a) The regulations of this part apply to competitive research grants awarded under the authority of section 2(b) of the Act of August 4, 1965, as amended by section 1615 of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), (7 U.S.C. 450i(b)), for the support of research to further the programs of the Department of Agriculture and to improve research capabilities in the agricultural, food, and environmental sciences in the following categories: Single investigators or coinvestigators in the same disciplines; teams of researchers from different disciplines; multidisciplinary teams for long-term applied research problems; multidisciplinary teams whose research has the eventual goal of technology transfer and education capacity through the acquisition of special research equipment and improvement of teaching and education, including fellowships; single investigators or coinvestigators who are beginning their research careers; and, faculty of small and mid-sized institutions not previously successful in obtaining competitive grants under this subsection. In accordance with Public Law 104–127, within the Department of Agriculture, the Secretary established the National Agricultural Research, Extension, Education, and Economics Advisory Board (NAREEEAB) to provide overall guidance to the Research, Education and Economics mission area on policies and priorities related to programs, including NRICGP. In addition to the stakeholder listening sessions NAREEEAB sponsors, CSREES receives stakeholder input on policies and priorities related to NRICGP from multiple sources including scientific societies; the National Research Council of the National Academy of Sciences; producers, processors, industry; the land-grant university system; non-governmental organizations; and other federal agencies; and through international coordination. The Administrator of CSREES shall determine and announce, through publication of a notice on the CSREES Web site (*http://www.csrees.usda.gov*), the government-wide funding opportunities Web site (*http://www.grants.gov*), or in such publications as the **Federal Register**, professional trade journals, agency or program handbooks, the Catalog of Federal Domestic Assistance, or any other appropriate means, high-priority research areas and categories for which proposals will be solicited and the extent that funds are made available therefore.

* * * * *

■ 3. Revise paragraphs (a) and (c) of § 3411.2 to read as follows:

§ 3411.2 Definitions.

* * * * *

(a) *Administrator* means the Administrator of the Cooperative State Research, Education, and Extension Service (CSREES) and any other officer or employee of the Department of Agriculture to whom the authority involved may be delegated.

* * * * *

(c) *Project Director* means a single individual who is responsible for the scientific and technical direction of the project, as designated by the grantee in the grant application and approved by the Administrator.

* * * * *

■ 4. Amend § 3411.3 by revising paragraphs (a), (d) introductory text, (d)(1) introductory text, (d)(1)(i), (d)(2), and (d)(3)(ii) to read as follows:

§ 3411.3 Eligibility requirements.

(a) For research projects, except where otherwise prohibited by law, State agricultural experiment stations, all colleges and universities, other research institutions and organizations, Federal agencies, private organizations or corporations, and individuals shall be

eligible to apply for and receive a competitive grant under this part, provided that the applicant qualifies as a responsible grantee under the criteria set forth in paragraph (b) of this section.

* * * * *

(d) *Agricultural Research Enhancement Awards.* In addition to paragraphs (a), (b), and (c) of this section, the following eligibility requirements apply to Agricultural Research Enhancement Awards for research projects (Program reserves the right to specify funding limitations and administrative requirements each year in the program solicitation):

(1) *Postdoctoral Fellowships.* In accordance with Section 2(b)(3)(D) of the Act of August 4, 1965, as amended, individuals who recently have received or will soon receive their doctoral degree may submit proposals for postdoctoral fellowships. The following eligibility requirements apply:

(i) The doctoral degree of the applicant must be received not earlier than January 1 of the fiscal year three years prior to the submission of the proposal and not later than nine months after the proposal due date;

* * * * *

(2) *New Investigator Awards.* Pursuant to Section 2(b)(3)(E) of the Act of August 4, 1965, as amended, Project Directors who are beginning their research careers, do not have an extensive research publication record, and have less than 5 years of post-graduate, career-track research experience, may submit proposals as new investigators. Applicants may not have received competitively-awarded Federal research funds beyond the level of pre or postdoctoral research awards or USDA NRICGP seed grants.

(3) *Strengthening Awards.*

* * * * *

(ii) *Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards.* The following eligibility requirements apply to Research Career Enhancement Awards, Seed Grants, and Strengthening Standard Research Project Awards:

(A) The Project Director listed on the Application For Funding must be from a small or mid-sized institution that is not among the top 100 universities and colleges for receiving Federal funds for science and engineering research as specified in the annual program solicitation or must be from an institution located in a USDA-EPSCoR state.

(B) Every investigator listed on the Application For Funding must have an appointment at a degree granting institution.

■ 5. Amend § 3411.4 by revising paragraphs (a) introductory text, (a)(4), (a)(5), (c)(3) introductory text, (c)(7) introductory text, (c)(8), (c)(11), and (c)(13) to read as follows:

§ 3411.4 How to apply for a grant.

(a) Program solicitations will be prepared and announced through publication on the government-wide funding opportunities Web site (*http://www.grants.gov*) as early as practicable each fiscal year. It will contain information sufficient to enable all eligible applicants to prepare competitive grant proposals and will be as complete as possible with respect to:

* * * * *

(4) Deadline dates for receipt of proposal packages;

(5) Submission addresses;

* * * * *

(b) * * *

(c) *Format for grant proposals.*

* * * * *

(3) *Project Description.* The specific aims of the project must be included in all proposals. The text of the project description may not exceed 18 single- or double-spaced pages and must contain the following components:

* * * * *

(7) *Personnel support.* To assist peer reviewers in assessing the competence and experience of the proposed project staff, all personnel who will be involved in the proposed project must be identified clearly. For each Project Director involved, and for all senior associates and other professional personnel who expect to work on the project, whether or not funds are sought for their support, the following should be included:

* * * * *

(8) *Budget.* A detailed budget is required for each year of requested support. In addition, a summary budget is required detailing requested support for the overall project period. A copy of the form which must be used for this purpose, along with instructions for completion, is included in the NRICGP Application Kit identified under § 3411.4(b) of the part and may be reproduced as needed by applicants. Funds may be requested under any of the categories listed, provided that the item or service for which support is requested may be identified as necessary for successful conduct of the proposed project, is allowable under applicable Federal cost principles, and is not prohibited under any applicable Federal statute or regulation. It should be noted, for example, that section 2(b)(7) of the Act of August 4, 1965, as amended, prohibits the use of funds under this program for the renovation or refurbishment of research spaces, purchases or installation of fixed equipment in such spaces, or for the planning, repair, rehabilitation, acquisition, or construction of a building or facility. Also, section 2(b)(8) of the Act of August 4, 1965, as amended, requires that all grants, except equipment grants authorized by section 2(b)(3)(D) of the same Act, awarded under this part, shall be used without regard to matching funds or cost sharing. Equipment grants may not exceed 50 percent of the cost of the equipment to be acquired. Equipment grant funds also may not be used for installation, maintenance, warranty, or insurance expenses. Indirect costs are not permitted on equipment grants, conference grants, or postdoctoral fellowships. According to the limit included in the annual program solicitation, a postdoctoral fellowship applicant may request and receive a reasonable institutional allowance.

* * * * *

(11) *Additions to project description.* Each project description is expected by the Administrator, the members of peer review groups, and the relevant program staff to be complete. However, if the inclusions of additional information is necessary to ensure the equitable evaluation of the proposal (e.g., photographs which do not reproduce well, reprints, and other pertinent materials which are deemed to be unsuitable for inclusion in the text of the proposal), the number of copies submitted should match the number of copies of the application requested in the program solicitation. Each set of such materials must be identified with the name of the submitting organization, and the name(s) of the Project Director(s). Information may not be appended to a proposal to circumvent page limitations prescribed for the project description. Extraneous materials will not be used during the peer review process.

* * * * *

(13) *National Environmental Policy Act.* As outlined in CSREES's implementing regulations of the National Environmental Policy Act of 1969 (NEPA) at 7 CFR part 3407, environmental data or documentation for the proposed project is to be provided to CSREES in order to assist CSREES in carrying out its responsibilities under NEPA. These responsibilities include determining whether the project requires an Environmental Assessment or an Environmental Impact Statement or whether it can be excluded from this

requirement on the basis of several categorical exclusions listed in 7 CFR part 3407. In this regard, the applicant should review the categories defined for exclusion to ascertain whether the proposed project may fall within one or more of the exclusions, and should indicate if it does so on the National Environmental Policy Act Exclusions Form provided in the NRICGP Application Kit.

* * * * *

■ 6. Revise paragraph (a) of § 3411.5 to read as follows:

§ 3411.5 Evaluation and disposition of applications.

(a) *Evaluation.* All proposals received from eligible applicants and received in accordance with deadlines established in the annual program solicitation shall be evaluated by the Administrator through such officers, employees, and others as the Administrator determines are uniquely qualified in the areas represented by particular projects. To assist in equitably and objectively evaluating proposals and to obtain the best possible balance of viewpoints, the Administrator shall solicit the advice of peer scientists, *ad hoc* reviewers, and/or others who are recognized specialists in the areas covered by the applications received and whose general roles are defined in §§ 3411.2(j) and 3411.2(k). Specific evaluations will be based upon the criteria established in § 3411.15, unless CSREES determines that different criteria are necessary for the proper evaluation of proposals in one or more specific program areas, or for specific types of projects to be supported, and announces such criteria and their relative importance in the annual program solicitation. The overriding purpose of these evaluations is to provide information upon which the Administrator may make informed judgments in selecting proposals for ultimate support. Incomplete, unclear, or poorly organized applications will work to the detriment of applicants during the peer evaluation process. To ensure a comprehensive evaluation, all applications should be written with the care and thoroughness accorded papers for publication.

■ 7. Amend § 3411.6 as follows:

■ A. Revise paragraph (a), paragraph (b) heading, (b)(1)(iii), (b)(1)(iv), (d) introductory text, (d)(2), and (f).

■ B. Remove and reserve paragraph (b)(2).

§ 3411.6 Grant awards.

(a) *General.* Within the limit of funds available for such purpose, the awarding official shall make grants to those responsible, eligible applicants whose proposals are judged most meritorious in the announced program areas under the evaluation criteria and procedures set forth in this part. All funds granted under this part shall be expended solely for the purpose for which the funds are granted in accordance with the approved application and budget, the regulations of this part, the terms and conditions of the award, the applicable Federal cost principles, and the Department's federal assistance regulations.

(b) *Grant award document.*

(1) * * *

(iii) Name(s) and address(es) of Project Director(s) chosen to direct and control approved activities;

(iv) Identifying grant and proposal numbers assigned by the Department;

* * * * *

(d) *Funding mechanisms.* The two mechanisms by which grants shall be awarded are as follows:

* * * * *

(2) *Continuation grant.* This is a funding mechanism whereby the Department agrees to support a specified level of effort for a predetermined period of time with a statement of intention to provide additional support at a future date, provided that performance has been satisfactory, appropriations are available for this purpose, and continued support would be in the best interests of the Federal government and the public. This kind of mechanism normally will be awarded for an initial one-year period, and any subsequent continuation project grants will also be awarded in one-year increments. The award of a continuation project grant to fund an initial or succeeding budget period does not constitute an obligation to fund any subsequent budget period. Unless prescribed otherwise by CSREES, a grantee must submit a separate application for continued support for each subsequent fiscal year. Decisions regarding continued support and the actual funding levels of such support in future years usually will be made administratively after consideration of such factors as the grantee's progress and management practices and the availability of funds. Since initial peer reviews are based upon the full term and scope of the original application, additional evaluations of this type generally are not required prior to successive years' support. However, in unusual cases (e.g., when the nature of the project or key personnel change or when the amount of future support requested substantially exceeds the grant application originally reviewed and approved), additional reviews may be required prior to approving continued funding.

* * * * *

(f) *Current Research Information Service (CRIS).* For each project funded, instructions will be sent to the grantee for the completion of CRIS Forms AD–416, ''Research Work Unit/Project Description-Research Resume'' and AD–417, ''Research Work Unit/Project Description—Classification of Research.'' Grant funds will not be released until the completed forms are received electronically via CRIS.

■ 8. Revise paragraph (b)(1) of § 3411.7 as follows:

§ 3411.7 Use of funds; changes.

* * * * *

(b) *Change in project plans.* (1) The permissible changes by the grantee, Project Director(s), or other key project personnel in the approved grant shall be limited to changes in methodology, techniques, or other aspects of the project to expedite achievement of the project's approved goals. If the grantee and/or the Project Director(s) is uncertain whether a particular change complies with this provision, the question must be referred to the Administrator for final determination.

■ 9. In the list of statutes in § 3411.8, revise the fifth and tenth statutes listed.

§ 3411.8 Other Federal statutes and regulations that apply.

* * * * *

7 CFR part 3015—USDA Uniform Federal Assistance Regulations, implementing OMB directives (*i.e.,* Circular Nos. A–21 and A–122) and incorporating provisions of 31 U.S.C. 6301–6308 (formerly, the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224), as well as general policy requirements applicable to recipients of Departmental financial assistance;

* * * * *

7 CFR part 3407—CSREES procedures to implement the National Environmental Policy Act;

* * * * *

Dated: September 5, 2006.

Colien Hefferan,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. E6–15568 Filed 9–19–06; 8:45 am]

BILLING CODE 3410–22–P

FEDERAL ELECTION COMMISSION

11 CFR Part 102

[Notice 2006–17]

Increase in Limitation on Authorized Committees Supporting Other Authorized Committees

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission (''Commission'') is amending its rules specifying the amount authorized committees of candidates may contribute to authorized committees of other candidates. The Consolidated Appropriations Act, 2005, amended the Federal Election Campaign Act of 1971, as amended (''the Act''), by increasing this amount from $1,000 to $2,000. These final rules implement this increase. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

EFFECTIVE DATE: These rules are effective on September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, or Mr. Albert J. Kiss, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Explanation and Justification for 11 CFR 102.12(c) and 102.13(c)

Each candidate for Federal office (other than a nominee for Vice President) is required to designate in writing a political committee to serve as the candidate's ''principal campaign committee'' under the Act and Commission regulations. 2 U.S.C. 432(e)(1) and 431(5); 11 CFR 101.1(a) and 102.12(a). Candidates may also authorize additional political committees to receive contributions or make expenditures on their behalf. 2 U.S.C. 432(e)(1) and 431(6); 11 CFR 101.1(b) and 102.13(a)(1). These political committees are collectively known as the candidate's ''authorized committees.'' 2 U.S.C. 431(6).

Subject to two exceptions, no political committee that ''supports'' or has supported more than one candidate may be designated either as a principal campaign committee or as an authorized committee.[1] 2 U.S.C. 432(e)(3)(A); 11 CFR 102.12(c)(1) and 102.13(c)(1). Prior to enactment of the Consolidated Appropriations Act, 2005, Pub. L. 108–447, 118 Stat. 2809 (2004) (''2005 Appropriations Act''), FECA provided that ''support'' did not include contributions by any authorized committee in amounts of $1,000 or less to an authorized committee of any other candidate. 2 U.S.C. 432(e)(3)(B) (2004). Section 525 of the 2005 Appropriations Act amended 2 U.S.C. 432(e)(3)(B) by increasing this amount to $2,000. 118 Stat. at 3271. To implement this statutory change, the Commission is amending 11 CFR 102.12(c)(2) and 102.13(c)(2) to reflect the increased amount.

The Commission is promulgating these rules without notice or an opportunity for comment (''notice and comment'') because the Administrative Procedure Act's (''APA'') ''good cause'' exemption allows the Commission to dispense with notice and comment when ''impracticable, unnecessary, or contrary to the public interest.'' 5 U.S.C. 553(b)(B). Notice and comment are unnecessary when regulations merely restate the statute they implement. *Gray Panthers Advocacy Committee* v. *Sullivan*, 936 F.2d 1284, 1291 (D.C. Cir. 1991), *citing Komjathy* v. *National Transportation Safety Board*, 832 F.2d 1294, 1296–97 (D.C. Cir. 1987). Because these final rules merely restate the amount limitation in section 432(e)(3)(B), notice and comment are unnecessary and the ''good cause'' exemption applies to these final rules.

For the same reasons, these final rules are not subject to the APA's thirty-day delayed effective date requirement under the ''good cause'' exemption to the delayed effective date requirement. 5 U.S.C. 553(d)(3). Thus, the Commission is making these final rules effective immediately upon publication in the **Federal Register**.

The Commission is submitting these final rules to the Speaker of the House of Representatives and the President of the Senate pursuant to the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.*, on September 14, 2006.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The provisions of the Regulatory Flexibility Act are not applicable to these rules because the Commission was not required to publish a notice of proposed rulemaking or to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and 604(a). Therefore, no regulatory flexibility analysis is required.

List of Subjects in 11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

■ For the reasons set out in the preamble, the Federal Election Commission is amending Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

§ 102.12 [Amended]

■ 2. In § 102.12(b), remove ''that'' and add in its place ''than''.

■ 3. In § 102.12(c)(2), remove ''$1,000'' and add in its place ''$2,000''.

§ 102.13 [Amended]

■ 4. In § 102.13(c)(2), remove ''$1,000'' and add in its place ''$2,000''.

Dated: September 14, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. E6–15565 Filed 9–19–06; 8:45 am]

BILLING CODE 6715–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 603, 605, 608, and 611

RIN 3052–AC34

Privacy Act Regulations; Information; Collection of Claims Owed the United States; Organization; Privacy and Security Information

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA or Agency) is issuing a final rule to update and amend its regulations regarding privacy and security information and other matters. This action is being taken to correct certain citations in the regulations and to conform the regulations to Executive order 13292.

EFFECTIVE DATE: This regulation will become effective 30 days after publication in the **Federal Register** during which either one or both houses of Congress are in session. We will

[1] One exception allows a candidate for the office of President nominated by a political party to designate the national committee of the political party as the candidate's principal campaign committee. 2 U.S.C. 432(e)(3)(A)(i); 11 CFR 102.12(c)(1). The other exception allows two or more candidates to designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee. 2 U.S.C. 432(e)(3)(A)(ii) and 11 CFR 102.13(c)(1).

publish a notice of the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Bob Taylor, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4129; TTY (703) 883–4020; or Mike Wilson, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, Virginia 22102–5090, (703) 883–4414, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION: We are amending our regulations to both correct citations in Agency regulations and update part 605 to conform to Executive order 13292. We have found incorrect regulatory citations in parts 603, 608, and 611 of our regulations, and are revising our regulations to include the correct citations. Part 605 of our regulations defines the procedures for acting in matters relating to national security information for classified documents and outlines the basic requirements for obtaining access to classified documents. We are revising the definitions of procedures for ''Derivative classification'' and ''Mandatory declassification review'' in part 605 to make them consistent with Executive order 13292.

In acting on this final regulation, the FCA Board determined that notice and public comment are neither required nor necessary under the Administrative Procedure Act, 5 U.S.C. 553(b). Section 553(b)(A) provides that the notice and comment requirements do not apply to rules of Agency organization, procedure, or practice, and as such, the amendments that relate to Agency procedure and practice do not require notice and public comment. In addition, 5 U.S.C. 553(b)(B) provides that notice and comment requirements do not apply when the Agency for good cause finds that notice and public comment are impracticable, unnecessary, or contrary to the public interest. Notice and public comment are unnecessary and contrary to the public interest in this case because the amendments involve only technical revisions to regulatory citations and an update to part 605 to conform to Executive order 13292. A comment period would only delay correction of inaccurate cites. Therefore, these regulations are published in final form.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects

12 CFR Part 603

Privacy.

12 CFR Part 605

Classified information.

12 CFR Part 608

Claims, Government employees, Wages.

12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

■ As stated in the preamble, parts 603, 605, 608, and 611 of chapter VI, title 12 of the Code of Federal Regulations, are amended as follows:

PART 603—PRIVACY ACT REGULATIONS

■ 1. The authority citation for part 603 continues to read as follows:

Authority: Secs. 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2252); 5 U.S.C. app. 3, 5 U.S.C. 552a (j)(2) and (k)(2).

§ 603.345 [Amended]

■ 2. Amend § 603.345 by removing the reference, ''§§ 602.267 and 602.269'' and adding in its place ''§§ 602.11 and 602.12''.

§ 603.350 [Amended]

■ 3. Amend § 603.350 by removing the reference, ''Section 552a(1)(3)'' the first place it appears and adding in its place ''Section 522a(i)(3)''.

PART 605—INFORMATION

■ 4. The authority citation for part 605 continues to read as follows:

Authority: Secs. 5.9, 5.12, 5.17 of the Farm Credit Act (12 U.S.C. 2243, 2246, 2252).

§ 605.500 [Amended]

■ 5. Amend § 605.500 by removing the reference, ''12356'' and adding in its place ''13292''.

§ 605.501 [Amended]

■ 6. Amend § 605.501(b) by removing the reference ''2001.32(a)(2)(i)'' and adding in its place ''2001.33(a)(2)(i)''.

■ 7. Amend § 605.502 as follows:

■ a. Revise paragraphs (b) and (c);

■ b. Remove the words, ''located in the Agency Services Branch'' from the third sentence of paragraph (d);

■ c. Remove the reference, ''4.1(b)'' and add in its place ''4.2(g)'' in the first sentence of paragraph (e); and

■ d. Remove the reference, ''189'' in the first sentence and add in its place, ''312'' and in the second sentence, remove the reference, ''12356'' and add in its place the reference ''13292'' in paragraph (i).

§ 605.502 Programs and procedures.

* * * * *

(b) *Derivative classification.* ''Derivative classification'' means the incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(c) *Mandatory declassification review.* ''Mandatory declassification review'' means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.5 of the Executive order. All requests for review for declassification under the mandatory review provisions of the Executive order shall be handled by the Information Security Officer or his/her designee.

* * * * *

PART 608—COLLECTION OF CLAIMS OWED THE UNITED STATES

■ 8. The authority citation for part 608 continues to read as follows:

Authority: Sec. 5.17 of the Farm Credit Act (12 U.S.C. 2252); 31 U.S.C. 3701–3719; 5 U.S.C. 5514; 4 CFR parts 101–105; 5 CFR part 550.

Subpart A—Administrative Collection of Claims

§ 608.807 [Amended]

■ 9. Amend § 608.807 by removing the reference, ''§ 602.267'' and adding in its place, ''§§ 602.11 and 602.12''.

PART 611—ORGANIZATION

■ 10. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.3, 1.4, 1.13, 2.0, 2.1, 2.10, 2.11, 3.0, 3.2, 3.21, 4.12, 4.15, 4.20, 4.21, 5.9, 5.10, 5.17, 6.9, 6.26, 7.0–7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2011, 2013, 2021, 2071, 2072, 2091, 2092, 2121, 2123,

2142, 2183, 2203, 2208, 2209, 2243, 2244, 2252, 2278a–9, 2278b–6, 2279a–2279f–1, 2279aa–5(e)); secs. 411 and 412 of Pub. L. 100–233, 101 Stat. 1568, 1638; secs. 409 and 414 of Pub. L. 100–399, 102 Stat. 989, 1003, and 1004.

Subpart G—Mergers, Consolidations, and Charter Amendments of Associations

§ 611.1124 [Amended]

■ 11. Amend § 611.1124 by removing the reference, ''§ 611.1090 of this part'' and adding in its place, ''section 5.17(a) of the Act'' in paragraph (n).

Dated: September 14, 2006.

Roland Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. 06–7951 Filed 9–19–06; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24955; Directorate Identifier 2006–CE–31–AD; Amendment 39–14768; AD 2006–19–11]

RIN 2120–AA64

Airworthiness Directives; Gippsland Aeronautics Pty. Ltd. Model GA8 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an airworthiness authority of another country to identify and correct an unsafe condition on an aviation product. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective October 25, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 25, 2006.

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

FOR FURTHER INFORMATION CONTACT: Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 19, 2006 (71 FR 35223). That NPRM proposed to require relocating the seat stop of the pilot and second occupant seat.

Comments

We gave the public the opportunity to participate in developing this AD. We have considered the comments received.

Jack Buster with the Modification and Replacement Parts Association (MARPA) provides comments on the MCAI AD process pertaining to how the FAA addresses publishing manufacturer service information as part of a proposed AD action. The commenter states that the proposed rule attempts to require compliance with a public law by reference to a private writing (as referenced in paragraph (e) of the proposed AD). The commenter would like the FAA to incorporate by reference (IBR) the Gippsland service bulletin.

We agree with Mr. Buster. However, we do not IBR any document in a proposed AD action, instead we IBR the document in the final rule. Since we are issuing the proposal as a final rule AD action, Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2005–29, Issue 2, dated February 14, 2006, is incorporated by reference.

Mr. Buster requests IBR documents be made available to the public by publication in the **Federal Register** or in the Docket Management System (DMS).

We are currently reviewing issues surrounding the posting of service bulletins in the Department of Transportation's DMS as part of the AD docket. Once we have thoroughly examined all aspects of this issue and have made a final determination, we will consider whether our current practice needs to be revised.

Mr. Buster comments on the vagueness of paragraph (g)(2) of the proposed AD and states that the requirements may be unenforceable in a court of law.

We partially agree with Mr. Buster. We are considering clarifying the text of paragraph (g)(2) in future ADs to more clearly remind operators they are required to assure a product is airworthy before it is returned to service. However, we consider the existing text to be legally enforceable since it requires performing FAA-approved corrective actions before returning the product to an airworthy condition. No change is required to this final rule in that regard.

Conclusion

We reviewed the available data, including the comments received, and determined that air safety and the public interest require adopting the AD as proposed.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable in a U.S. court of law. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements, if any, take precedence over the actions copied from the MCAI.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 22 products of U.S. registry. We also estimate that it will take about 2 work-hours per product to do the action and that the average labor rate is $80 per work-hour. Required parts will cost about $20 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of this AD on U.S. operators to be $7,920, or $360 per product ($180 per seat assembly).

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701:

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD Docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://dms.dot.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5227) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2006–19–11 Gippsland Aeronautics Pty. Ltd.: Amendment 39–14768 Docket No. FAA–2006–24955; Directorate Identifier 2006–CE–31–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 25, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model GA8 airplanes, all serial numbers through GA8–05–088, that are certificated in any U.S. category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Australia states that the aircraft manufacturer has determined that the current location of the pilot and second occupant seat stops is such that, at either seat's most forward position, aft movement of the control column can be restricted by the seat structure. If not corrected, this condition could lead to reduced controllability of the airplane in certain conditions. The MCAI requires relocating the seat stop to eliminate this condition.

Actions and Compliance

(e) Unless already done, do the following except as stated in paragraph (f) below:

(1) At the next regularly scheduled maintenance inspection (e.g. 100 hour or annual) that occurs 30 days or more after October 25, 2006 (the effective date of this AD), modify the pilot and second occupant seat track rails to add a new stop location.

(2) Do the modification following Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2005–29, Issue 2, dated February 14, 2006.

FAA AD Differences

(f) None.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Staff, FAA, *Attn:* Doug Rudolph, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4059; facsimile: (816) 329–4090, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) Return to Airworthiness: When complying with this AD, perform FAA-approved corrective actions before returning the product to an airworthy condition.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) This AD is related to MCAI Australian AD No. AD/GA8/4, effective April 13, 2006, which references Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2005–29, Issue 2, dated February 14, 2006.

Material Incorporated by Reference

(i) You must use Gippsland Aeronautics Mandatory Service Bulletin SB–GA8–2005–29, Issue 2, dated February 14, 2006, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Gippsland Aeronautics, PO Box 881, Morwell, Victoria 3840, Australia; telephone: + 61 (0) 3 5172 1200; facsimile: + 61 (0) 3 5172 1201; e-mail: *support@gippsaero.com.*

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on September 12, 2006.

Sandra J. Campbell,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–7928 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 700

[Docket No. 060831232–6232–01]

RIN 0694–AD90

Defense Priorities and Allocations System (DPAS): Assistance Programs With Canada and Other Nations

AGENCY: Bureau of Industry and Security, U.S. Department of Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) is amending the Defense Priorities and Allocations System (DPAS) Regulation (15 CFR part 700) to provide additional guidance on how persons in Canada and other foreign nations may apply for priority rating authority and special priorities assistance to obtain items in the United States, and to provide information on

how persons in the United States may obtain informal assistance in Italy, the Netherlands, Sweden, and the United Kingdom to obtain items in support of approved programs. These amendments do not alter the substance or effect of the DPAS regulation.

DATES: This rule is effective September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Liam McMenamin, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, Telephone: (202) 482–2233.

SUPPLEMENTARY INFORMATION:

Background

Under Title I of the Defense Production Act (DPA) of 1950, as amended, (50 U.S.C. App. 2061, *et seq.*), the President is authorized to require preferential acceptance and performance of contracts or orders supporting certain approved national defense and energy programs, and to allocate materials, services, and facilities in such a manner as to promote these approved programs. Additional priorities authority is found in section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, and 50 U.S.C. 82. The President delegated the priorities and allocations authorities of the DPA in Executive Order 12919 (June 3, 1994; amended by Executive Order 13286, February 28, 2003). As part of that delegation, the President designated the Secretary of Commerce to administer the Defense Priorities and Allocations System. DPAS authority has also been extended to support emergency preparedness activities under Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5195, *et seq.*). The DPAS regulation is found at 15 CFR part 700.

Amendments to the DPAS Regulation

The Defense Production Act's definition of ''national defense'' includes ''military assistance to any foreign nation.'' Section 700.55 of the DPAS regulation currently provides guidance on how persons in Canada and in other foreign nations can apply for authority to place priority rated orders and special priorities assistance to obtain items in the United States. Persons in the United States receiving a priority rated order must give the rated order preference over all unrated orders as necessary to meet required delivery dates. Special priorities assistance is provided by the Department of Commerce and the DPAS Delegate Agencies as appropriate to expedite deliveries, resolve delivery conflicts, place rated orders, locate suppliers, or to verify information provided by customers and vendors. Special priorities assistance may also be used to request authority to place rated orders.

The Department of Commerce and the Government of Canada have provided mutual assistance to the defense industries located in both countries since 1950. The Department of Commerce has determined that it would be useful to provide additional guidance on how persons in Canada producing items to support U.S. and Canadian approved programs may request priority rating authority and special priorities assistance to obtain items in the United States through the Canadian Public Works and Government Services Canada. This rule provides additional point of contact information in section 700.55(b) for Public Works and Government Services Canada, including branch and directorate names, mailing address, telephone, and fax numbers. These changes do not alter the substance or effect of the DPAS regulation.

The DPAS regulation provides that persons in foreign nations other than Canada may apply to the Department of Defense for priority rating authority and special priorities assistance to obtain items in the United States. Requests endorsed by the Department of Defense are forwarded to the Department of Commerce for appropriate action. The Department of Commerce has determined that it would be useful to provide additional guidance on how persons in foreign nations other than Canada may request priority rating authority and special priorities assistance through the Department of Defense. This rule provides additional point of contact information in section 700.55(c) for the Department of Defense, including office name, mailing address, telephone, and fax numbers. This rule also clarifies that if the end product is being acquired by a foreign nation, the request must be sponsored prior to its submission to the Department of Defense by the government of the foreign nation that will use the end product. This rule clarifies that if the end product is being acquired by a U.S. government agency, the request should be submitted to the Department of Defense through the U.S. contract administration representative. These changes do not alter the substance or effect of the DPAS regulation.

The Department of Defense has entered into bilateral security of supply arrangements with Italy, the Netherlands, Sweden, and the United Kingdom that allow the Department of Defense to request the priority delivery for Department of Defense contracts, subcontracts, and orders from companies in these countries. The Department of Commerce has determined that it would be useful to provide information on the bilateral security of supply arrangements in sections 700.55(a) and in a new section 700.55(d), and to provide guidance on how persons in the United States may request assistance through the Department of Defense in obtaining items from Italy, the Netherlands, Sweden, and the United Kingdom to support approved programs. Although these supply arrangements are new enterprises within the Department of Defense, the creation of these arrangements does not impact the existing authorities of the DPAS regulation. The new paragraph (d) in section 700.55 is only intended to provide persons in the U.S. with information on how to contact the Department of Defense to facilitate requests for priorities assistance in these countries. Persons in Italy, The Netherlands, Sweden, and the United Kingdom would continue to request assistance in accordance with section 700.55(c). These changes do not alter the existing authorities or requirements of the DPAS regulation.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*) unless the collection of information displays a currently valid Office of Management and Budget control number. This rule does not involve any collections of information that are subject to the Paperwork Reduction Act.

3. This rule does not contain policies with federalism implications as this term is defined in Executive Order 13132.

4. The Department finds that there is good cause under 5 U.S.C. 553(b)(B) to waive the provisions of the Administrative Procedure Act (APA) requiring prior notice and the opportunity for public comment. Because these revisions consist of minor technical changes which involve no exercise of agency discretion, it is unnecessary to provide notice and opportunity for public comment. In addition, the 30-day delay in

effectiveness required by 5 U.S.C. 553(d) is not applicable because this rule is not a substantive rule. It is purely administrative in nature and does not affect the existing rights of the public. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

The analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) are not applicable because notice of proposed rulemaking and opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law.

List of Subjects in 15 CFR Part 700

Administrative practice and procedure, Business and industry, Government contracts, National defense, Reporting and recordkeeping requirements, Strategic and critical materials.

■ For the reasons discussed in the preamble, the Department of Commerce amends 15 CFR part 700 as follows:

PART 700—DEFENSE PRIORITIES AND ALLOCATIONS SYSTEM

■ 1. The authority citation for part 700 continues to read as follows:

Authority: Titles I and VII of the Defense Production Act of 1950, as amended (50 U.S.C. App. 2061, *et seq.*), Title VI of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5195, *et seq.*), Executive Order 12919, 59 FR 29525, 3 CFR, 1994 Comp. 901, and Executive Order 13286, 68 FR 10619, 3 CFR, 2003 Comp. 166; section 18 of the Selective Service Act of 1948 (50 U.S.C. App. 468), 10 U.S.C. 2538, 50 U.S.C. 82, and Executive Order 12742, 56 FR 1079, 3 CFR, 1991 Comp. 309; and Executive Order 12656, 53 FR 226, 3 CFR, 1988 Comp. 585.

■ 2. In § 700.55, revise the second sentence in paragraph (a), revise paragraphs (b)(3), (4) and (5) and (c)(1), and add paragraph (d) to read as follows:

§ 700.55 Assistance Programs with Canada and other nations.

(a) * * * Although priority ratings have no legal authority outside of the United States, this section also provides information on how persons in the United States may obtain informal assistance in Canada, Italy, The Netherlands, Sweden, and the United Kingdom in support of approved programs.

(b) * * *

(3) Any person in the United States ordering defense items in Canada in support of an approved program should inform the Canadian supplier that the items being ordered are to be used to fill a rated order. The Canadian supplier should be informed that if production materials are needed from the United States by the supplier or the supplier's vendor to fill the order, the supplier or vendor should contact the Canadian Public Works and Government Services Canada, for authority to place rated orders in the United States: Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, Phase 3, Place du Portage, Level 0A1, 11 Laurier Street, Gatineau, Quebec, K1A 0S5, Canada; telephone: (819) 956–6825; Fax: (819) 956–7827.

(4) Any person in Canada producing defense items for the Canadian government may also obtain priority rating authority for items to be purchased in the United States by applying to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, in accordance with its procedures.

(5) Persons in Canada needing special priorities assistance in obtaining defense items in the United States may apply to the Canadian Public Works and Government Services Canada, Acquisitions Branch, Business Management Directorate, for such assistance. Public Works and Government Services Canada will forward appropriate requests to the U.S. Department of Commerce.

* * * * *

(c) *Foreign nations.*

(1) Any person in a foreign nation other than Canada requiring assistance in obtaining defense items in the United States or priority rating authority for defense items to be purchased in the United States, should submit a request for such assistance or rating authority to the Office of the Deputy Under Secretary of Defense (Industrial Policy): Office of the Deputy Under Secretary of Defense (Industrial Policy), 3330 Defense Pentagon, Washington, DC 20301; telephone: (703) 697–0051; Fax: (703) 695–4277.

(i) If the end product is being acquired by a U.S. government agency, the request should be submitted to the Office of the Deputy Under Secretary of Defense (Industrial Policy) through the U.S. contract administration representative.

(ii) If the end product is being acquired by a foreign nation, the request must be sponsored prior to its submission to the Office of the Deputy Under Secretary of Defense (Industrial Policy) by the government of the foreign nation that will use the end product.

* * * * *

(d) *Requesting assistance in Italy, The Netherlands, Sweden, and the United Kingdom.*

(1) The U.S. Department of Defense has entered into bilateral security of supply arrangements with Italy, The Netherlands, Sweden, and the United Kingdom that allow the U.S. Department of Defense to request the priority delivery for U.S. Department of Defense contracts, subcontracts, and orders from companies in these countries.

(2) Any person in the United States requiring assistance in obtaining the priority delivery of a contract, subcontract, or order in Italy, The Netherlands, Sweden, or the United Kingdom to support an approved program should contact the Office of the Deputy Under Secretary of Defense (Industrial Policy) for assistance. Persons in Italy, The Netherlands, Sweden, and the United Kingdom should request assistance in accordance with § 700.55(c)(1).

Dated: September 8, 2006.

Matthew S. Borman,

Deputy Assistant Secretary for Export Administration.

[FR Doc. E6–15447 Filed 9–19–06; 8:45 am]

BILLING CODE 3510–33–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Parts 2700, 2704, and 2705

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Final rule; technical amendments.

SUMMARY: This document makes technical amendments to the Federal Mine Safety and Health Review Commission's procedural rules and regulations implementing the Equal Access to Justice Act and Privacy Act.

DATES: Effective October 3, 2006.

FOR FURTHER INFORMATION CONTACT: Thomas A. Stock, General Counsel, Office of the General Counsel, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; telephone 202–434–9935; facsimile 202–434–9944.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 2006, the Federal Mine Safety and Health Review Commission

published a final rule in the **Federal Register**, setting forth revisions to its procedural rules (29 CFR part 2700) and regulations implementing the Equal Access to Justice Act (''EAJA'') (29 CFR part 2704) and Privacy Act (29 CFR part 2705). 71 FR 44190. This rule in part makes technical amendments that conform with changes made in the August 4 publication. In the August 4 final rule, the Commission amended 29 CFR 2704.104 by removing paragraph (b)(2), which provided for the aggregation of assets or employees of affiliates of a prevailing party to determine eligibility for an EAJA award. 71 FR 44203, 44210. The Commission also in part redesignated paragraphs (b)(3) and (b)(4) of § 2704.104 as paragraphs (b)(2) and (b)(3). 71 FR 44210. In these technical amendments, the Commission is revising 29 CFR 2704.202(b) and (c) to remove references to former section 2704.104(b)(2), and to ''affiliates'' described in former § 2704.104(b)(2).

In addition, this technical amendment corrects errors made in publications of prior years. Specifically, the Commission is revising the reference to ''§ 1700.5(d)'' set forth in 29 CFR 2700.5(b) to correctly state a reference to ''§ 2700.5(e).'' The Commission is also revising 29 CFR 2704.106(a) to insert the word ''or'' so that the paragraph reads in part that ''[a]wards will be based on rates customarily charged by persons engaged in the business of or acting as attorneys, agents and expert witnesses.'' Further, the Commission is making three minor punctuation changes. First, the Commission is revising 29 CFR 2704.103(a)(3) by replacing the semi-colon at the end of the paragraph with a period. Second, the Commission is revising 29 CFR 2704.104(b)(1) by replacing the semi-colon at the end of the paragraph with a period. Third, the Commission is revising 29 CFR 2705.2(c) by replacing the period at the end of the paragraph with a semi-colon. Finally, the Commission is replacing the term ''system or records'' in 29 CFR 2705.2(d) with ''system of records.'' All of the changes in this technical amendment are non-substantive.

List of Subjects

29 CFR Part 2700

Administrative practice and procedure, Mine safety and health, Penalties, Whistleblowing.

29 CFR Part 2704

Claims, Equal access to justice, Lawyers.

29 CFR Part 2705

Privacy.

■ For the reasons stated in the preamble, the Commission amends 29 CFR parts 2700, 2704, and 2705 as follows:

PART 2700—PROCEDURAL RULES

■ 1. The authority citation for part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820 and 823.

■ 2. The second sentence of paragraph (b) of § 2700.5 is revised to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

* * * * *

(b) * * * Documents filed with the Commission shall be addressed to the Executive Director and mailed or delivered to the Docket Office, Federal Mine Safety and Health Review Commission, 601 New Jersey Avenue, NW., Suite 9500, Washington, DC 20001; facsimile delivery as allowed by these rules (see § 2700.5(e)), shall be transmitted to (202) 434–9954. * * *

* * * * *

PART 2704—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN COMMISSION PROCEEDINGS

■ 3. The authority citation for part 2704 continues to read as follows:

Authority: 5 U.S.C. 504(c)(1); Pub. L. 99–80, 99 Stat. 183; Pub. L. 104–121, 110 Stat. 862.

■ 4. Section 2704.103 is amended by revising paragraph (a)(3) to read as follows:

§ 2704.103 Proceedings covered.

(a) * * *

(3) Challenges to claims of discrimination under section 105(c) of the Mine Act (30 U.S.C. 815(c)) where the Secretary of Labor represents the miner.

* * * * *

■ 5. Section 2704.104 is amended by revising paragraph (b)(1) to read as follows:

§ 2704.104 Eligibility of applicants.

* * * * *

(b) * * *

(1) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant, under the applicant's direction and control. Part-time employees shall be included on a proportional basis.

* * * * *

■ 6. Paragraph (a) of § 2704.106 is revised to read as follows:

§ 2704.106 Allowable fees and expenses.

(a) Awards will be based on rates customarily charged by persons engaged in the business of or acting as attorneys, agents and expert witnesses, even if the services were made available without charge or at a reduced rate to the applicant.

* * * * *

■ 7. Paragraphs (b) and (c) of § 2704.202 are revised to read as follows:

§ 2704.202 Contents of application—where the applicant has prevailed.

* * * * *

(b) The application also shall include a statement that the applicant's net worth does not exceed $2 million (if an individual) or $7 million (for all other applicants).

(c) Each applicant must provide with its application a detailed exhibit showing the net worth of the applicant when the underlying proceeding was initiated. The exhibit may be in any form convenient to the applicant that provides full disclosure of the applicant's assets and liabilities and is sufficient to determine whether the applicant qualifies under the standards in this part. The administrative law judge may require an applicant to file additional information to determine its eligibility for an award.

PART 2705—PRIVACY ACT IMPLEMENTATION

■ 8. The authority citation for part 2705 continues to read as follows:

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

■ 9. Paragraphs (c) and (d) of § 2705.2 are revised to read as follows:

§ 2705.2 Definitions.

* * * * *

(c) The term *record* means any item, collection or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number;

(d) The term *system of records* means a group of any records under control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying

particular assigned to the individual; and

* * * * *

Dated: September 12, 2006.

Michael F. Duffy,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. E6–15582 Filed 9–19–06; 8:45 am]

BILLING CODE 6735–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD05–06–066]

RIN 1625–AA08

Special Local Regulations for Marine Events; Sunset Lake, Wildwood Crest, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent special local regulations during the ''Sunset Lake Hydrofest'', a marine event to be held annually on the last weekend in September or the first weekend in October on the waters of Sunset Lake, Wildwood Crest, New Jersey. For 2006 this marine event will be held on September 30 and October 1, 2006. 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 portions of Sunset Lake during the event.

DATES: This rule is effective September 20, 2006. In 2006 this rule will be enforced from 8:30 a.m. on September 30, 2006 to 5:30 p.m. on October 1, 2006. For subsequent years this rule will be enforced annually from 8:30 a.m. to 5:30 p.m. on the last weekend in September or the first weekend in October.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket (CGD05–06–066) 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; Sunset Lake, Wildwood Crest, NJ in the **Federal Register** (71 FR 39609). 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 Sunset Lake Hydrofest Association sponsors the ''Sunset Lake Hydrofest'', on the waters of Sunset Lake near Wildwood Crest, New Jersey. The event consists of approximately 100 inboard hydroplanes, Jersey speed skiffs and flat-bottom ski boats racing in heats counter-clockwise around an oval racecourse. A fleet of approximately 100 spectator vessels is anticipated 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 permanent special local regulations on the specified waters of Sunset Lake, Wildwood Crest, New Jersey.

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 permanent rule will prevent traffic from transiting a portion of Sunset Lake during the event, the effect of this regulation would 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 Sunset Lake by navigating around the regulated area.

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 Sunset Lake 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 could pass safely around the regulated area. 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 M16475.1D, 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 § 100.536 to read as follows:

§ 100.536 Sunset Lake, Wildwood Crest, NJ

(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 Delaware Bay.

(2) *Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Sector Delaware Bay with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

(3) *Participant* includes all vessels participating in the Sunset Lake Hydrofest under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Sector Delaware Bay.

(b) *Regulated area* includes all waters of Sunset Lake, New Jersey, from shoreline to shoreline, south of latitude 38°58′32″ N. 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.* (1) This section will be enforced annually from 8:30 a.m. to 5:30 p.m. on the last weekend in September or the first weekend in October. The Commander, Fifth Coast Guard District will publish a Notice of Enforcement in the **Federal Register** and in the Fifth Coast Guard District Local Notice to Mariners every year announcing the dates and times this section is in effect.

(2) In 2006 this section will be enforced from 8:30 a.m. on September 30, 2006 to 5:30 p.m. on October 1, 2006.

Dated: September 8, 2006.

Larry L. Hereth,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 06–7943 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2004–0508; FRL–8221–2]

RIN 2060–AJ71

Control of Air Pollution From New Motor Vehicles; Second Amendment to the Tier 2/Gasoline Sulfur Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action amends the credit generation provisions of the Geographic Phase-in Area (GPA) gasoline sulfur program to yield the correct number of credits for refineries and importers that produce GPA gasoline and eliminate the generation of windfall credits by refineries or importers that have gasoline sulfur baselines below 150 ppm sulfur.

In June 2002, we published a Direct Final Rule (DFR) and concurrent Notice of Proposed Rulemaking (NPRM) to amend certain provisions of the gasoline sulfur program concerning Geographic Phase-in Area (GPA) gasoline. Specifically, we replaced the variable standard for GPA gasoline with a flat standard of 150 parts per million (ppm) sulfur for the duration of the GPA program. To prevent the generation of windfall credits by refineries or importers that had gasoline sulfur baselines below 150 ppm sulfur, we also amended the program's credit generation provisions. As stated in the preamble to the Direct Final Rule, we believed that the amendment would result in an equivalent number of credits generated during the amended GPA program as compared to the original program described under the Tier 2 final rule. Despite our intent for the revised calculations to yield the equivalent number of credits, the amended credit provisions were incorrect as pointed out by an adverse comment received on the DFR. Based on this adverse comment, we issued a partial withdrawal notice on August 26, 2002, to withdraw the amendments to the credit provisions and reinstate the provisions that were previously in effect. However, we also stated that we would address the adverse comments in a subsequent final action, this action, based on the concurrent NPRM.

DATES: This final rule is effective on January 1, 2007.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0508. All documents in the docket are listed in the *http://www.regulations.gov index.* Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the EPA Docket Center, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–1742. 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.

Note: The EPA Docket Center suffered damage due to flooding during the last week of June 2006. The Docket Center is continuing to operate. However, during the cleanup, there will be temporary changes to Docket Center telephone numbers, addresses, and hours of operation for people who wish to visit the Public Reading Room to view documents. Consult EPA's **Federal Register** notice at 71 FR 38147 (July 5, 2006) or the EPA Web site at *http://www.epa.gov/epahome/dockets.htm* for current information on docket status, locations and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Mary Manners, Compliance and Innovative Strategies Division, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; telephone (734) 214–4873, fax (734) 214–4053, e-mail *manners.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

Does This Action Apply to Me?

This action will affect you if you produce gasoline. The table below gives an example of entities that may have to comply with the regulations. However, since this is only an example, you should carefully examine these and other existing regulations in Title 40 Part 80 of the Code of Federal Regulations (CFR). If you have any questions, please call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS codes [a]	SIC codes [b]	Examples of potentially regulated entities
Industry	324110	2911	Petroleum refiners.

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) System.

Outline of This Preamble

I. Electronic Availability
II. Background
A. Refinery/Importer Annual Average GPA Standard and Credit Generation Under the Tier 2 Final Rule
B. Refinery/Importer Annual Average GPA Standard and Credit Generation Under the June 2002 Direct Final Rule
III. What Is EPA Finalizing Under This Action?
IV. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
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G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Electronic Availability

Today's action is available electronically on the date of publication from EPA's **Federal Register** Internet Web site listed below. Electronic copies of this preamble, regulatory language, and other documents associated with today's final rule are available from the EPA Office of Transportation and Air Quality Web site, listed below, shortly after the rule is signed by the Administrator. These services are free of charge, except any cost that you already incur for connecting to the Internet.

EPA Federal Register Web site: *http://www.epa.gov/fedrgstr/EPA-AIR/* (either select a desired date or use the Search feature).

EPA Office of Transportation and Air Quality Web site: *http://www.epa.gov/otaq/* (look in What's New or under specific rulemaking topic).

Please note that due to differences between the software used to develop the documents and the software into which the documents may be downloaded, changes in format, page length, *etc.,* may occur.

II. Background

Under a direct final rule (DFR) published in the **Federal Register** on June 12, 2002 (67 FR 40169), we eliminated the anti-backsliding provision for the annual average sulfur standard for Geographic Phase-in Area (GPA) gasoline. Specifically, we replaced the variable average standard for GPA gasoline [1] with a flat average standard of 150 ppm sulfur for 2004 through the duration of the GPA program.[2] To prevent the generation of windfall credits by refineries that had gasoline sulfur baselines below 150 ppm sulfur, we also amended the credit generation provisions for the duration of the GPA program (§ 80.310). As stated in the preamble to the direct final rule, we believed that the amendment to § 80.310 would result in an equivalent number of credits generated during the amended GPA program as compared to the original program under the Tier 2 final rule (65 FR 6698, February 10, 2000), even though the average standard for GPA gasoline was changed to 150 ppm sulfur.

However, one commenter on the DFR indicated that the amendment to § 80.310 would change the manner in which a refinery or importer of GPA gasoline would generate gasoline sulfur credits beginning in 2004. Specifically, the commenter stated that the amendments to §§ 80.310(a) and 80.310(b) would cause the credit baselines for its refineries to be reduced from 150 ppm to lower sulfur levels. The commenter also indicated that the changes to § 80.310(d) would require a refinery to reduce sulfur levels by at least 10 percent from its baseline before credits could be generated. The commenter stated that it would be adversely impacted by these changes since the amended rule would require it to invest capital dollars earlier than it had currently planned at its refineries in order to generate credits. The commenter stated that the combined effect of these changes would be detrimental because the number of credits that it could generate would be significantly reduced. The commenter indicated that it would be negatively impacted by this credit generation limitation since its ability to defer capital expenditures would be limited.

Based on this adverse comment, we issued a partial withdrawal notice (67 FR 38338, August 26, 2002) to withdraw the amendments to § 80.310(a), (b), and (d). In the DFR, we stated that if we received adverse comment on one or more distinct amendments, paragraphs, or sections of the direct final rule by July 12, 2002, we would publish a timely withdrawal in the **Federal Register** indicating which provisions would become effective on September 10, 2002, and which provisions would be withdrawn due to adverse comment. During the 30-day comment period for the rule, we received the adverse comments discussed above on the amendments to § 80.310(a), (b), and (d). In the partial withdrawal notice, we withdrew those amendments and reinstated the provisions that were previously in effect. However, we also stated that we would address the adverse comments in a subsequent final action, today's action, based on the Notice of Proposed Rulemaking that was published concurrently with the DFR.

A. Refinery/Importer Annual Average GPA Standard and Credit Generation Under the Tier 2 Final Rule

Prior to the June 2002 DFR, a refinery or importer's average sulfur standard for GPA gasoline would have been, with the anti-backsliding provisions of the Tier 2 final rule, the least of 150 ppm, the refinery's 1997–98 sulfur baseline plus 30 ppm, or the level from which credits were generated plus 30 ppm. A refinery or importer with a sulfur baseline of 100 ppm, for example, would have had a GPA gasoline sulfur standard of 130 ppm for the duration of the GPA program (the refinery or importer's 1997–98 baseline plus 30 ppm), assuming that no credits were generated prior to 2004. In 2004 and beyond, that refinery or importer would have generated credits based on the following equation under § 80.310:

$$CR_a = V_a \times (S_{std} - S_a)$$

Where:

CR_a = Credits generated for the averaging period.
V_a = Total annual volume of gasoline produced at a refinery or imported during the averaging period.
S_{std} = The standard for GPA gasoline (least of 150 ppm, the refinery or importer's 1997–98 sulfur baseline plus 30 ppm, or the level from which credits were generated plus 30 ppm).
S_a = Actual annual average sulfur level for gasoline produced at a refinery or imported during the averaging period, exclusive of any credits.

Using a volume of 100 gallons for simplified calculation purposes and assuming that the refinery or importer's actual annual gasoline sulfur level was held at its baseline level of 100 ppm, that refinery or importer would have generated 3000 ppm-gallon credits [100 gallons × (130 ppm − 100 ppm)].

B. Refinery/Importer Annual Average GPA Standard and Credit Generation Under the June 2002 Direct Final Rule

As a result of the June 2002 DFR, a refinery or importer's average sulfur standard for GPA gasoline would have been a flat standard of 150 ppm. As mentioned above, the DFR also amended the credit generation provisions (§ 80.310) for the duration of the GPA program to prevent the generation of windfall credits. As a result of the DFR, that refinery or importer would have generated credits based on the following equation:

$$CR_a = V_a \times (S_{Credit} - S_a)$$

Where:

CR_a = Credits generated for the averaging period.

[1] The anti-backsliding requirement was defined for the average standard for GPA gasoline as the least of (1) 150 ppm, (2), the refinery's or importer's 1997/1998 average gasoline sulfur level, calculated in accordance with section 80.295, plus 30 ppm, or (3) the lowest average sulfur level for any year in which the refinery generated allotments or credits under sections 80.275(a) or 80.305 plus 30 ppm, not to exceed 150 ppm.

[2] Under the Tier 2 final rule (65 FR 6698, February 10, 2000), the GPA program lasted from 2004 through 2006. However, the highway diesel final rule (66 FR 5002, January 18, 2001) allowed a two year extension of the GPA program in exchange for full compliance with the 15 ppm ultra-low sulfur diesel fuel standard by June 1, 2006.

V_a = Total annual volume of gasoline produced at a refinery or imported during the averaging period.

S_{Credit} = For GPA gasoline, the least of 150 ppm, or the refinery or importer's 1997–98 sulfur level, or the refinery or importer's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery or importer generated credits or allotments.

S_a = Actual annual average sulfur level for gasoline produced at a refinery or imported during the averaging period, exclusive of any credits.

Again using a volume of 100 gallons for simplified calculation purposes and assuming that the refinery or importer's actual annual gasoline sulfur level was held at its baseline level of 100 ppm, that refinery or importer would not generate any credits under the amended § 80.310 [100 gallons × (100 ppm − 100 ppm) = 0]. Furthermore, the amendment to § 80.310 specified that refiners and importers of GPA gasoline may generate credits beginning in 2004 only if the annual average sulfur level for the gasoline produced or imported during the annual averaging period is less than 0.90 of the refinery or importer's 1997–98 baseline sulfur level. In this example, the refinery or importer would not be able to generate credits until it reduced its gasoline sulfur levels to 90 percent of its baseline, or 90 ppm [0.90 × 100].

III. What Is EPA Finalizing Under This Action?

Today's final rule does not further amend the refinery/importer annual average standard for GPA gasoline. That is, the standard continues to be 150 ppm for the duration of the GPA program. However, today's final rule does amend the credit generation provisions of § 80.310 by adding 30 ppm to the Scredit variable, as shown below. Today's final rule also amends §§ 80.285 and 80.415 to make them consistent with § 80.310. These amendments will yield the correct number of credits generated in that the number of credits generated will be equivalent to the number of credits generated under § 80.310 of the Tier 2 final rule. While these amendments apply to credits generated beginning in 2004, these amendments will not be effective until January 1, 2007 and will not be applied retroactively. Specifically, under today's final rule, a refinery or importer will generate credits based on the following equation:

$$CR_a = V_a \times (S_{Credit} - S_a)$$

Where:

CR_a = Credits generated for the averaging period.

V_a = Total annual volume of gasoline produced at a refinery or imported during the averaging period.

S_{Credit} = For GPA gasoline, the least of 150 ppm, or the refinery's or importer's 1997–98 sulfur level plus 30 ppm, or the refinery's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery generated credits or allotments plus 30 ppm.

S_a = Actual annual average sulfur level for gasoline produced at a refinery or imported during the averaging period, exclusive of any credits.

Again using a volume of 100 gallons for simplified calculation purposes and assuming that the refinery or importer's actual annual gasoline sulfur level is held at its baseline level of 100 ppm, that refinery or importer will generate 3000 ppm-gallon credits under today's final rule [100 gallons × (130 ppm − 100 ppm) = 3000].

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Order (EO) 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under the EO.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This action specifically amends the regulations pertaining to the calculation of GPA gasoline sulfur credits to yield the correct number of credits for refineries and importers that produce GPA gasoline and to eliminate the generation of windfall credits by refineries or importers that have gasoline sulfur baselines below 150 ppm sulfur. This action is of limited impact in that it only applies to GPA gasoline and only for 2007 and 2008; it does not impose any new information collection requirements on the regulated entities.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Today's action does not apply to or affect small refiners or any other small entity.

As stated above, today's action amends the credit generation provisions of the GPA gasoline sulfur program to yield the correct number of credits for GPA gasoline and eliminate the generation of windfall credits by refineries or importers that have gasoline sulfur baselines below 150 ppm sulfur.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. Under § 202 of the UMRA, We generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule for which a written statement is needed, § 205 of the UMRA generally requires us to identify and

consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of § 205 do not apply when they are inconsistent with applicable law. Moreover, § 205 allows us to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if we provide an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to § 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This rule contains no Federal mandates for State, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the rule will significantly or uniquely affect small governments.

We have determined that this rule does not contain a Federal mandate that may result in estimated expenditures of more than $100 million to the private sector in any single year. This action has the net effect of amending 40 CFR 80.285, 80.310, and 80.415 to correct the credit generation provisions for GPA gasoline. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires us to develop an accountable process to ensure ''Meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

Under section 6 of Executive Order 13132, we may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or we consult with State and local officials early in the process of developing the proposed regulation. We also may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

Section 4 of the Executive Order contains additional requirements for rules that preempt State or local law, even if those rules do not have federalism implications (*i.e.,* the rules will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). Those requirements include providing all affected State and local officials notice and an opportunity for appropriate participation in the development of the regulation. If the preemption is not based on express or implied statutory authority, we also must consult, to the extent practicable, with appropriate State and local officials regarding the conflict between State law and federally protected interests within the agency's area of regulatory responsibility.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. The requirements of the rule will be enforced by the Federal government at the national level. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, we did consult with State and local officials in developing this rule.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule corrects the credit generation provisions for GPA gasoline under the Tier 2 program. This final rule does not have tribal implications, as specified in Executive Order 13175.

G. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks

Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs us to 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 an economically significant regulatory action as defined by Executive Order 12866. Furthermore, this rule does not concern an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

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

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 12(d) of Public Law 104–113, directs us to use voluntary consensus standards in our regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective January 1, 2007.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: September 14, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, title 40, Chapter 1 of the Code of Federal Regulations is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7545 and 7601(a).

■ 2. Section 80.285 is amended by revising paragraph (b)(1)(ii) to read as follows:

§ 80.285 Who may generate credits under the ABT program?

* * * * *

(b) * * *

(1) * * *

(ii) Refiners and importers of gasoline designated as GPA gasoline under § 80.219, using the least of 150.00 ppm, or the refinery's or importer's 1997–98 baseline calculated under § 80.295 plus 30.00 ppm, or the refinery's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery generated credits or allotments plus 30.00 ppm (for any party generating credits under both paragraphs (b)(1)(i) of this section and this paragraph (b)(1)(ii), such credits must be calculated separately); or

* * * * *

■ 3. Section 80.310 is amended by revising paragraphs (a) and (b) to read as follows:

§ 80.310 How are credits generated beginning in 2004?

(a) A refiner for any refinery, or an importer, may generate credits in 2004 and thereafter if the annual average sulfur level for gasoline produced or imported for the averaging period is less than 30.00 ppm; or, for refiners that are subject to the small refiner standards in § 80.240, the small refiner annual average sulfur standard applicable to that refinery; or, for refiners and importers subject to the GPA standards in § 80.216, the least of 150.00 ppm, or the refinery's or importer's 1997–1998 sulfur level calculated under § 80.295 plus 30.00 ppm, or the refinery's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery generated credits or allotments plus 30.00 ppm.

(b) Credits are calculated as follows:

$$CR_a = V_a \times (S_{Credit} - S_a)$$

Where:

CR_a = Credits generated for the averaging period.

V_a = Total annual volume of gasoline produced at a refinery or imported during the averaging period.

S_{Credit} = 30.00 ppm; or the sulfur standard for a small refinery established under § 80.240; or, for gasoline designated as GPA gasoline under § 80.219, the least of 150.00 ppm, or the refinery's or importer's 1997–1998 sulfur level calculated under § 80.295 plus 30.00 ppm, or the refinery's lowest annual average sulfur level for any year from 2000 through 2003 during which the refinery generated credits or allotments plus 30.00 ppm.

S_a = Actual annual average sulfur level, calculated in accordance with the provisions of § 80.205, for gasoline produced at a refinery or imported during the averaging period, exclusive of any credits.

* * * * *

■ 4. Section 80.415 is amended by revising paragraph (a)(2)(iii) to read as follows:

§ 80.415 What are the attest engagement requirements for gasoline sulfur compliance applicable to refiners and importers?

* * * * *

(a) * * *

(2) * * *

(iii) If the annual average sulfur level for any year in which credits were generated for 2000 through 2003 was less than the baseline level under paragraph (a)(1) of this section, for small refiners report as a finding the lowest annual sulfur level as the new baseline value for purposes of establishing the small refiner standards under § 80.240, and for GPA gasoline report as a finding the lowest annual sulfur level plus 30.00 ppm as the new sulfur level for purposes of credit generation under § 80.310, if lower than 150.00 ppm.

* * * * *

[FR Doc. 06–7809 Filed 9–19–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0324; FRL–8093–7]

Metrafenone; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of metrafenone, (3-bromo-6-methoxy-2-methylphenyl)(2,3,4-trimethoxy-6-methylphenyl)methanone, in or on imported grape at 0.6 parts per million (ppm), with no U.S. registration. BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 20, 2006. Objections and requests for hearings must be received on or before November 20, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0324. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–

4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Janet Whitehurst, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6129; e-mail address: *janet.whitehurst@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS code 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS code 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS code 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS code 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0324 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 20, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0324, by one of the following methods:

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

II. Background and Statutory Findings

In the **Federal Register** of May 10, 2006 (71 FR 27242–27243) (FRL–8058–2), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E6884) by BASF Corporation, 26 Davis Dr., P.O. Box 13528, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.624 be amended by establishing a tolerance for residues of the fungicide metrafenone, (3-bromo-6-methoxy-2-methylphenyl)(2,3,4-trimethoxy-6-methylphenyl)methanone, in or on imported table and wine grapes, at 0.5 ppm. That notice included a summary of the petition prepared by BASF Corporation, the registrant. The registrant is seeking a tolerance on imported grapes and its processed commodities. Following review of the residue data, EPA has increased the tolerance level for grapes from 0.5 ppm to 0.6 ppm and concluded that tolerances are not necessary for processed grape commodities. EPA's statistical analysis of the residue data indicates that 0.6 ppm better represents a value that should not be exceeded in grapes and processed grape commodities by any application of the pesticide in conformity with its uses. Tolerances are not necessary for processed grape commodities because residues on those commodities are unlikely to exceed the 0.6 ppm level in the grape tolerance. Under the FFDCA, tolerances for raw agricultural commodities also apply to processed foods made from the raw commodities (21 U.S.C. 346a(a)(2)). Comments were received on the notice of filing. EPA's response to these comments are discussed in Unit IV.C.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For

further discussion of the regulatory requirements of section 408 of FFDCA and a complete description of the risk assessment process, see:

- *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm.*
- *http://www.epa.gov/oppfead1/trac/science.*
- *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*
- *http://www.epa.gov/pesticides/trac/science/aggregate.pdf.*

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of metrafenone on grape at 0.6 ppm with no U.S. registration. EPA's assessment of exposures and risks associated with establishing the import tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The toxicology database for metrafenone is complete and adequate for selection of doses and endpoints to be used in this risk assessment. The toxic effects caused by metrafenone are discussed in a document entitled, *Metrafenone: Human Health Risk Assessment for Proposed Use on Grapes* that can be found at *http://www.regulations.gov* in the docket ID number EPA–HQ–OPP–2006–0324.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at:

- *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*
- *http://www.epa.gov/oppfead1/trac/science.*

A summary of the toxicological endpoints for metrafenone used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR METRAFENONE FOR USE IN HUMAN RISK ASSESSMENT

Exposure scenario	Dose used in risk assessment, UF	Special FQPA SF and level of concern for risk assessment	Study and toxicological effects
Chronic dietary (All populations)	NOAEL= 25 milligram/kilogram/day (mg/kg/day) UF=100 Chronic RfD=0.25mg/kg/day	cPAD= cRfD/Special FQPA SF Special FQPA SF = 1 cPAD= 0.25	Combined chronic/carcinogenicity—rat LOAEL 260 (mg/kg/day): Based on hepatotoxicity and nephrotoxicity in both sexes.
Cancer (Oral, dermal, inhalation)	Classification: "Suggestive Evidence of Carcinogenicity." The chronic RfD is protective of cancer effects.		

UF = uncertainty factor, FQPA SF = Special FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been proposed (40 CFR 180.624) for the residues of metrafenone, in or on imported table and wine Grapes. There are no registrations for use of metrafenone in the United States. There are no major livestock feed items associated with the use on imported grapes. Therefore, residues in livestock commodities are not relevant to the establishment of import tolerances for grapes. Risk assessments were conducted by EPA to assess dietary exposures from metrafenone in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

No acute reference dose was established nor was a dietary endpoint identified in either the general population or for females aged 13–49 years. There were no appropriate studies that demonstrated evidence of toxicity attributable to a single dose of metrafenone for these populations. As a result, a quantitative acute dietary exposure assessment is unnecessary.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the U.S. Department of Agriculture (USDA) 1994–1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The dietary assessment included just grapes, the only source of residues for metrafenone. It was assumed that 100% of all grape commodities contained tolerance level residues.

iii. *Cancer.* Although metrafenone is considered to be a possible human carcinogen, the risk assessment based on chronic effects is considered protective of cancer effects; therefore, a

cancer dietary analysis was not performed. EPA classified metrafenone as ''Suggestive Evidence of Carcinogenicity,'' and concluded that human risk to liver tumorigenesis would not be expected at exposure levels that do not cause tumors in mice. The NOAEL and LOAEL selected for the cRfD are based on hepatotoxicity and nephrotoxicity observed at doses lower than the liver tumor response dose. Thus, the cRfD is protective of the cancer effects. This conclusion was based on the following weight-of-evidence considerations:

a. There was a treatment-related increase in hepatocellular adenomas and adenomas plus carcinomas in male mice and only at the highest dose tested (HDT) (limit dose) of 1,109 mg/kg/day. Although there was an increase in the incidence of hepatocellular adenomas in female rats, this increase occurred only at the HDT, 1,493 mg/kg/day, which was considered by the EPA to be above the maximum tolerated dose (MTD) and, therefore, was not relevant.

b. There were no treatment-related tumors seen in male rats or female mice.

c. Metrafenone did not appear to be genotoxic.

d. The registrant submitted three ''mode of action'' studies in rats. The EPA considered that, because the increased incidence in tumors in rats occurred at a dose above the MTD, these studies could not be used to explain the mode of action. The registrant did not submit any ''mode of action'' studies in mice. Therefore, as EPA considered an increase in hepatocellular adenomas and adenomas plus carcinomas to be relevant only in mice, it was determined that no ''mode of action'' studies were applicable to these tumors. EPA indicated that the results of the mode of action studies in rats could not be ''assumed'' to be relevant in the mouse.

iv. *Anticipated residue and percent crop treated (PCT) information*. Anticipated residues and PCT data were not used for the conservative dietary exposure analysis.

2. *Dietary exposure from drinking water*. As there are no U.S. registrations or proposed registrations, residues are not expected in drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Metrafenone is not registered for use on any sites that would result in residential exposure.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to metrafenone and any other substances and metrafenone does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that metrafenone has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1.*In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using UFs (safety) in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional UFs and/or special FQPA SFs, as appropriate.

2. *Prenatal and postnatal sensitivity*. The toxicology database for metrafenone is complete and adequate to characterize potential pre- and/or postnatal risk for infants and children. Acceptable/guideline studies for developmental toxicity in rats and rabbits as well as a 2–generation reproduction study in rats were available for consideration during endpoint selection.

3. *Conclusion*. After evaluating the toxicological and exposure data, EPA recommends that the FQPA SF be reduced to 1X because:

i. The toxicology database is complete.

ii. There was no evidence of increased qualitative or quantitative susceptibility observed in the rat or rabbit developmental as well as the rat reproduction studies; there are no residual uncertainties with regard to pre- and postnatal toxicity.

iii. The dietary food exposure assessment is based on EPA-recommended tolerance-level residues and assumes 100% crop treated for all commodities, which results in very high-end estimates of dietary exposure.

iv. The proposed use is for import tolerances; therefore, residential and occupational exposures are not anticipated.

E. Aggregate Risks and Determination of Safety

In accordance with the FQPA, EPA must consider and aggregate pesticide exposures and risks from three major sources: Food, drinking water, and residential exposures. In an aggregate assessment, exposures from relevant sources are added together and compared to quantitative estimates of hazard (e.g., a NOAEL or PAD), or the risks themselves can be aggregated. When aggregating exposures and risks from various sources, EPA considers both the route and duration of exposure.

The registrant is seeking import tolerances on grapes and its processed commodities and the risk assessment includes only dietary exposure to metrafenone. There is no expectation that exposure to metrafenone would occur via water consumption or residential use. Therefore, an aggregate exposure risk assessment is equivalent to the dietary risk assessment.

1. *Acute risk*. Because there was no evidence of toxicity for metrafenone attributable to a single dose, metrafenone is not expected to pose an acute risk.

2. *Chronic risk*. As there are no U.S. registrations or proposed registrations, the chronic aggregate risk is equivalent to the chronic dietary risk. Based on the exposure assumptions discussed in this unit, the chronic exposure for the general U.S. population is 0.1% of the cPAD. The most highly exposed population subgroup is children 1–2 years, which utilizes 0.8% of the cPAD. The dietary risk estimates are all below EPA's level of concern.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level. As there are no U.S. registrations or proposed registrations for metrafenone, there will be no exposures from residential uses or residues in drinking water. Therefore, the aggregate risk is the risk from food (grape commodities) only. The dietary risk estimates are all below EPA's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). As there are no U.S. registrations or proposed registrations for metrafenone, there will be no exposures from residential uses or residues in drinking water. Therefore, the aggregate risk is the risk from food (grape commodities) only. The dietary risk estimates are all below EPA's level of concern.

5. *Aggregate cancer risk for U.S. population*. EPA considers the cRfD to be protective of the cancer effects and, as indicated in this unit, exposure is well below this level.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to metrafenone residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

The petitioner has submitted gas chromatography methods with electron capture and mass selective detection for determining residues of metrafenone in grapes and wine. These methods are considered adequate for tolerance enforcement purposes. In addition, there is good recovery of metrafenone from grapes using the Food and Drug Administration (FDA) multi-residue method protocols. The metrafenone methods may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

There are no specific CODEX maximum residue limits (MRLs) for metrafenone. Although the European Food Safety Authority has proposed a European Union MRL of 0.5 ppm for grapes, the MRL has yet to be harmonized between member states. The registrant is seeking import tolerance on grapes and its processed commodities. Following review of the residue and metabolism data, EPA has made a minor change to the proposed tolerance. For grapes EPA expanded the tolerance level for grapes from 0.5 ppm to 0.6 ppm.

C. Response to Comments

One comment, dated May 10, 2006, was received from B. Sachau. Ms. Sachau's comments regarding general exposure to pesticides contained no scientific data or evidence to rebut the Agency's conclusion that there is a reasonable certainty that no harm will result from aggregate exposure to metrafenone, including all anticipated dietary exposures and other exposures for which there is reliable information. This comment as well as her comments regarding animal testing have been responded to by the Agency on several occasions. For examples, see the **Federal Register** issues of January 7, 2005 (70 FR 1349) (FRL–7691–4) and October 29, 2004 (69 FR 63083) (FRL–7681–9).

V. Conclusion

Therefore, the tolerance is established for residues of metrafenone, (3-bromo-6-methoxy-2-methylphenyl)(2,3,4-trimethoxy-6-methylphenyl)methanone, in or on grape at 0.6 ppm, with no U.S. registration.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the

Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 11, 2006.

James J. Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.624 is added to subpart C to read as follows:

§ 180.624 Metrafenone, tolerances for residues.

(a) *General*. Tolerances are established for residues of metrafenone, (3-bromo-6-methoxy-2-methylphenyl)(2,3,4-trimethoxy-6-methylphenyl)methanone, in or on the following commodities.

Commodity	Parts per million
Grape	0.6[1]

[1] There is no U.S. registration on grapes as of September 20, 2006.

(b) *Section 18 emergency exemption*. [Reserved]

(c) *Tolerances with regional registrations*. [Reserved]

(d) *Indirect or inadvertent residues*. [Reserved]

[FR Doc. E6–15475 Filed 9–19–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0623; FRL–8090–5]

Dithianon; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of dithianon, (5,10-dihydro-5,10-dioxonaphtho(2,3-b)-1,4-dithiin-2,3-dicarbonitrile in or on imported fruit, pome, group 11, and hop, dried cones. BASF Corporation requested this tolerance under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA).

DATES: This regulation is effective September 20, 2006. Objections and requests for hearings must be received on or before November 20, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0623. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305-5805.

FOR FURTHER INFORMATION CONTACT: Rose Mary Kearns, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (703) 305-5611; e-mail address: *kearns.rosemary@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

- Crop production (NAICS 111), e.g., agricultural workers; greenhouse, nursery, and floriculture workers; farmers.
- Animal production (NAICS 112), e.g., cattle ranchers and farmers, dairy cattle farmers, livestock farmers.
- Food manufacturing (NAICS 311), e.g., agricultural workers; farmers; greenhouse, nursery, and floriculture workers; ranchers; pesticide applicators.
- Pesticide manufacturing (NAICS 32532), e.g., agricultural workers; commercial applicators; farmers; greenhouse, nursery, and floriculture workers; residential users.

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

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

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

OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm.*

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0623. in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 20, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0623, by one of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• *Mail*: Office of Pesticide Programs (OPP) Regulatory Public Docket (7502P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

• *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S-4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305-5805.

II. Background and Statutory Findings

In the **Federal Register** of April 12, 2006 (71 FR 19733) (FRL–7767–7), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 6E4781) by BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, N.C. 22709. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide dithianon, 5,10-dihydro-5,10-dioxonaphtho(2,3-b)-1,4-dithiin-2,3-dicarbonitrile, in or on imported fruit, pome, group 11 at 5 parts per million (ppm) and hop, dried cones at 100 ppm. There were no comments received in response to the notice of filing.

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for residues of dithianon on fruit, pome, group 11 at 5 parts per million and hop, dried cones at 100 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by dithianon as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found either in the docket ID number HQ–EPA–2006–0623 at *http://www.regulations.gov* or at *http://www.epa.gov/opprd001/factsheets*.

B. Toxicological Endpoints

For hazards that have a threshold below which there is no appreciable risk, the dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological level of concern (LOC). However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify non-threshold hazards such as cancer. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk, estimates risk in terms of the probability of occurrence of additional cancer cases. More information can be found on the general principles EPA uses in risk characterization at *http://www.epa.gov/pesticides/factsheets/riskassess.htm* or *http://www.epa.gov/oppfead1/trac/science*.

A summary of the toxicological endpoints for dithianon used for human risk assessment is shown in Table 1 of this unit:

TABLE 1.—SUMMARY OF TOXICOLOGICAL DOSE AND ENDPOINTS FOR DITHIANON FOR USE IN HUMAN RISK ASSESSMENT

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies and Intraspecies and any Traditional UF	Special FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (Females 13–49 years of age).	NOAEL = 20 mg/kg/day ..... UF = 1,000 aAcute RfD = 0.02 mg/kg/day	Special FQPA SF = 1 ..... aPAD = acute RfD/Special FQPA SF = 0.02 mg/kg/day	Developmental toxicity study in rats. LOAEL = 50 mg/kg/day based on post implantation loss due to early resorptions
Acute Dietary (General population including infants and children).	None	None	Not selected. No appropriate dose and endpoint could be identified for these population groups.
Chronic Dietary (All populations) ..	NOAEL = 6 mg/kg/day ..... UF = 1,000 a Chronic RfD = 0.006 mg/kg/day	Special FQPA SF = 1 ..... cPAD = chronic RfD/ Special FQPA SF = 0.006 mg/kg/day	Combined chronic toxicity/ oncogenicity study in rats. LOAEL = 30 mg/kg/day based on decreased body weight gains and increased relative to body kidney weights (M and F), grossly observed kidney lesions in males (irregular surfaces, pale kidneys, cysts, and enlarged kidneys) and females (masses), and non-neoplastic lesions of the kidney in males (tubular nephrosis, renal cysts, and end-stage kidney lesions) and females (tubular nephrosis, proliferative tubules, and glomerulonephropathy).
Cancer (oral, dermal, inhalation)	.....	.....	Classification: Classification is ''Suggestive Evidence of Carcinogenic Potential''. The risk assessment for chronic effects is considered protective of any cancer effect.

UF = uncertainty factor, FQPA SF = FQPA safety factor, NOAEL = no observed adverse effect level, LOAEL = lowest observed effect level, PAD = population adjusted dose (a = acute, c = chronic), RFD = reference dose, MOE = margin of exposure, LOC = level of concern, N/A = Not Applicable, [a] Additional 10x database uncertainty factor for lack of an acceptable developmental rabbit study.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have not been established for the residues of dithianon, in or on a variety of raw agricultural commodities because it is a new pesticide chemical. Risk assessments were conducted by EPA to assess dietary exposures from dithianon in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one-day or single exposure.

An appropriate endpoint attributable to a single exposure for females 13-49 years of age was identified in the toxicological studies for dithianon, therefore, a quantitative acute dietary exposure assessment is necessary for this population. In conducting the acute dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the acute exposure assessment. This acute analysis was based on tolerance-level residues, and an assumption of 100% crop treated.

No appropriate dose and endpoint could be identified attributable to a single exposure for the general population, including infants and children. Therefore, an acute dietary exposure assessment is not necessary for these populations.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™), which incorporates food consumption data as reported by respondents in the USDA 1994-1996 and 1998 Nationwide Continuing Surveys of Food Intake by Individuals (CSFII), and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessment: This chronic analysis was based on anticipated (average) residues and an assumption of 100% crop treated. Exposure to dithianon would originate from food only, because the proposed tolerances would only be established on imported commodities. With no proposed U.S. registration, there is no expectation that dithianon residues would occur in surface or ground water sources of drinking water.

iii. *Cancer.* The Agency classified dithianon as having ''Suggestive Evidence of Carcinogenicity'', based on the presence of renal adenomas and carcinomas in the female rat at doses that were adequate to assess carcinogenicity. This classification is based on several weight-of-evidence

considerations. First treatment-related rare kidney tumors, primarily adenomas, were seen only at the highest dose tested (HDT) (600 ppm) in one sex (females) and in one species (rats). The HDT was considered adequate, but not excessive, to assess the carcinogenicity of dithianon; however, significant renal toxicity occurred at this dose. Second, there is no mutagenicity concern for dithianon. Finally, the Agency concluded that the registrant's hypothesized non-genotoxic mode of action involving nephrotoxicity and sustained regenerative proliferation is biologically plausible. The risk assessment for chronic effects is considered protective of any cancer effects.

2. *Dietary exposure from drinking water*. Since dithianon is proposed for use only on imported pome fruit and imported hops commodities, the sole anticipated exposure route for the U.S. population is via dietary (food) exposure. With no proposed U.S. registration, there is no expectation that dithianon residues would occur in surface or ground water sources of drinking water.

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Dithianon is not registered for use on any sites that would result in residential exposure.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to dithianon and any other substances and dithianon does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dithianon has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative*.

D. Safety Factor for Infants and Children

1. *In general*. Section 408 of FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. In applying this provision, EPA either retains the default value of 10X when reliable data do not support the choice of a different factor, or, if reliable data are available, EPA uses a different additional safety factor value based on the use of traditional uncertainty factors and/or special FQPA safety factors, as appropriate.

2. *Prenatal and postnatal sensitivity*. There is no indication of increased quantitative or qualitative susceptibility of the offspring in the developmental and 2-generation reproduction studies. In the developmental toxicity study in rats, reductions in maternal body weights, body weight gains, and food consumption were seen at 50 mg/kg/day, but a higher dose (100 mg/kg/day) was required to produce a reduction in fetal body weights. The significant increase in post-implantation loss due to early resorptions occurred at 50 mg/kg/day, including dams that experienced total litter loss, is not evidence of increased qualitative susceptibility; instead, it is likely due to maternal toxicity. In the 2-generation reproduction study, decreased body weights, body weight gains, and food consumption were observed in the parents but no adverse effects were seen in the offspring up to the HDT.

3. *Conclusion*. The toxicology database shows no evidence of increased qualitative or quantitative susceptibility in the offspring. The dietary food exposure assessment utilizes tolerance level residues and 100% crop treated assumptions for acute risk, and average residues from crop field trials and 100% crop treated assumptions for chronic risk; by using these conservative assumptions, exposures/risks will not be underestimated. There are no existing or proposed residential uses for dithianon at this time. Nonetheless, because an acceptable rabbit developmental study is not available, the Agency retained the 10x FQPA safety factor, in the form of data base uncertainty factor of (UF_{DB}).

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. An acute endpoint was selected for only one population subgroup, females 13-49. Using the exposure assumptions discussed in this unit for acute exposure, EPA has concluded that acute exposure to dithianon from food will utilize 66% of the aPAD for females 13 to 49 years of age.

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE AND CHRONIC EXPOSURE TO DITHIANON

Population subgroup	Acute dietary (95th Percentile)*			Chronic dietary*		
	aPAD (mg/kg)	Exposure (mg/kg/day)	% aPAD	cPAD (mg/kg)	Exposure (mg/kg/day)	% cPAD
General U.S. Population	Not applicable.	Not applicable.	Not applicable.	0.006	.000738	12
All Infants <1 year	Not applicable.	Not applicable.	Not applicable.	0.006	0.003268	55
Children 1-2 years	Not applicable.	Not applicable.	Not applicable.	0.006	0.002773	46

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR ACUTE AND CHRONIC EXPOSURE TO DITHIANON—Continued

Population subgroup	Acute dietary (95th Percentile)*			Chronic dietary*		
	aPAD (mg/kg)	Exposure (mg/kg/day)	% aPAD	cPAD (mg/kg)	Exposure (mg/kg/day)	% cPAD
Children 3-5 years	Not applicable.	Not applicable.	Not applicable.	0.006	0.001995	33
Children 6-12 years	Not applicable.	Not applicable.	Not applicable.	0.006	0.000903	15
Youths 13-19 years	Not applicable.	Not applicable.	Not applicable.	0.006	0.000313	5
Adults 20-49 years	Not applicable.	Not applicable.	Not applicable.	0.006	0.000583	10
Adults 50+ years	Not applicable.	Not applicable.	Not applicable.	0.006	0.000483	8
Females 13-49 years	0.02	.013119	66	0.006	0.000369	6

* Values for the population with the highest risk are bolded.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to dithianon from food will utilize 12% of the cPAD for the U.S. population and 55% of the cPAD for all infants less than 1 year of age. There are no residential uses for dithianon that result in chronic residential exposure to dithianon.

3. *Short-term risk*. Dithianon is not registered for use on any sites that would result in residential exposure. Therefore, the aggregate risk is the risk from food only, which does not exceed the Agency's level of concern.

4. *Intermediate-term risk*. Dithianon is not registered for use on any sites that would result in residential exposure and is intended only for imported fruit, pome, group 11 and hops, dried cones. Therefore, the aggregate risk is the risk from food only, which does not exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. In accordance with EPA's Final Guidelines for Carcinogen Risk Assessment (March, 2005), the Agency classified dithianon into the category ''Suggestive Evidence of Carcinogenicity'', based on the presence of renal adenomas and carcinomas in the female rat at doses that were adequate to assess carcinogenicity. However, as noted in Unit.III.C.1.iii., the chronic risk assessment is protective of any possible cancer effect.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to dithianon residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (HPLC/UV for pome fruit and HPLC/ECD for hops) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755-5350; telephone number: (410) 305-2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Codex MRLs have been established for residues of dithianon in or on pome fruit at 5 ppm and hops at 100 ppm; the proposed tolerances on imported commodities are harmonized with established MRLs. There are currently no established Canadian or Mexican MRLs for dithianon.

V. Conclusion

Therefore, a tolerance is established for residues of dithianon, 5,10-dihydro-5,10-dioxonaphtho(2,3-b)-1,4-dithiin-2,3-dicarbonitrile, in or on imported fruit, pome, group 11 at 5 ppm and hop, dried cones at 100 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States,

or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 11, 2006.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.621 is added to read as follows:

§ 180.621 Dithianon; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide dithianon, (5,10-dihydro-5,10-dioxonaphtho(2,3-b)-1,4-dithiin-2,3-dicarbonitrile) in or on the following commodities:

Commodity	Parts per million
Fruit, pome, group 11[1]	5
Hop, dried cones[1]	100

[1]No U.S. registration as of September 5, 2006.

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. E6–15460 Filed 9–19–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0613.; FRL–8089–2]

Etofenprox; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of etofenprox (2-[ethoxyphenyl]-2-methylpropyl-3-phenoxy benzyl ether) in or on rice grain and rice straw. This action is associated with an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on rice. This regulation establishes a maximum permissible level for residues of etofenprox in these food commodities. The tolerances expire and are revoked on December 31, 2009.

DATES: This regulation is effective September 20, 2006. Objections and requests for hearings must be received on or before November 20, 2006, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0613. All documents in the docket are listed on the regulations.gov website. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday

through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Libby Pemberton, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–9364; e-mail address: *Sec–18–Mailbox@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0613 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 20, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0613, by one of the following methods:

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

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing tolerances for residues of the insecticide etofenprox (2-[ethoxyphenyl]-2-methylpropyl-3-phenoxy benzyl ether) or on rice grain at 0.01 parts per million (ppm) and rice straw at 0.02 ppm. These tolerances expire and are revoked on December 31, 2009. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR).

Section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under section 18 of FIFRA. Such tolerances can be established without providing notice or period for public comment. EPA does not intend for its actions on section 18 related tolerances to set binding precedents for the application of section 408 of the FFDCA and the new safety standard to other tolerances and exemptions. Section 408(e) of the FFDCA allows EPA to establish a tolerance or an exemption from the requirement of a tolerance on its own initiative, i.e., without having received any petition from an outside party.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of the FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Section 18 of the FIFRA authorizes EPA to exempt any Federal or State agency from any provision of FIFRA, if EPA determines that ''emergency conditions exist which require such exemption.'' This provision was not amended by the Food Quality Protection Act of 1996 (FQPA). EPA has established regulations governing such emergency exemptions in 40 CFR part 166.

III. Emergency Exemption for Etofenprox on Rice and FFDCA Tolerances

The Applicant asserts that the current emergency situation with respect to weevil management has arisen primarily from the continuing, and probably increasing, practice of cultivating crawfish in ponds in close proximity to rice fields in southern Louisiana. The great majority of crawfish ponds (at least 75%) are close enough to rice fields to be affected by the management practices used in rice. All of the insecticides currently registered for use against the

rice water weevil in Louisiana are toxic to crawfish. The use of etofenprox for weevil control has one significant advantage over currently used liquid products in that it is formulated as a granular and thus there is far less potential for drift. The Applicant states that the estimated economic loss if no effective weevil controls are available is over 8 million dollars.

EPA has authorized under FIFRA section 18 the use of etofenprox on rice for control of rice water weevil (*Lissorhoptrus oryzophilus*) in Louisiana. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of etofenprox in or on rice grain and rice straw. In doing so, EPA considered the safety standard in section 408(b)(2) of the FFDCA, and EPA decided that the necessary tolerance under section 408(l)(6) of the FFDCA would be consistent with the safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is lawful, EPA is issuing these tolerances without notice and opportunity for public comment as provided in section 408(l)(6) of the FFDCA. Although these tolerances expire and are revoked on December 31, 2009, under section 408(l)(5) of the FFDCA, residues of the pesticide not in excess of the amounts specified in these tolerances remaining in or on rice grain or rice straw after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by these tolerances at the time of that application. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

Because these time-limited tolerances are being approved under emergency conditions, EPA has not made any decisions about whether etofenprox meets EPA's registration requirements for use on rice or whether permanent tolerances for this use would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of etofenprox by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Louisiana to use this pesticide on this crop under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for etofenprox, contact the Agency's Registration Division at the address provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see *http://www.epa.gov/fedrgstr/EPA-PEST/1997/November/Day-26/p30948.htm*.

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of etofenprox and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for time-limited tolerances for residues of etofenprox in or on rice grain at 0.01 ppm and rice straw at 0.02 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Endpoints

The dose at which no adverse effects are observed (the NOAEL) from the toxicology study identified as appropriate for use in risk assessment is used to estimate the toxicological endpoint. However, the lowest dose at which adverse effects of concern are identified (the LOAEL) is sometimes used for risk assessment if no NOAEL was achieved in the toxicology study selected. An uncertainty factor (UF) is applied to reflect uncertainties inherent in the extrapolation from laboratory animal data to humans and in the variations in sensitivity among members of the human population as well as other unknowns. An UF of 100 is routinely used, 10X to account for interspecies differences and 10X for intra species differences.

For dietary risk assessment (other than cancer) the Agency uses the UF to calculate an acute or chronic reference dose (acute RfD or chronic RfD) where the RfD is equal to the NOAEL divided by the appropriate UF (RfD = NOAEL/UF). Where an additional safety factor (SF) is retained due to concerns unique to the FQPA, this additional factor is applied to the RfD by dividing the RfD by such additional factor. The acute or chronic Population Adjusted Dose (aPAD or cPAD) is a modification of the RfD to accommodate this type of FQPA SF.

For non-dietary risk assessments (other than cancer) the UF is used to determine the level of concern (LOC). For example, when 100 is the appropriate UF (10X to account for interspecies differences and 10X for intraspecies differences) the LOC is 100. To estimate risk, a ratio of the NOAEL to exposures (margin of exposure (MOE) = NOAEL/exposure) is calculated and compared to the LOC.

The linear default risk methodology (Q*) is the primary method currently used by the Agency to quantify carcinogenic risk. The Q* approach assumes that any amount of exposure will lead to some degree of cancer risk. A Q* is calculated and used to estimate risk which represents a probability of occurrence of additional cancer cases (e.g., risk is expressed as 1×10^6 or one in a million). Under certain specific circumstances, MOE calculations will be used for the carcinogenic risk assessment. In this non-linear approach, a ''point of departure'' is identified below which carcinogenic effects are not expected. The point of departure is typically a NOAEL based on an endpoint related to cancer effects though it may be a different value derived from the dose response curve. To estimate risk, a ratio of the point of departure to exposure (MOE_{cancer} = point of departure/exposures) is calculated. A summary of the toxicological endpoints for etofenprox used for human risk assessment is shown in the following Table:

DOSES AND TOXICOLOGICAL ENDPOINTS FOR ETOFENPROX

Exposure/Scenario	Dose Used in Risk Assessment, Interspecies, Intraspecies and any Traditional UF	FQPA SF and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (females 13-49 years of age)	Not selected	NA	No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies.
Acute Dietary (General population including infants and children)	Not selected	NA	No toxicological endpoint attributable to a single exposure was identified in the available toxicology studies.
Chronic Dietary (All populations)	NOAEL = 3.7 mg/kg/day Chronic RfD = 0.037 mg/kg/day	FQPA SF = 1x cPAD = Chronic RfD/Special FQPA SF = 0.037 mg/kg/day	Combined Chronic Toxicity/Carcinogenicity Study in Rat (MRID No. 40449707) LOAEL = 25.5 mg/kg/day based on increased thyroid weights. Related to increased liver weights and histopathology changes in liver and thyroid that occurred at the higher dose.
Incidental Oral Short-Term (1 - 30 days)	NOAEL =100 mg/kg/day UF = 100	LOC for MOE = 100	Developmental Toxicity in Rabbit (MRID No. 45210602) LOAEL = 300 mg/kg/day based on decreased body weights, body weight gains, and food consumption (maternal toxicity).
Incidental Oral Intermediate-Term (1 - 6 months)	NOAEL = 20 mg/kg/day UF = 100	LOC for MOE = 100	Subchronic Oral Toxicity in Rat (MRID No. 40449703) LOAEL = 120 mg/kg/day based on decreased body weight gain, increased liver and thyroid weights with corresponding histopathology, changes in hematology and clinical chemistry.
Dermal (All durations)	NA	NA	No systemic toxicity was identified in the dermal 28–day study; Highest Dose Tested was 1,000 mg/kg/day.
Inhalation (All durations)	NOAEL =10.6 mg/kg/day UF = 100	LOC for MOE = 100 Residential LOC for MOE = 100 Occupational	13–Week Inhalation Toxicity in Rat (MRID No. 40449705) LOAEL = 52.3 mg/kg/day based on organ weight changes and histopathological changes in liver, adrenals and thyroid.
Cancer (oral, dermal, inhalation)	Classification: ''Not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.''		

UF = uncertainty factor, FQPA SF = Any additional safety factor retained due to concerns unique to the FQPA, NOAEL = no observed adverse effect level, LOAEL = lowest observed adverse effect level, PAD = population adjusted dose (a = acute, c = chronic) RfD = reference dose, MOE = margin of exposure, LOC = level of concern, NA = Not Applicable

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Risk assessments were conducted by EPA to assess dietary exposures from etofenprox in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. An acute risk assessment was not performed. No toxicological endpoint attributable to a single (acute) dietary exposure was identified.

ii. *Chronic exposure.*In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity. The following assumptions were made for the chronic exposure assessments: The concentration of etofenprox in rice commodities is assumed at tolerance level and 100 percent of rice grown is assumed to be treated.

iii. *Cancer.* Etofenprox has been classified as, ''Not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.'' In 1989, the EPA classified etofenprox as a ''Group C Possible Human Carcinogen'' based on thyroid tumors in rats. In 1996 the EPA evaluated additional information submitted by the registrant, Mitsui Toatsu, regarding the carcinogenic potential of etofenprox. Its objective was to demonstrate a threshold mechanism for the thyroid tumors in rats. In 2005, an additional 4–week dietary investigative study on thyroid function and hepatic microsomal enzyme induction in rats was reviewed by the EPA. In 2005, the Agency considered if the additional study along with the previously submitted data provided sufficient information to support re-evaluation of etofenprox's carcinogenicity status. In consideration of these new data, and in accordance with the EPA Final Guidelines for Carcinogen Risk Assessment, etofenprox was classified as ''Not likely to be

carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.'' This decision was based on the following considerations:

a. Treatment-related thyroid follicular cell tumors were seen in both male and female rats at 4,900 ppm, which was considered to be adequate, and not excessive, to assess carcinogenicity;

b. No treatment-related tumors were seen in male or female mice when tested at a dose that was considered adequate to assess carcinogenicity;

c. There is no mutagenicity concern for etofenprox form *in vivo* or *in vitro* assays;

d. The non-neoplastic toxicological evidence (i.e., thyroid growth and thyroid hormonal changes) indicated that etofenprox was inducing a disruption in the thyroid-pituitary hormonal status; and

e. Rats are substantially more sensitive than humans to the development of thyroid follicular cell tumors in response to thyroid hormone imbalance. The overall weight-of-the-evidence was considered sufficient to indicate that etofenprox induced thyroid follicular tumors through an antithyroid mode of action; The quantification of carcinogenic potential is not applicable. Therefore, no risk quantification is required.

2. *Dietary exposure from drinking water*. The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for etofenprox in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of etofenprox. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm*.

Based on the provisional refined rice models (Method A and B) and SCI-GROW models, the estimated environmental concentrations (EECs) of etofenprox for chronic exposures are estimated to be 2.5 parts per billion (ppb) for surface water and 0.002 ppb for ground water.

The estimated drinking water concentrations (EDWCs) for etofenprox were directly entered into the dietary exposure model DEEM-FCID™. For chronic dietary risk assessment, the annual average concentration of 2.5 ppb was used to assess the contribution to drinking water

3. *From non-dietary exposure*. The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Etofenprox is currently registered for use on the following residential non-dietary sites: Outdoor (yard/patio), spot-on pet treatment, indoor foggers, and crack and crevice/spot treatment to control a variety of crawling and flying insect pests. The residential risk assessment was conducted using the following exposure assumptions: Average food and drinking water exposures are aggregated with exposures to toddlers from inhalation and hand-to-mouth activities following the use of an indoor total-release fogger and hand-to-mouth from contact with a companion cat treated with the etofenprox spot-on product. Aggregate assessment for adults combines average food and water exposures for the total U.S. population with adult handler and post application inhalation exposures from the use of the indoor total-release fogger. These residential uses are believed to be the ones most likely to co-occur (comprehensive flea treatment approach), and also present the most conservative (worst-case) scenario for potential aggregate exposures.

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

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to etofenprox and any other substances and etofenprox does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that etofenprox has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the policy statements released by EPA's Office of Pesticide Programs concerning common mechanism determinations and procedures for cumulating effects from substances found to have a common mechanism on EPA's website at *http://www.epa.gov/pesticides/cumulative/*.

C. Safety Factor for Infants and Children

1. *In general*. Section 408 of the FFDCA provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans.

2. *Developmental toxicity studies*. A prenatal developmental toxicity study in rabbits showed no quantitative/qualitative evidence of increased susceptibility in offspring. In the rabbit study the developmental effects were seen at doses that resulted in maternal deaths at the high dose. Additionally, the rabbit developmental study showed increased abortions, decreased maternal body weights, body weight gains and food consumption. In the rabbit study, the maternal LOAEL (300 milligram/kilogram/day (mg/kg/day)) is equal to the developmental LOAEL. In the 1–generation/developmental study in rats, increased susceptibility in the offspring was not observed. In the rat developmental study, the maternal LOAEL was equal to the developmental LOAEL.

3. *Reproductive toxicity study*. The 2–generation reproduction study in rats did not show evidence of quantitative/qualitative susceptibility in offspring. In this study rats showed decreased pup weights, increased thyroid, liver and kidney weights with corresponding pathological changes in pups, and clinical signs of pups during most of the lactation period which included body tremors, distended abdomen, lethargy, unsteady gait, and abnormal movements. However, except for thyroid weight in female pups, all of these effects occurred at the highest dose tested (HDT). The effects on organ weights carried over to the adults of both the F_1 and F_2 generations with corresponding centrilobular hepatocyte enlargement and increased thyroidal epithelial height in the HDT group of the F_1 generation. At the high dose, parents (F_0) had similar effects on their organs as the pups: increased liver, thyroid, and kidney weights with pathological changes in the kidney. The parental LOAEL was equal to the offspring LOAEL in the 2–generation reproduction study in rats.

4. *Prenatal and postnatal sensitivity*. There is no indication of increased quantitative/qualitative evidence of susceptibility of the offspring in the developmental rat or rabbit studies or in the 2–gen reproduction study in the rat. Developmental effects were seen at doses that caused maternal toxicity. No developmental effects were seen in the rat 1–generation/developmental study. In the 2–generation reproduction toxicity study, there was no evidence of quantitative and qualitative susceptibility because the presence of toxicity in the offspring occurred at the level of parental toxicity (increased organs weights and associated pathological changes occurred in both the pups and parents). In the developmental neurotoxicity study in rats, the observed eye abnormalities associated with body injuries could not be disassociated from possible altered treatment-related maternal behavior that resulted in injury to the pups.

5. *Conclusion*. The toxicology database for etofenprox is essentially complete. The data are sufficient for endpoint selection for exposure/risk assessment scenarios and for evaluation of the requirements under the Food Quality Protection Act (FQPA). Evidence of quantitative and qualitative susceptibility of offspring were not observed, and therefore, the FQPA 10x safety factor was reduced to 1x.

D. Aggregate Risks and Determination of Safety

The Agency currently has two ways to estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses. First, a screening assessment can be used, in which the Agency calculates drinking water levels of comparison (DWLOCs) which are used as a point of comparison against estimated drinking water concentrations (EDWCs). The DWLOC values are not regulatory standards for drinking water, but are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. More information on the use of DWLOCs in dietary aggregate risk assessments can be found at *http://www.epa.gov/oppfead1/trac/science/screeningsop.pdf*.

More recently the Agency has used another approach to estimate aggregate exposure through food, residential and drinking water pathways. In this approach, modeled surface and ground water EDWCs are directly incorporated into the dietary exposure analysis, along with food. This provides a more realistic estimate of exposure because actual body weights and water consumption from the CSFII are used. The combined food and water exposures are then added to estimated exposure from residential sources to calculate aggregate risks. The resulting exposure and risk estimates are still considered to be high end, due to the assumptions used in developing drinking water modeling inputs.

1. *Acute risk*. An acute risk assessment was not performed. No toxicological endpoint attributable to a single (acute) dietary exposure was identified. Therefore, acute risk from etofenprox exposure to is not expected.

2. *Chronic risk*. Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to etofenprox from food and water will utilize <1% of the cPAD for the U.S. population, and <1% of the cPAD for all infants (<1 year old), the subpopulation at greatest exposure. Based on the use pattern, chronic residential exposure to residues of etofenprox is not expected. Therefore, EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short-term risk*. Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Etofenprox is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for etofenprox.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food, water and residential exposures aggregated result in aggregate MOEs of 960 for adults and 350 for inhalation and 560 for incidental oral for toddlers. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food, water and residential uses. Therefore, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern.

4. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Etofenprox is currently registered for use(s) that could result in intermediate-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and intermediate-term exposures for etofenprox.

Using the exposure assumptions described in this unit for intermediate-term exposures, EPA has concluded that food, water, and residential exposures aggregated result in aggregate MOEs of 960 for adults and 130 for toddlers. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food, water, and residential uses. Therefore, EPA does not expect intermediate-term aggregate exposure to exceed the Agency's level of concern.

5. *Aggregate cancer risk for U.S. population*. Etofenprox has been classified as, ''not likely to be carcinogenic to humans at doses that do not alter rat thyroid hormone homeostasis.'' Therefore, etofenprox is not expected to pose a cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, and to infants and children from aggregate exposure to etofenprox residues.

V. Other Considerations

A. Analytical Enforcement Methodology

An adequate enforcement methodology (gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Team Leader, Emergency Response Team, Risk Integration, Minor Use, Emergency Response Branch (7505P) 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8179; e-mail address: *britten.anthony@epa.gov*.

B. International Residue Limits

Etofenprox is in the CODEX system with a residue definition of etofenprox (fat soluble), but without an MRL on rice.

VI. Conclusion

Therefore, time-limited tolerances are established for residues of etofenprox (2-[ethoxyphenyl]-2-methylpropyl-3-phenoxy benzyl ether), in or on rice, grain at 0.01ppm and rice, straw at 0.02 ppm.

VII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May

22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104-113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 8, 2006.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.620 is added to read as follows:

§ 180.620 Etofenprox; tolerances for residues.

(a) *General.* [Reserved]

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for residues of etofenprox (2-[ethoxyphenyl]-2-methylpropyl-3-phenoxy benzyl ether) in connection with use of the pesticide under section 18 emergency exemptions granted by EPA. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/ revocation date
Rice, grain	0.01	12/31/09
Rice, straw	0.02	12/31/09

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 06–8004 Filed 9–19–06; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0617; FRL–8091–6]

Pantoea Agglomerans Strain E325; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Pantoea agglomerans* strain E325 on apples and pears when applied/used as a microbial pesticide. Northwest Agricultural Products submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Pantoea agglomerans* strain E325.

DATES: This regulation is effective September 20, 2006. Objections and requests for hearings must be received on or before November 20, 2006, and must be filed in accordance with the instructions provided in 40 CFR part

178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0617. All documents in the docket are listed in the index for the docket. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The Docket Facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

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

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Document Apply to Me?

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

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

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

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

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

C. Can I File an Objection or Hearing Request?

Under section 408(g) of FFDCA, as amended by FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2006–0617 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before November 20, 2006.

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing that does not contain any CBI for inclusion in the public docket that is described in **ADDRESSES**. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit your copies, identified by docket ID number EPA–HQ–OPP–2006–0617, by one of the following methods.

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

II. Background and Statutory Findings

In the **Federal Register** of July 26, 2006 (71 FR 42395) (FRL–8080–6), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 6F7086) by Northwest Agricultural Products, 821 South Chestnut Ave., Pasco, Washington 99301. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of *Pantoea agglomerans* strain E325. This notice included a summary of the petition prepared by the petitioner Northwest Agricultural Products. There were no comments received in response to the notice of filing.

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other

exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

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

Pantoea agglomerans strain E325 was originally isolated from apple blooms in Wenatchee, Washington. *Pantoea agglomerans* strain E325 was isolated from an apple flower stigma by washing the flower in buffer and plating dilutions on agar media. The Microbial Pest Control Agent (MPCA) was selected from among more than 1,000 bacteria and yeast isolates evaluated for potential use in the control of fire blight. Screening assays were based on the ability of test organisms to colonize the stigma and preemptively exclude the disease organism which was introduced 24 hours after treatment with the test organism.

Pantoea agglomerans is ubiquitous in the environment, and is recognized as an epiphyte of a wide variety of plants, such as buckwheat, weeds, oilseed rape, sweet potato, rice, and trees of the Rosaceae family. *Pantoea agglomerans* is found on a wide variety of plant parts, including the rhizosphere, leaves, and seeds. The species is also a heavy colonizer of cotton plants, grass and silage and is the prominent species in organic dust. The organism has also been isolated from soil and water. Recent reports have also identified *P. agglomerans* on retail salad vegetables.

Pantoea agglomerans is a common organism of the gut microbiota of mosquitos and locusts. In fecal pellets of the locust, the organism is responsible for the release of guaiacol and phenol, essential components of the locust cohesion pheromone. These components are not produced in germ-free locusts. *Pantoea agglomerans* (*Enterobacter agglomerans*) was also identified in association with sheep scab mites, and as an intracellular symbiotic bacteria of the cereal weevil and the apple maggot fly. It has been demonstrated that *Enterobacter agglomerans* (in the gut of the fly) is able to detoxify the defense chemical (phloridzin) of the apple tree, which would otherwise kill the fly.

Fire blight is caused by the phytopathogenic bacterium *Erwinia amylovora* which colonizes predominately on the stigmatic surfaces of the apple or pear. The pathogen may enter the tree through the blossoms, leaves, or stem wounds. Usually the disease is spread by bacteria that over winter in holdover cankers in the main stem and branches or infected twigs. In the spring, when the blossoms begin to open, the cankers exude drops of bacterial ooze that are disseminated to the blossoms and young leaves by rain, heavy dew, or windblown mist. Fire blight may also be spread by pollinating insects such as bees, sucking, chewing, or boring insects, and unsanitary pruning tools. Warm temperatures (24–28°C) and high humidity are the optimal conditions for infection and disease development.

The disease becomes apparent in the spring, when infected blossoms suddenly wilt and turn brown. Later, twigs and leaves also turn brown and appear to be scorched by fire. The affected leaves usually remain on the tree well into the winter. Young infected fruits become watery or oily in appearance and exude droplets of clear, milky, or amber colored ooze. They later become leathery and turn brown, dark brown, or black, depending on the species. The shriveled fruit usually remains attached to the tree.

Fire blight is considered one of the most destructive diseases of fruit trees in North America. It occurs sporadically and unpredictably and occasionally reaches epidemic levels. A severe outbreak can seriously damage or kill mature pear, apple, or crab apple trees in one season. Other ornamentals such as hawthorn, plum, chokecherry, saskatoon, cotoneaster, and spirea may also be affected.

1. *Acute oral toxicity/pathogenicity—rats (OPPTS 885.3050).* Nineteen male and 19 female Sprague-Dawley rats were dosed with the test substance, *Pantoea agglomerans* strain E325, at a rate of 1.05×10^8 colony forming unit (CFU) per animal. (Master Record Identification Number (MRID) 464678–02) (Ref 1). Three animals were sacrificed on day 3, 7, and 14. All rats survived to the scheduled sacrifice. There was no change in organ weights (brain, blood, cecum contents, kidneys, liver, lungs, lymph nodes, and spleen) of male and female test animals from beginning of testing to sacrifice. The MPCA was detected at high levels in the organs of all test animals. Clearance of the MPCA from the blood and lymph node was achieved in all test animals. Counts of the MPCA had fallen in the lungs and kidney of test animals by day 7. Results from day 14 showed that the MPCA was cleared from all organs in all test animals. No clinical manifestations of treatment were noted. Gross necropsy revealed no indications of treatment-related pathology or any unusual findings. It is concluded that *Pantoea agglomerans* strain E325 is not acutely toxic to rats following oral administration.

2. *Acute pulmonary toxicity/pathogenicity—rat (OPPTS 885.3150).* Forty-eight male and 48 female Sprague-Dawley rats were dosed with the test substance, *Pantoea agglomerans* strain E325 at a rate of 1.8×10^{11} CFU per animal. (MRID 464678–03) Ref 2. The test material was determined to be below 100 CFU per animal at all time points tested. The test organism (*Pantoea agglomerans* strain E325) was cleared from the cecum contents by day 7 and from the lungs by day 14. The MPCA was detected in the kidney and lymph nodes, spleen, and brain up to day 14, but had cleared in all animals by day 21. Therefore, based on the presented/submitted data, the test organism was not toxic nor pathogenic to the test animals.

3. *Acute dermal toxicity—rabbits (OPPTS 870.2500 and OPPTS 885.3100).* The registrant has requested that the dermal irritation study be waived. *Pantoea agglomerans* is found on a wide variety of plant parts, including the rhizosphere, leaves, and seeds. The species is also a heavy colonizer of cotton plants, grass, and silage, and is the prominent species in organic dust. The organism has also been isolated from soil and water. Recent reports have also identified P. agglomerans on retail salad vegetables. There have been no adverse dermal effects or dermal irritation reported in any cited literature for *Pantoea agglomerans* strain E325. In light of the strong evidence indicating no adverse effects due to dermal exposure to *Pantoea agglomerans*, EPA has agreed to waive dermal toxicity testing. Further, data show that exposure from ambient populations is sufficiently high that it indicates there would be no adverse dermal effects from pesticidal use no matter what the residue level is.

4. *Primary eye irritation (OPPTS 870.2400).* The registrant has requested a waiver for the primary eye irritation study. Due to the fact that *Pantoea agglomerans* is found in food and drinking water, and there have been no adverse eye irritation effects reported, *Pantoea agglomerans* is not considered to be an eye irritant. Additionally *Pantoea agglomerans* is ubiquitous in the environment, and it is recognized as an epiphyte of a wide variety of plants such as sweet potato, rice, and organic

dust. No reports of eye irritation have been reported for this organism.

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

- Acute Intravenous (IV), Intracerebral (IC), Intraperitoneal (IP) injection Toxicity/Pathogenicity (OPPTS 885.3200).
- Cell Culture (OPPTS 885.3500).
- Immune Response (OPPTS 880.3800).
- Hypersensitivity study.
- Hypersensitivity Incidents (OPPTS 885.3400).

i. *Acute inhalation toxicity/pathogenicity*. The registrant cited the acute pulmonary toxicity/pathogenicity study (see Unit III.?.3.) to justify waiving the acute inhalation study. In the acute pulmonary toxicity/pathogenicity study *Pantoea agglomerans* strain E325, was not found in any organs or tissues which indicates that the active ingredient cleared tissues and was not toxic, infective, or pathogenic to rats when instilled intratracheally. Additionally, when this product is applied, applicators will be required to wear the necessary protective equipment to prevent inhalation, and this justifies granting this request to waive acute-inhalation data requirements.

ii. *Acute IV/IP/IC study*. In an acute oral toxicity/pathogenicity study (see Unit III.1. and 2.), no clinical signs of toxicity were observed in rats and no *Pantoea agglomerans* strain E325 was recovered from organs or tissues. These data show that *Pantoea agglomerans* strain E325 was considered to clear rapidly from the test animal in that it was never detected. The active ingredient *Pantoea agglomerans* strain E325 is considered to be non-toxic. Based on the low toxicity potential indicated by these observations, the request to waive the acute IP study was granted.

iii. *Cell culture*. This study is required for a virus and is not required for a bacterial active ingredient such as *Pantoea agglomerans* strain E325.

iv. *Immune response*. The lack of pathogenicity seen in the acute oral toxicity/pathogenicity study with the active ingredient indicates the immune system was not adversely affected by *Pantoea agglomerans* strain E325. Based on these considerations, the justifications to support the request to waive data requirements for the immune response studies for the TGAI/MP are acceptable.

v. *Hypersensitivity study*. No incidents of hypersensitivity have occurred during the research, development, or testing of *Pantoea agglomerans* strain E325 or the end use product, Bloomtime. A hypersensitivity study is not required at this time, but may be required in the future if there are reports of hypersensitivity incidents associated with this active ingredient used in pesticides. If a person is abnormally physiologically susceptible to a specific agent, there are a number of symptoms that the individual will exhibit. This organism has been in nature for many years, and there have been no reports of any human or animal exhibiting any symptoms after having been in contact with the organism.

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

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

IV. Aggregate Exposures

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

A. Dietary Exposure

Use of *Pantoea agglomerans* strain E325 is not expected to cause any harm via consumption of food or feed treated with the microbial pesticide, which is not applied directly to food as discussed in this unit.

1. *Food*. Residues of *Pantoea agglomerans* strain E325 are not expected on treated food commodities from the proposed use patterns. The product, Bloomtime, containing *Pantoea agglomerans* strain E325, is applied at bloom followed by a second application at first petal fall-full bloom. After Bloomtime is applied, the pesticide becomes non-viable very rapidly, which causes the need for more than one application. The pesticide itself is not in direct contact with the food commodities. This pesticide is applied prior to fruiting. There is no post-harvest treatment directly to the food commodities. Furthermore, the active ingredient is not a systemic pesticide. Thus, detectable residues of *Pantoea agglomerans* strain E325 are not expected on treated fruit trees or their food commodities. Furthermore, as previously stated, *Pantoea agglomerans* strain E325 is found in soil, water, and air. Data submissions to the Agency show that residues of the *Pantoea agglomerans* strain E325 are not found on the food commodities. Finally, as discussed previously in Unit III., the acute oral tests demonstrate low toxicity potential via dietary exposure to this Toxicity Category IV pesticide. Hence, even if the pesticide was present in or on food commodities, exposure via the dietary route is not expected to cause any harm. Therefore, the Agency has decided that dietary exposure from the proposed uses of *Pantoea agglomerans* strain E325 is not expected to adversely affect the U.S. adult population, infants, and children.

2. *Drinking water exposure*. No drinking water exposure is anticipated because of the use pattern and use sites. There are no aquatic use sites permitted for this pesticide, so exposure to drinking water is not expected. Further, there is no evidence of adverse effects from exposure to this organism. Exposure from the proposed use of *Pantoea agglomerans* strain E325 is not likely to pose any incremental risk via consumption of drinking water to adult humans, infants and children.

B. Other Non-Occupational Exposure

The proposed product is an end-use product to be commercially used in apple and pear orchards. No non-occupational residential, school or day care exposure is anticipated because of the use pattern of this product. The use of *Panteoa agglomerans* strain E325 should result in minimal to non-existent, non-occupational risk. No indoor residential, school, or daycare uses are permitted on the label of this product.

1. *Dermal exposure*. The low toxicity potential observed in the acute dermal studies discussed in Unit III., the low exposure potential based on low application rates, and the lack of persistence of the active ingredient, leads EPA to conclude that this pesticide poses minimal risk to human populations via non-occupational dermal exposure. Moreover, potential non-occupational dermal exposure to *Panteoa agglomerans* strain E325 is unlikely because the use sites are commercial and agricultural.

As previously discussed in Units III. and IV., a lack of hypersensitivity incidents indicates *Panteoa agglomerans* strain E325 poses minimal risk to populations via non-occupational dermal exposure. Thus, the Agency does not expect pesticides containing *Panteoa agglomerans* strain E325 to pose a non-occupational dermal exposure risk.

2. *Inhalation exposure*. Non-occupational inhalation exposure to the active ingredient itself is not expected to pose an inhalation risk. No treatment-related effects associated with the active ingredient were observed in the pulmonary tests reported in Unit II. Based on the low potential for non-occupational inhalation exposure, the Agency does not expect *Pantoea agglomerans* strain E325 to pose an inhalation risk.

V. Cumulative Effects

The Agency has considered the potential for cumulative effects of *Pantoea agglomerans* strain E325 and other substances in relation to a common mechanism of toxicity. These considerations include the possible cumulative effects of such residues on infants and children. As demonstrated in the toxicity assessment, *Pantoea agglomerans* strain E325 is non-toxic and non-pathogenic to mammals. Because no mechanism of pathogenicity or toxicity in mammals has been identified for this organism, no cumulative effects from the residues of this product with other related microbial pesticides are anticipated.

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

There is reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposures to residues of *Pantoea agglomerans* strain E325, as a result of its proposed uses. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, there appears to be no potential for harm, from this bacterium in its use as a microbial pesticide in apple and pear orchards. Furthermore, the organism is non-toxic and non-pathogenic to animals and humans. The Agency has arrived at this conclusion based on the very-low levels of mammalian toxicity for acute oral, pulmonary, and dermal effects with no toxicity or infectivity at the doses tested (see Unit III.). Moreover, potential non-occupational inhalation or dermal exposure is not expected to pose any adverse effects to exposed populations via aggregate and cumulative exposure.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there was scientific basis for including, as part of the program, the androgen and thyroid systems, in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority, to require the wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). The Agency is not requiring information on the endocrine effects of this active ingredient at this time. The Agency has considered, among other relevant factors, available information concerning whether the microorganism may have an effect in humans similar to an effect produced by a naturally-occurring estrogen or other endocrine effects.

There is no known metabolite produced by this bacterium that acts as an endocrine disruptor. The submitted and cited toxicity/pathogenicity studies in rodents indicate that following injection and pulmonary routes of exposure, no test substance was found in organs or tissues of test animals. This indicates that the body is able to process and clear the active ingredient. The Agency concludes that there will be no incremental adverse effects to the endocrine system.

B. Analytical Methods

The acute oral studies discussed in Unit II. demonstrate that the active ingredient, *Pantoea agglomerans* strain E325 does not pose a dietary risk. In addition, the active ingredient is not likely to come into contact with food commodities. Since residues are not expected on treated commodities, the Agency has concluded that an analytical method to detect residues of this pesticide on treated food commodities for enforcement purposes is not needed. Nevertheless, the Agency has concluded that for analysis of the pesticide itself, microbiological and biochemical methods exist and are acceptable for enforcement purposes for product identity of *Pantoea agglomerans* strain E325. Other appropriate methods are required for quality control to assure that product characterization, the control of human pathogens and other unintentional metabolites or ingredients are within regulatory limits, and to ascertain storage stability and viability of the pesticidal active ingredient.

C. CODEX Maximum Residue Level

There is no CODEX maximum residue level for residues of *Pantoea agglomerans* strain E325.

VIII. Conclusions

The results of the studies discussed in Unit II. are sufficient to comply with the requirements of FQPA. They support an exemption from the requirement of a tolerance for residues of *Pantoea agglomerans* strain E325 on apples and pears. In addition, the Agency is of the opinion that, if the microbial active ingredient is used as labeled, aggregate and cumulative exposures are not likely to pose any undue risk. Submitted and cited data show that *Pantoea agglomerans* strain E325 do not pose an incremental dietary and non-dietary risk to the adult human U.S. population, children, and infants. Therefore, an exemption from tolerance is granted in response to pesticide petition 6F7087.

MRID Citation References

1. 464678–02, Kuhn, J.O., Acute Oral Toxicity/Pathogenicity Study in Rats With A Microbial Pest Control Agent (MPCA).

2. 464678–03, Kuhn, J.O., Acute Pulmonary Toxicity/Pathogenicity Study In Rats With A Microbial Pest Control Agent (MPCA).

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of FFDCA, such as the exemption from the requirement of a tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: September 11, 2006.

James J. Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1272 is added to subpart D to read as follows:

§ 180.1272 Pantoea agglomerans strain E325; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Pantoea agglomerans* strain E325 when used on apples and pears.

[FR Doc. 06–8005 Filed 9–19–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[FEMA Docket No. D–7642]

Withdrawal of Final Flood Elevation Determination for the Listed Communities in Yuma and Coconino Counties, AZ

AGENCY: Federal Emergency Management Agency (FEMA), Department of Homeland Security (DHS).

ACTION: Final rule; withdrawal.

SUMMARY: The Federal Emergency Management Agency (FEMA) withdraws the final flood elevation determination published in 71 FR 33647, June 12, 2006 for the Unincorporated Areas of Yuma County and Cities of San Luis and Yuma, and the Unincorporated Areas of Coconino County, and City of Flagstaff, Arizona, hereafter referred to as ''listed communities.'' A final flood elevation determination will be made at a later date.

DATES: *Effective Date:* This rule is effective September 20, 2006.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., CFM, Chief, Engineering Management Section, Mitigation Division, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: On March 29, 2006, FEMA issued a letter to the Unincorporated Areas of Yuma County and Cities of San Luis and Yuma, and the Unincorporated Areas of Coconino County, and City of Flagstaff, Arizona, hereafter referred to as ''listed communities'' finalizing the flood elevation determinations. In addition, the March 29, 2006 letter established a September 29, 2006, effective date for the Flood Insurance Study (FIS) and Flood Insurance Rate Map (FIRM) for the listed communities. During the final processing of the FIS and FIRM it was determined that there are levee structures within the listed counties that are shown as providing protection against the 1% annual chance flood event. FEMA will only recognize those levee systems that meet, and continue to meet, minimum design, operation, and maintenance standards. 44 CFR 65.10 describes the information needed to recognize whether a levee system provides protection from the base flood event. The required information must be supplied to FEMA by the community or other party seeking recognition of the levee system. To acquire FEMA's recognition that a levee system protects an area against the base flood event, a community or levee owner must supply FEMA with such data as certification and design criteria (including information on freeboard, closures, embankment protection, embankment and foundation stability, settlement, interior drainage, etc.), and operation and maintenance plans.

Until the aforementioned levee information is submitted to FEMA, the final flood elevation published in 71 FR 33647, June 12, 2006 for the listed communities is hereby withdrawn in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104. Until further notice, the release of the FIS and FIRM for the listed communities has been postponed.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended to withdraw the following:

The final flood elevation determination published in 71 FR 33647, June 12, 2006 for the Unincorporated Areas of Yuma County and Cities of San Luis and Yuma, and the Unincorporated Areas of Coconino County, and City of Flagstaff, Arizona.

Dated: September 13, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 06–7808 Filed 9–19–06; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1756; MB Docket No. 05–142; RM–11220]

Radio Broadcasting Services; Roma, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of petition for reconsideration.

SUMMARY: The Audio Division has denied the petition for reconsideration of La Voz Latino (''LVL''), seeking reconsideration of the Audio Division's dismissal of its counterproposal in the proceeding as untimely. In this *Memorandum Opinion and Order,* the Audio Division denied LVL's petition for reconsideration of the dismissal of LVL's counterproposal.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MB Docket No. 05–142, adopted August 31, 2006, and released September 5, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A), because the petition for reconsideration was denied.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. E6–15530 Filed 9–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1760; MB Docket No. 06–52; RM–11318]

Radio Broadcasting Services; Flora, MS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a *Notice of Proposed Rule Making*, this *Report and Order* denies a Petition for Rule Making requesting that Channel 280A be allotted to Flora, Mississippi, because no party filed comments expressing an interest in the allotment. It also dismisses a Counterproposal requesting that Channel 280A be allotted to

Hermanville, Mississippi, because the Counterproposal was filed past the due date. Even if the Counterproposal were considered on the merits, it would be denied as short spaced to an authorized FM broadcast station at the time the Counterproposal was filed.

DATES: Effective October 20, 2006.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 06–52, adopted August 31, 2006, and released September 1, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* This document is not subject to the Congressional Review Act. (The Commission is, therefore, not required to submit a copy of this *Report and Order* to GAO pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule is denied.)

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–15532 Filed 9–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[FCC 06–119; MM Docket No. 01–11; RM–10027; RM–10322]

Radio Broadcasting Services; Arcadia, Desert Hot Springs, Fallbrook, Murrieta, and Yucca Valley, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule; denial of application for review.

SUMMARY: The Commission denied an application for review filed by the licensee of Stations KSSE(FM), Arcadia, CA, and KSSD(FM), Fallbrook, CA, of a *Report and Order* in this proceeding, which had denied its rulemaking petition to upgrade the class of Station KSSE(FM) from Channel 296A to Channel 296B1. The Commission determined that the rulemaking proposal could not be implemented because the licensee of Station KDGL(FM), Yucca Valley, CA, had withdrawn its consent to a downgrade in channel class and a site relocation, which is necessary to effectuate the upgrade. *See* **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 01–11, adopted August 10, 2006, and released August 17, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

The Commission also clarified the scope of permissible facility changes for pre-1964, grandfathered short-spaced stations under Section 73.213(a)(4) such as KSSE(FM). Although these stations are exempt from the second-adjacent and third-adjacent channel separation requirements set forth in Section 73.207, they are not permitted to upgrade their facilities beyond class maximums. *See* 67 FR 65721 (October 28, 2002).

This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Memorandum Opinion and Order to GAO, pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A) because the application for review was denied.)

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E6–15533 Filed 9–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1761; MB Docket No. 05–147; RM–10823]

Radio Broadcasting Services; Fort Lauderdale and Lake Park, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Charles Crawford, allots Channel 262A to Lake Park, Florida, as its first local service. To accommodate the proposal consistent with the minimum distance separation requirements of the Commission's rules, this document also grants the reclassification of WHYI–FM, Fort Lauderdale, Florida, to specify operation on Channel 264C0 in lieu of Channel 264C. No response was filed to the *Order to Show Cause* issued to Clear Channel Broadcasting Licenses, Inc., licensee of Station WHYI–FM, Fort Lauderdale, Florida. Channel 262A at Lake Park can be allotted consistent with the minimum distance separation requirements of the Commission's Rules with a site restriction of 4.7 kilometers (2.9 miles) south of the community. The reference coordinates for Channel 262A at Lake Park are 26–45–29 NL and 80–03–28 WL.

DATES: Effective October 20, 2006.

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

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 05–147, adopted August 31, 2006, and released September 5, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room 239), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.bcpiweb.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Florida is amended by removing Channel 264C and by adding Channel 264C0 at Fort Lauderdale; and by adding Lake Park, Channel 262A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–15598 Filed 9–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1758; MB Docket No. 05–122; RM–11198]

Radio Broadcasting Services; Columbus and Monona, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: The staff reinstates and conditionally grants a petition for rulemaking to reallot and change the community of license for Station WTLX(FM) from Channel 263A at Columbus, Wisconsin, to Channel 263A at Monona, Wisconsin. To prevent the removal of the sole local service at Columbus, Station WTLX(FM) may not commence operations at Monona until Station WTTN(AM) commences operations at Columbus as a ''backfill'' station. With this action, the proceeding is terminated. *See* **SUPPLEMENTARY INFORMATION.**

DATES: Effective October 20, 2006.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MB Docket No. 05–122, adopted August 31, 2006, and released September 5, 2006. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.bcpiweb.com.* The Commission will send a copy of the Memorandum Opinion and Order in this proceeding in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

The *Report and Order* in this proceeding dismissed the rulemaking petition because it was contingent upon an ungranted AM construction permit application to change the community of license for Station WTTN(AM), 1580 kHz, from Watertown, Wisconsin, to Columbus in violation of a staff policy. *See* 70 FR 66331 (November 2, 2005). Although the Commission may change its processing rules at any time, the petition for rulemaking was reinstated for equitable reasons because it was filed before the staff policy was announced.

The reference coordinates for Channel 263A at Monona, Wisconsin, are 43–08–19 NL and 89–22–27 WL.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by removing Columbus, Channel 263A and by adding Monona, Channel 263A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. E6–15601 Filed 9–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1764; MB Docket No. 04–379; RM–11086]

Radio Broadcasting Service; Eatonton and Lexington, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division, at the request of Middle Georgia Communications, Inc., substitutes Channel 249C2 for Channel 249C3 at Eatonton, reallots Channel 249C2 from Eatonton to Lexington, Georgia, and modifies Station WMGZ (FM)'s license accordingly. Channel 249C2 can be reallotted to Lexington in compliance with the Commission's minimum distance separation requirements with a site restriction of 31.1 kilometers (19.3 miles) east to avoid a short-spacing to the licensed site of Station WSRV (FM), Channel 246C, Gainesville, Georgia. The reference coordinates for Channel 249C2 at Lexington are 33–51–00 North Latitude and 82–46–38 West Longitude.

DATES: Effective October 20, 2006.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 04–379, adopted August 31, 2006, and released September 5, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Eatonton, Channel 249C3, and by adding Lexington, Channel 249C2.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–7801 Filed 9–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1762; MB Docket No. 04–305; RM–10980; RM–11328; RM–11329]

Radio Broadcasting Service; Oak Harbor and Sedro-Woolley, WA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Audio Division allots Channel 277A at Oak Harbor, Washington, as the community's second local service at city reference coordinates 48–17–36 NL and 122–38–31 WL. This is an alternate channel to a petition for rule making (RM–10980) filed by Dana J. Puopolo which proposed Channel 289A at Oak Harbor. In addition, the Audio Division allots Channel *233A for noncommercial educational use at Oak Harbor, Washington at city reference coordinates 48–17–36 NL and 122–38–31. This is an alternate channel to a counterproposal (RM–11328*) filed by Bible Broadcasting Network, Inc. for Channel *289A at Oak Harbor. Lastly, the Audio Division allots Channel 289A at Sedro-Woolley, Washington at city reference coordinates 48–30–14 NL and 122–14–10 WL in response to a counterproposal (RM–11329*) filed by Jodesha Broadcasting, Inc. A filing window for these channels will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective October 20, 2006.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 04–305, adopted August 31, 2006, and released September 5, 2006. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com*. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ As stated in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Washington, is amended by adding Oak Harbor, Channel 277A and Channel *233A; and Sedro-Woolley, Channel 289A.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 06–7950 Filed 9–19–06; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 107, 171, 172, 173, 175, 177, 178 and 180

[Docket No. PHMSA–2006–25496 (HM–189Z)]

RIN 2137–AE20

Hazardous Materials Regulations: Minor Editorial Corrections and Clarifications; Correction

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Final rule; correction.

SUMMARY: PHMSA is correcting a minor error in a final rule, published in the **Federal Register** on September 14, 2006. That final rule corrected editorial errors, made minor regulatory changes and, in response to requests for clarification, improved the clarity of certain provisions in the Hazardous Materials Regulations (HMR).

DATES: *Effective date:* October 1, 2006.

FOR FURTHER INFORMATION CONTACT: Kevin Leary, Office of Hazardous Materials Standards, (202) 366–8553, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On September 14, 2006, the Pipeline and Hazardous Materials Safety Administration (PHMSA, we) published a final rule under Docket HM–189Z (71 FR 54388) to correct editorial errors, make minor regulatory changes and, in response to requests for clarification, improved the clarity of certain provisions in the Hazardous Materials Regulations (HMR).

This document corrects a minor error in the September 14, 2006 final. We inadvertently omitted several sentences that are part of the current regulatory requirements in paragraph (b) of § 173.153. This section provides exceptions for certain shipments of Division 6.1 materials. The omitted sentences establish the conditions under which the exception may be utilized for air transportation and limit the total weight authorized for packages utilizing the exception. In this final rule, we are restoring these sentences to the paragraph.

Because these amendments do not impose new requirements, notice and public procedure are unnecessary. By

making these amendments effective without the customary 30-day delay following publication, the changes will appear in the next revision of 49 CFR.

II. Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final 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. This rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). This final rule will not result in increased compliance costs for hazardous materials shippers or carriers; therefore, it is not necessary to prepare a regulatory impact analysis.

B. Executive Order 13132

This final rule has been analyzed in accordance with the principles and criteria in Executive Order 13132 (''Federalism''). This final rule does not adopt any regulation that: (1) 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; (2) imposes substantial direct compliance costs on State and local governments; or (3) preempts state law. PHMSA is not aware of any State, local, or Indian tribe requirements that would be preempted by correcting editorial errors and making minor regulatory changes. This final rule does not have sufficient federalism impacts to warrant the preparation of a federalism assessment.

C. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (''Consultation and Coordination with Indian Tribal Governments''). Because this final rule does not have tribal implications, does not impose substantial direct compliance costs on Indian tribal governments, and does not preempt tribal law, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

D. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule makes minor editorial changes which will not impose any new requirements on persons subject to the HMR; thus, there are no direct or indirect adverse economic impacts for small units of government, businesses or other organizations.

E. Unfunded Mandates Reform Act of 1995

This 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.

F. Paperwork Reduction Act

There are no new information collection requirements in this final rule.

G. Environmental Impact Analysis

There are no environmental impacts associated with this final rule.

H. 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 number contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

■ In consideration of the foregoing, we are making the following correction to rule FR Doc. E6–15282, published on September 14, 2006:

PART 173—[CORRECTED]

■ 1. On page 54395, in § 173.153, correct the introductory text to paragraph (b) to read as follows:

§ 173.153 Exceptions for Division 6.1 (poisonous materials).

* * * * *

(b) *Limited quantities of Division 6.1 materials.* The exceptions in this paragraph do not apply to poison-by-inhalation materials. Limited quantities of poisonous materials (Division 6.1) in Packing Group II and III are excepted from the specification packaging requirements of this subchapter when packaged in combination packagings according to this paragraph. For transportation by aircraft, the package must also comply with the applicable requirements of § 173.27 of this subchapter and only hazardous materials authorized aboard passenger-carrying aircraft may be transported as a limited quantity. In addition, shipments of these limited quantities are not subject to subpart F of part 172 (Placarding) of this subchapter. Each package must conform to the packaging requirements of subpart B of this part and may not exceed 30 kg (66 pounds) gross weight. The following combination packagings are authorized:

* * * * *

Issued in Washington, DC, on September 15, 2006, under authority delegated in 49 CFR part 1.

Thomas J. Barrett,

Administrator.

[FR Doc. 06–7793 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–60–P

Proposed Rules

Federal Register
Vol. 71, No. 182
Wednesday, September 20, 2006

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25851; Directorate Identifier 2006–NM–133–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. This proposed AD would require determining the part number of the lift spoiler actuators/jacks (referred to after this as ''lift spoiler jacks''). For affected lift spoiler jacks, this proposed AD would require determining the date of manufacture of the lift spoiler jacks, repetitively inspecting the eye-end assembly of the lift spoiler jacks to detect discrepancies of the assembly or associated parts, and performing corrective actions if necessary. This proposed AD results from a report that a lift spoiler deployed in flight due to corrosion at the thread where the eye-end assembly was screwed into the piston of the lift spoiler jack. We are proposing this AD to prevent detachment of the eye-end assembly of a lift spoiler jack, which could result in uncommanded deployment of a lift spoiler in flight, and consequent reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by October 20, 2006.

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

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

Contact British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25851; Directorate Identifier 2006–NM–133–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

The European Aviation Safety Agency (EASA) notified us that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. The EASA advises that a lift spoiler deployed in flight, due to detachment of the eye-end assembly of the lift spoiler actuator/jack (referred to after this as the ''lift spoiler jack''). Investigation revealed corrosion at the thread where the eye-end assembly was screwed into the piston of the lift spoiler jack. This condition, if not corrected, could result in uncommanded deployment of a lift spoiler in flight, and consequent reduced controllability of the airplane.

Relevant Service Information

BAE Systems (Operations) Limited has issued Inspection Service Bulletin SB27–176, Revision 2, dated October 5, 2004. The service bulletin describes procedures for determining the serial number and date of manufacture of the lift spoiler jacks, and repetitively inspecting for discrepancies of the eye-end assembly of certain lift spoiler jacks, associated hardware (lock nut, locking device, and lock washer), and the thread of the piston where the eye-end assembly attaches. Discrepancies include but are not limited to evidence of corrosion or damaged or fretted threads. If there is no discrepancy or only light corrosion, as defined in the service bulletin, the service bulletin specifies repeating the inspection at a reduced inspection interval. If there is any severe corrosion, or damaged or fretted thread, the service bulletin specifies replacing the eye-end assembly or affected hardware with a new or

serviceable part. If any discrepancy of the threads of the piston is found, the service bulletin specifies returning the piston to the manufacturer for repair.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The EASA mandated the service information and issued airworthiness directive 2006–0139, dated May 23, 2006, to ensure the continued airworthiness of these airplanes in the European Union.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. As described in FAA Order 8100.14A, ''Interim Procedures for Working with the European Community on Airworthiness Certification and Continued Airworthiness,'' dated August 12, 2005, the EASA has kept the FAA informed of the situation described above. We have examined the EASA's findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require determining the part number (P/N) of all six lift spoiler jacks, and, for affected lift spoiler jacks, accomplishing the actions specified in the service information described previously, except as discussed under ''Differences Between the Proposed AD and Service Information.''

Differences Between the Proposed AD and Service Information

If any discrepancy of the threads of the piston is found, the service bulletin specifies returning the piston to the manufacturer for repair. This proposed AD would not require this action. Instead, this proposed AD would require replacing the piston with a new or serviceable piston.

The service bulletin does not specify the type of inspection necessary to find discrepancies of the eye-end assembly of the lift spoiler jacks. We have determined that a detailed inspection is needed. Note 1 of this proposed AD defines this type of inspection.

Costs of Compliance

This proposed AD would affect about 53 airplanes of U.S. registry. The proposed inspections would take about 4 work hours per airplane, per inspection cycle, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $16,960, or $320 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

BAE Systems (Operations) Limited (Formerly British Aerospace Regional Aircraft): Docket No. FAA–2006–25851; Directorate Identifier 2006–NM–133–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by October 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from a report that a lift spoiler deployed in flight due to corrosion at the thread where the eye-end assembly was screwed into the piston of the lift spoiler actuator/jack (referred to after this as the ''lift spoiler jack''). We are issuing this AD to prevent detachment of the eye-end assembly of a lift spoiler jack, which could result in uncommanded deployment of a lift spoiler in flight, and consequent reduced controllability of the airplane.

Compliance

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

Service Bulletin Reference

(f) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin SB27–176, Revision 2, dated October 5, 2004. Although the service bulletin specifies to submit information to the manufacturer, this AD does not include that requirement. Inspections and corrective actions accomplished before the effective date of this AD in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin SB27–176, dated October 1, 2003; or Revision 1, dated January 13, 2004; are acceptable for compliance with the corresponding actions required by this AD.

Determination of Part Number (P/N)

(g) Within 30 days after the effective date of this AD: Determine the P/N of all six lift

spoiler jacks. A review of airplane maintenance records is an acceptable method of determining the P/N if the P/N can be conclusively determined from that review.

(1) If no lift spoiler jack having P/N P308–45–0002 or P308–45–0102 is installed: No further action is required by this paragraph.

(2) For any lift spoiler jack having P/N P308–45–0002 or P308–45–0102: Before further flight, inspect the lift spoiler jack to determine its serial number (S/N) and date of manufacture. A review of airplane maintenance records is acceptable in lieu of this inspection if the S/N and date of manufacture can be conclusively determined from that review.

Inspection of Lift Spoiler Jack

(h) For any lift spoiler jack having P/N P308–45–0002 or P308–45–0102: At the applicable compliance time specified in paragraph (h)(1) or (h)(2) of this AD, perform a detailed inspection for discrepancies of the eye-end assembly of the lift spoiler jack, associated hardware, and the thread of the piston where the eye-end assembly attaches, in accordance with the service bulletin. Discrepancies include but are not limited to evidence of corrosion or damaged or fretted threads.

(1) For lift spoiler jacks identified in paragraphs (h)(1)(i) and (h)(1)(ii) of this AD: Within 30 days after the effective date of this AD.

(i) Any lift spoiler jack having a S/N prefixed with ''DAWX'' or ''CSW'' (regardless of the date of manufacture).

(ii) Any lift spoiler jack having P/N P308–45–0002 or P308–45–0102, with a date of manufacture on or before December 31, 1999.

(2) For lift spoiler jacks with a date of manufacture on or after January 1, 2000, except those with S/Ns prefixed with ''DAWX'' or ''CSW'': Within 5 months after the effective date of this AD.

Note 1: For the purposes of this AD, a *detailed inspection* is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, *etc.,* may be necessary. Surface cleaning and elaborate procedures may be required.''

Repetitive Inspections/Corrective Action

(i) Repeat the inspection required by paragraph (h) of this AD and do corrective actions based on the inspection findings, in accordance with paragraph (i)(1), (i)(2), or (i)(3) of this AD, as applicable.

(1) If no discrepancy of the eye-end assembly of the lift spoiler jack is found: Repeat the inspection required by paragraph (h) of this AD within 48 months, and, based on the findings during that repeat inspection, repeat the inspection and do corrective actions, as applicable, in accordance with paragraph (i) of this AD.

(2) If light corrosion, as defined in the service bulletin, but no other discrepancy, is found: Repeat the inspection required by paragraph (h) of this AD within 24 months, and, based on the findings during that repeat inspection, repeat the inspection and do corrective actions, as applicable, in accordance with paragraph (i) of this AD.

(3) If severe corrosion, as defined in the service bulletin, or any damaged or fretted thread, is found: Before further flight, replace the eye-end assembly of the lift spoiler jack, associated hardware, and piston, as applicable, with new or serviceable parts, as applicable, in accordance with the service bulletin. Then, repeat the inspection required by paragraph (h) of this AD within 48 months, and, based on the findings during that repeat inspection, repeat the inspection and do corrective actions, as applicable, in accordance with paragraph (i) of this AD. Where the service bulletin specifies to return certain damaged parts to the parts manufacturer, this AD does not require that action.

Parts Installation

(j) As of the effective date of this AD, no person may install a lift spoiler jack having P/N P308–45–0002 or P308–45–0102 unless it has been inspected as required by this AD and found to be free of severe corrosion or other discrepancy.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(l) The European Aviation Safety Agency's airworthiness directive 2006–0139, dated May 23, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on September 12, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–15592 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–25850; Directorate Identifier 2006–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all McDonnell Douglas Model MD–11 and –11F airplanes. This proposed AD would require revising the maintenance inspection program that provides for inspection of principal structural elements (PSEs) and replacement of safe-life parts, to incorporate a new revision to the MD–11 Airworthiness Limitations Instructions. The revision would reduce inspection intervals for fatigue cracking of certain PSEs, and expand the inspection area for a certain other PSE. This proposed AD results from a revised damage tolerance analysis. We are proposing this AD to detect and correct fatigue cracking of certain PSEs, which could adversely affect the structural integrity of the airplane.

DATES: We must receive comments on this proposed AD by November 6, 2006.

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

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

Contact Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024), for the service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5238; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your

comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–25850; Directorate Identifier 2006–NM–128–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD.

Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

Boeing has completed a revised damage tolerance analysis of certain principal structural elements (PSEs) on Model MD–11 and MD–11F airplanes. Boeing repeated the analysis to address additional crack growth scenarios as a result of in-service cracking and to correct the crack growth analysis spectrum which it found to underpredict operational loading. These new data indicate that the initial and repeat inspection intervals to detect fatigue cracking for certain PSEs must be revised.

The actions specified by the proposed AD are intended to detect fatigue cracking of several wing PSEs and a tail pylon PSE. This fatigue cracking, if not detected and corrected, could adversely affect the structural integrity of the airplane.

Relevant Service Information

We have reviewed Boeing MD–11 Airworthiness Limitations Instructions (ALI), Report Number MDC–K5225, Revision 11, dated March 2006. Among other things, Revision 11 of the ALI reduces certain initial and repeat intervals for inspections for fatigue cracking of certain PSEs, and expands the inspection area for a certain other PSE. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. For this reason, we are proposing this AD, which would require operators to incorporate the Boeing MD–11 ALI, Report Number MDC–K5225, Revision 11, dated March 2006, into the applicable maintenance and inspection program.

Costs of Compliance

There are about 102 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 93 airplanes of U.S. registry. The proposed maintenance and inspection program revision would take about 1 work hour per airplane, at an average labor rate of $80 per work hour. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $7,440, or $80 per airplane, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2006–25850; Directorate Identifier 2006–NM–128–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by November 6, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model MD–11 and –11F airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to incorporate new inspections for fatigue

cracking of principal structural elements (PSEs). Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to incorporate the inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (h) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529.

Unsafe Condition

(d) This AD results from a revised damage tolerance analysis. We are issuing this AD to detect and correct fatigue cracking of certain principal structural elements (PSEs), which could adversely affect the structural integrity of the airplane.

Compliance

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

Revision of Airworthiness Limitations Section

(f) Within 18 months after the effective date of this AD: Revise the Airworthiness Limitations section of the Instructions for Continued Airworthiness, Airworthiness Limitations Instructions (ALI), according to a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Boeing MD–11 ALI, Report Number MDC–K5225, Revision 11, dated March 2006, is one approved method.

(g) Except as provided by paragraph (h) of this AD: After the actions specified in paragraph (f) of this AD have been done, no alternative inspection intervals or replacement times may be approved for the PSEs and safe-life limited parts specified in Boeing Report Number MDC–K5225, Revision 11, dated March 2006.

Alternative Methods of Compliance (AMOCs)

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

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

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

Issued in Renton, Washington, on September 12, 2006.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–7945 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 4, 5, and 7

[Notice No. 64; Re: Notice No. 62]

RIN 1513–AB08

Major Food Allergen Labeling for Wines, Distilled Spirits and Malt Beverages

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: In response to industry member requests, the Alcohol and Tobacco Tax and Trade Bureau extends the comment period for Notice No. 62, Major Food Allergen Labeling for Wines, Distilled Spirits and Malt Beverages, a notice of proposed rulemaking published in the **Federal Register** on July 26, 2006, for an additional 90 days.

DATES: Written comments must be received on or before December 26, 2006.

ADDRESSES: You may send comments to any of the following addresses—

- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, Attn: Notice No. 62, P.O. Box 14412, Washington, DC 20044–4412.
- 202–927–8525 (facsimile).
- *nprm@ttb.gov* (e-mail).
- *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml*. An online comment form is posted with this notice on our Web site.
- *http://www.regulations.gov*. Federal e-rulemaking portal; follow instructions for submitting comments.

You may view copies of this extension notice, Notice No. 62, the petitions, and any comments we receive by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. To make an appointment, call 202–927–2400. You may also access copies of this extension notice, Notice No. 62, and the related comments online at *http://www.ttb.gov/regulations_laws/all_rulemaking.shtml*.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone (301) 290–1460.

SUPPLEMENTARY INFORMATION: On July 26, 2006, the Alcohol and Tobacco Tax and Trade Bureau (TTB) published Notice No. 62, Major Food Allergen Labeling for Wines, Distilled Spirits and Malt Beverages, in the **Federal Register** (71 FR 42329). In that notice of proposed rulemaking, TTB requested public comment on the proposed adoption of mandatory labeling standards for major food allergens used in the production of alcohol beverages subject to the labeling requirements of the Federal Alcohol Administration Act. The comment period for Notice No. 62, when published, was scheduled to close on September 25, 2006.

After publication of Notice No. 62, TTB received requests from the Distilled Spirits Council of the United States, the National Association of Beverage Importers, Inc., and Wine Institute to extend the comment period for Notice No. 62 for a period ranging from 60 to 120 days beyond the September 25, 2006, closing date. In support of their extension requests, these organizations note that the comment period of this notice would coincide with habitual August vacations in Europe, where many industry member suppliers reside, and that it would also coincide with the approaching grape harvest in California. Consequently, the three organizations state, many industry members would be unable to focus on the complexities and ramifications of the proposed rule and would not have adequate time to formulate a response to the proposal.

In response to these requests, TTB extends the comment period for Notice No. 62 for an additional 90 days. Therefore, comments on Notice No. 62 are now due on or before December 26, 2006.

Drafting Information: Gabriel J. Hiza of the Regulations and Rulings Division drafted this notice.

Signed: September 14, 2006.

John J. Manfreda,

Administrator.

[FR Doc. 06–7963 Filed 9–19–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–028]

RIN 1625–AA09

Drawbridge Operation Regulation; Bayou Lafourche, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing six bridges across Bayou Lafourche, south of the Gulf Intracoastal Waterway, in Lafourche Parish, Louisiana. The Lafourche Parish Council has requested that the bridges remain closed to navigation at various times on weekdays during the school year. These closures will facilitate the safe, efficient movement of staff, students and other residents within the parish.

DATES: Comments and related material must reach the Coast Guard on or before November 20, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch 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 the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone 504–671–2128.

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 [CGD08–06–028], 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. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District, Bridge Administration Branch 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 U.S. Coast Guard, at the request of the Lafourche Parish Council, proposes to modify the existing operating schedules of six bridges across Bayou Lafourche south of the Gulf Intracoastal Waterway in Lafourche Parish, Louisiana. The six bridges include: Golden Meadow Vertical Lift Bridge, mile 23.9; the Galliano Pontoon Bridge, mile 27.8; the South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6; the Cote Blanche Pontoon Bridge, mile 33.9; the Cutoff Vertical Lift Bridge, mile 36.3; and the Larose Pontoon Bridge, mile 39.1. The modification of the existing regulations will allow these bridges to remain closed to navigation from 7 a.m. to 8:30 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m., Monday through Friday from August 15 through May 31. At all other times, the bridges would open on signal for the passage of vessels.

Presently, the draws of these bridges shall open on signal; except that, from August 15 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 7 a.m. to 8 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m.

The existing regulations for the bridges went into effect on January 27, 2006. The original request by the petitioner was that the bridges be closed to navigation from 7 a.m. to 8:30 a.m.; however, due to a clerical error, the rule was codified with the morning hours of 7 a.m. to 8 a.m. This request will correct the discrepancy.

Traffic counts and vessel openings vary among the six bridges. The Louisiana Department of Transportation and Development provided information on vessel openings for the Larose Pontoon Bridge, mile 39.1; the Galliano/South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6; and the Golden Meadow Vertical Lift Bridge, mile 23.9 since the regulation became effective. The Lafourche Parish Council also provided information on vessel openings and traffic counts for the Cutoff Vertical Lift Bridge, mile 36.3; the Cote Blanche Pontoon Bridge, mile 33.9; and the Galliano Pontoon Bridge, mile 27.8.

The modification of the additional 30-minute closure request affects each bridge differently. The additional time will require vessels already delayed by the morning closures to be delayed an additional 30 minutes. The number of vessels delayed per bridge varies but on average there are approximately 12 to 14 vessels delayed per month on approximately 8 days per bridge.

Discussion of Proposed Rule

The proposed rule would modify the existing regulations in 33 CFR 117.465 to facilitate the movement of high volumes of vehicular traffic across the bridge during periods of increased transits during the school year. These closures would allow for vehicles and school busses to transit across the bridges unimpeded both before and after school hours. The change would allow these six bridges on Bayou Lafourche south of the Gulf Intracoastal Waterway, mile 35.6 west of Harvey Lock, in Larose, to remain closed to navigation from 7 a.m. to 8:30 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m. Monday through Friday from August 15 to May 31. At all other times, the bridge will open on signal for the passage of vessels. The proposed regulation does not affect the SR 1 (Leeville) Vertical Lift Bridge, mile 13.3. This bridge is a mid-level vertical lift bridge and is scheduled to be replaced by a high-level fixed bridge in the near future.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

This proposed rule would allow the six bridges to remain closed to navigation an additional 30 minutes in the morning to facilitate the movement of school children within Lafourche Parish. According to the information provided by the applicant, the public at

large is better served by the closure 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities: the owners and operators of vessels needing to transit the bridges during the requested closure periods.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed 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 the Eighth Coast Guard District Bridge Administration Branch at the address above. 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 will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect 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 proposed 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Determination Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. However, comments on this section still be considered before the final rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.465(a) is revised to read as follows:

§ 117.465 Lafourche Bayou.

(a) The draws of the following bridges shall open on signal; except that, from August 15 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 7 a.m. to 8:30 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m.:

(1) SR 308 (Golden Meadow) Bridge, mile 23.9, at Golden Meadow

(2) Galliano Pontoon Bridge, mile 27.8, at Galliano

(3) SR 308 (South Lafourche (Tarpon)) Bridge, mile 30.6, at Galliano

(4) Cote Blanche Pontoon Bridge, mile 33.9, at Cutoff

(5) Cutoff Vertical Lift Bridge, mile 36.3, at Cutoff

(6) SR 310 (Larose Pontoon) Bridge, mile 39.1, at Larose

* * * * *

Dated: September 10, 2006.

Joel R. Whitehead,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. E6–15558 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–06–034]

RIN 1625–AA09

Drawbridge Operation Regulation; Bayou Lafourche, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the draw of the Valentine Pontoon Bridge across Bayou Lafourche, mile 44.7, in Lafourche Parish, Louisiana. The regulation will allow for the bridge to be unmanned and remain closed during hours of infrequent traffic with an advance notification requirement to open the bridge.

DATES: Comments and related material must reach the Coast Guard on or before November 20, 2006.

ADDRESSES: You may mail comments and related material to Commander (dpb), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch 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 the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone 504–671–2128.

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 [CGD08–06–034], 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. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District, Bridge Administration Branch 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 U.S. Coast Guard, at the request of the Lafourche Parish Council, proposes to modify the existing operating schedules of the Valentine Pontoon Bridge across Bayou Lafourche, mile 44.7, in Lafourche Parish, Louisiana. The majority of the bridge's openings occur between the hours of 6 a.m. and 6 p.m. The bridge owner proposes to continue to open the bridge on signal during these hours and to open the bridge on signal if at least four hours advance notification is given between the hours of 6 p.m. and 6 a.m. Presently, the draw of the bridge opens on signal for the passage of traffic.

Several large shipyards are located on Bayou Lafourche upstream of the bridge. The Lafourche Parish Council has contacted these facilities and has received letters of no objection to the proposed changes. A recent review of the bridge tender logs indicates that approximately 700 vessels transited through the bridge over the past year. Approximately 80% of the vessels transiting though the bridge site did so between the hours of 6 a.m. and 6 p.m. Additionally, it would appear that the majority of the night time openings for the bridge are for trawl vessels and they appear to increase during the months of May and August. Many of the trawl vessels appear to transit in clusters and pass through the bridge site on the same bridge opening. Presently, it is unclear as to whether or not a four-hour advance notification will place an undue burden on the vessel owners; however, the regulation will be written so that the bridge will be required to open on signal during the advance notification period if a temporary surge in water traffic occurs.

Traffic counts were not included as part of the submittal from the bridge owner as the request is to reduce the requirement of having a bridge tender at the bridge 24 hours a day due to the limited number of vessel openings that occur during the hours of 6 p.m. to 6 a.m.

Discussion of Proposed Rule

The proposed rule would modify the existing regulations in 33 CFR 117.465. The modification to the regulations will require the bridge owner to open the bridge on signal from 6 a.m. until 6 p.m. daily for the passage of vessels. At all other times, the bridge will open for signal for the passage of vessels if at least four hours advance notification is given. This modification will allow the bridge owner to reduce their requirements to have a bridge tender at the bridge site at all times. The SR 3220 bridge, mile 49.2, at Lockport, is required to open on signal for the passage of vessels; except that from 6 p.m. to 10 a.m., the bridge draw shall open on signal if at least four hours advance notification is given. As the next bridge upstream from the Valentine Bridge already has a more restrictive regulation established, the new regulation will only directly affect those individuals whose vessels or facilities are located within this five mile stretch of the waterway. The two largest commercial facilities have already submitted letters of no objection to the proposed changes.

Included in the regulation will be a clause similar to that which is included on the SR 3220 bridge that requires the bridge owner to open the bridge in less than four hours for an emergency and to open the bridge on signal if a temporary surge in water traffic occurs.

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. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary.

Prior to proposing this rule, the Coast Guard analyzed the bridge usage records and determined that requiring four hours notice during off peak periods would have minimal impact on commercial vessel traffic. This proposed rule allows vessels ample opportunity to transit this waterway during the day and with minimal advanced notification at all other 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities: the owners and operators of vessels needing to transit the bridges during the requested closure periods.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 proposed 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 the Eighth Coast Guard District Bridge Administration Branch at the address above. 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 will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect 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 proposed 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Determination Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule. However, comments on this section still be considered before the final rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.465, paragraphs (b), (c), (d), (e), and (f) are redesignated paragraphs (c), (d), (e), (f) and (g). A new paragraph (b) is added to read as follows:

§ 117.465 Lafourche Bayou.

* * * * *

(b) The draw of the Valentine bridge, mile 44.7 at Valentine, shall open on signal; except that, from 6 p.m. to 6 a.m., the draw shall open on signal if at least four hours advance notification is given. During the advance notification period, the draw shall open on less than four hours notice for an emergency and shall open on demand should a temporary surge in water traffic occur.

* * * * *

Dated: September 10, 2006.

Joel R. Whitehead,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. E6–15561 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–15–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2005–5]

Retransmission of Digital Broadcast Signals Pursuant to the Cable Statutory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice of Inquiry.

SUMMARY: The Copyright Office is seeking comment on copyright issues associated with the secondary transmission of digital television broadcast signals by cable operators under the Copyright Act.

DATES: Written comments are due November 6, 2006. Reply comments are due December 4, 2006. September 20, 2006.

ADDRESSES: If hand delivered by a private party, an original and five copies of a comment or reply comment should be brought to Library of Congress, U.S. Copyright Office, 2221 S. Clark Street, 11th Floor, Arlington, VA. 22202, between 8:30 a.m. and 5 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office.

If delivered by a commercial courier, an original and five copies of a comment or reply comment must be delivered to the Congressional Courier Acceptance Site (''CCAS'') located at 2nd and D Streets, NE, Washington, D.C. between 8:30 a.m. and 4 p.m. The envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, LM 430, James Madison Building, 101 Independence Avenue, SE, Washington, DC. Please note that CCAS will not accept delivery by means of overnight delivery services such as Federal Express, United Parcel Service or DHL.

If sent by mail (including overnight delivery using U.S. Postal Service Express Mail), an original and five copies of a comment or reply comment should be addressed to U.S. Copyright Office, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Ben Golant, Senior Attorney, and Tanya M. Sandros, Associate General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: Section 111 of the Copyright Act (''Act''), title 17 of the United States Code (''Section 111'') provides cable systems with a statutory license to retransmit a performance or display of a work embodied in a primary transmission made by a television station licensed by the Federal Communications Commission (''FCC''). Cable systems that retransmit broadcast signals in accordance with the provisions governing the statutory license set forth in Section 111 are required to pay royalty fees to the Copyright Office. Payments made under the cable statutory license are remitted semi–annually to the Copyright Office which invests the royalties in United States Treasury securities pending distribution of these funds to those copyright owners who are entitled to receive a share of the fees.

The Motion Picture Association of America, Inc. (''MPAA''), its member companies and other producers and/or distributors of movies, series and specials broadcast by television stations (''Program Suppliers'') and the Office of the Commissioner of Baseball, the National Basketball Association, the National Football League, the National Collegiate Athletic Association, the National Hockey League and the Women's National Basketball Association (''Joint Sports Claimants'' or ''JSC'') (collectively, ''Copyright Owners'') have requested that the Copyright Office commence a rulemaking to clarify the applicability of existing Copyright Office rules to the retransmission of digital broadcast signals under the statutory license set forth in Section 111 of the Copyright Act.

The regulatory actions requested by Copyright Owners are properly within the authority of the Copyright Office. 17 U.S.C.111(d) and 702. However, the retransmission of digital broadcast signals under Section 111 raises many issues, some of which require further elucidation before amending Section 201.17 of title 37 of the Code of Federal Regulations (''CFR'' or ''Section 201.17'') and the associated cable Statement of Account forms (''SOAs''). We therefore initiate this Notice of Inquiry (''NOI'') to address the matters raised by the Copyright Owners' Petition for Rulemaking[1] and to seek comment on other possible changes to the Copyright Office's existing rules and cable SOA forms.

[1] The petition and the attachments may be viewed on the Copyright Office website at: *http://copyright.gov/docs/cable/digitalsignals.pdf* and *http://copyright.gov/docs/cable/digitalsignals-attachments.pdf.*

Background

Digital television technology enables a television broadcast station to provide, over–the–air, an array of quality high–definition digital television signals (''HDTV''), standard–definition digital television signals (''SDTV''), and many different types of ancillary programming and data services. In 1997, the FCC adopted its initial rules governing the transition of the broadcast television industry from analog to digital technology,[2] and authorized each individual television station licensee to broadcast in a digital format. *Advanced Television Systems and Their Impact on Existing Television Broadcast Service,* 12 FCC Rcd. 12809 (1997). Since that time, hundreds of television stations have been transmitting both analog and digital signals from their broadcast facilities,[3] and television stations may choose to broadcast in a ''digital–only'' mode of operations, pursuant to FCC authorization. *See, e.g., Second Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television*, 19 FCC Rcd 18279, 18321–22 (2004). Moreover, a significant number of cable operators have agreed to voluntarily carry both analog and digital broadcast signals from the same broadcast licensee. *See http://www.ncta.com/IssueBrief.aspx?contentId=2716&view=3* (Cable operators voluntarily carrying at least 500 digital television station signals).

It is this trend toward carriage of digital signals, often simultaneously with the transmission of an analog counterpart, that has prompted Copyright Owners to seek clarification of the rules governing a cable system's carriage of broadcast signals under Section 111. However, before proposing new rules, the Copyright Office seeks comment on the proposed changes and a number of associated issues related to the carriage of digital signals.

Applicability of Section 111 to Digital Broadcast Signals

Copyright Owners request that the Copyright Office address the recordkeeping and royalty calculation issues that arise in connection with the carriage of digital broadcast signals by cable operators, provided that the Copyright Office is of the view that Section 111 covers retransmissions of digital broadcast signals. Petition at 5.

In 1976, Congress amended the Copyright Act by adding, *inter alia*, the cable statutory license. In so doing, it explained the rationale supporting the addition of Section 111. According to the legislative history accompanying Section 111 of the Act, Congress recognized that ''cable systems are commercial enterprises whose basic retransmission operations are based on the carriage of copyrighted program material and that copyright royalties should be paid by cable operators to the creators of such programs.'' H.R. Rep. No. 94–1476, 94th Cong., 2d Sess. at 89 (1976). It also recognized that ''it would be impractical and unduly burdensome to require every cable system to negotiate with every copyright owner whose work was retransmitted by a cable system.'' *Id.* Consequently, Congress established a statutory copyright license for the retransmission of those over–the–air broadcast signals that a cable system is authorized to carry pursuant to the FCC regulations then in place.

In structuring the license, Congress made a distinction between primary and secondary transmissions and local versus distant ones in order to identify which transmissions are subject to the statutory license and at what rate. It did not define a broadcast transmission or identify whether a transmission was subject to the statutory license on the basis of the signal's technical characteristics (*i.e.*, an analog signal vs. a digital signal) nor was there a need to make such distinctions because all transmissions at that time were broadcast in an analog format.[4]

Specifically, Section 111(f) of the Act broadly defines ''primary transmission'' as ''a transmission made to the public by the transmitting facility whose signals are being received and further transmitted by the secondary transmission service, regardless of where or when the performance or display was first transmitted,'' and a ''secondary transmission'' as ''the further transmitting of a primary transmission simultaneously with the primary transmission, or nonsimultaneously with the primary transmission [under a narrowly prescribed set of circumstances]...'' It is these secondary retransmissions to the public, where the carriage of the signals comprising the secondary transmission is permissible under the rules, regulations, or authorizations of the FCC, which are subject to statutory licensing.

Such transmissions are then categorized as local or distant based upon the statutory definition of the ''local service area of the primary transmitter,''which ''in the case of a television broadcast station, comprises the area in which such station is entitled to insist upon its signal being retransmitted by a cable system pursuant to FCC requirements in effect on April 15, 1976, or such station's television market as defined in section 76.55(e) of the FCC's rules (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to sections 76.55(e) or 76.59 of the FCC's rules . . . .''[5]

As seen above, there is nothing in the Act, its legislative history, or the Copyright Office's implementing rules, which limits the cable statutory license to analog broadcast signals. Instead, the cited provisions broadly state that the statutory license applies to any broadcast stations licensed by the FCC or any of the signals transmitted by such stations. Thus, use of the statutory license for the retransmission of a digital signal would not be precluded merely because the technological characteristics of a digital signal differ from the traditional analog signal format. *See Consumer Electronics Association v. FCC*, 347 F.3d 291(D.C. Cir. 2003) (FCC had authority to issue order requiring that 13–inch and larger televisions include tuners capable of receiving and decoding digital television signals under plain language of the 1962 All Channel Receiver Act (''ACRA''), even though ACRA's original intent was to promote and support the viability of analog UHF broadcast stations).

[2] Recently, Congress established February 17, 2009, as the date for the completion of the transition from analog to digital broadcast television. *See* Pub. L. No. 109-171, Section 3002(a), 120 Stat. 4 (2006).

[3] As of October 2005, more than 1,537 television stations nationwide were broadcasting in a digital format. S*ee Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming*, 21 FCC Rcd 2503 (2006) (''12th Annual Video Competition Report'') at ¶95.

[4] Section 111 stands in contrast to Section 119, the satellite statutory license, which Congress has amended to cover satellite carrier retransmission of digital broadcast signals. *See Satellite Home Viewer Extension and Reauthorization Act of 2004*, Pub. L. No. 108–447, Title IX, Section 103, 118 Stat. 3393 (2004) (''SHVERA''). The SHVERA contains separate provisions concerning the royalties to be paid for the retransmission of digital broadcast signals by satellite carriers and it affords copyright owners and satellite carriers the opportunity to negotiate royalty rates for digital broadcast signals separate from analog signals. It also contains special rules, exceptions, and limitations regarding the carriage of digital signals, including provisions on the use of one satellite dish to receive all such signals, which subscribers are eligible to receive distant digital signals, and how to test the technical availability of such signals.

[5] Section 201.17(b)(5) of the Copyright Office's rules states that the terms primary transmission, secondary transmission, local service area of a primary transmitter, distant signal equivalent, network station, independent station, and noncommercial educational station have the meanings set forth in Section 111 of the Act.

Even so, questions remain with regard to the application and operation of the cable statutory license structure in the digital television context. For this reason, we are seeking comment on the issues raised by the Copyright Owners' Petition and on additional issues raised herein.

Digital Broadcast Signal Retransmission Issues

Retransmission of a digital television broadcast signal. Today, television broadcasters may choose to transmit their signals in either a digital format or an analog format, or simultaneously in both formats. Some stations have also chosen to make the initial transmission of a new station signal solely in the digital format.[6] Carriage of digital signals by a cable system under the Section 111 license, however, requires a review of the current regulations and reporting practices as developed for analog signals to determine if these practices need to be readjusted in order to ensure accurate and complete reporting under the provisions of Section 111.

First, in the case where the digital signal has or has had an analog counterpart, would the digital broadcast station's television market for Section 111 purposes be the same as the broadcast station's television market for the analog signal? And if the analog signal is considered distant, can the digital counterpart ever be considered local, or vice versa? Second, how should the Copyright Office determine whether a distant digital broadcast signal is permitted or non–permitted for Distant Signal Equivalent (''DSE'') purposes? Third, how does the Copyright Office determine the basis of carriage for a distant digital signal (*i.e.* market quotas, grandfathered status, etc.)? Fourth, what DSE values (for network, educational, independent) should be assigned to digital signals? Fifth, how would the Copyright Office determine the coverage area of a broadcast licensee's digital television transmission for cable copyright purposes, especially in the context of significantly viewed signals?[7]

Would the resolution of these questions be the same in the case where the signal never had an analog counterpart? The Copyright Office seeks answers to these questions concerning the carriage of a digital signal and will consider any related issues identified by the commenters.

Simultaneous Retransmission of Analog and Digital Broadcast Signals. Currently, hundreds of television stations are broadcasting in both an analog and digital format. For example, WRC in Washington, D.C., broadcasts both an analog signal (Channel 4, WRC–TV) and a digital signal (Channel 48, WRC–DT). *See http://www.nbc4.com/tvlistings/index.html.*

Copyright owners acknowledge that some cable systems are separately reporting carriage of digital and analog broadcast signals and, in their view, doing so appropriately.[8] However, they state that it is unclear whether all cable systems are identifying carriage of both types of signals or are doing so in a consistent and uniform manner. According to Copyright Owners, the lack of uniformity in reporting the carriage of both analog and digital broadcast signals necessitates clarification of the Copyright Office's existing regulations.

Specifically, they urge the Copyright Office to clarify that, if a cable operator chooses to carry a television broadcast station's analog and digital signals, that cable operator should identify those signals separately in Space G on its SOA (*e.g.*, as WRC–TV on channel 4 and WRC–DT on channel 48). Copyright Owners assert that separate designation provides notice that a cable operator is carrying digital signals and may be charging subscribers additional fees that should be included in the gross receipts calculation.[9] Moreover, in the context of distant signal carriage, Copyright Owners argue that separate reporting of both the digital and the analog signal is necessary because such carriage would generate an additional royalty obligation.

For purposes of ascertaining the royalties owed, Copyright Owners suggest that where the programming is identical, the DSE values for carriage of a distant analog and a digital signal would be the same. Alternatively, if the programming on the two signals is different (*e.g.*, where the digital signal does not carry network programming), they assert that the DSE values may be different and should be computed separately in accordance with the provisions of Section 111(f). But in either case, Copyright Owners imply that the cable operator would still have to pay for each signal.

Must a cable operator pay separately for carriage of a digital signal and an analog signal where the signals carry identical programming to the subscriber, or does the statutory license allow for a single payment for the delivery of the same programming albeit in two different formats?[10] Would the programming be considered ''different'' if the digital signal included only a subset of the programming from the analog signal or if the digital signal was broadcast in a high definition format? Are cable systems offering such combinations to subscribers and is the Copyright Owners' method of valuation appropriate?

We ask commenters to provide examples of where cable operators are retransmitting the analog and digital signals of the same licensee, but the programming on the primary (or main) digital signal is different than that of the analog signal. We also seek comment on how a cable operator should report the carriage of a digital signal that has been downconverted to an analog signal (at the cable operator's headend) so that subscribers without a digital set top box are able to view such signals.

Retransmission of Digital Multicast Streams. Multicasting is the process by which multiple streams of digital television programming are transmitted at the same time over a single broadcast channel. The eleven largest broadcast groups and their affiliates broadcast more than 937,000 hours of multicast programming during the month of October 2005. This multicast programming included news, weather, sports, religious material, music videos and coverage of local musicians and concerts, as well as foreign language programming (especially, but not limited to, Spanish programming). *See 12th Annual Video Competition Report*, 21 FCC Rcd. 2503 at ¶101.[11]

[6] For example, WHDT–TV–DT, Stuart, Florida, operates as a digital facility but never had a paired analog station. *See Petition for Declaratory Ruling that Digital Broadcast Stations Have Mandatory Carriage Rights*, 16 FCC Rcd 2692 (2001).

[7] As a point of reference, the Copyright Office notes that digital television station's coverage areas are measured by noise limited service contours under current FCC rules, not Grade B contours as is the case for analog stations, *see* 47 CFR 76.54(c).

[8] Cable operators are not required by the FCC to carry both the analog and digital signals of local broadcast stations. *See Carriage of Digital Television Broadcast Signals*, 20 FCC Rcd 4516 (2005).

[9] Gross receipts for the basic service of providing secondary transmissions of primary broadcast transmitters include the full amount of monthly (or other periodic) service fees for any and all services or tiers of services which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees. *See* 37 CFR 201.17(b)(1).

[10] We note, for example, that Metrocast Cablevision of New Hampshire has assigned a single value for a number of television stations transmitting both an analog and digital signal. Metrocast Cablevision SA3 Long Form, 2005/1 period, Cable ID # 7438 (as assigned by the Licensing Division of the Copyright Office).

[11] The FCC has decided that if a digital broadcaster elects to divide its digital spectrum into several separate, independent and unrelated multicast programming streams, only one of these streams, the ''primary'' digital video stream, is entitled to mandatory carriage under the Communications Act. *See Carriage of Digital Television Broadcast Signals,* 16 FCC Rcd 2598

For example, Station WRAL in Raleigh, North Carolina, transmits its analog signal (WRAL–TV) on channel 5 and its digital signal (WRAL–DT) on channel 5.1, which simulcasts (in some cases in HDTV) certain of the programming on channel 5. It also transmits a 24–hour news channel (WRAL–NC) on channel 5.2. And, it transmits locally–produced programming on channels 5.3 (WRAL–DT3) and 5.4 (WRAL–DT4). *See http://www.wral.com/wralinfo/index.html.*

Copyright Owners ask the Copyright Office to clarify that a cable operator carrying multicast signals must identify those signals separately in Space G on its SOA form. They state that a cable operator choosing to carry all of the digital channels transmitted by WRAL, for example, should state in Space G of its SOA that it carried WRAL–DT on channel 5.1; WRAL–NC on channel 5.2; WRAL–DT3 on channel 5.3; and WRAL–DT4 on channel 5.4. Copyright Owners assert that separate reporting is necessary in the case of carriage of multiple digital channels, where the copyright owners of the programming on such separate channels may be wholly different from the copyright owners of the programming on the primary digital video stream. We seek comment on the Copyright Owners' suggestions.

Copyright Owners also urge the Copyright Office to require separate calculation of DSE values and royalty payments for carriage of multiple streams of distant digital signals. If, for example, a cable operator chose to import two streams from a particular digital multicast television signal, one of which contained network programming and the other of which did not, that operator should be considered as importing 1.25 DSEs. We seek comment on Copyright Owners' proposals.

Retransmission of Datacast Streams. DTV technology allows television stations to use part of their digital bandwidth for new ancillary programming and data services. These services can be provided simultaneously with high definition or standard definition DTV programs, and can deliver virtually any type of data, audio or video, including text, graphics, software, web pages, video–on–demand, and niche programming. *See 12th Annual Video Competition Report*, 21 FCC Rcd. 2503 at ¶105. Some of the content produced and distributed by the television station may be related to the program being broadcast (*i.e.*, ''program–related material''). For example, a television station may transmit interactive sports statistics along with the local major league baseball game being digitally broadcast.

Copyright Owners did not directly discuss the retransmission of digital program–related material under Section 111 in their Petition for Rulemaking. However, they did suggest that if one digital broadcast stream contained only material that was part of the copyrighted programming on the other digital broadcast stream, the cable operator would report only a single DSE (or .25 DSE if the stream qualified as a ''network station'' as defined in the Copyright Act). Copyright Owners cite to *WGN v. United Video*, 693 F.2d 622 (7th Cir. 1982) in support of their proposal. In WGN, the 7th Circuit held that additional material broadcast with a television program that ''is intended to be viewed with and as an integral component of that program'' is covered by the copyright on the television program.

We seek comment on Copyright Owners' recommendation. We also ask whether the 1982 *WGN* case, decided in an analog context, is still good precedent for our purposes here.[12] In other words, have time and technology eroded the precedential value of the 7th Circuit's decision?

We note that satellite carriers and copyright owners have agreed that no separate copyright royalty payment would be due for any program–related material contained on the digital broadcast stream within the meaning of *WGN. See Rate Adjustment for the Satellite Carrier Compulsory License*, 70 FR 39178, 39179 (July 7, 2005). Should we consider this agreement as authoritative guidance in the Section 111 context?

Retransmission of Digital Audio Broadcast Signals. Like television station licensees, terrestrial radio station licensees are also converting to digital broadcasting. Using in band on channel (''IBOC'') technology, radio stations have initiated a new service known as digital audio broadcasting (''DAB''). DAB provides for enhanced sound fidelity and improved reception while giving radio stations the capability to multicast and offer new data services to the public (such as station, song and artist identification, stock and news information, as well as local traffic and weather bulletins). This technology allows broadcasters to use their current radio spectrum to transmit AM and FM analog signals simultaneously with new higher quality digital signals. IBOC technology makes use of the existing AM and FM bands (In Band) by adding digital carriers to a radio station's analog signal, allowing broadcasters to transmit digitally on their existing channel assignments (On Channel). There is, however, no government mandated transition for radio station licensees as there is for television station licensees. *See generally, Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service,* 19 FCC Rcd 7505 (2004).

Nevertheless, we seek comment on what changes in our rules and the SOAs are necessary to accommodate the secondary transmission of digital audio signals by cable systems. How should cable systems report the retransmission of digital audio multicast streams? Will cable subscribers need specialized equipment or set top boxes to receive these digital radio signals? If so, how would this affect a cable operator's gross receipts calculations?

Marketing of Digital Broadcast Signals and the Cable Statutory License

The Copyright Office's regulations require reporting of the gross receipts, as defined in Section 201.17(b), for any tier of service that must be purchased in order to access the tier which contains the broadcast signals. *Compulsory License for Cable Systems: Reporting of Gross Receipts*, 53 FR 2493, 2495 (Jan. 28, 1988); *see also* 37 CFR 201.17(b)(1); Form SA 1–2, General Instructions, p. v; Form SA 3, General Instructions, p. vi.

Copyright Owners state that cable operators often carry digital broadcast signals on a digital service tier, but for subscribers to access such signals, they must purchase other tiers of service. They note, for example, that Time Warner's Lincoln, Nebraska cable system offers several digital broadcast signals in a package as a ''free'' service. However, in order to receive this ''free'' package, a subscriber must not only rent an HDTV set top box for $7.65 per month, the subscriber must also purchase the system's ''digital tier,'' which contains many non–broadcast digital programming services, for an additional $6.95 per month.

Accordingly, Copyright Owners request that the Copyright Office clarify that a cable operator must include in its gross receipts any revenues from the tiers of service consumers must

(2001). In any event, cable systems have voluntarily agreed to carry multicast digital programming streams from broadcast stations across the country. *See Carriage of Digital Television Broadcast Signals*, 20 FCC Rcd 4516 at ¶ 38 (2005).

[12] With regard to the mandatory carriage of digital program-related material, the FCC decided to use the same factors enumerated in *WGN*, that are used in the analog context, to determine what material is considered program-related for must carry purposes, at least for the time being. *See Carriage of Digital Television Broadcast Signals*, 16 FCC Rcd at 2624 (2001); *but see id.* at 2651 (FCC seeking further comment ''on the proper scope of program-related in the digital context.'')

purchase in order to receive HDTV or other digital broadcast signals–notwithstanding that the operator may market its offering of such digital signals as ''free.'' Copyright Owners also recommend that the Copyright Office include in Space E of the cable SOAs a specific reference to ''Digital and HDTV Tiers,'' and explain that such reference includes all service tiers that a consumer must purchase in order to receive digital broadcast signals. We seek comment on these proposals. We also ask commenters to submit other examples of cable industry marketing practices that require subscribers to purchase tiers, services, or gateways, in order to access digital broadcast signals.

Digital Equipment and Reception Issues Under Section 111

Digital Set Top Boxes. Any fees charged for converters necessary to receive broadcast signals must be included in the cable system's gross receipts used to calculate its Section 111 royalty payment. 37 CFR 201.17(b)(1); Form SA 1–2, General Instructions, p. v; Form SA 3, General Instructions, p. vi. As the Copyright Office stated nearly thirty years ago: ''In either case, the subscriber must have a converter to receive, in usable form, the signals of all of the television stations that constitute the cable system's 'basic service of providing secondary transmissions of primary broadcast transmitters.' Subscriber fees associated with converters, therefore, are clearly amounts paid for the system's secondary transmission service and are included in that system's 'gross receipts.''' *Compulsory License for Cable Systems*, 43 FR 27827–27828 (June 27, 1978).

Currently, cable subscribers are generally unable to receive digital (including broadcast) signals offered by their cable operator unless they obtain a special converter, *i.e.* digital set top box, regardless of whether those signals are available as part of the lowest–priced basic service. Copyright Owners assert that some cable operators may not be including set top box fees in their calculation of gross receipts. They note, for example, that Time Warner's Lincoln, Nebraska system lists its ''HD Converter'' fee (as well as its ''basic converter'' fee) in Block 2 of Space F of its 2004–1 SOA (labeled as ''Services Other Than Secondary Transmission Rates'') and not in Block 1 of Space E (labeled as ''Secondary Transmission Service: Subscribers and Rates''). Copyright Owners argue that only fees identified in Space E are included in the cable operator's calculation of gross receipts (and thus in the calculation of the cable operator's Section 111 royalty). Copyright Owners assert that Time Warner's Nebraska cable system (if it were carrying digital broadcast signals) may have been incorrectly reporting its revenues from the carriage of retransmitted broadcast signals.

Copyright Owners are not suggesting that all cable operators are failing to include digital converter fees in their gross receipts. They note, for example, the 2004–1 SOA for Comcast's Montgomery County, Maryland cable system does appear to include digital converter fees in its calculation of gross receipts. According to Copyright Owners, the fact that some cable systems are including such converter fees in their gross receipts while others are apparently not doing so underscores the need for the Copyright Office to clarify this issue to ensure consistency in the application of the relevant rules.

Copyright Owners, therefore, request the Copyright Office to clarify that, in accordance with Section 201.17(b), a cable operator must include in its gross receipts any fees charged subscribers for digital set top boxes used to receive HDTV or other digital broadcast signals, notwithstanding that the operator may market its offering of such signals as ''free.'' Copyright Owners also recommend that the Copyright Office include in Space E of the cable statement of account form specific reference to ''Digital and HDTV Converters'' and explain that this line item refers to converters used to receive HDTV or other digital broadcast signals. We seek comment on these proposed changes.

Cable Cards. As stated earlier, under Section 201.17(b) of the Copyright Office's rules, gross receipts for the retransmission of broadcast signals include the full amount of service fees for any and all services or tiers of service which include one or more secondary transmissions of television or radio broadcast signals, for additional set fees, and for converter fees. (Emphasis added)

Section 624A of the Communications Act, 47 U.S.C. 544a, governs the compatibility between cable systems and navigation devices (*e.g.*, cable set–top boxes, digital video recorders, and television receivers with navigation capabilities) manufactured by consumer electronics manufacturers not affiliated with cable operators. In connection with the digital television transition, the cable industry and the consumer electronics industry have engaged in ongoing inter–industry discussions seeking to establish a cable ''plug and play'' standard. With the standard in place, consumers are able to directly attach their DTV receivers to cable systems and receive cable television service without the need for a digital set top box. To receive cable service, consumers would only need to use a point–of–deployment module (''POD''), now marketed as ''CableCARD,'' that would fit into a slot built into the television set. The POD acts as a key to unlock encrypted programming. In October 2003, the FCC adopted initial ''plug and play'' and POD requirements that were generally proposed by the cable and consumer electronics industries. *Compatibility Between Cable Systems and Consumer Electronics Equipment*, 18 FCC Rcd 20885 (2003). The current rules, however, apply only to unidirectional programming (i.e. programming coming from the cable headend) and does not apply to bi–directional programming, such as Video On Demand and impulse pay–per–view. The industries are currently working on a bi–directional plug and play agreement. In the meantime, cable subscribers will still need a digital set top box to access these types of advanced services.

We seek comment on whether cable subscribers have been required to purchase CableCards in order to access digital broadcast television signals. If so, we ask whether the Copyright Office's definition of gross receipts should be amended to include subscriber revenue generated through the lease of CableCards. How are cable operators currently treating the lease of CableCards on their SOAs? What space and block on the SOAs should be changed, or possibly added, to list CableCard revenue?

Second Television Set Fees. Cable operator fees for service to second television sets are included in a cable system's gross receipts for the purposes of Section 111. 37 CFR 201.17(b)(1); Form SA 1–2, General Instructions, p. v; Form SA 3, General Instructions, p. vi; *see also Compulsory License for Cable Systems*, 43 FR 958, 959 (Jan. 5, 1978) (''The additional set fee is, we believe, clearly a payment for basic secondary transmission service . . .'').

Copyright Owners state that some cable systems charge additional fees for access to digital broadcast signals to a second television set in the household. They note, for example, that Susquehanna's York, Pennsylvania, cable system charges its customers $6.95 per month for ''Additional HDTV Terminals,'' even though it does not charge customers for service to additional television sets receiving only an analog service. *See http://www.suscom.com/home/sites/pricing.php?city=york).* Copyright Owners contend, however, that it is

unclear whether this system, and others like it, are including fees for service to additional sets that receive HDTV and other digital broadcast signals within their calculation of gross receipts.

Copyright Owners thus ask the Copyright Office to clarify that, in accordance with Section 201.17(b) of the rules, fees for service to additional digital television sets or ''HDTV Terminals'' must be included in a cable system's gross receipts. Copyright Owners also recommend that the Copyright Office include in Space E of the cable SOA specific reference to ''Digital and HDTV Additional Set Fees'' and explain that such line item refers to fees charged for service to additional television sets receiving HDTV or other digital broadcast signals. We seek comment on the changes proposed by the Copyright Owners. Moreover, some cable operators offer their subscribers in–home digital networks where one digital set top box provides digital signals to all sets in the household. We seek comment on whether the fees associated with such a service, if any, should be included in the operator's gross receipts calculation.

Conclusion

We hereby seek comment from the public on the issues identified herein associated with the retransmission of digital broadcast signals by cable systems under Section 111 of the Copyright Act. If there are any additional issues concerning the treatment of digital television retransmissions not discussed above, we encourage interested parties to bring those matters to our attention.

Dated: September 14, 2006.

Marybeth Peters,

Register, U.S. Copyright Office.

[FR Doc. 06–7927 Filed 9–19–06; 8:45 am]

BILLING CODE 1410–30–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0483; FRL–8078–2]

Chlorpropham, Linuron, Pebulate, Asulam, and Thiophanate-methyl; Proposed Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke certain tolerances for the herbicides linuron and pebulate and the fungicide thiophanate-methyl. Also, EPA is proposing to modify certain tolerances for the herbicides chlorpropham, linuron, asulam and the fungicide thiophanate-methyl. In addition, EPA is proposing to establish new tolerances for the herbicides chlorpropham, linuron, asulam, and the fungicide thiophanate-methyl. The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

DATES: Comments must be received on or before November 20, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0483, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0483. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov website is an ''anonymous access'' system, which means EPA will not know your identity or contact information -unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Jane Smith, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460–0001; telephone number: (703) 308–0048; e-mail address:*smith.jane-scott@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to

certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in Unit II.A. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through www.regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

C. What Can I do if I Wish the Agency to Maintain a Tolerance that the Agency Proposes to Revoke?

This proposed rule provides a comment period of 60 days for any person to state an interest in retaining a tolerance proposed for revocation. If EPA receives a comment within the 60–day period to that effect, EPA will not proceed to revoke the tolerance immediately. However, EPA will take steps to ensure the submission of any needed supporting data and will issue an order in the **Federal Register** under FFDCA section 408(f) if needed. The order would specify data needed and the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. If the data are not submitted as required in the order, EPA will take appropriate action under FFDCA.

EPA will issue a final rule after considering comments that are submitted in response to this proposed rule. In addition to submitting comments in response to this proposal, you may also submit an objection at the time of the final rule. If you fail to file an objection to the final rule within the time period specified, you will have waived the right to raise any issues resolved in the final rule. After the specified time, issues resolved in the final rule cannot be raised again in any subsequent proceedings.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to revoke, modify, and establish specific tolerances for residues of the herbicides chlorpropham, linuron, pebulate, and asulam and the fungicide thiophanate-methyl in or on commodities listed in the regulatory text.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA is required to determine whether each of the amended tolerances meets the safety standard of the FQPA. The safety finding determination of ''reasonable certainty of no harm'' is discussed in detail in each RED and Report of the FQPA TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed copies of many REDs and TREDs may be obtained from EPA's National Service Center for Environmental Publications (EPA/NSCEP), P.O. Box 42419, Cincinnati, OH 45242–2419, telephone 1–800–490–9198; fax 1–513–489–8695; internet at *http://www.epa.gov/ncepihom/* and from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, telephone 1–800–553–6847 or 703–605–6000, internet at *http://www.ntis.gov*. Electronic copies of REDs and TREDs are available on the internet at *http://www.epa.gov/pesticides/reregistration/status.htm* and chlorpropham in docket number EPA–HQ–OPP–2002–0180, asulam in docket number EPA–HQ–OPP–2002–0329, linuron in docket number EPA–HQ–OPP–2002–0079, and thiophanate-methyl in dockets EPA–HQ–OPP–2002–0140, and EPA–HQ–OPP–2002–0265.

The selection of an individual tolerance level is based on crop field residue studies designed to produce the maximum residues under the existing or proposed product label. Generally, the level selected for a tolerance is a value slightly above the maximum residue found in such studies. The evaluation of whether a tolerance is safe is a separate inquiry. EPArecommends the raising of a tolerance when data show that: 1. Lawful use (sometimes through a label change) may result in a higher residue level on the commodity; and 2. the tolerance remains safe, notwithstanding increased residue level allowed under the tolerance.

In REDs, Chapter IV on ''Risk management, Reregistration, and Tolerance Reassessment'' typically describes the regulatory position, FQPA assessment, cumulative safety determination, determination of safety for U.S. general population, and safety for infants and children. In particular, the human health risk assessment document which supports the RED describes risk exposure estimates and whether the Agency has concerns. In TREDs, the Agency discusses its evaluation of the dietary risk associated with the active ingredient and whether it can determine that there is a reasonable certainty (with appropriate mitigation) that no harm to any population subgroup will result from aggregate exposure.

Explanations for proposed modifications in tolerances can be found in the RED and TRED document and in more detail in the Residue Chemistry Chapter document which supports the RED and TRED. Copies of the Residue Chemistry Chapter documents are found in the Administrative Record and are available electronically through EPA's electronic public docket and comment system, regulations.gov at *http://www.regulations.gov*. You may search

for this proposed rule and for pebulate under docket number EPA–HQ–OPP–2006–0483, or for an individual chemical under its respective docket number, then click on that docket number to view its contents.

The aggregate exposures and risks are not of concern for the above- mentioned pesticide active ingredients based upon the data identified in the RED or TRED which lists the submitted studies that the Agency found acceptable.

EPA has found that the tolerances that are proposed in this document to be established or modified, are safe, i.e., that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residues, in accordance with section 408(b)(2)(C). (Note that changes to tolerance nomenclature do not constitute modifications of tolerances). These findings are discussed in detail in each RED or TRED. The references are available for inspection as described in this document under **SUPPLEMENTARY INFORMATION**.

In addition, EPA is proposing to revoke certain specific tolerances because either they are no longer needed or are associated with food uses that are no longer registered under FIFRA. Those instances where registrations were canceled were because the registrant failed to pay the required maintenance fee and/or the registrant voluntarily canceled one or more registered uses of the pesticide. It is EPA's general practice to propose revocation of those tolerances for residues of pesticide active ingredients on crop uses for which there are no active registrations under FIFRA, unless any person in comments on the proposal indicates a need for the tolerance to cover residues in or on imported commodities or domestic commodities legally treated.

1. *Chlorpropham*. A plant commodity tolerance on postharvest potato for chlorpropham is currently regulated for residues of CIPC (isopropyl m-chlorocarbanilate) and its metabolite 1-hydroxy-2-propyl 3'-chlorocarbanilate (calculated as CIPC) in 40 CFR 180.181. Because the regulated metabolite was not detected in potato following treatment with radiolabelled ^{14}C-chlorpropham, EPA determined that the tolerance expression for plants should be expressed in terms of chlorpropham per se. Meanwhile, the current interim milk and livestock tolerances in 40 CFR 180.319 are regulated for isopropyl m-chlorocarbanilate (CIPC) residues. However, based on available ruminant data that show residues of chlorpropham and its metabolite 4-hydroxychlorpropham-O-sulfonic acid (4-HSA) in milk and edible tissues, EPA determined that the tolerance expression should be expressed in terms of the combined residues of chlorpropham and 4-hydroxychlorpropham-O-sulfonic acid (4-HSA) and recodified under 40 CFR 180.181 as permanent tolerances. Therefore, EPA is proposing to recodify plant tolerances for chlorpropham from 40 CFR 180.181(a) to (a)(1), and regulate tolerances there for residues of the plant regulator and herbicide chlorpropham (isopropyl m-chlorocarbanilate). Also, EPA is proposing to remove the interim milk and livestock tolerances (meat, fat, and meat byproducts of cattle, hog, horse, and sheep) for chlorpropham (isopropyl m-chlorocarbanilate) in 40 CFR 180.319, recodify them as permanent tolerances in 40 CFR 180.181(a)(2), and regulate tolerances there for the combined residues of the plant regulator and herbicide chlorpropham (isopropyl m-chlorocarbaniliate (CIPC)) and its metabolite 4-hydroxychlorpropham-O-sulfonic acid (4-HSA).

In addition, based on ruminant feeding data and the calculated maximum theoretical dietary burden (MTDB) estimates, EPA determined that tolerances on the meat of cattle, hog, horse and sheep should be increased in 40 CFR 180.181(a)(2) from 0.05 to 0.06 ppm, the limit of quantitation (LOQ), and a tolerance for goat meat should be established at 0.06 ppm. Also, based on exaggerated feeding study data that showed combined residues of concern in kidney at about 0.3 ppm, the Agency determined that tolerances for kidney of cattle, hog, horse, and sheep should be separated from their existing meat byproduct tolerances at 0.05 ppm and in 40 CFR 180.181(a)(2) increased to 0.30 ppm, and a tolerance for goat kidney should be established at 0.30 ppm. However, because combined residues of concern in liver were shown to be near the LOQ (0.06 ppm), the Agency determined that tolerances for meat byproduct, except kidney of cattle, hog, horse, and sheep should be increased in 40 CFR 180.181(a)(2) from 0.05 to 0.06 pm, and a tolerance for goat, meat byproducts, except kidney should be established at 0.06 ppm. In addition, based on ruminant feeding data that showed combined residues of concern in fat at 0.17 ppm, the Agency determined that tolerances for the fat of cattle, hog, horse, and sheep should be increased from 0.05 to 0.20 ppm, and a tolerance for goat fat should be established at 0.20 ppm. Moreover, based on ruminant feeding data and the MTDB estimates that showed combined residues of concern to be 0.25 ppm, the Agency determined that the tolerance for milk should be increased from 0.05 to 0.30 ppm. Therefore, EPA is proposing to increase tolerances in newly recodified 40 CFR 180.181(a)(2) for the combined residues of chlorpropham and 4-hydroxychlorpropham-O-sulfonic acid (4-HSA) as follows: Milk from 0.05 to 0.30 ppm; cattle, fat; hog, fat; horse, fat; and sheep, fat from 0.05 to 0.20 ppm; cattle, meat; hog, meat; horse, meat; and sheep, meat from 0.05 to 0.06 ppm; cattle, meat byproducts, except kidney; hog, meat byproducts, except kidney; horse, meat byproducts, except kidney; and sheep, meat byproducts, except kidney from 0.05 to 0.06 ppm, and cattle, kidney; hog, kidney; horse, kidney; and sheep, kidney from 0.05 to 0.30 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Also, EPA is proposing to establish tolerances in newly recodified 40 CFR 180.181(a)(2) for the combined residues of chlorpropham and 4-hydroxychlorpropham-O-sulfonic acid (4-HSA) as follows: Goat, fat at 0.20 ppm; goat, kidney at 0.30 ppm; goat, meat at 0.06 ppm; and goat, meat byproducts,except kidney at 0.06 ppm.

Based on available potato field trial data that show residues of chlorpropham as high as 24.0 ppm, the Agency determined that the tolerance in newly recodified 40 CFR 180.181(a)(1) should be decreased from 50.0 to 30.0 ppm. Therefore, EPA is proposing to decrease the tolerance in newly recodified 40 CFR 180.181(a)(1) on potato, postharvest from 50.0 to 30.0 ppm.

Based on an available potato processing data that show an average concentration factor of chlorpropham residues at 3x and a highest average field trial (HAFT) whole potato residue of 12.0 ppm, the Agency determined that residues would be 36 ppm and a tolerance should be established on potato, wet peel at 40 ppm. (Residues did not concentrate in potato granules, flakes, or chips). Therefore, EPA is proposing to establish a tolerance in newly recodified 40 CFR 180.181(a)(1) on potato, wet peel at 40.0 ppm.

Since the chlorpropham TRED, the spinach tolerance in 40 CFR 180.319 was revoked by final rule published in the **Federal Register** on July 23, 2004 (69 FR 43918) (FRL–7358–6), which included tolerance actions on a number

of pesticide active ingredients including chlorpropham.

2. *Linuron*. According to the TRED, the tolerance expression, which is currently expressed as ''residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea)'' in 40 CFR 180.184(a) and (c), should be modified to include metabolites that can be converted to 3,4-dichloroaniline that are of toxicological concern. Consequently, EPA is proposing the tolerance expression in 40 CFR 180.184(a) and (c) read as follows:

(a) *General*. Tolerances are established for the combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on the following food commodities:

* * * * *

(c) *Tolerances with regional registrations*. Tolerances with regional registrations, as defined in § 180.1(n), are established for the combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on the following food commodities:

The feeding of treated soybean forage or hay to livestock is prohibited as stated on registration labels and therefore the tolerances are no longer needed. Consequently, EPA is proposing to revoke the tolerances in 40 CFR 180.184(a) for residues of the herbicide linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on soybean, forage and soybean, hay.

Based on field trial data that indicate linuron residues of concern in or on field corn stover are as high as 5.5 ppm, the Agency determined that a tolerance of 6.0 ppm is appropriate. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.184(a) for residues of the herbicide linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on corn, field, stover from 1.0 to 6.0 ppm. The Agency determined that the increased tolerance is safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

In order to conform to current Agency practice, EPA is proposing to revise the commodity terminology in 40 CFR 180.184 for corn, grain (inc. pop) at 0.25 ppm into corn, field, grain and corn, pop, grain. However, because there are no active U.S. registrations for linuron residues of concern on popcorn, and therefore a tolerance is no longer needed, EPA is proposing to revoke the newly revised tolerance in 40 CFR 180.184(a) on corn, pop, grain. In addition, based on field trial data that indicate linuron residues of concern in or on corn grain as high as 0.06 ppm, the Agency determined that the corn, field, grain tolerance should be decreased from 0.25 to 0.1 ppm. Therefore, EPA is proposing to decrease the newly revised tolerance in 40 CFR 180.184(a) for the combined residues of the linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on corn, field, grain from 0.25 to 0.1 ppm.

Ruminant feeding data at an exaggerated level (6.9x) show that linuron residues of concern expected at a 1x feeding level are 0.16 ppm in fat, 0.07 ppm in meat, 1.9 ppm in liver and kidney, and 0.05 ppm (LOQ) in milk. Based on these expected residue levels, the Agency determined that the fat tolerances of cattle, goat, horse and sheep should be decreased from 1.0 to 0.2 ppm; meat tolerances of cattle, goat, horse and sheep should be decreased from 1.0 to 0.1 ppm; meat byproduct tolerances of cattle, goat, horse, and sheep should be separated into tolerances for meat byproducts, except kidney and liver, and decreased from 1.0 to 0.1 ppm, kidney of cattle, goat, horse, and sheep, which should be established separately and increased from 1.0 to 2.0 ppm, and liver of cattle, goat, horse, and sheep, which should be established separately and increased from 1.0 to 2.0 ppm; and a tolerance for milk should be established at 0.05 ppm. Therefore, EPA is proposing to decrease tolerances from 1.0 ppm in 40 CFR 180.184(a) to the following: Cattle, fat; goat, fat; horse, fat; and sheep, fat; each at 0.2 ppm; cattle, meat; cattle, meat byproducts, except kidney and liver; goat, meat; goat, meat byproducts, except kidney and liver; horse, meat; horse, meat byproducts, except, kidney and liver; sheep, meat and sheep, meat byproducts, except kidney and liver; each at 0.1 ppm. Also, EPA is proposing to established separate tolerances and increase them from 1.0 in 40 CFR 180.184(a) as follows: Cattle, kidney; cattle, liver; goat, kidney; goat, liver; horse, kidney; horse, liver; sheep, kidney; and sheep, liver; each at 2.0 ppm. In addition, EPA is proposing to establish a tolerance in 40 CFR 180.184(a) on milk at 0.05 ppm. The Agency determined that the increased tolerances are safe; i.e., there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on ruminant feeding data and an estimated dietary burden in swine that is much less than that for beef and dairy cattle, the Agency calculated likely linuron residues of concern to be 0.007 ppm in hog fat, 0.003 ppm in hog meat, and 0.08 ppm in hog liver and kidney, and therefore tolerances should be decreased from 1.0 ppm to 0.05 ppm, 0.05 ppm, and 0.1 ppm for hog fat, meat, and meat byproducts, respectively. Therefore, EPA is proposing to decrease tolerances in 40 CFR 180.184(a) for the combined residues of linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on hog, fat and hog, meat from 1.0 to 0.05 ppm; and hog, meat byproducts from 1.0 to 0.1 ppm.

Based on field trial data, the Agency determined that linuron residues of concern were non-detectable (<0.05 ppm) in or on parsnips. Therefore, EPA is proposing to decrease the tolerance in 40 CFR 180.184(a) for the combined residues of linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on parsnip (with or without tops) from 0.5 to 0.05 ppm and revise the commodity terminology into parsnip, roots and parsnip, tops.

The Linuron TRED reassessed the tolerance on cottonseed and recommended that it should be decreased from 0.25 to 0.05 ppm and be recodified from 40 CFR 80.184(a) to (c) as a regional tolerance, with use restricted to east of the Rocky Mountains. Since completion of the Linuron TRED, EPA has reviewed additional cotton field trial data from all cotton growing regions of the U.S. that indicate linuron residues of concern ranged from <0.05 to 0.244 ppm in or on undelinted cottonseed and that linuron did not concentrate in the processed fractions of cottonseed (meal, refined oil, and hulls). The Agency determined that the number of cottonseed field trials met geographical representation guidelines in accordance with OPPTS Harmonized Guideline 860.1500 (which is available at *http://www.epa.gov/opptsfrs/publications/OPPTS_Harmonized/860_Residue_Chemistry_Test_Guidelines/Series/*) for use of linuron on cotton both east and west of the Rocky Mountains. Based on these data, the Agency determined that the current tolerance for cotton, undelinted seed at 0.25 ppm is appropriate and should be maintained in 40 CFR 180.184(a), and separate tolerances are not needed on cotton meal, refined oil and hulls.

Since completion of the Linuron TRED, the registrant has adequately

responded to the deficiencies for cotton gin byproducts and has provided sufficient information with regard to the type of equipment used for harvesting the cotton commodities as well as justification for hand harvesting some cotton gin byproduct samples. Based on more recent cotton storage stability and field trial data reflecting all cotton growing regions of the U.S. submitted in response to the TRED that show linuron residues of concern in or on stripper cotton gin byproducts as high as 3.32 ppm, the Agency determined that a tolerance should be established for cotton gin byproducts in 40 CFR 180.184(a) at 5.0 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.184(a) for the combined residues of linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on cotton, gin byproducts at 5.0 ppm.

Because use of linuron on potatoes and celery is restricted to east of the Rocky Mountains, and use on wheat is restricted to the states of Idaho, Oregon, and Washington, the Agency determined that tolerances on celery, potato, and the forage, grain, hay, and straw of wheat should be recodified as regional registrations. Also, based on field trial data that indicate linuron residues of concern were as high as 0.42 ppm in or on celery, nondetectable (<0.05 ppm) in or on all but one sample (0.07 ppm) of potato, <0.03 ppm in or on wheat grain, and as high as 2.0 ppm in or on wheat straw, the Agency determined that the tolerance should remain at 0.5 ppm on celery, be decreased from 1.0 to 0.2 ppm on potato and 0.25 to 0.05 ppm on wheat, grain, and increased from 0.5 to 2.0 ppm on wheat straw. However, while tolerances for wheat forage and hay have been reassessed, additional data are anticipated in 2007 in response to the 2002 Linuron TRED. Therefore, EPA is proposing to recodify tolerances on celery, potato, and the forage, grain, hay, and straw of wheat from 40 CFR 180.184(a) to (c) and maintain or modify their tolerance levels for combined residues of linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, as follows: Celery; wheat, forage; and wheat, hay; each maintained at 0.5 ppm; potato decreased from 1.0 to 0.2 ppm; wheat, grain decreased from 0.25 to 0.05 ppm; and wheat, straw increased from 0.5 to 2.0 ppm. The Agency determined that the increased tolerance is safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Interregional Research Project number 4 (IR-4) has submitted petitions (PP 8E5027 and PP 8E5028) requesting the establishment of tolerances on celeriac and rhubarb based on use directions and data translated from carrots and celery, respectively. Based on field trial data that show linuron residues of concern for carrot samples treated at 0.75x were as high as 0.56 ppm and celery samples treated at 1x were as high as 0.42 ppm, the Agency determined that tolerances should be established at 1.0 ppm on celeriac and 0.5 ppm on rhubarb. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.184(a) for the combined residues of linuron and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on celeriac at 1.0 ppm and rhubarb at 0.5 ppm.

Although additional data are anticipated in 2007 in response to the TRED, tolerances associated with sorghum and sweet corn have been reassessed at the current tolerance levels. The Agency determined that the tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue. EPA is proposing to maintain the tolerance and revise commodity terminology in 40 CFR 180.184(a) to conform to current Agency practice as follows: ''Sorghum, forage'' to ''sorghum, grain, forage'' at 1.0 ppm; ''corn, fresh (inc. kernel plus cob with husks removed)'' to ''corn, sweet, kernel plus cob with husks removed'' at 0.25 ppm; and ''soybean, (dry or succulent)'' to ''soybean, seed'' at 1.0 ppm and ''soybean, vegetable'' at 1.0 ppm.

3. *Pebulate*. The last U.S. registration for the pesticide active ingredient pebulate (S-propyl butylethylthiocarbamate) was canceled on October 24, 2003, due to non-payment of registration fees and a notice was published in the **Federal Register** on November 6, 2003 (68 FR 62785) (FRL–7331–3). Therefore, the tolerances are no longer needed and EPA is proposing to revoke the tolerances in 40 CFR 180.238 for residues of S-propyl butylethylthiocarbamate in or on beet, sugar, roots; beet, sugar, tops; and tomato.

4. *Asulam*. The tolerance expression in 40 CFR 180.360 currently regulates asulam (methyl sulfanilylcarbamate) *per se*. Because an adequate enforcement method is available for the determination of combined residues of asulam and all metabolites containing the sulfanilamide moiety, the Agency recommended in the asulam TRED that the tolerance expression be revised to include metabolites containing the sulfanilamide moiety. Therefore, EPA is proposing the tolerance expression in 40 CFR 180.360 read as follows:

''(a) *General*. Tolerances are established for the combined residues of asulam (methyl sulfanilylcarbamate) and its metabolites containing the sulfanilamide moiety in or on the following food commodities:''

Based on sugarcane field trial data that showed asulam residues of concern as high as 0.213 ppm and a correction for a 70% loss of residues during storage, the Agency calculated that maximum residues should be 0.71 ppm and determined that the tolerance on sugarcane should be increased from 0.1 to 1.0 ppm. Therefore, EPA is proposing to increase the tolerance in 40 CFR 180.360(a) for the combined residues of asulam and its metabolites containing the sulfanilamide moiety in or on sugarcane, cane from 0.1 to 1.0 ppm. The Agency determined that the increased tolerance is safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on an available sugarcane processing data that show an average concentration factor of asulam residues at 48x and a HAFT residue value that when corrected for a 70% loss in storage is expected to be 0.557 ppm (0.167 ppm/0.3), the Agency calculated that residues would be about 26.7 ppm and determined that a tolerance should be established on sugarcane, molasses at 30.0 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.360(a) for the combined residues of asulam and its metabolites containing the sulfanilamide moiety in or on sugarcane, molasses at 30 ppm.

Based on a 1.2x exaggerated feeding data, animal metabolism data, and a ruminant diet of containing 10% molasses, a livestock feed item, the Agency determined that because the anticipated residues of asulam and sulfanilamide containing metabolites in milk are <0.025 ppm, in or on fat, liver, and muscle are <0.05 ppm, and kidney is 0.12 ppm, that tolerances should be established in milk, and on the fat and meat of cattle, goats, hogs, horses, and sheep at 0.05 ppm, and meat byproducts of cattle, goats, hogs, horses, and sheep at 0.2 ppm. Therefore, EPA is proposing to establish tolerances in 40 CFR 180.360(a) for the combined residues of asulam and its metabolites containing the sulfanilamide moiety in or on commodities, as follows: Cattle, fat; cattle, meat; goat, fat; goat, meat; hog, fat; hog, meat; horse, fat; horse, meat; sheep, fat; and sheep, meat at 0.05 ppm; and cattle, meat byproducts; goat, meat byproducts; hog, meat byproducts; horse, meat byproducts; and sheep meat

byproducts at 0.2 ppm; and milk at 0.05 ppm.

5. *Thiophanate-methyl*. Currently, the tolerances for thiophanate-methyl are expressed in 40 CFR 180.371(a) in terms of thiophanate-methyl (dimethyl [(1,2-phenylene)-bis(iminocarbonothioyl)] bis(carbamate)), its oxygen analogue dimethyl-4,4-o-phenylene bis(allophonate), and its benzimidazole-containing metabolites (calculated as thiophanate-methyl); and in 180.371(b) and (c) in terms of thiophanate-methyl and its metabolite methyl 2-benzimidazoyl carbamate (MBC). However, the Agency no longer considers the metabolite allophanate to be a residue of concern and has determined that residues of concern for plant and animal commodities for tolerance enforcement consists of the parent and its metabolite methyl 2-benzimidazoyl carbamate. Therefore, EPA is proposing to amend the tolerance expression in 40 CFR 180.371(a), (b) and (c) so as to regulate tolerances for the combined residues of thiophanate-methyl (dimethyl [(1,2-phenylene) bis(iminocarbonothioyl)] bis(carbamate)) and its metabolite methyl 2-benzimidazoyl carbamate, calculated as thiophanate-methyl, in or on food commodities.

CODEX alimentarius commission maximum residues limits (MRLs) for thiophanate-methyl are currently expressed as methyl 2-benzimidazoyl carbamate (carbendazim), which is incompatible with the revised U.S. tolerance definition that will include both thiophanate-methyl and methyl 2-benzimidazoyl carbamate. EPA has determined that residues of concern for plant and animal commodities for tolerance enforcement consists of the parent and its metabolite methyl 2-benzimidazoyl carbamate based on the metabolism of thiophanate-methyl in/on apples, sugar beets, wheat, lima beans, and in ruminants and poultry.

EPA no longer considers dry apple pomace, banana pulp, bean forage and hay, and peanut forage to be significant animal feed items, and therefore, tolerances are no longer needed. (A listing of significant food and feed commodities is found in Table 1. - Raw Agricultural and Processed Commodities and Feedstuffs Derived from Crops of the Residue Chemistry Test Guideline OPPTS 860.1000 dated August 1996, available at *http://www.epa.gov/opptsfrs/publications/OPPTS_Harmonized/860_Residue_Chemistry_Test_Guidelines/Series/)*. Currently, there is a tolerance in 40 CFR 180.371 on peanut (forage and hay). Based on field trial data that show thiophanate-methyl residues of concern as high as 3.76 ppm, the Agency determined that the tolerance on peanut hay should be decreased from 15.0 to 5.0 ppm. In addition, thiophanate-methyl registrations were approved by EPA to be amended to delete use on celery by request of the registrant in 1997. Therefore, EPA is proposing to revoke the tolerances in 40 CFR 180.371(a) on apple, dry pomace; banana, pulp; bean (forage and hay), and celery, and revise the commodity terminology from peanut (forage and hay) into separate tolerances for peanut, forage and peanut, hay, and revoke peanut forage, and decrease peanut, hay from 15.0 to 5.0 ppm.

Based on available exaggerated (10x) poultry feeding data, EPA determined that there is no reasonable expectation of finite thiophanate-methyl residues of concern in poultry commodities and therefore, the tolerance for egg (the only existing poultry commodity tolerance) is no longer needed under 40 CFR 180.6(a)(3). Therefore, EPA is proposing to revoke the tolerance in 40 CFR 180.371 for egg.

Based on the available ruminant feeding study, the Agency determined that thiophanate-methyl residues of concern in milk and animal tissues were at the combined Limit of Quantitions (LOQs) and therefore the tolerances for the fat and meat of cattle, goat, horse, and sheep should be increased from 0.10 (N) to 0.15 ppm, meat byproducts, except kidney and liver of cattle, goat, and sheep should be increased from 0.10 (N) to 0.15 ppm, meat byproducts, except liver of horse should be increased from 0.10 (N) to 0.15 ppm, and kidney of cattle, goat, and sheep should be decreased from 0.2 to 0.15 ppm, and therefore the separate meat byproduct tolerances should be combined at 0.15 ppm for cattle, goat, horse, and sheep, and milk from 1.0 to 0.15 ppm, and milk decreased from 1.0 to 0.15 ppm. Consequently, EPA is proposing to remove the ''(N)'' designation from all entries in 40 CFR 180.371 to conform to current Agency administrative practice (''(N)'' designation means negligible residues), and to increase the tolerances in 40 CFR 180.371 for the combined residues of thophanate-methyl and methyl 2-benzimidazoyl carbamate in or on cattle, fat; cattle, meat; goat, fat; goat, meat; horse, fat; horse, meat; sheep, fat; and sheep, meat from 0.1(N) to 0.15 ppm, and remove individual meat byproduct commodity tolerances of a given animal and combine them into a single tolerance for meat byproducts for that animal in 40 CFR 180.371 for the combined residues of thiophanate-methyl and methyl 2-benzimidazoyl carbamate in or on the cattle, meat byproducts; goat, meat byproducts; horse, meat byproducts; and sheep, meat byproducts at 0.15 ppm, and decrease milk from from 1.0 to 0.15 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on field trial data that show thiophanate-methyl residues of concern as high as 16.25 ppm in or on tart and sweet cherries, 6.22 ppm on strawberries, less than the LOQ (<0.1 ppm) on wheat, the Agency determined that the tolerances should be increased on cherries from 15.0 to 20.0 ppm, on strawberries from 5.0 to 7.0 ppm, and on wheat grain from 0.05 to 0.1 ppm. Therefore, EPA is proposing to increase the tolerances in 40 CFR 180.371(a) for the combined residues of thiophanate-methyl and methyl 2-benzimidazoyl carbamate in or on cherry, postharvest from 15.0 to 20.0 ppm, strawberry from 5.0 to 7.0 ppm, and on wheat, grain from 0.05 to 0.1 ppm. The Agency determined that the increased tolerances are safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Crop field trials conducted in North Dakota on canola seed samples in 2001 demonstrate the combined residues thiophanate-methyl and methyl 2-benzimidazoyl carbamate were below the LOQ (<0.14 ppm) at the 1x rate of application (1.4 lb ai/acre) after 38 days. These data indicate the tolerance on canola seeds should be increased from 0.1 to 0.2 ppm with a regional registration restricted to Minnesota, North Dakota, and Montana (East of Interstate 15). Therefore, EPA is proposing to increase a tolerance in 40 CFR 180.371(c) for the combined residues of thiophanate-methyl and methyl 2-benzimidazoyl carbamate in or on canola, seed from 0.1 to 0.2 ppm. The Agency determined that the increased tolerance is safe; i.e. there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue.

Based on available field trial data that indicates that thiophanate-methyl residues of concern were less than 2.0 ppm in or on apples, less than the combined LOQs (<0.1 ppm each) in or on almond nutmeat and as high as 0.49 ppm in or on almond hulls, <0.1 ppm in or on pecans and peanut nutmeat, as high as 0.19 ppm in or on dry beans (as high as 1.43 on snap beans), as high as 2.55 ppm in or on peaches, and less than 0.5 ppm in or on plums, the Agency determined that established

tolerances for thiophanate-methyl and methyl 2-benzimidazoyl carbamate should be decreased for apples; almonds; almond, hulls; dry beans, peaches, peanuts, pecans, and plums. Therefore, EPA is proposing to decrease the tolerances in 40 CFR 180.371(a) for the combined residues of thiophanate-methyl and methyl 2-benzimidazoyl carbamate in or on apple, postharvest from 7.0 to 2.0 ppm; almond from 0.2(N) to 0.1 ppm; almond, hulls from 1.0 to 0.5 ppm; dry beans from 2.0 to 0.2 ppm, and revise the commodity terminology from bean (snap and dry) to bean, dry, seed at 0.2 ppm and bean, snap, succulent (which will be maintained at 2.0 ppm); peach, postharvest from 15.0 to 3.0 ppm; peanut from 0.2(N) to 0.1 ppm; pecans from 0.2 to 0.1 ppm, and revise the commodity terminology from pecans to pecan; and plum, postharvest from 15.0 to 0.5 ppm.

In accordance with 40 CFR 180.1(h), residues in or on nectarines are covered by the reassessed tolerance on peaches, and therefore the tolerance on postharvest nectarines is no longer needed. Therefore, EPA is proposing to remove the tolerance in 40 CFR 180.371(a) on nectarine, postharvest.

Based on plum processing data from plums treated at 10x that show thiophanate-methyl residues of concern do not concentrate in prunes, the Agency determined that the tolerance on plum, prune, postharvest is no longer needed since residues in or on prunes would be covered by the reassessed tolerance on plum, postharvest at 0.5 ppm. Therefore, EPA is proposing to remove the tolerance in 40 CFR 180.371(a) on plum, prune, postharvest.

Based on field trial data that show thiophanate-methyl residues of concern in or on dry bulb onions as high as 0.30 ppm, the Agency determined that the tolerance for onion, dry should be decreased from 3.00 to 0.5 ppm and residues on garlic are covered by the bulb onion tolerance in accordance with 40 CFR 180.1(h). EPA is proposing to decrease the tolerance in 40 CFR 180.371 for the combined residues of thiophanate-methyl and methyl 2-benzimidazoyl carbamate in or on onion, dry from 3.00 to 0.5 ppm, and revise the term to onion, bulb.

Based upon a HAFT residue level of 0.2 ppm in or on soybeans and the observed 6.5x concentration factor for hulls, the Agency determined that a separate tolerance should be established on soybean hulls at 1.5 ppm. Therefore, EPA is proposing to establish a tolerance in 40 CFR 180.371(a) for the combined residues of thiophanate-methyl and methyl 2-benzimidazoyl carbamate in or on soybean, hulls at 1.5 ppm.

The available field trial residue data in or on cucumbers, melons, pumpkins, and squash are adequate to support a cucurbit vegetable group tolerance at 1.0 ppm. Because a crop group tolerance covers all of the cucurbit vegetables, individual tolerances are no longer needed. Therefore, EPA is proposing in 40 CFR 180.371(a) to remove the individual tolerances on cucumber, melon, pumpkin, and squash at 1.0 ppm and combine them into a crop group tolerance on vegetable, cucurbit, group 9 at 1.0 ppm.

EPA is proposing to revise commodity terminology in 40 CFR 180.371(a) to conform to current Agency practice as follows: ''Sugar beet, roots'' to ''beet, sugar, roots;'' ''sugar beet, tops'' to ''beet, sugar, tops;'' ''soybean'' to ''soybean, seed;'' and ''sugarcane, seed piece treatment PRE-H'' to ''sugarcane, seed piece treatment'' and in 40 CFR 180.371(b) from ''cotton'' to ''cotton, undelinted seed.''

The Agency will address the tolerance in § 180.371 on sugarcane, seed piece treatment in a future **Federal Register** notice.

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

A ''tolerance'' represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities (RACs) and processed foods. Section 408 of FFDCA, 21 U.S.C. 346a, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on RACs and processed foods. Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, 21 U.S.C. 342(a). Such food may not be distributed in interstate commerce (21 U.S.C. 331(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. 136 *et seq.*). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States.

EPA is proposing these tolerance actions to implement the tolerance recommendations made during the reregistration and tolerance reassessment processes (including follow-up on canceled or additional uses of pesticides). As part of these processes, EPA was required to determine whether each of the amended tolerances meets the safety standard of the FQPA. The safety finding determination is discussed in detail in each Post-FQPA RED and TRED for the active ingredient. REDs and TREDs recommend the implementation of certain tolerance actions, including modifications to reflect current use patterns, to meet safety findings, and change commodity names and groupings in accordance with new EPA policy. Printed and electronic copies of the REDs and TREDs are available as provided in Unit II.A.

EPA has issued post-FQPA REDs for pebulate and thiophanate-methyl and TREDs for chlorpropham, linuron, and asulam, which had REDs completed prior to FQPA. REDs and TREDs contain the Agency's evaluation of the data base for these pesticides, including requirements for additional data on the active ingredients to confirm the potential human health and environmental risk assessments associated with current product uses, and in REDs state conditions under which these uses and products will be eligible for reregistration. The REDs and TREDs recommended the establishment, modification, and/or revocation of specific tolerances. RED and TRED recommendations such as establishing or modifying tolerances, and in some cases revoking tolerances, are the result of assessment under the FQPA standard of ''reasonable certainty of no harm.'' However, tolerance revocations recommended in REDs and TREDs that are proposed in this document do not need such assessment when the tolerances are no longer necessary.

EPA's general practice is to propose revocation of tolerances for residues of pesticide active ingredients on crops for which FIFRA registrations no longer exist and on which the pesticide may therefore no longer be used in the United States. Nonetheless, EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as ''import tolerances,'' are necessary to allow importation into the United States of food containing such pesticide residues. However, where there are no imported commodities that require these import tolerances, the Agency believes it is appropriate to revoke tolerances for unregistered pesticides in order to prevent potential misuse.

Furthermore, as a general matter, the Agency believes that retention of import tolerances not needed to cover any

imported food may result in unnecessary restriction on trade of pesticides and foods. Under section 408 of the FFDCA, a tolerance may only be established or maintained if EPA determines that the tolerance is safe based on a number of factors, including an assessment of the aggregate exposure to the pesticide and an assessment of the cumulative effects of such pesticide and other substances that have a common mechanism of toxicity. In doing so, EPA must consider potential contributions to such exposure from all tolerances. If the cumulative risk is such that the tolerances in aggregate are not safe, then every one of these tolerances is potentially vulnerable to revocation. Furthermore, if unneeded tolerances are included in the aggregate and cumulative risk assessments, the estimated exposure to the pesticide would be inflated. Consequently, it may be more difficult for others to obtain needed tolerances or to register needed new uses. To avoid potential trade restrictions, the Agency is proposing to revoke tolerances for residues on crops uses for which FIFRA registrations no longer exist, unless someone expresses a need for such tolerances. Through this proposed rule, the Agency is inviting individuals who need these import tolerances to identify themselves and the tolerances that are needed to cover imported commodities.

Parties interested in retention of the tolerances should be aware that additional data may be needed to support retention. These parties should be aware that, under FFDCA section 408(f), if the Agency determines that additional information is reasonably required to support the continuation of a tolerance, EPA may require that parties interested in maintaining the tolerances provide the necessary information. If the requisite information is not submitted, EPA may issue an order revoking the tolerance at issue.

When EPA establishes tolerances for pesticide residues in or on RACs, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticides residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry, and/or eggs.
2. There is a reasonable expectation that finite residues will exist.
3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and (c)).

EPA has evaluated certain specific meat, milk, poultry, and egg tolerances proposed for revocation in this rule and has concluded that there is no reasonable expectation of finite pesticide residues of concern in or on those commodities.

C. When do These Actions Become Effective?

EPA is proposing that these revocations, modifications, establishment of tolerances, and commodity terminology revisions become effective on the date of publication of the final rule in the **Federal Register**. For this rule, proposed revocations will affect tolerances for uses which have been canceled for many years or are no longer needed. The Agency believes that treated commodities have had sufficient time for passage through the channels of trade. However, if EPA is presented with information that existing stocks would still be available and that information is verified, the Agency will consider extending the expiration date of the tolerance. If you have comments regarding existing stocks and whether the effective date allows sufficient time for treated commodities to clear the channels of trade, please submit comments as described under **SUPPLEMENTARY INFORMATION**.

Any commodities listed in this proposal treated with the pesticides subject to this proposal, and in the channels of trade following the tolerance revocations, shall be subject to FFDCA section 408(1)(5), as established by FQPA. Under this section, any residues of these pesticides in or on such food shall not render the food adulterated so long as it is shown to the satisfaction of the Food and Drug Administration that:

1. The residue is present as the result of an application or use of the pesticide at a time and in a manner that was lawful under FIFRA.
2. The residue does not exceed the level that was authorized at the time of the application or use to be present on the food under a tolerance or exemption from tolerance. Evidence to show that food was lawfully treated may include records that verify the dates when the pesticide was applied to such food.

D. What is the Contribution to Tolerance Reassessment?

By law, EPA was required by August 3, 2006, to reassess the tolerances in existence on August 2, 1996. Regarding tolerances mentioned in this proposed rule, tolerances in existence as of August 2, 1996, were previously counted as reassessed at the time of the signature completion of a Post-FQPA RED or TRED for each active ingredient. Therefore, no further tolerance reassessments would be counted toward the August 2006 review deadline.

III. Are the Proposed Actions Consistent with International Obligations?

The tolerance revocations in this proposal are not discriminatory and are designed to ensure that both domestically produced and imported foods meet the food safety standard established by the FFDCA. The same food safety standards apply to domestically produced and imported foods.

The tolerance action in the proposal apply equally to domestically-produced and import foods. In making its tolerance decisions, the Agency seeks to harmonize with international standards whenever possible, consistent with U.S.food safety standards and agricultural practices. EPA considers the international Maximum Residue Limits (MRLs) established by the Codex Alimentarium Comission, as required by section 408(b)(4) of the Federal Food, Drug, and Cosmetic Act. The Codex Alimentarium is a joint UN food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safty standards-setting organization in trade agreements to which the United States is a party. EPA also considers MRLs established in Canada and Mexico.

EPA's effort to harmonize MRLs is summarized in the tolerance reassessment section of individual RED documents. EPA has developed guidance concerning submissions for import tolerance support (June 1, 2000, 65 FR 35069) (FRL–6559–3). This guidance will be made available to interested persons. Electronic copies are available on the internet at *http://www.epa.gov/*. On the Home Page select ''Laws, Regulations, and Dockets,'' then select ''Regulations and Proposed Rules'' and then look up the entry for this document under ''**Federal Register**– Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

IV. Statutory and Executive Order Reviews

In this proposed rule, EPA is proposing to establish tolerances under FFDCA section 408(e), and also modify and revoke specific tolerances established under FFDCA section 408.

The Office of Management and Budget (OMB) has exempted these types of actions (i.e., establishment and modification of a tolerance and tolerance revocation for which extraordinary circumstances do not exist) from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This proposed rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published on May 4, 1981 (46 FR 24950) and on December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticides listed in this proposed rule, the Agency hereby certifies that this proposed action will not have a significant negative economic impact on a substantial number of small entities. In a memorandum dated May 25, 2001, EPA determined that eight conditions must all be satisfied in order for an import tolerance or tolerance exemption revocation to adversely affect a significant number of small entity importers, and that there is a negligible joint probability of all eight conditions holding simultaneously with respect to any particular revocation. (This Agency document is available in the docket of this proposed rule). Furthermore, for the pesticide named in this proposed rule, the Agency knows of no extraordinary circumstances that exist as to the present proposal that would change EPA's previous analysis. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This proposed rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this proposed rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this proposed rule.

List of Subjects in 40 CFR Part 180

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

Dated: August 29, 2006.

James Jones,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR chapter I be amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.181 the section heading and paragraph (a) are revised to read as follows:

§ 180.181 Chlorpropham; tolerances for residues.

(a)(1) *General.* Tolerances are established for residues of the plant regulator and herbicide chlorpropham (isopropyl m-chlorocarbaniliate (CIPC)) in or on the following food commodities:

Commodity	Parts per million
Potato, postharvest	30

Commodity	Parts per million
Potato, wet peel	40

(2) Tolerances are established for the combined residues of the plant regulator and herbicide chlorpropham (isopropyl m-chlorocarbaniliate (CIPC)) and its metabolite 4-hydroxychlorpropham-O-sulfonic acid (4-HSA) in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.20
Cattle, kidney	0.30
Cattle. meat	0.06
Cattle, meat byproducts, except kidney	0.06
Goat, fat	0.20
Goat, kidney	0.30
Goat, meat	0.06
Goat, meat byproducts, except kidney	0.06
Hog, fat	0.20
Hog, kidney	0.30
Hog, meat	0.06
Hog, meat byproducts, except kidney	0.06
Horse, fat	0.20
Horse, kidney	0.30
Horse, meat	0.06
Horse, meat byproducts, except kidney	0.06
Milk	0.3
Sheep, fat	0.20
Sheep, kidney	0.30
Sheep, meat	0.06
Sheep, meat byproducts, except kidney	0.06

* * * * *

3. In § 180.184 paragraphs (a) and (c) are revised to read as follows:

§ 180.184 Linuron; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on the following food commodities:

Commodity	Parts per million
Asparagus	7.0
Carrot, roots	1.0
Cattle, fat	0.2
Cattle, kidney	2.0
Cattle, liver	2.0
Cattle, meat	0.1
Cattle, meat byproducts, except kidney and liver	0.1
Celeriac	1.0
Corn, field, forage	1.0
Corn, field, grain	0.1
Corn, field, stover	6.0
Corn, sweet, forage	1.0
Corn, sweet, kernel plus cob with husks removed	0.25
Corn, sweet, stover	1.0
Cotton, gin byproducts	5.0
Cotton, undelinted seed	0.25
Goat, fat	0.2
Goat, kidney	2.0
Goat, liver	2.0
Goat, meat	0.1
Goat, meat byproducts, except kidney and liver	0.1
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.1
Horse, fat	0.2
Horse, kidney	2.0
Horse, liver	2.0
Horse, meat	0.1
Horse, meat byproducts, except kidney and liver	0.1
Milk	0.05
Parsnip, roots	0.05
Parsnip, tops	0.05

Commodity	Parts per million
Rhubarb	0.5
Sheep, fat	0.2
Sheep, kidney	2.0
Sheep, liver	2.0
Sheep, meat	0.1
Sheep, meat byproducts, except kidney and liver	0.1
Sorghum, grain, forage	1.0
Sorghum, grain, grain	0.25
Sorghum, grain, stover	1.0
Soybean, seed	1.0
Soybean, vegetable	1.0

* * * * *

(c) *Tolerances with regional registrations*. Tolerances with regional registrations, as defined in § 180.1(n), are established for the combined residues of the herbicide linuron (3-(3,4-dichlorophenyl)-1-methoxy-1-methylurea) and its metabolites convertible to 3,4-dichloroaniline, calculated as linuron, in or on the following food commodities:

Commodity	Parts per million
Celery	0.5
Parsley, leaves	0.25
Potato	0.2
Wheat, forage	0.5
Wheat, grain	0.05
Wheat, hay	0.5
Wheat, straw	2.0

* * * * *

§ 180.238 [Amended]

4. Section 180.238 is removed.

§ 180.319 [Amended]

5. Section 180.319 is amended by removing from the table the entry for isopropyl m-chlorocarbanilate (CIPC).

6 In § 180.360 paragraph (a) is revised to read as follows:

§ 180.360 Asulam; tolerances for residues.

(a) *General*. Tolerances are established for the combined residues of asulam (methyl sulfanilylcarbamate) and its metabolites containing the sulfanilamide moiety in or on the following food commodities:

Commodity	Parts per million
Cattle, fat	0.05
Cattle, meat	0.05
Cattle, meat byproducts	0.2
Goat, fat	0.05
Goat, meat	0.05
Goat, meat byproducts	0.2
Hog, fat	0.05
Hog, meat	0.05
Hog, meat byproducts	0.2
Horse, fat	0.05
Horse, meat	0.05
Horse, meat byproducts	0.2
Milk	0.05
Sheep, fat	0.05
Sheep, meat	0.05
Sheep, meat byproducts	0.2
Sugarcane, cane	1.0
Sugarcane, molasses	30

* * * * *

7 In § 180.371 paragraphs (a), (b), and (c) are revised to read as follows:

§ 180.371 Thiophanate-methyl; tolerances for residues.

(a) *General*. Tolerances are established for the combined residues of thiophanate-methyl (dimethyl [(1,2-phenylene) bis (iminocarbonothioyl)] bis(carbamate)) and its metabolite methyl 2-benzimidazoyl carbamate, calculated as thiophanate-methyl in or on the following commodities:

Commodity	Parts per million
Almond	0.1
Almond, hulls	0.5

Commodity	Parts per million
Apple, postharvest	2.0
Apricot, postharvest	15.0
Banana	2.0
Bean, dry, seed	0.2
Bean, snap, succulent	2.0
Beet, sugar, roots	0.2
Beet, sugar, tops	15.0
Cattle, fat	0.15
Cattle, meat	0.15
Cattle, meat byproducts	0.15
Cherry, postharvest	20.0
Goat, fat	0.15
Goat, meat	0.15
Goat, meat byproducts	0.15
Grape	5.0
Horse, fat	0.15
Horse, meat	0.15
Horse, meat byproducts	0.15
Milk	1.5
Onion, bulb	0.5
Onion, green	3.0
Peach, postharvest	3.0
Peanut	0.1
Peanut, hay	5.0
Pecan	0.1
Pistachio	0.1
Pear	3.0
Plum, postharvest	0.5
Potato	0.1
Sheep, fat	0.15
Sheep, meat	0.15
Sheep, meat byproducts	0.15
Soybean, seed	0.2
Soybean, hulls	1.5
Strawberry	7.0
Sugarcane, seed piece treatment	0.1
Vegetable, cucurbit, group 9	1.0
Wheat, grain	0.1
Wheat, hay	0.1
Wheat, straw	0.1

(b) *Section 18 emergency exemptions.* Time-limited tolerances are established for the combined residues of thiophanate-methyl (dimethyl [(1,2-phenylene) bis (iminocarbonothioyl)] bis(carbamate)) and its metabolite methyl 2-benzimidazoyl carbamate, calculated as thiophanate-methyl, in or on the following commodities:

Commodity	Parts per million	Expiration/revocation date
Blueberry	1.5	6/30/07
Citrus	0.5	6/30/07
Cotton, gin byproducts	5.0	12/31/07
Cotton, undelinted seed	0.05	12/31/07
Mushroom	0.01	12/31/07
Vegetable, fruiting, group 8	0.5	12/31/08

(c) *Tolerances with regional registrations.* Tolerances with regional registration, as defined in 180.1(n), are established for the combined residues of thiophanate-methyl (dimethyl [(1,2-phenylene) bis (iminocarbonothioyl)] bis(carbamate)) and its metabolite methyl 2-benzimidazoyl carbamate, calculated as thiophanate-methyl, in or on the following commodities:

Commodity	Parts per million
Canola, seed	0.2

* * * * *

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Parts 302, 303, 304, 305, and 308

RIN 0970–AC22

Child Support Enforcement Program; Medical Support

AGENCY: Administration for Children and Families, Department of Health and Human Services (HHS).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: These proposed regulations would revise Federal requirements for establishing and enforcing medical support obligations in child support enforcement program cases receiving services under title IV–D of the Social Security Act (the Act). The proposed changes would: require that all support orders in the IV–D program address medical support; redefine reasonable-cost health insurance; require health insurance to be accessible, as defined by the State; and make conforming changes to the Federal substantial-compliance audit and State self-assessment requirements.

DATES: Consideration will be given to comments received by November 20, 2006.

ADDRESSES: Send comments to the Office of Child Support Enforcement, Administration for Children and Families, 370 L'Enfant Promenade, SW., 4th Floor, Washington, DC 20447, Attention: Director, Division of Policy, Mail Stop: OCSE/DP. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address. A copy of this regulation may be downloaded from *http://www.regulations.gov*. In addition, you may transmit written comments electronically via the Internet: *http://www.regulations.acf.hhs.gov*.

FOR FURTHER INFORMATION CONTACT: Thomas G. Miller, OCSE Division of Policy, 202–401–5730, e-mail: *tgmiller@acf.hhs.gov*. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. eastern time.

SUPPLEMENTARY INFORMATION:

Statutory Authority

This notice of proposed rulemaking is published under the authority granted to the Secretary of Health and Human Services (the Secretary) by section 1102 of the Social Security Act, 42 U.S.C. 1302. Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, that may be necessary for the efficient administration of the title IV–D program.

This proposed rule is also published in accordance with section 452(f) of the Act, as amended by section 7307 of the Deficit Reduction Act of 2005 (DRA of 2005), which directs the Secretary to issue regulations which require that State agencies administering IV–D programs ''enforce medical support included as part of a child support order whenever health care coverage is available to the noncustodial parent at reasonable cost.'' Section 7307 of the DRA of 2005 also added two additional sentences to section 452(f) of the Act: ''A State agency administering the program under this part [title IV–D] may enforce medical support against a custodial parent if health care coverage is available to the custodial parent at a reasonable cost, notwithstanding any other provision of this part [title IV–D].'' And: ''For purposes of this part, the term 'medical support' may include health care coverage, such as coverage under a health insurance plan (including payment of costs of premiums, co-payments, and deductibles) and payment for medical expenses incurred on behalf of a child.''

This proposed regulation is also published in accordance with section 466(a)(19) of the Act, as amended by section 7307 of the DRA of 2005, which requires States to have in effect laws requiring the use of procedures under which all child support orders enforced pursuant to title IV–D of the Act ''shall include a provision for medical support for the child to be provided by either or both parents.''

Background

In 2001, the Census Bureau estimated that 9.2 million of the nation's children under the age of 19 (12.1 percent) were without health insurance (*Children With Health Insurance: 2001*, Current Population Reports, U.S. Census Bureau, August 2003). Of all children, 52.4 million were covered through private health insurance. Ninety-three percent of the 52.4 million children were covered through an employer-sponsored plan (ESI) and 19.5 million had coverage through a government program. *Children With Health Insurance: 2001*, reports that the rate of uninsured children in 2001 was lower than reported in 1997, when Congress established the State Children's Health Insurance Program (SCHIP).

A more recent Census Bureau report, *Health Insurance Coverage in the United States: 2002* (Current Population Reports, U.S. Census Bureau, September 2003), found that the proportion of children who remained uninsured did not change from 2001 to 2002, despite an increase in the number and percentage of uninsured in the general population to 43.6 million people (15.2 percent) in 2002. It appears children were largely protected as a result of increased government-sponsored health insurance coverage through Medicaid, SCHIP and military health care (*Health Insurance Coverage: 2002*). While public coverage increased, the percentage of people covered by employment-sponsored health insurance (ESI) dropped in 2002, from 62.6 percent to 61.3 percent, driving an overall increase of 2.4 million U.S. residents who were uninsured during the entire year of 2002. Only for children did expanded public coverage offset the decrease in ESI.

The income disparity as to who does or does not receive ESI is widely documented. *Children With Health Insurance: 2001* estimates that 85 percent of children in families with incomes of at least 250 percent of the poverty level have ESI, compared with 51.3 percent of children in families with incomes between 133 and 200 percent of poverty level. In 2002 the coverage rate for households with incomes of $25,000 to $50,000 decreased 1.5 percentage points from 2001 rates (*Health Insurance Coverage: 2002*).

For children who live apart from one or both of their parents, securing private health care coverage or defraying the cost of public benefits has proven even more complex and burdensome. From its creation in 1975 Part D of title IV of the Act, the Child Support Enforcement Program (IV–D program), has been responsible for locating noncustodial parents; establishing paternity; establishing, modifying and enforcing child support orders; and collecting and distributing child support owed by the noncustodial parent. The initial focus of this Federal/State/local partnership was to secure reimbursement for Federal welfare expenditures from the noncustodial parents of these children.

The Child Support Enforcement Amendments of 1984 added a new section to the Act, requiring State IV–D agencies to petition for health care coverage in all IV–D cases in which

such coverage is available at reasonable cost. The Secretary of HHS defined ''reasonable cost'' by regulation at 45 CFR 303.31: The cost of health care coverage is reasonable if it is available through the child support noncustodial parent's employment.

Federal regulations require that the State child support guidelines must, at a minimum, ''provide for the child(ren)'s health care needs, through health insurance coverage or other means.'' (45 CFR 302.56(c)(3)). The mechanism for accomplishing this mandate is determined by each State. Generally, guidelines use one or a combination of the following methods: One parent is ordered to provide health insurance and the cost is deducted from his/her income before the support obligation is calculated or the cost of health insurance is added to the basic award and prorated between the parents. Where there is no ESI or there are significant uninsured or extraordinary medical expenses, States generally add an amount to the support award and apportion it between the parents or consider such expenses a basis to deviate from the guideline amount.

The Federal statute and regulations fostered cooperation between State IV–D and Medicaid agencies. Under 42 CFR 433.151, Medicaid State plans must provide for entering into cooperative agreements for enforcement of rights to and collection of third party benefits with, among other agencies, IV–D agencies. Child support program regulations required State child support agencies to notify Medicaid agencies when private family health coverage was obtained or discontinued for a Medicaid-eligible person, and authorized Federal financial participation for the cost of these services (45 CFR 304.20).

Seeking to remove legal impediments to securing private health care coverage from noncustodial parents of child support-eligible children, the Omnibus Budget Reconciliation Act of 1993 (OBRA '93) amended the Employee Retirement Income Security Act of 1974 (ERISA), creating the Qualified Medical Child Support Order (QMCSO). Every employer group health plan must honor a properly prepared QMCSO that requires a plan participant to provide coverage for a dependent child (29 U.S.C. 1169(a)). OBRA '93 required States as a condition of Medicaid funding to enact laws prohibiting employers and insurers from denying enrollment of a child under a parent's health coverage plan due to various factors such as: The child's birth out-of-wedlock, failure to claim the child as a dependent on the parent's Federal income tax return, or the child's residence outside the insurer's service area or with someone other than the employee.

Medical child support was strengthened in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). This legislation mandated that all child support orders contain provisions for medical support. [The Child Support Performance and Incentive Act of 1998 (CSPIA) discussed below, later moved this requirement from section 466(a)(19) to section 452(f) of the Act. The DRA of 2005 moved the requirement back to section 466(a)(19) as noted under *Statutory Authority*.]

States also were required to provide a simple administrative process for enrolling a child in a new health plan using a notice of coverage. Section 609(a) of ERISA was amended to expand the definition of ''medical child support orders'' to permit certain administrative orders to be considered QMCSOs, rather than just court orders.

Recognizing that States' efforts to secure and enforce medical support orders against child support obligors had met with limited success and that significant problems remained, Congress enacted CSPIA. This law included even stronger provisions to improve medical support enforcement in the IV–D program. Further, the CSPIA directed the Secretaries of HHS and the Department of Labor (DOL) to establish a *Medical Child Support Working Group* (Working Group). The Working Group included thirty members representing: HHS and DOL, State child support directors, State Medicaid directors, employers (including payroll professionals), sponsors and administrators of group health plans defined by section 607(1) of ERISA, organizations representing children potentially eligible for medical support, SCHIP programs, and organizations representing child support professionals. The Working Group was asked to identify impediments to the effective enforcement of medical support by State IV–D agencies and make recommendations to the Secretaries to eliminate them.

A final report, *21 Million Children's Health: Our Shared Responsibility*, offered 76 recommendations broken into five categories: Federal Statute/Legislation; Federal Regulation/Guidance; Best Practice; Technical Assistance and Education; and Research and Demonstration. This proposed rule responds to several of the Working Group's key recommendations. The Secretaries of HHS and DOL jointly transmitted *21 Million Children* to the Congress on August 16, 2000.

CSPIA also directed HHS and DOL to develop and promulgate a *National Medical Support Notice (NMSN)*, to be issued by State IV–D agencies as a means of enforcing health care coverage provisions contained in child support orders. HHS and DOL issued the final rule on the NMSN jointly on December 27, 2000 (amending 29 CFR part 2590 and 45 CFR part 303) (65 FR 82154). All States have now implemented the NMSN. Under ERISA, an appropriately completed NMSN is deemed to be a QMCSO for the child, and the employer is required to comply with the Notice in a timely manner.

After review of *21 Million Children* and promulgation of the NMSN, OCSE consulted with a wide range of program stakeholders in 2001 and 2002, including State and local workers and administrators, national organizations, advocates and other parties interested in medical support enforcement. These consultations explored the feasibility and impact of the Working Group's recommendations, establishing which recommendations had wide support. Those included in the consultations were the National Governors Association (NGA), the National Conference of State Legislators (NCSL), the American Public Human Services Association (APHSA), the National Child Support Enforcement Association (NCSEA), the National Council of Child Support Directors (NCCSD), the Eastern Regional Interstate Child Support Association (ERICSA), and the Western Interstate Child Support Council (WICSEC).

Resolutions passed by NCSEA, NCCSD, and ERICSA urged OCSE to expand the definition of reasonable cost under 45 CFR 303.31 to include both parents and to decouple it from ESI. These organizations joined in the Working Group's conclusion that the definition ''deeming employment-related coverage to be *per se* reasonable'' in cost is an artifact of earlier decades when employment-related insurance was both widely available and more heavily subsidized by the employer. Therefore, there is broad support for eliminating the employer-tied definition of reasonable cost.

Additionally, the HHS study *Health Care Coverage Among Child Support-Eligible Children,* published in 2002 after the Working Group's Report, suggests that untapped employer-sponsored insurance through custodial mothers and their spouses might reduce the share of children without private health insurance more significantly than similar insurance through noncustodial

parents, for a variety of reasons, including availability, accessibility, cost and preference. ''Half of child support-eligible children living with their mothers are currently covered by [employer-sponsored] insurance. The sources of this coverage are as follows: the resident mother (26 percent), the noncustodial father (13 percent), a step-father (7 percent), and another adult in the child's household (4 percent),'' (*HHS, December 2002*). Another 6.7 percent appear to have access to employer-sponsored insurance (ESI) but are not covered. (Custodial fathers are more likely to either provide ESI or have access to it). Therefore, it appears that custodial mothers are the most important source of ESI for child support-eligible children living with their mothers, and provide more than one-quarter of those children with ESI. Indeed, the Working Group's decision matrix to determine appropriate health insurance coverage, presented in *21 Million Children,* contains a preference for using the custodial parent's (or step-parent's) health insurance.

Provisions of the Regulation

We propose amending parts 302, 303, 304, 305, and 308, as discussed below.

Part 302

Section 302.56—Guidelines for Setting Child Support Awards

Currently, under § 302.56(c)(3), the State guidelines for setting and modifying child support awards must provide for the child(ren)'s health care needs, through health insurance coverage or other means. We propose to amend § 302.56(c)(3) to require that guidelines ''address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with § 303.31(b) of this chapter.''

The recommendations of the Working Group grew from a fundamental understanding that parents share primary responsibility for their children's needs. The proposed regulation clarifies that the resources of *both* parents must be considered. The Working Group found that ''* * * only 27 States'' child support guidelines direct the decision maker to consider both parents as potential sources of health care coverage'' (*21 Million Children*).

The proposed language is purposely broad, ensuring that child support guidelines consider not only health insurance coverage that may be available from either, or both parents, but also how the parents will meet the child's health care needs when no insurance is available, when the cost of insurance is beyond the reasonable means of the parents, or where the cost is extraordinary or unreimbursed by insurance. It is possible that both health insurance coverage and cash medical support would be included in a support order. For example, where a custodial parent has access to maintain health insurance coverage for the parties' child, the noncustodial parent may be required to pay a share of the premium's cost. And each parent may be ordered to pay a fixed sum or a percentage of the cost of allergy shots, or orthodontic treatment or psychological counseling, not covered by insurance.

This regulation does not mandate that State guidelines label the payment of medical costs as a stand-alone item. States are free to incorporate health costs within an existing methodology, such as those described below, so long as the insurance and resources of both parents are considered. The sole limitation is that considerations of accessibility and affordability must be addressed in accordance with § 303.31(b), as proposed.

Currently, the health insurance premium to cover the child is generally either deducted from the income of the parent providing coverage or treated as an ''add on'' to the basic support obligation, which may be further apportioned. Uninsured and extraordinary medical expenses are usually either an ''add on'' or treated as a factor allowing deviation from the guideline amount.

The Working Group acknowledged the variation in approach. The elected methodology clearly affects the amount of the support obligation. These are policy choices left to each State. Each State should ensure that its child support guidelines address with specificity how the cash child support award would then ''* * * increase or decrease in order to account for health care premiums, and child support orders should clearly specify how such amounts are to be allocated between the parents'' (*21 Million Children*).

Part 303

As discussed below, we propose one change to case closure regulations at § 303.11, to address the circumstances under which a child-only Medicaid case receiving IV–D services may be closed.

The other proposed amendments to part 303 incorporate major recommendations of the Working Group. They shift the focus of providing health insurance from the non-custodial parent with an employer-related or other group plan, to either parent, to the extent that insurance coverage is accessible and available at reasonable cost. The amendments also broaden medical child support by specifically addressing cash medical support.

Section 303.11—Case Closure Criteria

Section 303.11(b)(11) states that in order to be eligible for closure, a case must meet the following criterion: ''In a non-IV–A case receiving services under section 302.33(a)(1)(i) or (iii), the IV–D agency documents the circumstances of the recipient of services's noncooperation and an action by the recipient of services is essential for the next step in providing IV–D services.''

Currently § 303.11(b)(11) allows case closure for noncooperation only for IV–D applicants (§ 302.33(a)(1)(i)) or *former* IV–A, IV–E foster care or Medicaid families (§ 302.33(a)(1)(iii)). States have complained about lack of cooperation by custodial parents of children in child-only Medicaid cases and the inability to either ensure cooperation or close the case.

If, in a child-only Medicaid case, the IV–D agency documents that the custodial parent has not cooperated and an action by the custodial parent is essential for the next step in providing IV–D services, we believe it would be appropriate, after meeting notice and waiting period requirements under § 303.11(c), for the IV–D agency to close the case under § 303.11(b)(11). We propose to authorize a State IV–D agency to close such cases for noncooperation by adding references in § 303.11(b)(11) to child-only Medicaid cases receiving services under § 302.33(a)(1)(ii), which requires IV–D agencies to provide services to non-IV–A Medicaid recipients. We do this by expanding the reference in this section to include the whole of § 302.33(a)(1). However, we continue to encourage State Medicaid agencies to refer cases to IV–D agencies when it is appropriate, and to develop criteria and procedures, in conjunction with State IV–D agencies, for appropriate referrals.

The proposed regulation would authorize States to close these cases using the Secretary's rulemaking authority under section 1102 of the Act to ensure efficient administration of his functions under section 452 of the Act. The Secretary is responsible under section 452(a)(1) for setting standards determined to be necessary to assure IV–D programs will be effective. Allowing States to close cases when the custodial parent is not cooperating with the IV–D agency will allow States to focus on cases in which the custodial parent is cooperating with the State in

its efforts to secure support for his/her children.

Section 303.31—Securing and Enforcing Medical Support Obligations

Section 303.31(a)

We have added a new paragraph (a)(1) to define cash medical support as ''an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.'' This would include the cost of: (1) Premiums when health insurance is provided by another parent or through Medicaid or SCHIP; (2) medical care such as orthodontia not covered by available health insurance; or (3) medical costs when no reasonable or accessible insurance is available. A health insurance premium or cash medical support obligation is current support for purposes of distribution and allocation between cash child support and cash medical support, as discussed later in this preamble.

Currently, § 303.31(a)(2) specifies that health insurance includes fee for service, health maintenance organization, preferred provider organization, and other types of coverage under which medical services could be provided to dependent children of noncustodial parents. We propose to amend § 303.31(a)(2) by deleting reference to the noncustodial parent and referring instead to either parent to clarify that either parent could be ordered to provide health care coverage.

Under current § 303.31(a)(1), health insurance is considered reasonable in cost if it is available through an employment-related or other group health insurance, regardless of service delivery mechanism. We proposed to renumber this provision as § 303.31(a)(3) and to revise it as follows: ''Cash medical support or private health insurance is considered reasonable in cost if the cost to the obligated parent does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State child support guidelines adopted in accordance with § 302.56(c).'' We are using the Secretary's rulemaking authority under section 1102 of the Act to update an obsolete regulatory requirement to recognize the evolution of the health care system over the past decade, particularly with respect to availability of health insurance through the workplace. Use of 1102 authority to update this definition would eliminate the requirement for IV–D programs to consider health insurance available through employment to be reasonable in cost, and contribute to the State's and Secretary's responsibilities to operate effective programs.

A major focus of the Working Group's recommendations was redefining ''reasonable cost'' in existing regulations. Research completed after *21 Million Children* supported the Working Group's recommendation that it was appropriate to remove from the regulation the conclusion that health insurance through the noncustodial parent's employer is *de facto* available at reasonable cost. During its consultation process on the Working Group's recommendations, OCSE has been urged to change the existing regulation to provide a definition of reasonable cost that considers the parent's ability to pay.

The proposed rule changes in this Notice adopt the Working Group's conclusion that a new measure is required to ascertain whether private health insurance is ''reasonable in cost.'' For many, the cost of obtaining such coverage, even when offered by an employer, is beyond their reasonable means.

The trend over the last 20 years is significantly increased employee costs for ESI coverage. At the time the existing regulation was enacted, a majority of employers offered dependent health care coverage to their employees at little or no cost. A 1997 General Accounting Office report estimated that ''* * * in 1980, 51 percent of employers who offered dependent coverage fully subsidized the cost, but in 1993, only 21 percent of employers did so.'' The recent Census Bureau report, *Health Insurance Coverage in the United States: 2002,* reports that 30.8 percent of workers employed for firms with fewer than 25 employees are covered by their own ESI, compared with 68.7 percent of covered workers in firms with 1000 or more employees. Even within the few years since *21 Million Children* was published, the cost to employees has risen to more than 50 percent of the average child support received (U.S. Census Bureau, *Child Support for Custodial Mothers and Fathers 1997*).

State child support enforcement officials have been concerned that the cost of health insurance would dramatically and disproportionately reduce the cash child support award, leaving the custodial parent with insufficient funds to meet the child's daily living expenses, and/or so impoverish the noncustodial parent as to remove his or her incentive to work.

After considerable debate, the Working Group recommended that private health insurance coverage be deemed reasonable if the cost does not exceed five percent of the gross income of the parent who provides the coverage (*21 Million Children*). During the consultation process, OCSE was made aware that States, professional organizations and advocacy groups were engaged in considerable discussion over this recommendation and varied in their position. The main division was whether each State should be able to set the threshold for reasonableness under its own guidelines—as some already do—or whether the Working Group's five percent of gross income standard should be adopted.

Recently, two States have considered how best to handle medical support enforcement. A New Jersey grant project endorsed a standard of reasonableness measured against five percent of the net income of the person ordered to provide coverage. However, no coverage would be required from ''parents whose net income is at or below 200 percent of the Federal poverty level,'' unless the coverage is available at no cost to the parent. See *A Feasibility Study for Review and Adjustment for Medical Support and SCHIP Collaboration (Feasibility Study)*. New Jersey's report is available at *http://www.acf.hhs.gov/programs/cse/pol/dcl/dcl-03–10.htm*.

Minnesota's Medical Child Support Workgroup recommended that no contribution for medical support be required from parents with incomes below 150 percent of poverty. For those with net incomes between 150 and 275 percent of the Federal poverty level, five percent of adjusted gross income is ordered toward the cost of medical support. Minnesota's December 2002 Report is available at (*www.dhs.state.mn.us/ecs/ChildSupport/Reports*). The limitations on ordering a low-income parent to provide health insurance offered in both studies mirror, in concept, best practice recommendations in *21 Million Children:* Unless insurance is available from an employer without an employee contribution, enrollment should not be ordered against either a parent with income at or below 133 percent of the Federal poverty level or one whose child is covered by Medicaid due to the enrolling parent's income.

Proposed § 303.31(a)(3) is similar to the Working Group's five percent of gross income recommendation and clarifies that ''reasonable cost'' considerations apply where a tribunal is ordering health insurance coverage and/or cash medical support. However, this rule allows States the option of

adopting, as part of their child support guidelines under § 302.56, an alternate standard, *that is reasonable, income-based and numeric*. We appreciate that there are competing interests in establishing a reasonable cost standard and particularly welcome comments on this issue.

In addition, the proposed definition recognizes the possibility that one parent may have access to health insurance but the other parent may be ordered to bear a portion or all of the cost of the insurance. Therefore, the proposed regulation refers to the cost of private health insurance that does not exceed five percent of the *obligated* parent's gross income.

Section 303.31(b)

Currently, under § 303.31(b), the introductory text specifies that medical support enforcement services will be provided if rights to medical support have been assigned to the State as a condition of receiving Medicaid. We propose to amend the introductory text of § 303.31(b) by deleting the reference to assignment of medical support rights to the State since the IV–D agency must provide medical support enforcement services to all IV–D recipients.

Sections 303.31(b)(1)–(4)—Addressing Medical Support in Child Support Orders

To incorporate the concepts of including medical support (health insurance and/or cash medical support) in every order, we propose to revise § 303.31(b)(1)–(4).

Under existing § 303.31(b)(1), the IV–D agency is required to petition for medical support in a new or modified child support order if the noncustodial parent has health insurance available at reasonable cost, unless the custodial parent and child(ren) have satisfactory health insurance other than Medicaid. From consultations with our individual State partners, and as discussed later in this preamble, we believe there is a national consensus that simply ignoring the availability of health care through the custodial parent's employment is not in the best interest of children.

A second concern with the current rule is that it may require the noncustodial parent to pay for health insurance coverage that is not accessible to the child, due to distance or to plan restrictions that make it virtually worthless for the child. A Working Group Recommendation proposes a modification to Federal regulation: The decision-maker establishing or modifying a child support order must determine whether either the custodial or noncustodial parent is able to obtain *appropriate* health insurance coverage. If appropriate coverage is available, it is to be ordered. *Appropriateness* is based on three factors. The first, *affordability* or *reasonable cost*, has been discussed above and is included in these regulations.

The second component of ''appropriateness'' is *accessibility*. Health insurance has little or no value if the child does not have geographic access to the services provided by the coverage. Part of the Working Group's new paradigm for setting medical child support orders is that coverage should *not be ordered* where the services and providers are unavailable to the child in practical terms. The Working Group recommends that enrollment of a child in private health care coverage is not required unless the coverage is found to be: available for at least one year based on the work history of the parent providing coverage *and* with the child living within the geographic area covered by the plan or within 30 minutes or 30 miles of primary care services. The Working Group further suggests that States be permitted to enact an alternate standard.

OCSE agrees that health insurance should not be mandated when the covered child cannot use it. However, we found no consensus among our partners on how to define accessibility and concluded that this is not an area in which the Federal government should be prescriptive. Thus, the provisions contained in this proposed rule make it a State responsibility to define under what circumstances health insurance is ''accessible.''

States are free to incorporate a definition that addresses only geographic access to services or also to address the continuity problem recognized by the Working Group. There is no public consensus on whether and how to measure the value of private health insurance to a child when it is frequently disrupted. For example, New Jersey's proposed medical support guidelines do consider the stability of coverage based on whether it is likely to be in place for at least one year (*Feasibility Study*). Again, we concluded that this judgment is best left to the individual States.

The third component of ''availability'' that the Working Group recommends is whether the health insurance plan is *comprehensive*. We concluded that this third measure should not be explicitly addressed in Federal requirements, beyond the existing requirement in § 303.32(c)(8), relating to the NMSN, under which IV–D agencies must choose among insurance plans if more than one is available and the child is not yet enrolled as ordered.

The Working Group also concluded that parents have the primary responsibility to meet their children's needs, including health care coverage. When one or both parents can provide ''accessible and affordable health care,'' that coverage should not be replaced by the expenditure of public funds from either Medicaid or SCHIP (*21 Million Children*). Given the importance of medical support to the well being of children, we propose that each newly-established or modified order must directly address medical support, whether or not private health insurance is currently available. To petition for such relief is ineffective without a corresponding, comprehensive mechanism for determining how courts or administrative hearing bodies will allocate this responsibility between the parents, under some circumstances subsidized by public benefits.

Rather than looking exclusively to the noncustodial parent, private insurance available to both the custodial and noncustodial parent should be considered. And while section 452(f) of the Act only requires states to *enforce* medical support orders when the obligor is the noncustodial parent, section 466(a)(19) of the Act requires that States have in effect laws requiring the use of procedures under which all child support orders enforced under title IV–D of the Act ''shall include a provision for medical support for a child to be provided by either or both parents.'' States will be required to submit an amended State plan page providing assurances that laws and procedures require inclusion of medical support provisions in new and modified orders. Given both demographics and relative ease of use, the Working Group concludes that, quite opposite to the current rule, there should be a preference for coverage available to the custodial parent with financial contribution by the noncustodial parent. Not only does this expand the pool of available private health coverage but it also provides coverage that is generally more accessible to the custodian than that provided by the noncustodial parent.

Under proposed paragraph (b)(1), the State must petition the court or administrative authority to include private health insurance coverage in the support order if it is accessible to the child and available at reasonable cost to the obligated parent. If private health insurance is not available, then under proposed paragraph (b)(2), the IV–D agency must petition to include a provision for cash medical support in

all new and modified orders, to continue until accessible insurance becomes available at reasonable cost. As defined by proposed paragraph (a)(1), cash medical support includes not only payments to cover a child's uninsured medical expenses but also may include an amount to be paid toward the cost of health insurance provided through a government program, such as Medicaid or SCHIP, or privately by the other parent. For example, if a custodial parent of a child enrolled in SCHIP is required to pay a co-payment or premium for SCHIP, the cash medical support obligation of the noncustodial parent could be used to pay or reimburse the custodial parent for any co-payment or premium owed to SCHIP.

We are proposing paragraphs (b)(1) and (2) using the Secretary's rulemaking authority under section 1102 of the Act to increase the effectiveness of State IV–D programs and therefore allow for more efficient administration of the Secretary's responsibilities under section 452 of the Act. Incorporating the concept of accessibility of health care as well as providing for a cash medical support obligation in the absence of health insurance coverage will ensure an increase in the availability of health insurance coverage for children, and, if that is not possible, provide for cash medical support to contribute to the child(ren)'s medical needs.

As it is possible for an order to include both an order to pay health insurance and cash medical support, this regulation specifically authorizes States to address both health insurance coverage and cash medical support. For example, pursuant to § 303.31(b)(1), where the custodial parent had health insurance coverage available through his/her employer, the decision-maker could first determine that the insurance was both accessible to the child (as defined by the State) and that the obligated parent's cost was less than five percent his/her gross income (or another income-based numeric standard enacted by the State). The obligated parent could be the custodial parent, the noncustodial parent, or both parents, depending on the circumstances in the particular case, the State's guidelines, and how responsibilities are shared between the parties. If so, the child support order could require the custodial parent to enroll the child in the health insurance plan.

The support order could specify which parent is responsible for the cost of obtaining the coverage or allocate responsibility for costs between the parents. For example, should the custodial parent have access to health insurance, and the cost of the insurance does not exceed five percent of the noncustodial parent's gross income, the custodial parent could enroll the child(ren) and the State could order the noncustodial parent to pay cash medical support towards the cost of the employee's share of health insurance coverage by the custodial parent. It would be up to the State to determine how the premium is paid, directly by the noncustodial parent to the plan administrator or as reimbursement to the custodial parent should he or she have premiums withheld from his or her income.

The order should also address allocation of the cost of any uncovered expense—co-payments, deductibles, unreimbursed or extraordinary expenses. The same scenario applies where the noncustodial parent has accessible coverage, available at reasonable cost.

However, private insurance may be found to be unavailable where: neither parent has access to employer-sponsored or group coverage; the cost of enrollment exceeds five percent of the obligated parent's gross income (or other standard elected by the State); or the noncustodial parent's insurance is not accessible to the child. In such a case, a new or modified support order must contain a provision for cash medical support in lieu of health insurance, consistent with the state's guidelines. The amount of cash medical support must be reasonable as defined under paragraph (a)(3). The amount paid could be used to contribute to the cost of a government health insurance program and/or to cover a child's medical needs not covered by health insurance.

If no private health insurance is available, the cash medical support provision would continue until insurance becomes available and the order is modified accordingly. State law, guidelines, and procedures would determine the mechanism to modify the support order when private insurance becomes available (for example, using administrative adjustment, automatic modifications, or review and modification by the issuing tribunal).

We appreciate that there are competing interests in how States will accommodate these changes to establishing medical support. Will changes to State child support guidelines be required? How will cash medical support be designated? How will orders be modified once private health insurance becomes available? We particularly welcome comments on these issues.

Under current § 303.31(b)(2), the IV–D agency is required to petition for inclusion of medical support in a new or modified support order whether or not health insurance is available to the noncustodial parent at the time the order is entered or the children can be immediately added to the health care coverage. We propose to delete this section because under the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), an employer receiving a QMCSO, including a NMSN, is required to immediately enroll the child in the health plan, without regard to open enrollment periods. Therefore, because of the OBRA '93 requirement, children can be immediately added to the health care coverage and paragraph (b)(2) is no longer accurate.

Currently, under § 303.31(b)(3), the IV–D agency is required to establish written criteria to identify cases without a medical support order when there is high potential for obtaining medical support based upon evidence that health insurance may be available to the noncustodial parent at a reasonable cost. We propose to revise this section, changing ''cases'' to ''orders'', deleting the reference to the noncustodial parent, since either parent could provide health care coverage, and adding a cross-reference to § 303.8(d). Section 303.8(d) requires that the ''need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary.'' States are free to define their own criteria so long as, at a minimum, the State meets the requirement in § 303.8(d) and includes as criteria: evidence, such as from New Hire reporting or another database or reporting process that health insurance is now available to the obligated parent; and other facts, as defined by the State, and Federal review and adjustment requirements in § 303.8(d), that are sufficient to warrant modification of the order to include medical support.

Currently, under § 303.31(b)(4), the IV–D agency is required to petition the court or administrative authority to modify a support order to include medical support in the form of health insurance coverage when cases meet the modification criteria established by the State for inclusion of medical support. We propose in § 303.31(b)(4) to petition for medical support and to require the IV–D agency to petition the court or administrative authority to modify support orders to include medical support in accordance with the proposed regulation when cases meet the modification criteria for inclusion of medical support discussed above.

Sections 303.31(b)(5)–(b)(9), and (c)—Securing and Enforcing Medical Support Obligations

We propose deleting current §§ 303.31(b)(5), (7) and (9) that require the IV–D agency: to provide the custodial parent with ''information pertaining to the health insurance policy'' obtained under a support order; to enforce health insurance coverage ordered but not obtained; and to request that employers and health insurers inform the agency of lapses in coverage. Under OBRA '93, the plan administrator is required to provide information and forms regarding the child's coverage directly to the custodial parent. This requirement is included on the NMSN. Therefore, the requirement in paragraph (b)(5) for the IV–D agency to do so is no longer necessary. Since states are required to use the NMSN to enforce all orders for health insurance coverage under § 302.32, the separate requirement to do so under paragraph (b)(7) is unnecessary. The employer's responsibility to notify the IV–D agency when an employee-obligor's health insurance has lapsed under paragraph (b)(9) is contained in § 303.32(c)(6) and on the NMSN itself.

In accordance with the deletions of these sections, the remaining paragraphs have been renumbered. Existing paragraph (b)(6) becomes proposed (b)(5) and existing paragraph (b)(8) becomes proposed (b)(6).

Paragraph 303.31(c) continues to require that medical support services shall be provided to individuals eligible for services under § 302.33.

Section 303.32—National Medical Support Notice

Currently, under § 303.32(c)(4), employers must withhold any employee share of premiums and send any amount withheld directly to the insurance plan. States are required to allocate amounts available for income withholding across multiple orders under § 303.100(a)(5), recognizing that there may be insufficient funds to meet all of the orders/notices for withholding. Similar situations will occur where the employee's income is insufficient to meet the mandates to withhold both payments for health insurance premiums required by the NMSN and cash child support under an income withholding order.

Both the Working Group and our individual state partners with whom we discussed these issues raised concern that the cost of health insurance might adversely impact funds available for cash child support, particularly where the obligor is under a support order for more than one family. This proposed regulation incorporates an allocation priority presented in *21 Million Children*. Using our rulemaking authority under section 1102 of the Act, the proposed regulation places current cash child and spousal support first in priority, followed by health insurance and cash medical support, then arrearages, and finally other child support obligations. However, it affords the State decision-maker the opportunity to require a different allocation when the best interest of the child so dictates. Some existing State laws may need to be amended to meet this proposed requirement.

We propose to revise existing paragraph 303.32(c)(4) requiring the employer to withhold employee contributions for health coverage for the children and forward them to the plan. Proposed paragraph (c)(4) would require employers to:

> ''(i) Withhold any obligation of the employee for employee contributions necessary for coverage of the child(ren), and send any amount withheld directly to the plan; or (ii) Where there are insufficient funds available to meet the employee's contribution necessary for coverage of the child(ren) and also to comply with any withholding orders received by the employer under § 303.100 of this part, up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)), the employer shall allocate the funds available in accordance with § 303.100(a)(5) and the following priority, unless a court or administrative order directs otherwise:
>
> (A) Current child and spousal support;
>
> (B) Health insurance premiums or current cash medical support;
>
> (C) Arrearages; and
>
> (D) Other child support obligations.''

This proposed hierarchy places health insurance premiums or current cash medical support before payment of arrearages because premiums and cash medical support are considered current support for distribution purposes.

Finally, under current § 303.32(d), the effective date for implementing the use of the NMSN is specified. We are deleting this paragraph as unnecessary because all States are using the NMSN. The remainder of § 303.32 is unchanged. Using the Secretary's authority to regulate under section 1102 of the Act to specify the appropriate allocation of available funds for health insurance premiums, current child support and current cash medical support will ensure consistency across State programs and therefore contribute to the effective operation of IV–D programs. This allocation formula responds, along with the National Medical Support Notice, to the Secretary's responsibility under section 452(f) of the Act to issue regulations governing the enforcement of medical support when included as part of a child support order.

Part 304

Section 304.20—Availability and Rate of Federal Financial Participation (FFP)

Currently, under § 304.20(b)(11), FFP is available for services and activities under approved IV–D State plans, including required medical support activities as specified in §§ 303.30 and 303.31. To include reference to the NMSN requirements in § 303.32, we propose to revise § 304.20(b)(11), to read as follows: ''Required medical support activities as specified in §§ 303.30, 303.31, and 303.32 of this chapter.''

Part 305

Section 305.63—Standards for Determining Substantial Compliance With IV–D Requirements

Currently, under § 305.63(c)(5), for the purposes of optional Federal audits to determine substantial compliance with State plan requirements, the State must provide certain specified required medical support services in at least 75 percent of the cases reviewed. We propose to add the requirements under § 302.32, the National Medical Support Notice (NMSN), to the program services subject to the substantial compliance audit because of the importance of ensuring that States meet Federal requirements for use of the NMSN.

We are using our rulemaking authority under section 1102 of the Act to include reference to the National Medical Support Notice requirements under § 302.32 in both the Federal audit authority under § 305.63 and the State self-assessment requirements in § 308.2 below. The Secretary may conduct audits, in accordance with section 452(a)(C) of the Act, when appropriate, to determine the effectiveness of State programs. These Federal audits and State self-assessments combine to ensure that States operate efficient and effective IV–D programs.

Part 308

Section 308.2—Required Program Compliance Criteria

Currently under § 308.2(e), for purposes of the State's annual self-assessment review and report, the State must evaluate whether it has provided certain specified required medical support services in at least 75 percent of the cases reviewed. We are adding reference to use of the NMSN as required in § 303.32 to the self-assessment process because we failed to

do so when the NMSN was finalized. States should determine as part of their annual self-assessments whether Federal requirements with respect to use of the NMSN are being met.

We proposed to revise § 308.2(e) by deleting current § 308.2(e)(2), (5), (6), and (7) since these required program compliance criteria refer to requirements in § 303.31 that have been deleted in the proposed regulation and to make the self-assessment requirements consistent with other changes to the medical support enforcement requirements made by this regulation. Proposed § 308.2(e)(1) would require a determination of whether the State is meeting its obligation to include medical support that is reasonable and accessible, in accordance with § 303.31(b) in at least 75 percent of new or modified support orders.

Under proposed § 308.2(e)(2), States are required to assess their own performance according to their criteria: ''If reasonable and accessible health insurance was available and required in the order, but not obtained, determine whether the National Medical Support Notice was used to enforce the order in accordance with the requirements in § 303.32 of this chapter.'' Current § 308.2(e)(4) requires States to report whether the State Medicaid agency was informed ''* * * that coverage had been obtained when health insurance was obtained,'' has been renumbered as proposed § 308.2(e)(3) and the cross-referenced section has been amended to cite § 303.31(b)(5), to comport with the changes elsewhere in these proposed regulations.

We propose to add a new § 308.2(e)(4) for States to assess their own performance with the use of the NMSN: ''Determine whether the State transferred notice of the health care provision, using the National Medical Support Notice required under § 302.32 of this chapter, to a new employer when a noncustodial parent was ordered to provide health insurance coverage and changed employment and the new employer provides health care coverage.''

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirements inherent in a proposed or final rule. Interested parties may comment to OMB on these reporting requirements as described below. This NPRM contains changes to reporting requirements in Part 308, which the Department has submitted to OMB for its review.

Section 308.1(e) contains a requirement that a State report the results of annual self-assessment reviews to the appropriate OCSE Regional Office and to the Commissioner of OCSE. The information submitted must be sufficient to measure State compliance with Federal requirements for expedited procedures and to determine whether the program is in compliance with title IV–D requirements and case processing timeframes. The results of the report will be disseminated via ''best practices'' to other States and also be used to determine whether technical assistance is needed. The State plan preprint page for this requirement (page 2.15, State Self-assessment and Report) was approved by OMB on January 18, 2001, under OMB Number 0970–0223.

The revisions to section 308.2(e), which address securing and enforcing medical support, will slightly reduce the paperwork burden on States, by eliminating three information collection and reporting requirements because, under these proposed regulations, medical support will be included in all new and modified support orders, but the reduced paperwork burden would be negligible.

Respondents: State child support enforcement agencies in the 50 States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.

This information collection requirement will impose the estimated total annual burden on the agencies described in the table below:

Information collection	Number of respondents	Responses per respondent	Average burden hours per response	Total annual burden hours
Section 308.1	54	1	3,866	208,764

The Administration for Children and Families (ACF) will consider comments by the public on the proposed information collection in order to evaluate the accuracy of ACF's estimate of the burden of the proposed collection of information. Comments by the public on this proposed collection of information will be considered in the following areas:

- Evaluating the accuracy of the ACF estimate of the burden of the proposed collection[s] of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technology, e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations 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. This does not affect the deadline for the public to comment to the Department on the proposed regulations. Written comments to OMB for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW., Washington, DC 20503, Attn: Desk Officer for the Administration for Children and Families.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), and enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that these proposed regulations will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments. State governments are not considered small entities under the Act.

Regulatory Impact Analysis

Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. These proposed rules provide solutions to problems in securing private health care coverage for children who live apart from one or both of their parents and the Department has determined that they are consistent with the priorities and principles set forth in the Executive Order.

These proposed regulations implement section 7307 of the Deficit Reduction Act of 2005, the Administration's proposal to require States to consider medical support available to either parent in establishing a medical support obligation, and to enforce medical support at their option when the obligated parent is the custodial parent. They also address certain recommendations of the Medical Child Support Working Group, which included public deliberation, and additional input from state and local IV–D administrators and other child support enforcement stakeholders.

There are no costs associated with these proposed rules. They do not introduce new requirements for including medical support in child support orders, a long-standing program requirement, but rather broaden States options for addressing the availability and accessibility of health care coverage. For example, by focusing on health insurance coverage available to either parent, these rules recognize that untapped employer-sponsored insurance through custodial mothers and their spouses might reduce the share of children without private health insurance. As discussed earlier in the preamble, an HHS study *Health Care Coverage Among Child Support-Eligible Children, 2002,* found that half of child support-eligible children living with their mother are currently covered by employer-sponsored insurance.

These regulations are significant under section 3(f) of the Executive Order because they raise novel policy issues and therefore have been reviewed by the Office of Management and Budget.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The Department has determined that these proposed regulations would not impose a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year.

Congressional Review

These proposed regulations are not a major rule as defined in 5 U.S.C., chapter 8.

Assessment of Federal Regulations and Policies on Families

Section 654 of the Treasury and General Government Appropriations Act of 1999 requires Federal agencies to determine whether a proposed policy or regulation may affect family well-being. These proposed regulations will have a positive impact on family well-being as defined in the legislation, by providing greater access to health care coverage.

Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as ''regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, or on the distributions of power and responsibilities among the various levels of government''. These proposed regulations do not have federalism implications for State or local governments as defined in the Executive Order.

List of Subjects

45 CFR Part 302

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Parts 303 and 304

Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

45 CFR Part 305

Child support, Grant programs/social programs, Accounting.

45 CFR Part 308

Auditing, Child support, Grant programs/social programs, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Programs No. 93.563, Child Support Enforcement Program)

Dated: February 16, 2006.

Wade F. Horn,

Assistant Secretary for Children and Families.

Approved: June 20, 2006.

Michael O. Leavitt,

Secretary, Department of Health and Human Services.

For the reasons discussed above, title 45 CFR chapter III is amended as follows:

PART 302—STATE PLAN REQUIREMENTS

1. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), 1396(k).

2. Amend § 302.56 by revising paragraph (c)(3) to read as follows:

§ 302.56 Guidelines for setting child support awards.

* * * * *

(c) * * *

(3) Address how the parents will provide for the child(ren)'s health care needs through health insurance coverage and/or through cash medical support in accordance with § 303.31(b) of this chapter.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

1. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k.

§ 303.11 [Amended]

2. In § 303.11, amend paragraph (b)(11) by removing ''(i) or (iii)'' after ''§ 302.33(a)(1).''

3. Revise § 303.31 to read as follows:

§ 303.31 Securing and enforcing medical support obligations.

(a) For purposes of this section:

(1) Cash medical support means an amount ordered to be paid toward the cost of health insurance provided by a public entity or by another parent through employment or otherwise, or for other medical costs not covered by insurance.

(2) Health insurance includes fee for service, health maintenance organization, preferred provider organization, and other types of coverage which is available to either parent, under which medical services could be provided to the dependent child(ren).

(3) Cash medical support or private health insurance is considered reasonable in cost if the cost to the obligated parent does not exceed five percent of his or her gross income or, at State option, a reasonable alternative income-based numeric standard defined in State child support guidelines adopted in accordance with § 302.56(c).

(b) The State IV–D agency must:

(1) Petition the court or administrative authority to include health insurance that is accessible to the child(ren), as defined by the State, and is available to the obligated parent at reasonable cost, as defined under paragraph (a)(3) of this section, in new or modified court or administrative orders for support;

(2) If health insurance described in paragraph (b)(1) of this section is not available at the time the order is entered or modified, petition to include cash medical support in new or modified orders until such time as health insurance, that is accessible and reasonable in cost as defined under paragraph (a)(3) of this section, becomes available. In appropriate cases, as defined by the State, cash medical support may be ordered in addition to health insurance coverage.

(3) Establish written criteria to identify orders that do not address the health care needs of children based on—

(i) Evidence that health insurance may be available to either parent, and

(ii) Facts, as defined by State law, regulation, procedure, or other directive, and review and adjustment requirements under § 303.8(d) of this part, which are sufficient to warrant modification of the existing support order to address the health care needs of children in accordance with paragraphs (b)(1) and (2) of this section.

(4) Petition the court or administrative authority to modify support orders, in accordance with State child support guidelines, for cases identified in paragraph (b)(3) of this section to include health insurance and/or cash medical support in accordance with paragraphs (b)(1) and (b)(2) of this section.

(5) Inform the Medicaid agency when a new or modified court or administrative order for child support includes health insurance and/or cash medical support and provide the information referred to in § 303.30(a) of this part to the Medicaid agency when the information is available for Medicaid applicants and recipients.

(6) Periodically communicate with the Medicaid agency to determine whether there have been lapses in health insurance coverage for Medicaid applicants and recipients.

(c) The IV–D agency shall inform an individual who is eligible for services under § 302.33 of this chapter that medical support enforcement services will be provided and shall provide the services specified in paragraph (b) of this section.

4. Amend § 303.32 by revising paragraph (c)(4), and removing (d), to read as follows:

§ 303.32 National Medical Support Notice

* * * * *

(c) * * *

(4) Employers must:

(i) Withhold any obligation of the employee for employee contributions necessary for coverage of the child(ren), and send any amount withheld directly to the plan; or

(ii) Where there are insufficient funds available to meet the employee's contribution necessary for coverage of the child(ren) and also to comply with any withholding orders received by the employer under § 303.100 of this part, up to the limits imposed under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. 1673(b)), the employer shall allocate the funds available in accordance with § 303.100(a)(5) of this chapter and the following priority, unless a court or administrative order directs otherwise:

(A) Current child and spousal support;

(B) Health insurance premiums or current cash medical support;

(C) Arrearages; and

(D) Other child support obligations.

* * * * *

PART 304—FEDERAL FINANCIAL PARTICIPATION

1. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396k.

§ 304.20 [Amended]

2. Amend § 304.20(b)(11) by removing ''§§ 303.30 and 303.31'' and adding ''§§ 303.30, 303.31, and 303.32'' in its place.

PART 305—PROGRAM PERFORMANCE MEASURES, STANDARDS, FINANCIAL INCENTIVES, AND PENALTIES

1. The authority citation for part 305 is revised to read as follows:

Authority: 42 U.S.C. 609(a)(8), 652(a)(4) and (g), 658A and 1302.

§ 305.63 [Amended]

2. Amend § 305.63(c)(5) by adding ''and § 302.32'' after ''under § 303.31''.

PART 308—ANNUAL STATE SELF-ASSESSMENT REVIEW AND REPORT

1. The authority citation for part 308 continues to read as follows:

Authority: 42 U.S.C. 654(15)(A) and 1302.

2. Amend § 308.2 by revising paragraph (e) to read as follows:

§ 308.2 Required program compliance criteria.

* * * * *

(e) *Securing and enforcing medical support orders.* A State must have and use procedures required under this paragraph in at least 75 percent of the cases reviewed. A State must:

(1) Determine whether support orders established or modified during the review period include medical support in accordance with § 303.31(b) of this chapter.

(2) If reasonable in cost and accessible health insurance was available and required in the order, but not obtained, determine whether the National Medical Support Notice was used to enforce the order in accordance with requirements in § 303.32 of this chapter.

(3) Determine whether the IV–D agency informed the Medicaid agency that coverage had been obtained when health insurance was obtained during the review period pursuant to § 303.31(b)(5) of this chapter.

(4) Determine whether the State transferred notice of the health care provision, using the National Medical Support Notice required under § 302.32 of this chapter, to a new employer when a noncustodial parent was ordered to provide health insurance coverage and changed employment and the new employer provides health care coverage.

* * * * *

[FR Doc. 06–7964 Filed 9–19–06; 8:45 am]

BILLING CODE 4184–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 06–1757; MB Docket No. 05–111; RM–11200]

Radio Broadcasting Services; Cumberland Head, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: The Audio Division has dismissed the request of Dana J. Puopolo (''Puopolo'') to allot Channel 264A at Cumberland Head, New York. Puopolo filed a petition for rulemaking proposing the allotment of Channel 264A at Cumberland Head, as the community's first local FM transmission service. The proposal was dismissed for inability to provide useable service to the community due to destructive interference from Canadian Station CBF–FM.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order*, MB Docket No. 05–111, adopted August 31, 2006, and released September 5, 2006. The full text of this Commission decision is available for

inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.* This document is not subject to the Congressional Review Act. The Commission is, therefore, not required to send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the proposed rule was dismissed.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division Media Bureau.

[FR Doc. E6–15531 Filed 9–19–06; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 71, No. 182

Wednesday, September 20, 2006

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

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

September 14, 2006.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Appeals Division

Title: National Appeals Division Customer Service Survey.

OMB Control Number: 0503–0007.

Summary of Collection: The Secretary of Agriculture established the National Appeals Division (NAD) on October 20, 1994, by Secretary's Memorandum 1010–1, pursuant to the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994. The Act consolidated the appellate functions and staff of several USDA Agencies and provided for independent hearings and reviews of adverse decisions of Agencies within USDA. Hearing Officers conduct evidentiary hearings on adverse decisions or, when the appellant requests they review the Agency's record of the adverse decision without a hearing. Although NAD maintains a database to track appeal requests, the database contains only information necessary to process the appeal request, such as the name, address, filing results etc. NAD wants to update its information that is currently used to measure the efficiency and level of satisfaction with the USDA appeal process and gather data on the public's awareness of its services. NAD will collect information using a survey.

Need and Use of the Information: NAD will collect information to determine the extent of the public's awareness of NAD's purpose, mission, and services. Also, information from the survey will be used to provide a snapshot of the quality of NAD's services. The collected information from the surveys will be used to alter current or establish new training for Hearing and Appeals Officers.

Description of Respondents: Farms; Individuals or households; Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 2,000.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 660.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E6–15571 Filed 9–19–06; 8:45 am]

BILLING CODE 3410–WY–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in Little Rock, Arkansas, October 17–19, 2006. The purpose of the meeting is to discuss emerging issues in urban and community forestry.

DATES: The meeting will be held October 17–19, 2006.

ADDRESSES: The meeting will be held at the Holiday Inn Presidential Conference Center, 600 Interstate 30, Little Rock, AR 72202. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Suzanne M. del Villar, Executive Assistant, National Urban and Community Forestry Advisory Council, P.O. Box 1003, Sugarloaf, CA 92386–1003. Individuals may fax their names and proposed agenda items to (909) 585–9527.

FOR FURTHER INFORMATION CONTACT: Suzanne M. del Villar, Urban and Community Forestry Staff, (909) 585–9268, or via e-mail at *sdelvillar@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff before or after the meeting. Public input sessions will be provided.

Dated: September 13, 2006.

Dennis Truesdale,

Acting Associate Deputy Chief, State and Private Forestry.

[FR Doc. E6–15569 Filed 9–19–06; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–331–802]

Notice of Final Results of New Shipper Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp From Ecuador

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

SUMMARY: On April 26, 2006, the Department of Commerce (the Department) published the preliminary results of its new shipper review of the antidumping duty order on certain frozen warmwater shrimp from Ecuador. The review covers the entries of Studmark, S.A. (Studmark) for the period of review (POR) August 4, 2004, through July 31, 2005. Based on the Department's analysis of the issues, these final results have changed from the preliminary results. The final results are listed in the section below entitled ''Final Results of Review.''

DATES: *Effective Date:* September 20, 2006.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Gemal Brangman, AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4136 or (202) 482–3773, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 16, 2006, the Department published in the **Federal Register** the preliminary results of this new shipper review and invited interested parties to comment on those results.[1] The Department received a request for a hearing and a case brief from Studmark on July 12 and July 31, 2006, respectively. A public hearing was held on August 16, 2006.

Scope of the Order

The scope of this order includes certain warmwater shrimp and prawns, whether frozen, wild-caught (ocean harvested) or farm-raised (produced by aquaculture), head-on or head-off, shell-on or peeled, tail-on or tail-off,[2] deveined or not deveined, cooked or raw, or otherwise processed in frozen form.

The frozen warmwater shrimp and prawn products included in the scope of this order, regardless of definitions in the Harmonized Tariff Schedule of the United States (HTS), are products which are processed from warmwater shrimp and prawns through freezing and which are sold in any count size.

The products described above may be processed from any species of warmwater shrimp and prawns. Warmwater shrimp and prawns are generally classified in, but are not limited to, the Penaeidae family. Some examples of the farmed and wild-caught warmwater species include, but are not limited to, whiteleg shrimp (*Penaeus vannemei*), banana prawn (*Penaeus merguiensis*), fleshy prawn (*Penaeus chinensis*), giant river prawn (*Macrobrachium rosenbergii*), giant tiger prawn (*Penaeus monodon*), redspotted shrimp (*Penaeus brasiliensis*), southern brown shrimp (*Penaeus subtilis*), southern pink shrimp (*Penaeus notialis*), southern rough shrimp (*Trachypenaeus curvirostris*), southern white shrimp (*Penaeus schmitti*), blue shrimp (*Penaeus stylirostris*), western white shrimp (*Penaeus occidentalis*), and Indian white prawn (*Penaeus indicus*).

Frozen shrimp and prawns that are packed with marinade, spices or sauce are included in the scope of this order. In addition, food preparations, which are not ''prepared meals,'' that contain more than 20 percent by weight of shrimp or prawn are also included in the scope of this order.

Excluded from the scope are: (1) Breaded shrimp and prawns (HTS subheading 1605.20.10.20); (2) shrimp and prawns generally classified in the *Pandalidae* family and commonly referred to as coldwater shrimp, in any state of processing; (3) fresh shrimp and prawns whether shell-on or peeled (HTS subheading 0306.23.00.20 and 0306.23.00.40); (4) shrimp and prawns in prepared meals (HTS subheading 1605.20.05.10); (5) dried shrimp and prawns; (6) canned warmwater shrimp and prawns (HTS subheading 1605.20.10.40); (7) certain dusted shrimp; and (8) certain battered shrimp. Dusted shrimp is a shrimp-based product: (1) That is produced from fresh (or thawed-from-frozen) and peeled shrimp; (2) to which a ''dusting'' layer of rice or wheat flour of at least 95 percent purity has been applied; (3) with the entire surface of the shrimp flesh thoroughly and evenly coated with the flour; (4) with the non-shrimp content of the end product constituting between four and 10 percent of the product's total weight after being dusted, but prior to being frozen; and (5) that is subjected to individually quick frozen (IQF) freezing immediately after application of the dusting layer. Battered shrimp is a shrimp-based product that, when dusted in accordance with the definition of dusting above, is coated with a wet viscous layer containing egg and/or milk, and par-fried.

The products covered by this order are currently classifiable under the following HTS subheadings: 0306.13.00.03, 0306.13.00.06, 0306.13.00.09, 0306.13.00.12, 0306.13.00.15, 0306.13.00.18, 0306.13.00.21, 0306.13.00.24, 0306.13.00.27, 0306.13.00.40, 1605.20.10.10, and 1605.20.10.30. These HTS subheadings are provided for convenience and for customs purposes only and are not dispositive, but rather the written description of the scope of this order is dispositive.

Analysis of Comments Received

All issues raised in the case brief by Studmark are addressed in the ''Issues and Decision Memorandum for the Final Results of the New Shipper Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Ecuador'' from Stephen J. Claeys, Deputy Assistant Secretary for Import Administration, to David M. Spooner, Assistant Secretary for Import Administration (Decision Memorandum), dated concurrently with and is hereby adopted by this notice.

A list of the issues which Studmark raised and to which we have responded, all of which are addressed in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in the Decision Memorandum, which is on file in the Central Records Unit, room B–099 of the main Department of Commerce building.

In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at *http://ia.ita.doc.gov/frn.* The paper copy and electronic version of the Decision Memorandum are identical in content.

Fair Value Comparisons

We calculated export price (EP) and normal value based on the same methodology used in the preliminary results, except as follows:

We made no adjustment to EP for foreign inland freight expense instead of making such an adjustment based on the facts otherwise available as we did in the preliminary results.

[1] *See Notice of Preliminary Results of New Shipper Review of the Antidumping Duty Order on Certain Frozen Warmwater Shrimp from Ecuador,* 71 FR 34888 (June 16, 2006) (*Preliminary Results*).

[2] ''Tails'' in this context menas the tail fan, which includes the telson and the uropods.

Final Results of Review

As a result of our review, we determine that the following weighted-average percentage margin exists for the period August 4, 2004, through July 31, 2005:

Manufacturer/exporter	Margin (percent)
Studmark, S.A.	9.20

Assessment

The Department shall determine, and the U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with section 351.212(b)(1) of the Department's regulations, we have calculated importer-specific assessment rates by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise. Where the importer-specific assessment rate is above *de minimis* we will instruct CBP to assess antidumping duties on that importer's entries of subject merchandise. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of these final results of review.

Cash Deposit Requirements

The following cash deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results for this new shipper review, as provided for by section 751(a)(1) and 751(a)(2)(C) of the Tariff Act of 1930, as amended (the Act): (1) The cash deposit rate for Studmark (*i.e.*, for subject merchandise both manufactured and exported by Studmark) will be 9.20 percent; (2) the cash deposit rate for exporters who received a rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for entries of subject merchandise exported by Studmark but not manufactured by Studmark will continue to be the ''All Others'' rate (*i.e.*, 3.58 percent) or the rate applicable to the manufacturer, if so established; and (4) if neither the exporter nor the producer is a firm covered in this review or a prior segment of the proceeding, the cash deposit rate will be 3.58 percent, the ''All Others'' rate established in the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. There are no changes to the rates applicable to any other companies under this antidumping duty order.

This notice also serves as a final reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping and countervailing duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping and countervailing duties occurred, and in the subsequent assessment of antidumping duties increased by the amount of antidumping and/or countervailing duties reimbursed.

This notice also is the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Failure to comply is a violation of the APO.

This determination is issued and published in accordance with sections 751(a) and 777(i)(1) of the Act.

Dated: September 13, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

Appendix—List of Comments in the Issues and Decision Memorandum

Comment 1: Whether a Particular Market Situation Exists In the Home Market
Comment 2: Application of Facts Otherwise Available for Inland Freight Expenses
Comment 3: Period for Calculating G&A Expenses

[FR Doc. 06–7790 Filed 9–19–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE.

International Trade Administration

A–570–893

Certain Frozen Warmwater Shrimp from the People's Republic of China: Extension of Time Limit for Final Results of the 2004/2005 Antidumping Duty New Shipper Review

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

EFFECTIVE DATE: September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Javier Barrientos, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2243.

Background

On June 27, 2006, the Department of Commerce (''the Department'') issued the preliminary results of this new shipper review. *See Certain Frozen Warmwater Shrimp from the People's Republic of China: Preliminary Results of the Antidumping Duty New Shipper Review*, 71 FR 38368 (July 6, 2006) (''*Preliminary Results*'').

Extension of Time Limits for Final Results

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(i)(1) require the Department to issue the preliminary results of a new shipper review within 180 days after the date on which the new shipper review was initiated and final results of a review within 90 days after the date on which the preliminary results were issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated. See section 751(a)(2)(B)(iv) of the Act, and 19 CFR 351.214(i)(2).

In order to allow parties additional time to submit comments regarding the Department's *Preliminary Results*, the Department extended the deadline for the submission of case and rebuttal briefs by 48 days. As a result of the extensions and the extraordinarily complicated issues raised in this review segment, including surrogate valuation and bona fides issues, it is not practicable to complete this new shipper review within the current time limit. Accordingly, the Department is extending the time limit for the completion of the final results by 60 days untilNovember 24, 2006, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 13, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 06–7795 Filed 09–19–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Certain Welded Carbon Steel Standard Pipe from Turkey: Extension of Time Limit for Preliminary Results of Countervailing Duty New Shipper Review

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

EFFECTIVE DATE: September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4793.

SUPPLEMENTARY INFORMATION:

Background Information

On April 26, 2006, the Department of Commerce (''the Department'') initiated a new shipper review relating to the countervailing duty order on certain welded carbon steel standard pipe from Turkey, for the period January 1, 2005, through December 31, 2005.[1] On May 2, 2006, the Department published the notice of initiation in the **Federal Register**. *See Certain Welded Carbon Steel Standard Pipe from Turkey: Notice Initiation of Countervailing Duty New Shipper Review*, 71 FR 25814 (May 2, 2006). The respondents in this review are Toscelik Profil ve Sac Endustrisi A.S. and Tosyali Dis Ticaret A.S. The preliminary results are currently due no later than October 23, 2006.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (''the Act''), requires the Department to make a preliminary determination within 180 days after the date on which the new shipper review was initiated. However, when the Department determines a case is extraordinarily complicated such that it cannot complete the review within this time period, section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2) allow the Department to extend the time limit for the preliminary determination from 180 days to 300 days.

[1] *See* Memorandum to the File concerning Request for CVD New Shipper Review: Certain Welded Carbon Steel Standard Pipe from Turkey (April 26, 2006) (''Initiation Checklist''). A public version of the Initiation Checklist is available on the public record in the Department's Central Records Unit (room B–099).

Extension of Time Limit for Preliminary Results

We determine that this case is extraordinarily complicated given the number of programs to be analyzed. Specifically, in this review, we are examining 13 different programs for the two respondents. Also, it is the Department's practice to normally conduct verifications for new shipper reviews. Therefore, in accordance with the statutory and regulatory authority cited above, we are extending the time period for issuing the preliminary results of this new shipper review to 300 days. As the new deadline falls on February 19, 2007, a federal holiday, the Department will issue the preliminary results on the next business day, February 20, 2007. The final results of this review continue to be due within 90 days after the date the preliminary results are issued.

This notice is issued and published in accordance with section 751(a) of the Act and 19 CFR 351.214.

Dated: September 14, 2006.

Stephen J. Claeys,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 06–7796 Filed 9–19–06; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 091206A]

Endangered Species; File No. 1589

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that The Riverbanks Zoo and Garden, 500 Wildlife Parkway, P.O. Box 1060, Columbia, SC 29202–1060 [Charles Scott Pfaff, Responsible Party] has applied in due form for a permit to take shortnose sturgeon (*Acipenser brevirostrum*) for purposes of enhancement.

DATES: Written, telefaxed, or e-mail comments must be received on or before October 20, 2006.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: File No. 1589.

FOR FURTHER INFORMATION CONTACT: Jennifer Skidmore or Kate Swails, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226).

The Riverbanks Zoo and Garden proposes to obtain and maintain a total of eight captive-bred, non-releaseable adult shortnose sturgeon from the South Carolina Department of Natural Resources. This sturgeon display would be used to increase public awareness of the shortnose sturgeon and its status. The proposed project would educate the public on shortnose sturgeon life history and the reasons for the species decline. The proposed project to display endangered cultured shortnose sturgeon responds directly to a recommendation from the NMFS recovery plan outline for this species. The permit is requested for a duration of 5 years.

Dated: September 14, 2006.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 06–7802 Filed 9–19–06; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning the Senior Corps Accomplishments Surveys (reference OMB Control Number 3045–0049), the current clearance for which will expire on April 30, 2007. This request for renewal reflects the Corporation's intent to conduct Accomplishment Surveys for its three Senior Corps programs: The Foster Grandparent Program, the Senior Companion Program, and the Retired and Senior Volunteer Program (RSVP).

Copies of the information collection requests can be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by November 20, 2006.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of the CEO; Attention Nathan Dietz, Department of Research and Policy Development; 1201 New York Avenue, NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (1) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

(3) By fax to: (202) 606–3464, Attention Nathan Dietz, Department of Research and Policy Development.

(4) Electronically through the Corporation's e-mail address system: *ndietz@cns.gov*.

FOR FURTHER INFORMATION CONTACT: Nathan Dietz, (202) 606–6633, or by e-mail at *ndietz@cns.gov*.

SUPPLEMENTARY INFORMATION: The Corporation is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, 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 expected to respond, including 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).

Background

The Corporation seeks to renew clearance for the Accomplishment Surveys for Senior Corps Programs to collect information about Senior Corps volunteer activities and accomplishments, as well as to gather information about the practices used by the organizations that recruit, supervise and manage Senior Corps volunteers.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Accomplishment Surveys for Senior Corps Programs.

OMB Number: 3045–0049.

Agency Number: None.

Affected Public: Not-for-profit organizations.

Total Respondents: 3,250.

Frequency: On occasion.

Average Time per Response: 45 minutes.

Estimated Total Burden Hours: 2,437.5 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: September 13, 2006.

Bob Grimm,

Director.

[FR Doc. 06–7944 Filed 9–19–06; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Business Board; Notice of Advisory Committee Meeting

AGENCY: Department of Defense, DoD.

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Business Board (DBB) will meet in open session on Thursday, September 28, 2006 at the Pentagon, Washington, DC from 8:30 a.m. to 9:30 a.m. The mission of the DBB is to advise the Secretary of Defense on effective strategies for implementation of best business practices of interest to the Department of Defense. At this meeting, the Board will deliberate on recommendations regarding a unified medical system. Topics to be covered include objectives of a unified medical system, cost savings and transition recommendations.

DATES: Thursday, September 28, 2006, 8:30 a.m. to 9:30 a.m.

ADDRESSES: 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to attend the meeting must contact the Defense Business Board no later than Wednesday, September 27th for further information about escort arrangements in the Pentagon. Additionally, those who wish to provide input to the Board should submit written comments by Tuesday, September 26th to allow time for distribution to the Board members prior to the meeting. The DBB may be contacted at: Defense Business Board, 1155 Defense Pentagon, Room 3C288, Washington, DC 20301–1155, via e-mail at *defensebusinessboard2@osd.mil* or via phone at (703) 697–2168.

Special Note: During the September 6, 2006 DBB meeting, follow-on recommendations to the Board's presentation were requested to be delivered by October 1, 2006. Due to the time constraints of the request, this notice has not been published within the 15 day notification requirement. However, to facilitate maximum particiaption from the public, requests for attendance will be honored through close of business, Wednesday, September 27, 2006.

Dated: September 14, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–7769 Filed 9–19–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Transformation Advisory Group Meeting of the U.S. Joint Forces Command

AGENCY: Department of Defense.

ACTION: Notice of Closed Meeting.

SUMMARY: The Transformation Advisory Group (TAG) will meet in closed session on 12–13 December 2006. The establishment date was already published in the **Federal Register** on 28 May 2003, in accordance with 41 CFR 102–3.150.

The mission of the TAG is to provide timely advice on scientific, technical, and policy-related issues to the Commander, U.S. Joint Forces Command as he develops and executes the DOD transformation strategy. Full development of the topics will require discussion of information classified in accordance with Executive Order 12958, dated 17 April 1995, as amended March 2003.

Access to the information must be strictly limited to personnel having the requisite clearances and specific need-to-know, unauthorized disclosure of the information to be discussed at the TAG meetings could cause serious damage to our national defense. The meeting will be closed for security reasons, pursuant to 5 U.S.C. 552, Exemption(b)1, Protection of National Security, and Exemption(b)3 regarding information protected under the Homeland Security Act of 2002. In accordance with Section 10(d) of the Federal Advisory Committee Act and 41 CFR 102–3.155 this meeting will be closed.

DATES: December 12–13, 2006.

Location: United States Joint Forces Command, 1562 Mitscher Avenue, Suite 200, Norfolk, VA 23551–2488.

FOR FURTHER INFORMATION CONTACT: Mr. Robert O. Anderson, Designated Federal Officer, (757) 836–6395.

SUPPLEMENTARY INFORMATION: Mr. Floyd March, Joint Staff, (703) 697–0610.

Dated: September 13, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, DoD.

[FR Doc. 06–7746 Filed 9–19–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

[DOD–2006–OS–0197]

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notice of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD) as the matching agency under the Privacy Act, is hereby giving notice to the record subjects of a computer matching program between Social Security Administration (SSA) and the DoD that their records are being matched by computer.

The Social Security Act requires SSA to verify, with independent or collateral sources, information provided to SSA by recipients of SSI payments and beneficiaries of SVB benefits. The SSI and SVB recipient/beneficiary provides information about eligibility/entitlement factors and other relevant information. SSA obtains additional information as necessary before making any determinations of eligibility/payment or entitlement/benefit amounts or adjustments thereto. With respect to military retirement payments to SSI recipients and SVB beneficiaries who are retired members of the Uniformed Services or their survivors, SSA proposes to accomplish this task by computer matching with the DoD.

DATES: This proposed action will become effective October 20, 2006, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the Defense Manpower Data Center (DMDC) and SSA have concluded an agreement to conduct a computer matching program.

The parties to this agreement have determined that a computer matching program is the efficient, expeditious, and effective means of obtaining and processing the information needed by the SSA under the Social Security Act to verify the eligibility/entitlement of, and to verify payment/benefit amounts for, certain SSI and SVB recipients/beneficiaries. Computer matching also will produce the required data to calculate and make any necessary adjustments of SSI payments and SVB benefits. The principal alternative to using a computer matching program would be to conduct a manual comparison of DoD payment records with a list of SSI and SVB recipients/beneficiaries. Conducting such a manual match would clearly impose a considerable administrative burden, constitute a greater intrusion on the individual's privacy, and would result in additional delay in the eventual SSI payment and SVB benefit or recovery of unauthorized or erroneous payments/benefits. Using the computer matching program, the information exchange between the parties can be accomplished within 30 days.

A copy of the computer matching agreement between SSA and DoD is available upon request. Requests should be submitted to the address caption above or to the Office of Payment Policy, Office of Income Security Programs, Office of Disability and Income Security Programs, Social Security Administration, 0106 RRCC, 6401 Security Boulevard, Baltimore, MD 21235.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 2518.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on September 12, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records about Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: September 14, 2006.

C.R. Choate,

Alternate OSD Federal Register Liaison Office, Department of Defense.

Computer Matching Program Between the Social Security Administration and the Department of Defense for Verification of Social Security Supplemental Security Income Payments and Special Veterans Benefits

A. PARTICIPATING AGENCIES

Participants in this computer matching program are the Social Security Administration (SSA) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The SSA is the source agency, *i.e.*, the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, *i.e.*, the agency that actually performs the computer matching.

B. PURPOSE OF THE MATCH

The Social Security Act requires SSA to verify, with independent or collateral sources, information provided to SSA by recipients of SSI payments and beneficiaries of SVB benefits. The SSI and SVB recipient/beneficiaries provides information about eligibility/entitlement factors and other relevant information. SSA obtains additional information as necessary before making any determinations of eligibility/payment or entitlement/benefit amounts or adjustments thereto. With respect to military retirement payments to SSI recipients and SVB beneficiaries who are retired members of the Uniformed Services or their survivors, SSA proposes to accomplish this task by computer matching with the DOD.

C. AUTHORITY FOR CONDUCTING THE MATCH

The legal authority for the matching program is contained in sections 1631(e)(1)(B), (f), and 806(b) of the Social Security Act (42 U.S.C. 1383(e)(1)(B), (f) and 1006(b)).

D. RECORDS TO BE MATCHED

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, from which records will be disclosed for the purpose of this computer match are as follows:

SSA will use records from a system of records identified as 60–0103, entitled ''Supplemental Security Income Record and Special Veterans Benefits, SSA/ODSSIS'', last published in the **Federal Register** at 71 FR 1830, January 11, 2006.

DMDC will use records from a system of records identified as S322.10 DMDC, entitled ''Defense Manpower Data Center Data Base,'' last published in the **Federal Register** at 69 FR 31974, June 8, 2004, as amended at 69 FR 67117, November 16, 2004.

E. DESCRIPTION OF COMPUTER MATCHING PROGRAM

SSA, as the source agency, will provide DMDC with an electronic file which contains the data elements. Upon receipt of the electronic file, DMDC, as the recipient agency, will perform a computer match using all nine digits of the SSN of the SSI/SVB file against a DMDC database which contains the data elements. The DMDC database consists of extracts of personnel and pay records of retired members of the uniformed services or their survivors. The ''hits'' or matches will be furnished to SSA. SSA is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the SSA source file and resolving any discrepancies or inconsistencies on an individual basis. SSA will also be responsible for making final determinations as to eligibility for /entitlement to, or amount of payments/benefits, their continuation or needed adjustments, or any recovery of overpayments as a result of the match.

1. The electronic file provided by SSA will contain approximately 8.6 million records extracted from the SSR/SVB.

2. The electronic DMDC database contains records on approximately 2.3 million retired uniformed service members or their survivors.

F. INCLUSIVE DATES OF THE MATCHING PROGRAM

This computer matching program is subject to public comment and review by Congress and the Office of Management and Budget. If the mandatory 30 day period for comment has expired and no comments are received and if no objections are raised by either Congress. The Office of Management and Budget within 40 days of being notified of the proposed match, the computer matching program becomes effective and the respective agencies may begin the exchange at a mutually agreeable time on a quarterly basis, shifting to a monthly basis, provided DoD consents, when and if the computer system work can be completed to effectuate the increased frequency. By agreement between SSA and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES

Director, Defense Privacy Office, 1901 South Bell Street, Suite 920, Arlington, VA 22202–4512. Telephone (703) 607–2943.

[FR Doc. 06–7923 Filed 9–19–06; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Extension of Project Period and Waiver for the Center on Learning Disabilities

AGENCY: Office of Special Education Programs, Office of Special Education and Rehabilitative Services, Department of Education.

SUMMARY: The Secretary waives the requirements in the Education Department General Administrative Regulations (EDGAR), in 34 CFR 75.250 and 75.261(a), respectively, that generally prohibit project periods exceeding five years and extensions of project periods involving the obligation of additional Federal funds. This extension of project period and waiver will enable the currently funded Center on Learning Disabilities to receive funding from October 1, 2006 through September 30, 2007.

DATES: This extension of project period and waiver are effective September 20, 2006.

FOR FURTHER INFORMATION CONTACT: Renee Bradley, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4105, Potomac Center Plaza, Washington, DC 20202–2641. Telephone: (202) 245–7277.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 2001, the Department published a notice in the **Federal Register** (66 FR 35746) inviting applications for a new award for fiscal year (FY) 2001 for a Center on Learning Disabilities (Center). Based on that notice, the Department made one award for a period of 60 months to Vanderbilt University to establish and operate the Center to conduct follow-up research, provide training, disseminate

synthesized research validated information, and to provide national technical assistance on issues in the area of identification and assessment of children with learning disabilities. This Center was designed from its inception to conduct both research and technical assistance activities with a shift over the project period from primarily research to a larger proportion of dissemination and technical assistance activities.

Extension and Waiver

The Center's current project period is scheduled to end on September 30, 2006. However, with the recent release of the Federal regulations implementing Part B of the Individuals with Disabilities Education Act, as reauthorized by the Individuals with Disabilities Education Improvement Act of 2004, there is an urgent need to continue certain of the Center's data analysis, dissemination, and technical assistance activities for an additional year. The new procedures in the regulations regarding the identification of children with learning disabilities are one of the major implementation challenges that States and local school districts will face in implementing the new regulations. In order to ensure that continued assistance is available to assist States and local school districts, the Secretary is waiving the requirements in 34 CFR 75.250 and 75.261(a) and intends to issue a continuation award to the existing grantee for an additional twelve-month period.

The Center will continue its dissemination and technical assistance activities, including further development and implementation of a technical assistance and dissemination approach that links research to practice and promotes the use of current knowledge and ongoing research findings. Under this approach, the Center works with other Department of Education technical assistance providers to communicate research findings and distribute products; and prepares the research findings and products in formats that are useful for specific audiences, including general education researchers, and local, State, and national policymakers, as well as education practitioners. In addition to this broad dissemination of information, the Center will continue its work with the previously identified implementation sites, local schools and districts that the Center has been working with over the past three years, assisting them in their efforts to implement response to intervention and to evaluate and document progress of those efforts. Based on the knowledge gained, the Center will continue to develop materials to assist in effective large-scale implementation of response to intervention and the identification of children with learning disabilities. The Center also will be continuing work to develop additional technical assistance products on specific learning disabilities and complete an Implementation Resource Kit on Learning Disabilities.

Finally, the Center will complete final analysis of data from the longitudinal identification studies in math and reading that the Center conducted to investigate the impact of various identification models on the number of students identified with a specific learning disability. Data from these studies also will be analyzed to inform the Center's development of products to assist with the implementation of response to intervention and the identification of students with learning disabilities.

Waiver of Proposed Rulemaking and Delayed Effective Date

Under the Administrative Procedure Act (5 U.S.C. 553) (APA) the Department generally offers interested parties the opportunity to comment on an extension of project period and waiver under 34 CFR 75.250 and 75.261(a). The APA provides that an agency is not required to conduct 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. We have determined that conducting rulemaking on the proposed extension and waiver would be impracticable because the Department cannot both conduct rulemaking and issue a continuation award to the Center by September 30, 2006. Further, it is essential that the Department make the continuation award to ensure that the critical work being conducted by the Center continues, including providing significant technical assistance to States and local school districts as they begin implementation of the provisions of IDEA and the Part B regulations regarding response to intervention and the identification of children with specific learning disabilities. Rulemaking was not conducted on this matter at an earlier time because the critical need for assistance on this issue was not realized until the issuance of the Part B regulations on August 3, 2006 and the subsequent OSEP Leadership meeting with all of the State Directors of Special Education on August 21–23, 2006.

The APA also provides that a substantive rule may not take effect within 30 days from publication unless the agency for good cause finds that a delayed effective date would not be in the public interest. For the reasons described in the preceding paragraph, we also are waiving the APA's requirement that this extension and waiver be published at least 30 days before the effective date.

Regulatory Flexibility Act Certification

The Secretary certifies that the extension of the project period and waiver will not have a significant economic impact on a substantial number of small entities. The only entity that will be affected is the Center on Learning Disabilities.

Paperwork Reduction Act of 1995

This extension of project period and waiver does not contain any information collection requirements.

Intergovernmental Review

This program is not subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: September 14, 2006.

Andrew J. Pepin,

Executive Administrator, Office of Special Education and Rehabilitative Services.

[FR Doc. E6–15578 Filed 9–19–06; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy; Methane Hydrate Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

This notice announces a meeting of the Methane Hydrate Advisory Committee. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, November 8, 2006, 8 a.m. to 5 p.m., and Thursday, November 9, 2006, 8:30 a.m. to 2:30 p.m.

ADDRESSES: Marriott West Loop–by the Galleria, 1750 West Loop South, Houston, TX 77027.

FOR FURTHER INFORMATION CONTACT: Edith Allison, U.S. Department of Energy, Office of Oil and Natural Gas, Washington, DC 20585. Phone: 202–586–1023.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee:* The purpose of the Methane Hydrate Advisory Committee is to provide advice on potential applications of methane hydrate to the Secretary of Energy, and assist in developing recommendations and priorities for the Department of Energy, Methane Hydrate Research and Development Program.

Tentative Agenda:

Wednesday, November 8:

- Reports on key Department of Energy-supported field projects.
- Report on August Fast Track Subcommittee Meeting and Discussion of Recommendations.
- Environmental Aspects of Gas Hydrates including Barkley Canyon Hydrate Cruise.
- Report on India Expedition and Other International Cooperation.
- Discussion of Draft Methane Hydrate Five-Year Plan.

Thursday, November 9:

- Discussion of Recommendations, Methane Hydrate Five-Year Plan, and 2007 Report to Congress.
- Planning for the Future and Topics for April 2007 Methane Hydrate Advisory Committee Meeting.
- Subcommittee Meetings.
- Wrap-up and Discussion of Action Items.
- Adjourn.

Public Participation: The meeting is open to the public. The Chairman of the Committee will conduct the meeting to facilitate the orderly conduct of business. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, you should contact Edith Allison at the address or telephone number listed above. You must make your request for an oral statement at least five business days prior to the meeting, and reasonable provisions will be made to include the presentation on the agenda. Public comment will follow the 10 minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 60 days at the Freedom of Information Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on September 14, 2006.

Rachel Samuel,

Deputy Advisory Committee, Management Officer.

[FR Doc. 06–7807 Filed 9–19–06; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

September 13, 2006.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC06–160–000.

Applicants: Duquesne Light Holdings, Inc.; Duquesne Light Company; Duquesne Power, LLC; Duquesne, Keystone LLC; Duquesne Conemaugh, LLC; Monmouth energy, Inc., DQE Holdings, LLC; DQE Merger Sub, Inc.; DUET Investment Holding; GIF2–MFIT United Pty. Limited; Industry Funds Management (Nominees) Limited, as trustee of the IFM (International Infrastructure) Wholesale Trust; CLH Holdings, GP.

Description: Duquesne Light Holdings, Inc. et al. submits an application requesting authorization for merger of Merger Sub with and into DL Holdings, which will result in the Duquesne Companies becoming wholly-owned subsidiaries of Holdings.

Filed Date: 09/06/2006.

Accession Number: 20060912–0387.

Comment Date: 5 p.m. Eastern Time on Tuesday, October 10, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–1418–002.

Applicants: Reliant Energy Wholesale Generation, LLC.

Description: Reliant Energy Wholesale Generation, LLC submits its refund report pursuant to FERC's 7/20/06 order.

Filed Date: 08/30/2006.

Accession Number: 20060912–0376.

Comment Date: 5 p.m. Eastern Time on Wednesday, September 20, 2006.

Docket Numbers: ER05–1508–002.

Applicants: Interstate Power and Light Company.

Description: Midwest Independent Transmission System Operator, Inc. submits an amendment to its 6/21/06 compliance filing.

Filed Date: 09/08/2006.

Accession Number: 20060912–0167.

Comment Date: 5 p.m. Eastern Time on Friday, September 29, 2006.

Docket Numbers: ER06–451–009; ER06–1467–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc. submits an errata to its 9/1/06 filing of proposed revisions to its OAT Tariff relating to its real-time energy imbalance service market etc.

Filed Date: 09/07/2006.

Accession Number: 20060912–0166.

Comment Date: 5 p.m. Eastern Time on Friday, September 22, 2006.

Docket Numbers: ER06–785–002.

Applicants: Midwest Independent Transmission System Operator, Inc.; Midwest ISO Transmission Owners.

Description: Midwest Independent Transmission System Operator, Inc. and Midwest ISO submit revisions to the Midwest ISO Agreement pursuant to Commission's 8/11/06 order.

Filed Date: 09/08/2006.

Accession Number: 20060912–0378.

Comment Date: 5 p.m. Eastern Time on Friday, September 29, 2006.

Docket Numbers: ER06–1476–000.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Company submits its Generator Special Facilities Agreement and a Generator Interconnection Agreement with The County of Sonoma.

Filed Date: 09/07/2006.

Accession Number: 20060912–0447.

Comment Date: 5 p.m. Eastern Time on Thursday, September 28, 2006.

Docket Numbers: ER06–1482–000.

Applicants: Southern California Edison Company.

Description: Southern California Edison Co submits an amended Interconnection Facilities Agreement with Oasis Power Partners, Service Agreement 25, FERC Electric Tariff, Second Revised Volume No. 6.

Filed Date: 09/11/2006.

Accession Number: 20060912–0375.

Comment Date: 5 p.m. Eastern Time on Monday, October 02, 2006.

Docket Numbers: ER06–1485–000.

Applicants: Xcel Energy Operating Companies.

Description: Xcel Energy Services Inc on behalf Southwestern Public Service Company submits First Revised Sheet 8 et al. to FERC Electric Tariff, First Revised Volume 1, effective 11/1/06.

Filed Date: 08/31/2006.

Accession Number: 20060905–0098.

Comment Date: 5 p.m. Eastern Time on Thursday, September 28, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. 06–7980 Filed 9–19–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–R01–OAR–2006–0226; A–1–FRL–8221–1]

Adequacy Status of Motor Vehicle Budgets in Submitted State Implementation Plan for Transportation Conformity Purposes; Maine; Maintenance Plan Motor Vehicle Emissions Budgets for the Portland Maine 8-Hour Ozone Area, and the Hancock, Knox, Lincoln and Waldo Counties Maine 8-Hour Ozone Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that EPA has found that the 2016 motor vehicle emissions budgets in the August 3, 2006 Maine State Implementation Plan (SIP) revision are adequate for transportation conformity purposes. The submittal included MOBILE6.2 motor vehicle emissions budgets for 2016 for the Portland Maine 8-Hour Ozone Area, and the Hancock, Knox, Lincoln and Waldo Counties (Midcoast) Maine 8-Hour Ozone Area. On March 2, 1999, the DC Circuit Court ruled that budgets in submitted SIPs cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the Portland Maine 8-hour ozone area and the Midcoast Maine 8-hour ozone area can use the MOBILE6.2 motor vehicle emissions budgets from the submitted plan for future conformity determinations.

DATES: These motor vehicle emissions budgets are effective October 5, 2006.

FOR FURTHER INFORMATION CONTACT: Donald O. Cooke, Environmental Scientist, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, Suite 1100 (CAQ), Boston, MA 02114–2023, (617) 918–1668, *cooke.donald@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, whenever ''we,'' ''us'' or ''our'' is used, we mean EPA.

Today's notice is simply an announcement of a finding that we have already made. EPA New England sent a letter to Maine Department of Environmental Protection on September 8, 2006, stating that the 2016 MOBILE6.2 motor vehicle emissions budgets in the August 3, 2006 State Implementation Plans (SIPs) are adequate for transportation conformity purposes. This finding will also be announced on EPA's conformity Web site: *http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm,* (once there, click on ''What SIP submissions has EPA already found adequate or inadequate?''). The adequate motor vehicle emissions budgets (MVEBs) are provided in the following table:

ADEQUATE MOTOR VEHICLE EMISSIONS BUDGETS

	VOC (tons per summer day)	NO_X (tons per summer day)
Year 2016 MVEBs for the Portland 8-hour Ozone Area	16.659	32.837
Year 2016 MVEBs for the Midcoast 8-hour Ozone Area	3.763	6.245

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to state air quality implementation plans and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in a May 14, 1999 memorandum entitled ''Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision.'' Additional guidance on EPA's adequacy

process was published in a July 1, 2004 **Federal Register** final rulemaking, ''Transportation Conformity Rule Amendments for the New 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards and Miscellaneous Revisions for Existing Areas; Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (69 FR 40004). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 11, 2006.

Robert W. Varney,

Regional Administrator, EPA New England.

[FR Doc. E6–15599 Filed 9–19–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8221–3]

Notification of Closure of the EPA Headquarters Library

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The EPA Headquarters Library will close its doors to walk-in patrons and visitors on October 1, 2006. This notice provides information regarding how members of the public can access EPA documents held in the Headquarters Repository Library collection and in electronic format.

FOR FURTHER INFORMATION CONTACT: Jeff Tumarkin, Mailcode 2843T, Office of Environmental Information, Information Access Division, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 566–0681; e-mail address: *Tumarkin.Jeff@epa.gov.*

SUPPLEMENTARY INFORMATION: The trend in recent years has shown a shift in the ways that people request and receive library services from EPA. With more material available online and electronically, EPA has found that its employees and the public are finding the materials they need from EPA's web site and they are requesting more information electronically. In addition, with tighter security at Federal facilities, the public's physical visits to the EPA Headquarters Library have been declining. These trends, in addition to reductions in the library's FY07 budget, suggested to EPA that it needed to use information technology to improve its delivery of library services to EPA and public patrons. Library services for EPA staff and the public will be maintained as detailed in the new EPA Library Network National Framework which is available online at *http://www.epa.gov/natlibra/.*

Beginning October 1, 2006, the EPA Headquarters Library, located in Room 3340 in the EPA West Building, located at 1301 Constitution Ave., NW., Washington, DC, will become one of three EPA repositories for paper copies of EPA documents, reports and publications. The other two repositories will be located at the EPA–RTP Library, 109 T.W. Alexander Drive, Durham, NC 27711, and at the Andrew W. Breidenbach Environmental Research Center, 26 W. Martin Luther King Dr., Cincinnati, OH 45268. Public access to EPA's valuable documents collections continues to be a critical mission of the EPA Libraries. Thousands of EPA documents and reports can be accessed in full-text electronic format through the National Environmental Publications Information System (NEPIS) at *http://nepis.epa.gov/.* Members of the public can also search for EPA documents in the libraries' catalog at *http://www.epa.gov/natlibra/ols.htm.* Once items of interest are identified, they can be borrowed via interlibrary loan thru participating institutions. The public will continue to have access to environmental information thru the EPA Regional Libraries remaining open *http://www.epa.gov/natlibra/libraries.htm.*

The answers to many questions about EPA and its activities can be found in the Agency's Frequently Asked Questions database which can searched online at *http://publicaccess.custhelp.com/.* Additionally, the public will continue to have access to comprehensive environmental information via the EPA Web site at *http://www.epa.gov.*

Dated: September 13, 2006.

Linda A. Travers,

Acting Assistant Administrator and Chief Information Officer, Office of Environmental Information.

[FR Doc. 06–7803 Filed 9–19–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0099; FRL–8094–3]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: On September 1, 2006, EPA issued a Notice of Receipt of Requests for Amendments by Registrants to Delete Uses in Certain Pesticide Registrations. Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any request in the **Federal Register**. The September 1 Notice inadvertently included a request to delete both cotton and pome fruit from EPA Registration 264–805, Thiacloprid Technical, and EPA Registration 264–806, Calypso 4 Flowable Insecticide. The Notice should have listed a request to delete only cotton from these registrations.

DATES: Because this technical correction removes one use deletion request, the effective date for the remaining use deletions remains unchanged from the September 1 Notice. The remaining deletions are effective February 28, 2007, unless the Agency receives a written withdrawal request on or before February 28, 2007. The Agency will consider a withdrawal request postmarked no later than February 28, 2007.

Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant on or before February 28, 2007.

ADDRESSES: Submit your withdrawal request, identified by docket identification (ID) number EPA–HQ–OPP–2006–0099, by one of the following methods:

- *Mail*: Attention: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Delivery*: OPP Regulatory Public Docket (7502P), Environmental Protection Agency, Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. Deliveries are only accepted during the Docket's normal hours of operation (8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays). Special arrangements should be made for deliveries of boxed information. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: John Jamula, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200

Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6426; e-mail address: *jamula.john@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. Although this action may be of particular interest to persons who produce or use pesticides, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the information in this notice, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0099. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This Notice corrects an error that was contained in a September 1 notice of receipt of request for amendments by registrants to delete uses in certain pesticide registrations (71 FR 52071). The September 1 Notice inadvertently included a request to delete both cotton and pome fruit from EPA Registration 264–805, Thiacloprid Technical, and EPA Registration 264–806, Calypso 4 Flowable Insecticide. The Notice should have listed a request to delete only cotton from these registrations.

III. What is the Agency's Authority for Taking this Action?

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for use deletion must submit the withdrawal in writing to John Jamula using the methods in **ADDRESSES**. The Agency will consider written withdrawal requests postmarked no later than February 28, 2007.

V. Provisions for Disposition of Existing Stocks

The Agency has authorized the registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: September 8, 2006.

Robert Forrest,

Acting Director, Information Technology and Resources Management Division, Office of Pesticide Programs.

[FR Doc. E6–15461 Filed 9–19–06; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2006–0788; FRL–8094–7]

Notice of Filing of a Pesticide Petition for Establishment of Regulations for Residues of a Pesticide Chemical in or on Various Commodities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a pesticide chemical in or on various commodities.

DATES: Comments must be received on or before October 20, 2006.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2006–0788 and pesticide petition number (PP)7F4821, by one of the following methods:

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

Instructions: Direct your comments to docket ID number EPA–HQ–OPP–2006–0788. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through regulations.gov or e-mail. The Federal regulations.gov Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the docket index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only

available in hard copy, at the OPP Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Building), 2777 S. Crystal Drive, Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joanne I. Miller, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; Telephone number; (703) 305–6224; e-mail address: *miller.joanne@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. What Action is the Agency Taking?

EPA is printing a summary of a pesticide petition received under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, proposing the establishment or amendment of regulations in 40 CFR part 180 for residues of pesticide chemicals in or on various food commodities. EPA has determined that this pesticide petition contains data or information regarding the elements set forth in FFDCA section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the pesticide petition. Additional data may be needed before EPA rules on this pesticide petition.

Pursuant to 40 CFR 180.7(f), a summary of the petition included in this notice, prepared by the petitioner along with a description of the analytical method available for the detection and measurement of the pesticide chemical residues is available on EPA's Electronic Docket at *http://www.regulations.gov*. To locate this information on the home page of EPA's Electronic Docket, select ''Quick Search'' and type the OPP docket ID number. Once the search has located the docket, clicking on the ''Docket ID'' will bring up a list of all documents in the docket for the pesticide including the petition summary.

New Tolerance

PP 7F4821. K-I Chemical U.S.A. Inc., 11 Martine Avenue, Suite 970, White Plains, NY 10606, proposes to establish tolerances for residues of the herbicide fluthiacet-methyl [acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H*-[1,3,4] thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-methyl ester] and its acid metabolite, CGA–300402, CAS No. 149253–65–6: acetic acid, [[2-chloro-4-fluoro-5-[(tetrahydro-3-oxo-1*H*,3*H* [1,3,4]thiadiazolo[3,4-α]pyridazin-1-ylidene)amino]phenyl]thio]-, in or on the food/feed commodities: cotton, gin byproducts at 0.20 part per million (ppm); cotton seed, undelinted at 0.020 ppm. Gas chromatography with a nitrogen phosphorus detector and a fused-silica column is used to measure and evaluate the chemical residues.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 12, 2006.

Kathy S. Monk,

Director, Registration Division, Office of Pesticide Programs,

[FR Doc. 06–7804 Filed 9–19–06; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

September 12, 2006.

SUMMARY: The Federal Communications Commission (Commission) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number.

FOR FURTHER INFORMATION CONTACT: Paul J. Laurenzano, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554, (202) 418–1359 or via the Internet at *plaurenz@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0725.

OMB Approval date: 08/25/2006.
Expiration Date: 08/31/2009.
Title: Quarterly Filing of Nondiscrimination Reports (on Quality of Service, Installation and Maintenance) by Bell Operating Companies.
Form No.: N/A.
Estimated Annual Burden: 16 responses; 800 total annual burden hours.
Needs and Uses: Bell Operating Companies (BOCs) are required to provide nondiscrimination reports on an annual basis. Without provision of these reports, the Commission would be unable to ascertain whether the BOCs were discriminating in favor of their own payphones.

OMB Control No.: 3060–0817.
OMB Approval date: 09/07/2006.
Expiration Date: 09/30/2009.
Title: Computer III Further Remand Proceedings: BOC Provision of Enhanced Services (ONA Requirements), CC Docket No. 95–20.
Form No.: N/A.
Estimated Annual Burden: 8 responses; 216 total annual burden hours.
Needs and Uses: BOCs are required to post their CEI plans and amendments on their publicly accessible Internet sites. The requirement extends to CEI plans for new or modified tele-messaging or alarm monitoring services and for new or amended payphone services. If the BOC receives a good faith request for a plan from someone who does not have internet access, the BOC must notify that person where a paper copy of the plan is available for public inspection. The CEI plans will be used to ensure that BOCs comply with Commission policies and regulations safeguarding against potential anticompetive behavior by the BOCs in the provision of information services.

OMB Control No.: 3060–0824.
OMB Approval date: 09/01/2006.
Expiration Date: 09/30/2009.
Title: Service Provider Identification Number and Contact Form.
Form No.: FCC form 498.
Estimated Annual Burden: 5,000 responses; 7,500 total annual burden hours.
Needs and Uses: The Administrator of the universal service program must obtain contact and remittance information from service providers participating in the universal service high cost, low income, rural health care, and schools and libraries programs. The Administrator uses FCC Form 498 to collect service provider name, phone numbers, other contact information, and remittance information from universal service fund participants to enable the Administrator to perform its universal service disbursement functions under 47 CFR part 54. FCC Form 498 allows fund participants to direct remittance to third parties or receive payments directly from the Administrator.

OMB Control No.: 3060–0876.
OMB Approval date: 09/01/2006.
Expiration Date: 09/30/2009.
Title: USAC Board of Directors Nomination Process (47 CFR Section 54.703) and Review of Administrator's Decision (47 CFR Sections 54.719–54.725).
Form No.: N/A.
Estimated Annual Burden: 1,312 responses; 41,840 total annual burden hours.
Needs and Uses: Pursuant to 47 CFR 54.703 industry and non-industry groups may submit to the Commission for approval nominations for individuals to be appointed to the USAC Board of Directors. 47 CFR 54.719–54.725 contain the procedures for Commission review of USAC decisions, including the general filing requirements pursuant to which parties must file requests for review. The information is used by the Commission to select USAC's Board of directors and to ensure that requests for review are filed properly with the Commission.

OMB Control No.: 3060–0810.
OMB Approval date: 09/01/2006.
Expiration Date: 09/30/2009.
Title: Procedures for Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended.
Form No.: N/A.
Estimated Annual Burden: 100 responses; 6,200 total annual burden hours.
Needs and Uses: This submission extended a currently approved collection. Carriers seeking eligibility designations for service provided on tribal lands (which include ''near reservations'') may petition the Commission directly under section 214(e)(6), without first seeking designation from the relevant state commission and all others must go to the state first for resolution of the jurisdictional issues before seeking designation from the Commission. In the Order, the Commission concluded that petitions for designation filed under section 214(e)(6) relating to ''near reservation'' areas will not be considered as petitions relating to tribal lands and as a result, petitioners seeking ETC designation in such areas must follow the procedures outlined in the *Twelfth Report and Order* for non-tribal lands prior to submitting a request for designation to this Commission.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. E6–15534 Filed 9–19–06; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[EB Docket No. 06–168; FCC 06–128]

Commercial Radio Service, Inc. and Timothy M. Doty

AGENCY: Federal Communications Commission.
ACTION: Notice.

SUMMARY: This document commences a hearing proceeding by directing Commercial Radio Service, Inc. and Timothy M. Doty to show cause in an adjudicatory hearing before an administrative law judge why their respective authorizations in the wireless services should not be revoked on issues relating to their basic qualifications to be and remain Commission licensees. The hearing will be held at a time and place to be specified in a subsequent order.

DATES: Persons desiring to participate as parties in the hearing (other than Commercial Radio Service, Inc. and Timothy Doty, both of whom are already specified as parties in the hearing) shall file a petition for leave to intervene not later than October 20, 2006.

ADDRESSES: Please file documents with the Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. Each document that is filed in this proceeding must display on the front page the docket number of this hearing, ''EB Docket No. 06–168.''

FOR FURTHER INFORMATION CONTACT: Gary Schonman, Special Counsel, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, Washington, DC 20554. Tel. 202–418–1420.

SUPPLEMENTARY INFORMATION: This is a summary of the Order to Show Cause, FCC 06–128, released August 30, 2006. The full text of the Order to Show Cause is available for 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, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the

Commission's copy 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 for BCPI, please provide the appropriate FCC document number, FCC 06–124. The Order also is available on the Internet at the Commission's Web site through its Electronic Document Management System (EDOCS). The Commission's Internet address for EDOCS is: *http://hraunfoss.fcc.gov/edocs_public/SilverStream/Pages/edocs.html.* Alternative formats are available to persons with disabilities (Braille, large print, electronic files, audio format). Send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at 202–418–0530 (voice), (202) 418–0432 (tty).

Summary of the Order: In the Order to Show Cause the Commission commences a hearing proceeding before an administrative law judge to determine whether Commercial Radio Service, Inc. (''CRS'') and Timothy M. Doty (''Doty'') are qualified to be and remain Commission licensees and, if not, whether their respective authorizations should be revoked. The Order to Show Cause also inquires whether a monetary forfeiture should be assessed against CRS.

CRS is the licensee of one commercial and four private land mobile stations. Doty, a principal in CRS, holds, in his individual capacity, a General Radiotelephone Operator License and an Amateur Radio License. Doty has twice been convicted of felonies in State and Federal courts. Subsequent to the first of Doty's felony convictions, CRS filed at least two license applications with the Commission in which CRS answered ''No'' to the question inquiring whether the applicant or any party directly or indirectly controlling the applicant had ever been convicted of a felony in State or Federal court. Subsequent to the second of Doty's felony convictions, CRS filed at least five license renewal-only applications with the Commission. By filing renewal-only applications rather than renewal/modification applications, CRS failed to provide information to the Commission about Doty's felony convictions that it was otherwise required to disclose. In each of the applications discussed above, CRS certified that all of the statements therein were true, complete, correct, and made in good faith.

The Commission determined that Doty's felony convictions and CRS'' apparent failures to inform the Commission about such felonies in license applications filed with the Commission raise substantial and material questions as to their qualifications to be and to remain Commission licensees. Thus, pursuant to sections 312 of the Communications Act of 1934, as amended, 47 U.S.C. 312, and § 1.91 of the Commission's rules, 47 CFR 1.91, the Order to Show Cause directs CRS and Doty to show cause why their respective licenses should not be revoked, upon the following issues:

1. To determine the effect of Mr. Doty's felony convictions on his qualifications to be and to remain a Commission licensee;
2. To determine the effect of Mr. Doty's felony convictions on the qualifications of CRS to be and to remain a Commission licensee;
3. To determine whether CRS made misrepresentations and/or lacked candor and/or violated Section 1.17 of the Commission's rules regarding the felony convictions of Mr. Doty in any applications filed with the Commission;
4. To determine whether CRS failed to timely amend Commission applications to disclose Mr. Doty's felony convictions, in violation of Section 1.65 of the Commission's rules;
5. To determine whether CRS made false certifications in any applications filed with the Commission;
6. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Mr. Doty is qualified to be and to remain a Commission licensee;
7. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether CRS is qualified to be and to remain a Commission licensee;
8. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the above-captioned licenses of Mr. Doty should be revoked;
9. To determine, in light of the evidence adduced pursuant to the foregoing issues (1) through (7), whether the above-captioned licenses of CRS should be revoked.

The Order to Show Cause also directs that, irrespective of the resolution of the foregoing issues, it shall be determined, pursuant to section 503 of the Communications Act of 1934, as amended, 47 U.S.C 503, whether an Order of Forfeiture in the amount not to exceed $11,000 for each violation or each day of a continuing violation, up to a total of $97,500 for any single act or failure to act should be issued against CRS for having failed to disclose Doty's felony convictions in one or more of its applications, in willful and/or repeated violation of §§ 1.17 and 1.65 of the Commission's rules, 47 CFR 1.17 and 1.65.

The hearing will be held at a time and place to be specified in a subsequent order.

Copies of the Order to Show Cause are being sent by Certified Mail, Return Receipt Requested, to CRS, Doty, and counsel for CRS.

To avail themselves of the opportunity to be heard and the right to present evidence in the hearing in this proceeding, pursuant to section 312 of the Communications Act of 1934, as amended, 47 U.S.C. 312, and § 1.91 of the Commission's Rules, 47 CFR 1.91, an officer representative of CRS and Timothy M. Doty, in person or by their respective attorneys, must file with the Commission, not later than September 29, 2006, a written appearance in triplicate stating that they will appear on the date fixed for hearing and present evidence on the issues specified herein.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 06–7906 Filed 9–19–06; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: September 26, 2006 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. 437g. Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, *Telephone:* (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 06–7962 Filed 9–8–06; 3:05 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984.

Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of agreements are available through the Commission's Office of Agreements (202–523–5793 or *tradeanalysis@fmc.gov)*.

Agreement No.: 010714–040.

Title: Trans-Atlantic American Flag Liner Operators Agreement.

Parties: A.P. Moller-Maersk A/S; American President Lines, Ltd.; American Roll-On Roll-Off Carrier, LLC; and Hapag-Lloyd USA, LLC.

Filing Party: Howard A. Levy, Esq.; 80 Wall Street, Suite 1117; New York, NY 10005.

Synopsis: The amendment changes the name of CP Ships (USA) LLC to Hapag-Lloyd USA, LLC.

Agreement No.: 201173.

Title: UMS P&O Ports Marine Terminal Agreement.

Parties: P&O Ports North America, Inc. and Universal Maritime Service Corporation.

Filing Party: Neal M. Mayer, Esq.; Hoppel, Mayer & Coleman; 1050 Connecticut Avenue, NW.; 10th Floor; Washington, DC 20036.

Synopsis: The agreement would authorize the parties to discuss, on a voluntary and non-binding basis, issues relating to possible cooperation with respect to matters relating to marine terminal operation and services in Baltimore.

By order of the Federal Maritime Commission.

Dated: September 15, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 06–7798 Filed 9–19–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel—Operating Common Carrier Ocean Transportation Intermediary Applicants:

China International Freight (USA), LLC, 1100 Larkspur Landing Circle, Suite 290, Larkspur, CA 94939. *Officers:* Thomas R. Waters, President, (Qualifying Individual), Layne Dorr, Vice President.

Unique Logistics International (NYC), LLC, One Cross Island Plaza, Suite 305, Rosedale, NY 11422. *Officers:* Dawn Lowry, Treasurer, (Qualifying Individual), John Fitzpatrick, Manager.

Seamster Logistics Inc. dba Seamaster Logistics, 547 Boulevard, Kenilworth, NJ 07033. *Officers:* Richard Shannon, Asst. Secretary, (Qualifying Individual), Peter Stone, President.

16 East Tremont Corp. dba American & Caribbean Shipping, 13 East Tremont Avenue, Bronx, NY 10453. *Officers:* Nuris Estela Minaya, Vice President, (Qualifying Individual), Santiago Batista, President.

JWJ Express Inc., 149–23 182nd Street, Suite 100, Jamaica, NY 11413. *Officers:* Fan Gho Kung, Vice President, (Qualifying Individual), Sanghwan Lee, President.

Non-Vessel—Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Freight It, Inc., 11222 La Cienega Blvd., Suite 471, Inglewood, CA 90304. *Officers:* Taher C. Hussaini, CEO, (Qualifying Individual), Amir G. Fekri, Vice President.

Maritima Auto Exports, Inc., Edificio 1026 Caretera 28-Zona, (Port) Portuaria, Puerto Nuevo, PR 00920. *Officer:* Michael A. Feliciano, President, (Qualifying Individual).

Transplace International, Inc., 509 Enterprise Drive, Lowell, AR 72745. *Officers:* Kevin L. Higgins, Vice Pres. Logistics, (Qualifying Individual), Jun-Sheng Li, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

All Shore Forwarders, Ltd., One River Centre, 331 Newman Springs Road, Red Bank, NJ 07701. *Officers:* Brian A. Weiner, President, (Qualifying Individual).

Haines International, Inc., 1450 Church Street, Rahway, NJ 07065. *Officers:* Craig M. Haines, President, (Qualifying Individual).

Dated:September 15, 2006.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 06–7799 Filed 9–19–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
017198F	OMJ International Freight Inc., 8423 NW., 68th Street, Miami, FL 33166	June 23, 2006.
016012F	Samari Global Trade, Inc., 1310 Beach Avenue, Bronx, NY 10472	June 4, 2006.

Peter J. King,

Deputy Director, Bureau of Certification, and Licensing.

[FR Doc. 06–7806 Filed 9–19–06; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 13, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. CP Capital Asset Acquisition, Inc., Miami, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Security Bank, National Association, North Lauderdale, Florida.

B. Federal Reserve Bank of Chicago (Patrick M. Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

1. Citizens Banking Corporation, Flint, Michigan; to acquire 100 percent of the voting shares of Republic Bancorp, Inc., Owosso, Michigan, and thereby indirectly acquire voting shares of Republic Bank, Lansing, Michigan.

Board of Governors of the Federal Reserve System, September 13, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–7979 Filed 9–19–06; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Institute for Occupational Safety and Health: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Board of Scientific Counselors (BSC), National Institute for Occupational Safety and Health (NIOSH).

Time and Date: 9 a.m.–2:45 p.m., October 18, 2006.

Place: The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC 20037.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: The Board shall provide advice to the Director, NIOSH on research and prevention programs. Specifically, the Board shall provide guidance on the Institute's research activities related to developing and evaluating hypotheses, systematically documenting findings and disseminating results. The Board shall evaluate the degree to which the activities of NIOSH conform to appropriate scientific standards; address current and relevant needs; and produce intended results.

Matters To Be Discussed: Agenda items include a health hazard evaluation program review, an update on the economics of occupational safety and health, and an update on flavorings-related lung disease prevention efforts.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Roger Rosa, Executive Secretary, BSC, NIOSH, 200 Independence Avenue, SW., Room 715H, Washington, DC 20201, telephone (202) 205–7856, fax (202) 260–4464.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 13, 2006.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 06–7984 Filed 9–19–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: DHHS/ACF/ASPE/DOL Enhanced Services for the Hard-to-Employ Demonstration and Evaluation: Rhode Island 15-Month Survey Amendment.

OMB No.: 0970–0276.

Description: The Enhanced Services for the Hard-to-Employ Demonstration and Evaluation Project (HtE) seeks to learn what works in this area to date and is explicitly designed to build on past research by rigorously testing a wide variety of approaches to promote employment and improve family functioning and child well-being. The HtE project is designed to help Temporary Assistance for Needy Families (TANF) recipients, former TANF recipients, or low-income parents who are hard-to-employ. The project is sponsored by the Office of Planning, Research and Evaluation (OPRE) of the Administration for Children and Families (ACF), the Office of the Assistant Secretary for Planning and Evaluation (ASPE) in the U.S. Department of Health and Human Services (HHS), and the U.S. Department of Labor (DOL).

The evaluation involves an experimental, random assignment design in four sites, testing a diverse set of strategies to promote employment for low-income parents who face serious obstacles to employment. The four include: (1) Intensive care management to facilitate the use of evidence-based treatment for major depression among parents receiving Medicaid in Rhode Island; (2) job readiness training, worksite placements, job coaching, job development and other training opportunities for recent parolees in New York City; (3) pre-employment services and transitional employment for long-term TANF participants in Philadelphia; and (4) home- and center-based care, enhanced with self-sufficiency services, for low-income families who have young children or are expecting in Kansas and Missouri.

Materials for follow-up surveys for each of these sites were previously submitted to OMB and were approved. The purpose of this submission is to add physiological measures to the follow-up effort to the Rhode Island study.

Respondents: The respondents to this component of the Rhode Island follow-

up survey will be low-income parents and their children from the Rhode Island site currently participating in the HtE Project. As described in the prior OMB submission, these parents are Medicaid recipients between the ages of 18 and 45 receiving Medicaid through the managed care provider United Behavioral Health (UBH) in Rhode Island who meet study criteria with regard to their risk for depression. Children are the biological, adopted, and stepchildren of these parents, between 1 and 18 years of age.

The annual burden estimates are detailed below, and the substantive content of each component will be detailed in the supporting statement attached to the forthcoming 30-day notice.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
RI 15-month, parent physiological component	400	8	5 minutes or .08 hrs	266.66
RI 15-month, young child physiological component	160	8	5 minutes or .08 hrs	106.66
RI 15-month, youth physiological component	242	8	5 minutes or .08 hrs	161.33

Estimated Total Annual Burden Hours: 534.65.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: September 13, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–7763 Filed 9–19–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Family Assistance; Single-Source Program Expansion Supplement

AGENCY: Office of Family Assistance, Administration for Children and Families, HHS.

CFDA#: 93.575.

Legislative Authority: Child Care and Development Block Grant Act of 1990, as amended.

Amount of Award: $101,774.00 for one year.

Project Period: 09/30/2006–09/29/2007.

Justification for the Exception to Competition: Oregon State University (the grantee) is currently conducting data analyses with funding from a research grant awarded in FY 2004 to validate methodologies used to conduct State market rate surveys on the price for child care and early education programs at the State and local levels. The supplemental funds will allow the grantee to include additional datasets in the ongoing analyses representing sampling methodologies that include a more diverse care provider sample, a broader geographical coverage, and several additional data collection methods, and will in turn make the findings from the project more generalizable to States, Tribes and Territories implementing the Child Care and Development Fund program.

CONTACT FOR FURTHER INFORMATION: Ivelisse Martinez-Beck, Research Coordinator, Child Care Bureau, Portals Building, Suite 800, 1250 Maryland Avenue, SW., Washington, DC 20024.

Telephone: 202–690–7885.

Dated: September 1, 2006.

Sidonie Squier,

Director, Office of Family Assistance.

[FR Doc. E6–15559 Filed 9–19–06; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0040]

Determination of Regulatory Review Period for Purposes of Patent Extension; CYDECTIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for CYDECTIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that animal drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments.*

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane,Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and

Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For animal drug products, the testing phase begins on the earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(j)) became effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the animal drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a animal drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(4)(B).

FDA recently approved for marketing the animal drug product CYDECTIN (moxidectin). CYDECTIN is indicated for the treatment and control of certain internal and external parasites in cattle. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for CYDECTIN (U.S. Patent No. 4,916,154) from American Cyanamid Company, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 6, 2004, FDA advised the Patent and Trademark Office that this animal drug product had undergone a regulatory review period and that the approval of CYDECTIN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for CYDECTIN is 2,857 days. Of this time, 2,841 days occurred during the testing phase of the regulatory review period, while 16 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)) involving this animal drug product became effective*: April 5, 1990. The applicant claims April 9, 1990, as the date the investigational new animal drug application (INAD) became effective. However, FDA records indicate that the date of FDA's letter assigning a number to the INAD was April 5, 1990, which is considered to be the effective date for the INAD.

2. *The date the application was initially submitted with respect to the animal drug product under section 512(b) of the act*: January 13, 1998. The applicant claims August 8, 1995, as the date the new animal drug application (NADA) for CYDECTIN (NADA 141–099) was initially submitted. The applicant claims this is the date it submitted the first component of NADA 141–099, which was submitted in several modules. It is FDA's position that the approval phase begins when the marketing application is complete. A review of FDA records reveals that the date of FDA's official acknowledgement letter assigning a number to NADA 141–099 was January 13, 1998, which is considered to be the initially submitted date for NADA 141–099.

3. *The date the application was approved*: January 28, 1998. FDA has verified the applicant's claim that NADA 141–099 was approved on January 28, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,754 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 20, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 19, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions are to be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 06–7800 Filed 9–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 2006E–0023 and 2006E–0345]

Determination of Regulatory Review Period for Purposes of Patent Extension; MYCAMINE—New Drug Application 21–754

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MYCAMINE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug

product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product MYCAMINE (mycafungin sodium). MYCAMINE is indicated for treatment of patients with esophageal candidiasis and prophylaxis of *Candida* infections in patients undergoing hematopoietic stem cell transplantation. Subsequent to this approval, the Patent and Trademark Office received patent term restoration applications for MYCAMINE (U.S. Patent Nos. 6,107,458 and 6,265,536) from Astellas Pharma, Inc., and the Patent and Trademark Office requested FDA's assistance in determining these patents' eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MYCAMINE represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MYCAMINE is 2,546 days. Of this time, 2,221 days occurred during the testing phase of the regulatory review period, while 325 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: March 29, 1998. The applicant claims June 30, 2003, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 29, 1998, which was 30 days after FDA receipt of the original IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: April 26, 2004. The applicant claims April 23, 2004, as the date the new drug application (NDA) for MYCAMINE (NDA 21–754) was initially submitted. However, FDA records indicate that NDA 21–754 was initially submitted on April 26, 2004.

3. *The date the application was approved*: March 16, 2005. FDA has verified the applicant's claim that NDA 21–754 was approved on March 16, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 476 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 20, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 19, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 11, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 06–7985 Filed 9–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006E–0033]

Determination of Regulatory Review Period for Purposes of Patent Extension; APTIVUS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for APTIVUS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug

product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human drug product APTIVUS (tipranavir). APTIVUS is indicated for combination antiretroviral treatment of HIV–1 infected adult patients with evidence of viral replication who are highly treatment-experienced or have HIV–1 strains resistant to multiple protease inhibitors. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for APTIVUS (U.S. Patent No. 5,852,195) from Pharmacia & Upjohn Co., LLC, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated February 24, 2006, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of APTIVUS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for APTIVUS is 3,114 days. Of this time, 2,931 days occurred during the testing phase of the regulatory review period, while 183 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: December 14, 1996. The applicant claims December 13, 1996, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was December 14, 1996, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: December 22, 2004. The applicant claims December 21, 2004, as the date the new drug application (NDA) for Aptivus (NDA 21–814) was initially submitted. However, FDA records indicate that NDA 21–814 was submitted as a complete marketing application on December 22, 2004.

3. *The date the application was approved*: June 22, 2005. FDA has verified the applicant's claim that NDA 21–814 was approved on June 22, 2005.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,278 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 20, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 19, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–15553 Filed 9–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0019]

Determination of Regulatory Review Period for Purposes of Patent Extension; FUZEON

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for FUZEON and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the human drug product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the product. Although only a portion of a regulatory review period may count

toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human drug product FUZEON (enfuvirtide). FUZEON is indicated for use in combination with other antiretroviral agents for the treatment of HIV–1 infection in treatment-experienced patients with evidence of HIV–1 replication despite ongoing antiretroviral therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for FUZEON (U.S. Patent No. 6,133,418) from Duke University, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated April 6, 2004, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of FUZEON represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for FUZEON is 2,312 days. Of this time, 2,133 days occurred during the testing phase of the regulatory review period, while 179 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: November 14, 1996. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on November 14, 1996.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: September 16, 2002. The applicant claims June 24, 2002, as the date the new drug application (NDA) for FUZEON (NDA 21–481) was initially submitted. The applicant claims this is the date it submitted the first module of NDA 21–481, which was submitted in several units as part of a rolling NDA submission procedure. It is FDA's position that the approval phase begins when the marketing application is complete. A review of FDA records reveals that the final module of the marketing application was submitted on September 16, 2002, which is considered to be the NDA initially submitted date.

3. *The date the application was approved*: March 13, 2003. FDA has verified the applicant's claim that NDA 21–481 was approved on March 13, 2003. This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 569 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 20, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 19, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–15554 Filed 9–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004E–0402]

Determination of Regulatory Review Period for Purposes of Patent Extension; AVASTIN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for AVASTIN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval

phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product AVASTIN (bevacizumab). AVASTIN, used in combination with intravenous 5-fluorouracil-based chemotherapy, is indicated for first-line treatment of patients with metastatic carcinoma of the colon or rectum. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for AVASTIN (U.S. Patent No. 6,054,297) from Genentech, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 8, 2005, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of AVASTIN represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for AVASTIN is 2,551 days. Of this time, 2,401 days occurred during the testing phase of the regulatory review period, while 150 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective*: March 5, 1997. The applicant claims February 3, 1997, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 5, 1997, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262)*: September 30, 2003. The applicant claims August 29, 2003, as the date the biologics license application (BLA) for AVASTIN (BLA 125085/0) was initially submitted. The applicant claims this is the date it submitted the first unit of BLA 125085/0, which was submitted in several units as part of a rolling application submission procedure. It is FDA's position that the approval phase begins when the marketing application is complete. A review of FDA records reveals that the final module of the BLA 125085/0 was submitted on September 30, 2003, which is considered to be the complete marketing application initially submitted date.

3. *The date the application was approved*: February 26, 2004. FDA has verified the applicant's claim that BLA 125085/0 was approved on February 26, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 307 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 20, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 19, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–15555 Filed 9–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005E–0234]

Determination of Regulatory Review Period for Purposes of Patent Extension; MACUGEN

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for MACUGEN and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*.

FOR FURTHER INFORMATION CONTACT: Beverly Friedman, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA approved for marketing the human drug product MACUGEN (pegaptanib sodium). MACUGEN is indicated for the treatment of neovascular (wet) age-related macular degeneration. Subsequent to this

approval, the Patent and Trademark Office received a patent term restoration application for MACUGEN (U.S. Patent No. 6,051,698) from Gilead Sciences, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated June 28, 2005, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of MACUGEN represented the first permitted commercial marketing or use of the product. Thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for MACUGEN is 2,312 days. Of this time, 2,128 days occurred during the testing phase of the regulatory review period, while 184 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: August 21, 1998. The applicant claims August 20, 1998, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 21, 1998, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: June 17, 2004. The applicant claims March 17, 2004, as the date the new drug application (NDA) for MACUGEN (NDA 21–756) was initially submitted. The applicant claims this is the date it submitted the first module of NDA 21–756, which was submitted in several modules as part of a rolling NDA submission procedure. It is FDA's position that the approval phase begins when the marketing application is complete. A review of FDA records reveals that the final module of the marketing application was submitted on June 17, 2004, which is considered to be the NDA initially submitted date.

3. *The date the application was approved*: December 17, 2004. FDA has verified the applicant's claim that NDA 21–756 was approved on December 17, 2004.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 990 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments and ask for a redetermination by November 20, 2006. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by March 19, 2007. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Division of Dockets Management. Three copies of any mailed information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 1, 2006.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. E6–15556 Filed 9–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2006D–0303]

Draft Guidance for Industry on Public Availability of Labeling Changes in ''Changes Being Effected'' Supplements; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled ''Public Availability of Labeling Changes in 'Changes Being Effected' Supplements.'' The guidance announces to holders of a new drug application (NDA), an abbreviated new drug application (ANDA), or a biologics license application (BLA), who intend to submit a ''Changes Being Effected'' supplement (CBE supplement) to make a postapproval labeling change, that FDA will make labeling revisions identified in a CBE supplement publicly available upon receipt of the supplement by FDA. The guidance does not have any bearing on supplements that relate to chemistry, manufacturing, and controls changes, nor does it expand the circumstances in which an ANDA holder may effect labeling changes via a CBE supplement.

DATES: Submit written or electronic comments on the draft guidance by November 20, 2006. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Meredith S. Francis, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Public Availability of Labeling Changes in 'Changes Being Effected' Supplements.'' FDA has begun an initiative to facilitate computerized access to drug information by consumers, pharmacists, and health care providers so that they will have faster and more comprehensive access to drug information. As part of this initiative, the agency has been involved in the development of a computerized repository of a broad array of drug information, known as ''DailyMed.'' Among other things, DailyMed contains the information referred to as ''content of labeling,'' which includes all the information found in prescription drug labeling and over-the-counter (OTC) drug facts labeling, including all text, tables, and figures (see 21 CFR 314.50(l)(1)(i)). To maximize its ability to serve as a useful resource to consumers, pharmacists, and health care providers, DailyMed must contain the

most up-to-date and comprehensive drug information available.

Sections 314.70 and 601.12 (21 CFR 314.70 and 601.12) of FDA regulations identify the types of supplemental applications that must be submitted to FDA to effect a labeling change to approved NDAs, ANDAs, and BLAs. Certain types of changes to labeling should receive FDA approval before the changes are implemented. These include all labeling changes that do not fall under § 314.70(c)(6)(iii), (d)(2)(ix), or (d)(2)(x), or under § 601.12(f)(2) or (f)(3). Other changes may be implemented by a sponsor upon the agency's receipt of a CBE supplement. These changes are identified in §§ 314.70(c)(6)(iii) and 601.12(f)(2)(i).

In the past, FDA has not made labeling publicly available until it has been approved, either under a pre-approval supplement or under a CBE supplement. To make the most current labeling submitted to FDA available to health care practitioners and the public, and to facilitate the DailyMed initiative, FDA will make the revised labeling proposed in a CBE supplement publicly available on its Web site and through DailyMed shortly after the CBE supplement is received and before FDA has necessarily reviewed or approved it. If, after reviewing the CBE supplement, FDA decides it should not be approved, FDA will either: (1) Remove the labeling submitted with the CBE supplement from FDA's Web site and from DailyMed and replace that labeling with the previous labeling; or (2) recommend the sponsor amend its labeling and, after the sponsor submits the amended labeling, post the amended labeling on FDA's Web site and provide it to DailyMed promptly.

A sponsor should not submit a CBE supplement to FDA until the sponsor is ready to distribute the labeling that it proposes in that CBE supplement. FDA will consider the submission of a CBE supplement to be consent by the sponsor to post the proposed labeling on FDA's Web site and on DailyMed.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on public availability of labeling changes in CBE supplements. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

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

III. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/cder/guidance/index.htm* or *http://www.fda.gov/ohrms/dockets/default.htm*.

Dated: September 13, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–7983 Filed 9–19–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2384–06; DHS Docket No. USCIS–2006–0048]

RIN 1615–ZA39

Termination of the Designation of Liberia for Temporary Protected Status; Automatic Extension of Employment Authorization Documentation for Liberia TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice of termination of temporary protected status for Liberia.

SUMMARY: Following a review of country conditions and consultations with the appropriate Government agencies, the Secretary of the Department of Homeland Security (DHS) has determined that the temporary protected status (TPS) designation of Liberia should be terminated. This termination will not take effect until October 1, 2007, to provide for an orderly transition. This Notice informs the public of the termination of the Liberia TPS designation and sets forth procedures for nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) with TPS to re-register for TPS benefits. Re-registration is limited to persons who have previously registered for TPS under the designation of Liberia and whose application was granted or remains pending. Liberians (or aliens having no nationality who last habitually resided in Liberia) who have not previously been granted TPS, or who do not already have a pending application for TPS under the designation for Liberia, may not file under late initial filing provisions. Late initial filings (LIFs) are only allowed during an extension of a designation of TPS.

Given the timeframes involved with processing TPS re-registrants, DHS recognizes that re-registrants might not receive a new EAD until after their current EAD expires on October 1, 2006. Accordingly, this Notice automatically extends the validity of EADs issued under the designation of TPS for Liberia for six months through April 1, 2007, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended. New EADs with an expiration date of September 30, 2007, will be issued to eligible TPS beneficiaries who timely re-register and apply for an EAD.

DATES: *Effective Dates:* The termination of Liberia's TPS designation is effective 12:01 a.m., local time, October 1, 2007. To maintain TPS benefits through the 12 months leading up to the effective date of the termination, Liberian TPS beneficiaries must comply with the re-registration requirements described in this Notice. The 60-day re-registration period begins September 20, 2006 and ends November 20, 2006.

FOR FURTHER INFORMATION CONTACT: Matthew Horner, Status and Family Branch, Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue, NW., 2nd Floor, Washington, DC 20529, telephone (202) 272–1505. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Abbreviations and Terms Used in This Document

Act—Immigration and Nationality Act
ASC—USCIS Application Support Center
DHS—Department of Homeland Security
DOS—Department of State
EAD—Employment Authorization Document
Secretary—Secretary of Homeland Security
TPS—Temporary Protected Status
USCIS—U.S. Citizenship and Immigration Services

What authority does the Secretary of Homeland Security have to terminate the designation of TPS for Liberia?

Section 244(b)(1) of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a(b) authorizes the Secretary of Homeland Security, after consultation with appropriate agencies of the Government, to designate a foreign state (or part thereof) for TPS. The Secretary may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of the TPS designation, or any extension thereof, the Secretary, after consultation with appropriate agencies of the Government, must review the conditions in a foreign state designated for TPS to determine whether the conditions for the TPS designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state no longer meets the conditions for the TPS designation, he must terminate the designation. Such termination may not take effect earlier than 60 days after the date the Notice of termination is published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(B). The Secretary may determine the appropriate effective date of the termination for the purpose of providing an orderly transition. 8 U.S.C. 1254a(b)(3)(B); 8 U.S.C. 1254a(d)(3).

Why did the Secretary decide to terminate the designation of Liberia for TPS?

On August 25, 2004, the Secretary of Homeland Security published a Notice in the **Federal Register** at 63 FR 52297 re-designating Liberia for TPS due to ''extraordinary and temporary conditions'' caused by the past armed conflict that prevented aliens from returning to Liberia in safety. The Secretary announced an extension of this TPS designation on August 16, 2005, determining that the conditions warranting such designation continued to be met. 70 FR 48176.

Over the past year, DHS and the Department of State (DOS) have continued to review conditions in Liberia. Based on this review, DHS has determined that the TPS designation of Liberia should be terminated because the extraordinary and temporary conditions that formed the basis of the designation have improved such that they no longer prevent Liberians (or aliens having no nationality who last habitually resided in Liberia) from returning to their home country in safety.

The uncertain situation that characterized the immediate aftermath of the armed conflict's end and the temporary and extraordinary conditions caused by the long war have improved. With the assistance of a large and robust peacekeeping mission, Liberia is now entering a long-term phase of reconstruction and rehabilitation and there exists a democratically-elected government with the capacity to accept the return of its nationals. Indeed, the United Nations High Commissioner for Refugees (UNHCR) decided in February 2006 to shift its policy from ''facilitating'' to ''promoting'' the voluntary repatriation of Liberian refugees based on the existence of conditions for refugees to return in ''safety and dignity.'' (UNHCR Briefing Notes, ''Liberia: UNHCR to promote voluntary repatriation following positive changes,'' February 17, 2006). Further, UNHCR has withdrawn its recommendation (put forward last year) in favor of a moratorium on forced returns of rejected Liberian asylum-seekers stating that, in regard to individuals found not to be eligible for refugee status under the 1951 Convention or OAU Convention, as applicable, UNHCR would have no objection to their possible return to Liberia. (UNHCR Position on International Protection Needs of Asylum-Seekers from Liberia, March 31, 2006). While much remains to be done after years of armed conflict and the destruction and neglect that accompanied it, UNHCR organized the return of more than 50,000 Liberian refugees as of April 2006. More than 151,000 Liberians refugees have returned spontaneously due to the cessation of hostilities and presence of UN peacekeeping troops. Nearly 300,000 internally displaced persons (IDPs) have also returned. While the situation remains fragile, progress has been made in Liberia and a majority of the objectives in the Government of Liberia's 150-day Action Plan are either on track to be completed or due to commence shortly.

Based upon this review, the Secretary, after consultation with appropriate Government agencies, determined that the extraordinary and temporary conditions that prompted the re-designation of Liberia for TPS no longer prevent Liberians (or aliens having no nationality who last habitually resided in Liberia) from returning to their home country in safety, and that the designation of Liberia for TPS should be terminated. *See* 8 U.S.C. 1254a(b)(3)(A) (describing procedures for periodic review of TPS designations); 8 U.S.C. 1254a(b)(3)(B) (describing procedures for terminating a TPS designation).

If I currently have benefits through the TPS designation of Liberia and would like to maintain those benefits until the effective date of the termination (October 1, 2007), do I need to re-register for TPS?

Yes. If you already have received TPS benefits through the designation of Liberia for TPS, your benefits will expire on October 1, 2006. All Liberian TPS beneficiaries must comply with the re-registration requirements described below to maintain TPS benefits through September 30, 2007. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period. 8 U.S.C. 1254a(a)(1), 1254a(f). Failure to re-register without good cause will result in the withdrawal of your temporary protected status and possibly your removal from the United States. 8 U.S.C. 1254a(c)(3)(C). TPS beneficiaries who fail, without good cause, to re-register on time will not be issued a new EAD valid through September 30, 2007.

If I am currently registered for TPS or have a pending application for TPS, how do I re-register to renew my benefits until the effective date of the termination (October 1, 2007)?

All persons previously granted TPS under the designation of Liberia who would like to maintain such status and those whose applications remain pending but who wish to renew their benefits, must re-register by filing the following:

(1) Form I–821, Application for Temporary Protected Status, without fee;

(2) Form I–765, Application for Employment Authorization (see the chart below to determine whether you must submit the one hundred and eighty dollar ($180) filing fee with Form I–765 (for which a fee waiver may be requested));

(3) A biometric services fee of seventy dollars ($70) if you are 14 years of age or older, or if you are under 14 and requesting an EAD extension. The biometric services fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii); and

(4) A photocopy of the front and back of your EAD if you received an EAD during the most recent registration period.

When filing Form I–821, it is important to place your Alien Registration Number on your application. You may find your Alien Registration Number, also known as your ''A Number,'' listed below your

name on your EAD. In addition, please note that you do not need to submit photographs with your TPS application because a photograph will be taken, if needed, when you appear at an USCIS Application Support Center (ASC) for collection of biometrics.

Aliens who have previously registered for TPS but whose applications remain pending should follow these instructions if they wish to renew their TPS benefits. All TPS re-registration applications submitted without the required fees will be returned to the applicants.

What edition of the Form I–821 should be submitted?

Form I–821 has been revised. Only Forms I–821 with revision dates of November 5, 2004 or later will be accepted. The revision date can be found on the bottom right corner of the form. Submissions of older versions of Form I–821 will be rejected. You may obtain immigration forms, free of charge, on the Internet at *http://www.uscis.gov* or by calling the USCIS forms hotline at 1–800–870–3676.

Who must submit the $180 filing fee for the Form I–765, Application for Employment Authorization?

If	Then
You are applying for an extension of your EAD valid through September 30, 2007.	You must complete and file the Form I–765, Application for Employment Authorization, with the $180 fee.
You are not applying for an extension of your EAD	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.
You are applying for an extension of your EAD and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other supporting information) in accordance with 8 CFR 244.20.

Applicants who are only seeking to re-register for TPS and are not requesting an EAD or applying for an extension of their EAD should not check any of the following boxes on the I–765 (Application for Employment Authorization) in response to the question ''I am applying for:''

Permission to accept employment;

Replacement (of lost employment authorization document);

Renewal of my permission to accept employment (attach previous employment authorization document).

If a TPS applicant is not applying for an EAD and he or she incorrectly checks any of these boxes without submitting a $180 fee with his or her Form I–765, the processing of their application may be delayed.

Who must submit the $70 biometric services fee?

The $70 biometric services fee must be submitted by all aliens 14 years of age and older who: (1) Have previously been granted TPS and are now re-registering for TPS; or (2) have an initial application for TPS currently pending, have an EAD bearing the notification ''C–19'' on the face of the card under ''Category'' and wish to renew temporary treatment benefits. In addition, any alien, including one who is under the age of 14, choosing to apply for a new EAD or an extension of an EAD must submit the $70 biometric services fee. This biometric services fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii).

When should I submit my re-registration application for TPS?

Applications must be filed during the 60-day re-registration period from September 20, 2006 until November 20, 2006. You are encouraged to file the application as soon as possible after the start of the 60-day re-registration period.

Where should I submit my re-registration application for TPS?

To facilitate efficient processing, USCIS has designated two post office (P.O.) boxes with the Chicago Lockbox for the filing of TPS applications. The type of TPS re-registration application you submit will determine the P.O. Box where your application must be submitted. Certain applications for TPS re-registration may also be electronically filed or ''E-Filed.'' See below for further filing instructions. Please note that applications should not be filed with a USCIS Service Center or District Office. Failure to file your application properly may delay the processing of your application.

Category 1: Applications for re-registration that do not require the submission of additional documentation and applications to renew temporary treatment benefits must either be electronically filed (''E-Filed'') (see below) or filed at this address: U.S. Citizenship and Immigration Services, P.O. Box 6943, Chicago, IL 60680–6943.

Or, for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, Attn: TPS—Liberia, 427 S. LaSalle—3rd Floor, Chicago, IL 60605–1029.

E-Filing Your Application: If your application falls into Category 1, you are strongly encouraged to E-File your application. During the re-registration period from September 20, 2006 to November 20, 2006, aliens re-registering for TPS and those renewing temporary treatment benefits under this designation may electronically file Form I–821, Form I–765, and associated fees by using E-Filing at the USCIS Internet site, *http://www.uscis.gov.* In order to properly re-register using E-Filing, aliens must begin the E-Filing process by completing Form I–821 online. After the Form I–821 is completed, the system will then automatically link the alien to Form I–765. E-filing will only be available during the 60-day re-registration period. Attempts to E-file after the re-registration period ends November 20, 2006 will not be accepted. Aliens whose application falls into Category 2 (explained below) may not E-File and must send their application materials to the USCIS Chicago Lockbox at the address listed below.

Category 2: Aliens who are filing a re-registration application that requires the submission of additional documentation cannot e-file and must file at the P.O. Box listed below: U.S. Citizenship and Immigration Services, P.O. Box 8677, Chicago, IL 60680–8677.

Or, for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, Attn: TPS—Liberia—[EOIR/Additional Documents], 427 S. LaSalle—3rd Floor, Chicago, IL 60605–1029.

Note: Please make sure to indicate either ''EOIR'' or ''Additional Documents'' on the ''Attn:'' line, as appropriate, after ''Liberia,'' above.

Applications for re-registration require the submission of supporting documentation under the following circumstances:

(A) If one or more of the questions listed in Part 4, Question 2 of Form I–821 apply to the alien, then the alien must submit an explanation, on a separate sheet(s) of paper, and/or additional documentation.

(B) If the alien was granted TPS by an Immigration Judge or the Board of

Immigration Appeals, then the alien must include evidence of the grant of TPS (such as an order from the Executive Office for Immigration Review (EOIR)) with his or her application package.

Are certain aliens ineligible for TPS?

Yes. There are certain criminal and security-related inadmissibility grounds that render an alien ineligible for TPS. 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS, as are aliens described in the bars to asylum. 8 U.S.C. 1254a(c)(2)(B), 1158(b)(2)(A). Aliens should also note that an individual granted TPS will have his or her TPS withdrawn if the alien was not in fact eligible for TPS, fails without good cause to timely re-register, or, with some exceptions, fails to maintain continuous physical presence in the United States from the date the alien first was granted TPS. 8 U.S.C. 1254a(c)(3)(A)–(C).

Am I eligible to receive an automatic extension of my EAD from October 1, 2006, through April 1, 2007?

To receive an automatic extension of your EAD, you must be a national of Liberia (or an alien having no nationality who last habitually resided in Liberia) who has applied for and received an EAD under the TPS designation for Liberia and who has not had TPS withdrawn or denied. This automatic extension is limited to EADs (1) issued on Form I–766, Employment Authorization Document, (2) bearing an expiration date of October 1, 2006, and (3) bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category'.

If I am currently registered for TPS under the designation of Liberia and I am re-registering for TPS, how do I receive a new EAD after the six-month automatic extension expires?

TPS re-registrants will receive a notice in the mail with instructions to appear at an ASC for biometrics collection. When you report to the ASC, you must bring the following documents: (1) Your receipt notice for your re-registration application; (2) your ASC appointment notice; and (3) your current EAD. If no further action is required for your case, you will receive a new EAD, valid through September 30, 2007, through the mail. If your case requires further resolution, USCIS will contact you in writing to explain what additional information, if any, is necessary to resolve your case. If such application is approved, you will receive a new EAD in the mail with an expiration date of September 30, 2007.

May I request an interim EAD at my local District Office?

No. USCIS will not issue interim EADs to TPS applicants and re-registrants at District Offices.

How may employers determine whether an EAD has been automatically extended for six months through April 1, 2007, and is therefore acceptable for completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 through April 1, 2007, employers of Liberian TPS beneficiaries whose EADs have been automatically extended by this Notice must accept the EAD, if it is presented and reasonably appears on its face to be genuine and to relate to the employee, as a valid ''List A'' document. Employers should not ask for additional Form I–9 documentation and should not request proof of Liberian citizenship. An EAD that has been automatically extended for six months by this Notice through April 1, 2007, will actually contain an expiration date of October 1, 2006, and must be a Form I–766 bearing the notation ''A–12 '' or ''C–19'' on the face of the card under ''Category.'' New EADs showing the April 1, 2007, expiration date of the six-month automatic extension will not be issued.

This action by the Secretary of Homeland Security through this **Federal Register** Notice does not affect the right of an applicant for employment or an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This Notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those setting forth re-verification requirements. *See* 8 CFR 274a.2(b)(1)(vii) (employer re-verification requirements). For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a USCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

How may employers determine an employee's eligibility for employment once the automatic extension has expired, between April 1, 2007, and the effective date of the termination of the TPS designation of Liberia on October 1, 2007?

TPS beneficiaries who successfully re-register will possess an EAD with an expiration date of September 30, 2007. This EAD must be accepted for the purposes of verifying identity and employment authorization. Employers are reminded that the laws requiring employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force, as described above.

What can an employee present to an employer for purposes of completing Form I–9, Employment Eligibility Verification?

Qualified individuals who have received a six-month extension of their EADs by virtue of this **Federal Register** Notice may present a TPS-based EAD to their employer, as described above, as proof of identity and employment authorization through April 1, 2007. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present a copy of this **Federal Register** Notice regarding the automatic extension of employment authorization documentation through April 1, 2007. After April 1, 2007, employees may present a new EAD valid through September 30, 2007.

As an alternative to the aforementioned options, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

Does TPS lead to lawful permanent residence?

No. TPS is a temporary benefit that does not lead to lawful permanent residence by itself or confer any other immigration status. 8 U.S.C. 1254a(e), (f)(1), (h). When a country's TPS designation is terminated, TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated), or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration

status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the termination of the TPS designation. Once the Secretary determines that a TPS designation should be terminated, aliens who had TPS under that designation are expected to plan for their departure from the United States and may apply for other immigration benefits for which they may be eligible.

How does my TPS affect my eligibility to apply for other benefits?

TPS does not prevent an alien from applying for another immigration benefit, such as non-immigrant status, adjustment of status based on an immigrant or employment-based petition, or asylum. Likewise, the grant of another immigration status has no bearing on your TPS. 8 U.S.C. 1254a(a)(5). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. 8 U.S.C. 1254a(f)(4). The grounds for denying one immigration benefit, however, may also be grounds for denying or withdrawing TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii), 1254a(c)(2)(B)(ii).

Are nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who entered the United States after October 1, 2002, eligible for TPS?

No. This Notice terminating the TPS designation for Liberia does not change the required dates of continuous residence and continuous physical presence in the United States for Liberians (or aliens having no nationality who last habitually resided in Liberia) wishing to extend their TPS benefits until the effective date of the termination (October 1, 2007). This Notice does not expand TPS eligibility beyond the current TPS requirements for the Liberia designation. To be eligible for continued benefits until the effective date of the termination of the TPS designation of Liberia, nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) must have been continuously physically present in the United States since August 25, 2004, and continuously resided in the United States since October 1, 2002.

May I register under the late initial registration provisions at this time?

No. Certain nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who have not previously applied for TPS cannot establish eligibility for TPS under the ''late initial registration'' provisions. Late initial filings are only permitted during an extension of a TPS designation, pursuant to 8 CFR 244.2(f)(2), whereas the TPS designation of Liberia is being terminated. Thus, Liberians (or aliens having no nationality who last habitually resided in Liberia) who have not previously filed for TPS and been granted, or who do not already have a pending application for TPS under the designation for Liberia, may not file under late initial filing provisions. Late initial registration applications submitted to USCIS under the Liberia designation will be denied.

How does the termination of TPS affect nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who currently receive TPS benefits?

Once the termination of Liberia's TPS designation becomes effective on October 1, 2007, these TPS beneficiaries will maintain the same immigration status they held prior to TPS (unless that status has since expired or been terminated), if any, or any other status they may have acquired while registered for TPS. Accordingly, if an alien held no lawful immigration status prior to being granted TPS and did not obtain any other status during the TPS period, he or she will revert to unlawful status upon the effective date of termination of the TPS designation (October 1, 2007).

At that time, former TPS beneficiaries will no longer be eligible for a stay of removal or employment authorization based on TPS. TPS-related EADs issued under the Liberia designation will not be renewed or extended.

Termination of the TPS designation for Liberia does not necessarily affect pending applications for other forms of immigration relief or protection. Former TPS beneficiaries, however, will begin to accrue unlawful presence as of October 1, 2007, if they have not been granted any other immigration status or protection or if they have no pending application for certain benefits. An alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized or is present in the United States without being admitted or paroled. *See* 8 U.S.C. 1182(a)(9)(B), (C) (aliens unlawfully present).

Notice of Termination of the Designation of Liberia for TPS

By the authority vested in the Secretary of Homeland Security under section 244(b)(3) of the Act, the Secretary determined on August 2, 2006, after consulting with the appropriate Government agencies, that the conditions that prompted designation of Liberia for TPS no longer support the TPS designation. Accordingly, the Secretary orders as follows:

(1) The designation of Liberia under section 244(b)(1)(C) of the Immigration and Nationality Act is terminated effective 12:01 a.m., local time, October 1, 2007. 8 U.S.C. 1254a(b)(3)(B), (d)(3).

(2) There are approximately 3,600 nationals of Liberia (or aliens having no nationality who last habitually resided in Liberia) who have been granted TPS and who may be eligible to re-register, in accordance with the terms and conditions set forth in this Notice, for continued TPS benefits until the effective date of the termination (October 1, 2007).

(3) To maintain TPS and related benefits until the effective date of the termination (October 1, 2007), a national of Liberia (or an alien having no nationality who last habitually resided in Liberia) who was granted TPS and who has not had TPS withdrawn must re-register during the 60-day re-registration period from September 20, 2006 until November 20, 2006.

(4) To re-register, aliens must follow the aforementioned filing procedures set forth in this Notice.

Information concerning the termination of the designation of Liberia for TPS will be available at local USCIS offices upon publication of this Notice and on the USCIS Web site at *http://www.uscis.gov.*

Dated: September 6, 2006.

Michael Chertoff,

Secretary.

[FR Doc. 06–7785 Filed 9–18–06; 12:07 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Proposed Information Collection; Export of Caviar or Meat of Paddlefish or Sturgeon Removed From the Wild

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service) will ask the Office of Management and Budget (OMB) to approve the information collection described below. As required by the Paperwork Reduction Act of 1995 and as part of our continuing efforts to reduce paperwork and respondent burden, we invite the general public and other Federal agencies to take this opportunity to comment on this information collection.

DATES: You must submit comments on or before November 20, 2006.

ADDRESSES: Send your comments on the information collection to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, VA 22203 (mail); *hope_grey@fws.gov* (e-mail); or (703) 358–2269 (fax).

FOR FURTHER INFORMATION CONTACT: To request additional information about this information collection request, contact Hope Grey at one of the addresses above or by telephone at (703) 358–2482.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is associated with regulations implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES regulates international trade in listed species through a system of permits and certificates. The Service assesses permit requests according to criteria in CITES and Federal regulations for the issuance, suspension, revocation, or denial of permits. OMB has approved our current applications for CITES permits and assigned OMB Control Number 1018–0093, which expires June 30, 2007.

We have identified the need to develop a new permit application form specific to permit requests for the export of caviar and/or meat of wild-origin paddlefish and/or U.S. native sturgeon species. In the past, we have used FWS Form 3–200–27 (Export of Wildlife Removed from the Wild) to collect information to allow us to assess such permit requests. However, when using that general form, applicants have had considerable difficulty in understanding what and how to supply the information required. We have developed a new form, FWS Form 3–200–76, to clarify our information collection needs for evaluation of these permit requests.

II. Data

OMB Control Number: None.

Title: Export of Caviar or Meat of Paddlefish or Sturgeon Removed from the Wild, 50 CFR parts 13 and 23.

Service Form Number(s): 3–200–76.

Type of Request: New collection.

Affected Public: Individuals; fishers; commercial dealers/distributors/suppliers and importers/exporters of paddlefish and sturgeon caviar and meat; freight forwarders/brokers; and local, State, tribal, and Federal Governments.

Respondent's Obligation: Required to obtain or retain benefits.

Frequency of Collection: On occasion.

Estimated Number of Respondents: 12.

Estimated Total Annual Responses: 120.

Estimated Time Per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 180.

Estimated Cost to the Public: $17,400. Based on an average rate of $30 per hour, we estimate the dollar value of the annual burden hours to be $5,400. There is a $100 processing fee for each application, for an estimated $12,000 annually.

III. Request for Comments

We invite comments concerning this information collection on:

(1) Whether or not the collection of information is necessary, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(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 respondents.

Your comments in response to this notice are a matter of public record. We will include and/or summarize each comment in our request to OMB for approval of this information collection.

Dated: August 29, 2006.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E6–15560 Filed 9–19–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of a 5-Year Review of Kendall Warm Springs dace, Dudley Bluffs bladderpod, and Dudley Bluffs twinpod

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 5-year review of Kendall Warm Springs dace (*Rhinichthys osculus thermalis*), Dudley Bluffs bladderpod (*Lesquerella congesta*), and Dudley Bluffs twinpod (*Physaria obcordata*) under section 4(c)(2) of the Endangered Species Act of 1973, as amended (Act). The purpose of reviews conducted under section 4(c)(2) of the Act is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants is accurate. The 5-year review is an assessment of the best scientific and commercial data available at the time of the review.

DATES: To allow us adequate time to conduct this review, we must receive your information no later than November 20, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: For Kendall Warm Springs dace—submit information to the Wyoming Field Office, U.S. Fish and Wildlife Service, Attention: 5-year Review, 5353 Yellowstone Road, Suite 308A, Cheyenne, Wyoming 82009. For Dudley Bluffs bladderpod and Dudley Bluffs twinpod—submit information to the Western Colorado Field Office, U.S. Fish and Wildlife Service, Attention: 5-year Review, 764 Horizon Drive, Building B, Grand Junction, Colorado 81506–3946. Information received in response to this notice and review, as well as other documentation in our files, will be available for public inspection, by appointment, during normal business hours, at the above addresses.

FOR FURTHER INFORMATION CONTACT: For Kendall Warm Springs dace—contact Brian Kelly, Wyoming Field Supervisor, at the above address, or telephone 307–772–2374. For Dudley Bluffs bladderpod and Dudley Bluffs twinpod—contact Al Pfister, Western Colorado Project Leader, at the above address, or telephone 970–243–2778.

SUPPLEMENTARY INFORMATION:

Why Is a 5-Year Review Being Conducted?

Section 4(c)(2)(A) of the Act (16 U.S.C. 1531 *et seq.*) requires that we conduct a review of listed species at least once every 5 years. We are then, under section 4(c)(2)(B) and the provisions of subsections (a) and (b) of section 4, to determine, on the basis of such a review, whether or not any species should be removed from the List of Endangered and Threatened Wildlife and Plants (delisted), or reclassified from endangered to threatened (downlisted), or reclassified from threatened to endangered (uplisted). The 5-year review is an assessment of the best scientific and commercial data available at the time of the review. Therefore, we are requesting submission of any new information (best scientific and commercial data) on the following species since their original listings as threatened (Dudley Bluffs bladderpod and Dudley Bluffs twinpod (55 FR 4152, February 6, 1990)) and endangered (Kendall Warm Springs dace (35 FR 16047, October 13, 1970; 39 FR 1175, January 4, 1974)). If the present classification of any of these species is not consistent with the best scientific and commercial information available, the Service will recommend whether or not a change is warranted in the Federal classification of the species. Any change in Federal classification would require a separate rule-making process.

Our regulations at 50 CFR 424.21 require that we publish a notice in the **Federal Register** announcing those species currently under active review. This notice announces our review of the Kendall Warm Springs dace, Dudley Bluffs bladderpod, and Dudley Bluffs twinpod.

What Information Is Considered in the Review?

A 5-year review considers all new information available at the time of the review. These reviews will consider the best scientific and commercial data that have become available since the current listing determination or most recent status review of each species, such as—(A) Species biology, including but not limited to population trends, distribution, abundance, demographics, and genetics; (B) Habitat conditions, including but not limited to amount, distribution, and suitability; (C) Conservation measures that have been implemented to benefit the species; (D) Threat status and trends (see five factors under heading ''How do we determine whether a species is endangered or threatened?''); and (E) Other new information, data, or corrections, including but not limited to taxonomic or nomenclatural changes, identification of erroneous information contained in the List of Endangered and Threatened Wildlife and Plants, and improved analytical methods.

Public Solicitation of New Information

We request any new information concerning the status of Kendall Warm Springs dace, Dudley Bluffs bladderpod, and Dudley Bluffs twinpod. See ''What information is considered in the review?'' heading for specific criteria. Information submitted should be supported by documentation such as maps, bibliographic references, methods used to gather and analyze the data, and/or copies of any pertinent publications, reports, or letters by knowledgeable sources. We specifically request information regarding data from any systematic surveys, as well as any studies or analysis of data that may show population size or trends; information pertaining to the biology or ecology of the species; information regarding the effects of current land management on population distribution and abundance; and recent information regarding conservation measures that have been implemented to benefit the species. Additionally, we specifically request information regarding the current distribution of populations and evaluation of threats faced by the species in relation to the five listing factors (as defined in section 4(a)(1) of the Act) and each species listed status as judged against the definition of threatened or endangered. Finally, we solicit recommendations pertaining to the development of or potential updates to recovery plans and additional actions or studies that would benefit these species in the future.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home addresses from the supporting record, which we will honor to the extent allowable by law. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

How Are These Species Currently Listed?

The List of Endangered and Threatened Wildlife and Plants (List) is found in 50 CFR 17.11 (wildlife) and 17.12 (plants). Amendments to the List through final rules are published in the **Federal Register**. The List also is available on our Internet site at *http://endangered.fws.gov/wildlife.html#Species.* In Table 1 below, we provide a summary of the listing information for the species under active review.

TABLE 1.—SUMMARY OF LISTING INFORMATION FOR KENDALL WARM SPRINGS DACE, DUDLEY BLUFFS BLADDERPOD, AND DUDLEY BLUFFS TWINPOD

Species		Historic range	Where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
PLANTS							
Twinpod, Dudley Bluffs.	*Physaria obcordata*	U.S.A. (CO)	Entire	T	374	NA	NA
Dudley Bluffs bladderpod.	*Lesquerella congesta.*	U.S.A. (CO)	Entire	T	374	NA	NA
*	*	*	*	*	*	*	
FISH							
Dace, Kendall Warm Springs.	*Rhinichthys osculus thermalis.*	U.S.A. (WY)	Entire	E	2	NA	NA
*	*	*	*	*	*	*	

Definitions Related to This Notice

The following definitions are provided to assist those persons who contemplate submitting information regarding the species being reviewed—(A) Species includes any species or subspecies of fish, wildlife, or plant, and any distinct population segment of any species of vertebrate, which interbreeds when mature; (B) Endangered means any species that is in danger of extinction throughout all or a significant portion of its range; (C) Threatened means any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.

How Do We Determine Whether a Species Is Endangered or Threatened?

Section 4(a)(1) of the Act establishes that we determine whether a species is endangered or threatened based on one or more of the five following factors—(A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence. Section 4(a)(1) of the Act requires that our determination be made on the basis of the best scientific and commercial data available.

What Could Happen as a Result of This Review?

If we find that there is new information concerning Kendall Warm Springs dace, Dudley Bluffs bladderpod, and Dudley Bluffs twinpod indicating a change in classification may be warranted, we may propose a new rule that could do one of the following—(a) reclassify the species from endangered to threatened (downlist); (b) reclassify the species from threatened to endangered (uplist); or (c) remove the species from the List. If we determine that a change in classification is not warranted, then these species will remain on the List under their current status.

Authority

This document is published under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: August 15, 2006.

James J. Slack,

Regional Director, Denver, Colorado.

[FR Doc. 06–7924 Filed 9–19–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Safe Harbor Agreement and Application for an Enhancement of Survival Permit for the Tempe Reach of the Rio Salado Environmental Restoration Project

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application; request for comments.

SUMMARY: The City of Tempe (Applicant) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit. The requested permit, which is for a period of 50 years, would authorize incidental take of Yuma clapper rail (*Rallus longirostris yumanensis*), southwestern willow flycatcher (*Empidonax traillii extimus*), and bald eagle (*Haliaeetus leucocephalus*) as a result of operation and maintenance activities associated with the Rio Salado Project. We invite public comment.

DATES: To ensure consideration, written comments must be received on or before October 20, 2006.

ADDRESSES: Persons wishing to review the application, draft Safe Harbor Agreement (SHA), or other related documents may obtain a copy by written or telephone request to the Field Supervisor, U.S. Fish and Wildlife Service, Arizona Ecological Services Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951 (602/242–0210). Electronic copies of these documents will also be available for review on the Arizona Ecological Services Office Web site, *http://www.fws.gov/arizonaes/*. The application and related documents will be available for public inspection, by appointment only, during normal business hours (8 a.m. to 4:30 p.m.) at the Service's Phoenix office. Comments concerning the application, draft SHA, or other related documents should be submitted in writing to the Field Supervisor (address above) or by fax to (602) 242–2513. Please refer to permit number TE–133286–0 when submitting comments. All comments received, including names and addresses, will become a part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Mike Martinez at the U.S. Fish and Wildlife Service, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951, 602/242–0210 x224, or by email at *Mike_Martinez@fws.gov*.

SUPPLEMENTARY INFORMATION: The Applicant has applied to the Service for an enhancement of survival permit pursuant to Section 10(a)(1)(A) of the Endangered Species Act (Act), as amended.

The Applicant plans to conduct operation and maintenance activities associated with the Rio Salado Project, including maintenance of habitat vegetation; reintroduction of non-listed species into created habitat; maintenance and operation of urban park and landscaping; maintenance of trails, paths, and service roads; maintenance of water quality and flood control capability within the Salt River, Indian Bend Wash, and Tempe Town Lake; the planning, development, and operation of urban (public and private) development adjacent to the Tempe Town Lake; and operation of events on Tempe Town Lake and within the linear park adjacent to Tempe Town Lake. The Rio Salado Project is a cooperative project between the Applicant and the U.S. Army Corps of Engineers to restore, enhance, and maintain 182 acres of native riparian and wetland vegetation along the Salt River from McClintock Drive to Priest Drive (excluding Tempe Town Lake) and Indian Bend Wash from McKellips Road to the confluence with the Salt River.

A final rule to delist the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) was published in the **Federal Register** on April 14, 2006 (71 FR 19452). As a non-listed species, the cactus ferruginous pygmy-owl cannot be a covered species in the SHA. However, the Applicant intended that the species be covered in the SHA and will continue to provide the same conservation measures originally described in the agreement.

Section 9 of the Act prohibits take of threatened or endangered species. However, the Service, under limited circumstances, may issue permits to take threatened and endangered wildlife species incidental to, and not the purpose of, otherwise lawful activities.

We provide this notice under section 10(c) of the Act (16 U.S.C. 1531 *et seq.*) and its implementing regulations (50 CFR 17.22), and the National Environmental Policy Act (42 U.S.C. 4371 *et seq.*) and its implementing regulations (40 CFR 1506.6).

Christopher Todd Jones,

Acting Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 06–8006 Filed 9–19–06; 8:45 am]

BILLING CODE 4510–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement and Receipt of Application for an Enhancement of Survival Permit Associated With the Restoration of Habitat for Utah Prairie Dogs on Private Land in Sevier County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Mr. Harlow Brown (Applicant/Cooperator) has applied to the Fish and Wildlife Service (Service) for an Enhancement of Survival Permit (ESP) for the Utah prairie dog (UPD) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). This permit application includes a Safe Harbor Agreement (SHA) between the Applicant and the Service. The Service requests information, views, and opinions from the public via this notice. Further, the Service is soliciting information regarding the adequacy of the SHA as measured against the Service's Safe Harbor Policy and the regulations that implement it.

DATES: Written comments on the permit application must be received on or before October 20, 2006.

ADDRESSES: Persons wishing to review the SHA and the ESP application may obtain a copy by writing the Service's Mountain-Prairie Regional Office, Denver, Colorado. Documents also will be available for public inspection during normal business hours at the Regional Office, 134 Union Boulevard, Denver, Colorado 80228–1807, or the Utah Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. Written data or comments concerning the SHA or ESP application should be submitted to the Regional office and must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE120720–0 in your comments, or in the request for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Pat Mehlhop, Regional Safe Harbor Coordinator (see Denver address above), telephone 303–236–4215, or Larry Crist, Acting Utah Field Supervisor (see West Valley City address above), telephone 801–975–3330.

SUPPLEMENTARY INFORMATION: The UPD is the westernmost member of the genus *Cynomys*. The species' range, which is limited to the southwestern quarter of Utah, is the most restricted of all prairie dog species in the United States. Distribution of the UPD has been greatly reduced due to disease (plague), poisoning, drought, and human-related habitat alteration. Protection of this species and enhancement of its habitat on private land will benefit recovery efforts.

The primary objective of this SHA is to encourage voluntary conservation measures to benefit the species and the landowner. Through this agreement, the landowner will receive relief from any additional section 9 liability under the Act beyond that which exists at the time the agreement is signed (''regulatory baseline''). The property is currently used as irrigated pasture land and is bordered by other private land. At the present time, the property supports several active prairie dog colonies. Foraging and visual surveillance habitat will be further enhanced for the UPD by reducing the vegetation density and by seeding to improve the forage quality for UPD. The habitat improvements will be maintained throughout the term of this agreement through managed grazing. The Cooperator will receive an ESP that authorizes implementation of the conservation actions and other provisions of this Agreement and authorizes incidental take of the covered species above the Cooperator's baseline responsibilities, as defined in the SHA. The proposed SHA and permit would become effective upon signature of the SHA and issuance of the permit and would remain in effect for 25 years. We have made the determination that the proposed activities described in the application and SHA will increase available prairie dog habitat and potentially expand several colonies of Utah prairie dogs on the Brown property to the north and the south. The action is categorically excluded under the National Environmental Policy Act (NEPA). This notice is provided pursuant to the NEPA, section 10 of the Act, and the Service's Safe Harbor Policy (64 FR 32717).

The Service has evaluated the impacts of this action under the NEPA and determined that it warrants categorical exclusion as described in 516 DM 8, 8.5 C.(1). The Service will evaluate whether the issuance of the ESP complies with section 7 of the Act by conducting an intra-Service section 7 consultation on the issuance of the permit. The result of the biological opinion, in combination with the above finding and any public comments, will be used in the final analysis to determine whether or not to issue the requested ESP, pursuant to the regulation that guide issuance of the type of permit.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: August 21, 2006.

James J. Slack,

Acting Regional Director, Denver, Colorado.

[FR Doc. E6–15590 Filed 9–19–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Safe Harbor Agreement and Receipt of Application for an Enhancement of Survival Permit Associated With the Restoration of Habitat for Utah Prairie Dogs on Private Land in Piute County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Mr. Tarval Torgersen (Applicant/Cooperator) has applied to the Fish and Wildlife Service (Service) for an Enhancement of Survival Permit (ESP) for the Utah prairie dog (UPD) pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). This permit application includes a Safe Harbor Agreement (SHA) between the Applicant and the Service. The Service requests information, views, and opinions from the public via this notice. Further, the Service is soliciting information regarding the adequacy of the SHA as measured against the Service's Safe Harbor Policy and the regulations that implement it.

DATES: Written comments on the permit application must be received on or before October 20, 2006.

ADDRESSES: Persons wishing to review the SHA and the ESP application may obtain a copy by writing the Service's Mountain-Prairie Regional Office, Denver, Colorado. Documents also will be available for public inspection during normal business hours at the Regional Office, 134 Union Boulevard, Denver, Colorado 80228–1807, or the Utah Field Office, U.S. Fish and Wildlife Service, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. Written data or comments concerning the SHA or ESP application should be submitted to the Regional office and must be in writing to be processed. Comments must be submitted in writing to be adequately considered in the Service's decision-making process. Please reference permit number TE131543–0 in your comments,

or in the request for the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Pat Mehlhop, Regional Safe Harbor Coordinator (see Denver address above), telephone 303–236–4215, or Larry Crist, Acting Utah Field Supervisor (see West Valley City address above), telephone 801–975–3330.

SUPPLEMENTARY INFORMATION: The UPD is the westernmost member of the genus *Cynomys*. The species' range, which is limited to the southwestern quarter of Utah, is the most restricted of all prairie dog species in the United States. Distribution of the UPD has been greatly reduced due to disease (plague), poisoning, drought, and human-related habitat alteration. Protection of this species and enhancement of its habitat on private land will benefit recovery efforts.

The primary objective of this SHA is to encourage voluntary conservation measures to benefit the species and the landowner. Through this agreement, the landowner will receive relief from any additional section 9 liability under the Act beyond that which exists at the time the agreement is signed (''regulatory baseline''). The property is currently used as grazing land and cropland and is bordered on three sides by private lands. At the present time, the property supports several active prairie dog colonies. Foraging habitat and habitat that offers visual surveillance for the prairie dogs will be further enhanced for the UPD by restoring irrigated cropland to perennially-irrigated grazing land, and by implementing a prescribed grazing plan to increase forage quantity and quality. The habitat improvements will be maintained throughout the term of this agreement through managed grazing. The Cooperator will receive an ESP that authorizes implementation of the conservation actions and other provisions of this Agreement and authorizes incidental take of the covered species above the Cooperator's baseline responsibilities, as defined in the SHA. The proposed SHA would become effective upon signature of the SHA and issuance of the permit, and would remain in effect for 15 years. The requested permit would remain in effect for 35 years. We have made the determination that the proposed activities described in the application and SHA will increase available prairie dog habitat and potentially expand several colonies of prairie dogs on private land. The action is categorically excluded under the National Environmental Policy Act (NEPA). This notice is provided pursuant to the NEPA, section 10 of the Act, and the Service's Safe Harbor Policy (64 FR 32717).

The Service has evaluated the impacts of this action under the NEPA and determined that it warrants categorical exclusion as described in 516 DM 8, 8.5 C.(1). The Service will evaluate whether the issuance of the ESP complies with section 7 of the Act by conducting an intra-Service section 7 consultation on the issuance of the permit. The result of the biological opinion, in combination with the above finding and any public comments, will be used in the final analysis to determine whether or not to issue the requested ESP, pursuant to the regulations that guide issuance of the type of permit.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Dated: August 21, 2006.

James J. Slack,

Acting Regional Director, Denver, Colorado.

[FR Doc. E6–15596 Filed 9–19–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–06–1220–P–PM]

Notice of Off-Highway Vehicle (OHV) Travel Restriction for Factory Butte Area, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Off-Highway Vehicle (OHV) travel restriction for motorized use in the Factory Butte area, Bureau of Land Management, Richfield Field Office, Utah.

SUMMARY: Notice is hereby given that effective immediately, the Bureau of Land Management (BLM), Richfield Field Office, is restricting OHV travel to designated routes on 142,023 acres of public lands near Caineville, Utah, known as the Factory Butte area. This restriction does not apply to State or private lands located in the area. Within the Factory Butte area 2,602 acres currently designated as open will remain open and 3,843 acres currently designated as closed will remain closed to OHV travel. The restriction to designated routes affects the remaining 142,023 acres of the area located in portions of T. 27 S., R. 6–10 E.; T. 28 S., R. 7–10 E.; T. 29 S., R. 7 & 8 E.; and T. 30 S., R. 7 & 8 E., Salt Lake Meridian. The purpose of the restriction is to protect threatened and endangered species that have been adversely impacted or are at risk of being adversely impacted by OHV use. This restriction will remain in effect until the conditions giving rise to the restriction have been sufficiently addressed or the Richfield Field Office Resource Management Plan that is currently being prepared is signed by the authorized officer and becomes final.

EFFECTIVE DATE: This notice and the OHV restriction are effective immediately.

FOR FURTHER INFORMATION CONTACT: Cornell Christensen, Field Office Manager, BLM Richfield Field Office, 150 East 900 North, Richfield, Utah 84701; Phone 435–896–1500.

SUPPLEMENTARY INFORMATION: In 1982, the Henry Mountains Management Framework Plan (MFP) designated the majority of public lands in the Factory Butte area managed by the BLM's Richfield Field Office as ''open'' to off-road vehicle (*i.e.*, off-highway vehicle) use. An OHV activity area of 640 acres was identified where intensive OHV use was occurring. However, the surrounding areas were also left open to cross-country OHV use. Since 1982, OHV use has significantly increased throughout the Factory Butte area. Surveys conducted have noted mortality to threatened and endangered plant populations from cross-country OHV use. Based on this information, BLM's authorized officer has determined that OHV use in the area is causing or will cause adverse effects to threatened and endangered plant species. Consequently, OHV use on 142,023 acres in the Factory Butte area is being restricted to designated routes, with 2,602 acres remaining open to cross-country OHV use and 3,843 acres remaining closed. A map showing the affected areas is available for public inspection at the BLM's Richfield Field Office at the above address. This map may be revised in the future based on monitoring of resource conditions and trends in the area. OHV use on the remainder of the public lands administered by BLM's Richfield Field Office will be unchanged and managed according to the existing land use plans. This restriction order applies to all motorized vehicle use with the exception of law enforcement and emergency operations, administrative uses, or other uses authorized by regulations.

Implementation

A map showing the portions of the Factory Butte area affected by this restriction is available for public review at the BLM's Richfield Field Office. The map shows the OHV designations

within the area and routes open to OHV travel. The map may be revised in the future based on monitoring of resource conditions and trends. Maps and other appropriate educational information will be posted on kiosks at staging areas. Signs will be posted at strategic entry locations along the boundaries and on the routes designated for use by OHVs.

Authority: This restriction notice is issued under the authority of 43 CFR 8341.2.

Violations of this restriction are punishable by a fine not to exceed $1,000 or imprisonment not to exceed 12 months.

Persons who are administratively exempt from the restrictions contained in this notice include: any Federal, State or local officer or employee acting within the scope of their duties, members of any organized rescue or fire-fighting force in the performance of an official duty, and any person holding written authorization from the BLM.

Dated: July 31, 2006.

Henri R. Bisson,

Field Office Manager.

[FR Doc. 06–7973 Filed 9–19–06; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF INTERIOR

Bureau of Land Management

[UT–062–06–1220–PM]

Notice of Supplementary Rules Requiring Human Waste Carry-Out for White Wash Sand Dunes Area, Moab Field Office, UT

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Interim Final Supplementary Rules Requiring Human Waste Carry-out for White Wash Sand Dunes Area, Moab Field Office, Utah.

SUMMARY: These interim final supplementary rules, applicable to specified public lands administered by BLM's Moab Field Office, require the possession, set up for usage, and use of portable toilets for individuals and groups camping on public lands administered by the Moab Field Office in the White Wash Sand Dunes area of Grand County Utah. This action is necessary to protect public health and maintain public land recreation opportunities in the area.

DATES: These interim final supplementary rules are effective September 20, 2006 and will remain in effect until modified by the authorized officer or such time as constructed toilets are installed to provide reasonable coverage of the geographic area. We invite comments until November 20, 2006.

ADDRESSES: Deliver all comments concerning the interim final rule by one of the following means:

Mail, personal, or messenger delivery: address your comment to the Bureau of Land Management, Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532; Internet: you may access the Federal eRulemaking Portal: *http://www.regulations.gov*; E-mail: you may send comments to *momail@ut.blm.gov*.

FOR FURTHER INFORMATION CONTACT: Russell von Koch, Recreation Branch Chief, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, or telephone 435–259–2100.

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

Written comments on the interim final supplementary rules should be specific, confined to issues pertinent to the interim final supplementary rules, and should explain the reason for any recommended change. Where possible, comments should reference the specific section or paragraph of the rules that the comment is addressing. BLM need not consider or include in the Administrative Record for the final supplementary rules: (a) Comments that BLM receives after the close of the comment period (see **DATES**), unless they are postmarked or electronically dated before the deadline, or (b) comments delivered to an address other than those listed above (See **ADDRESSES**).

You may also access and comment on the interim final supplementary rules at the Federal eRulemaking Portal by following the instructions at that site (see **ADDRESSES**).

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, during regular business hours (7:45 a.m. to 3:45 p.m.), Monday through Friday, except Federal holidays. Individual respondents may request confidentiality. If you wish to request that BLM consider withholding your name, street address, and other contact information (such as: Internet address, FAX or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. BLM will make available for public inspection in their entirety all submissions from organizations, businesses, and government agencies, or from individuals identifying themselves as representatives or officials of such entities.

II. Background and Purpose

Improper disposal of human body waste by recreation visitors to undeveloped public lands in the White Wash Sand Dunes area near Green River, Utah, has produced conditions hazardous to public health. Subsequent to receiving public complaints, the Sanitarian for the Southeastern Utah Health Department has requested BLM to implement corrective action. Problems identified include dumping of recreational vehicle holding tanks on public roads (an illegal activity under both State and Federal law), human waste on the ground at camping areas, and frequent burying of human waste near camping areas. In addition to the public health issue, the presence of solid human waste impacts the quality of recreation opportunities in the White Wash Sand Dunes area. The interim final supplementary rules are necessary to halt ongoing impacts, provide for sanitation and public safety, and maintain the quality of recreation opportunities.

BLM finds good cause to publish these supplementary rules on an interim final basis, effective the date of publication, because of public health and safety concerns within the management area. The Moab Field Office was contacted on June 14, 2006, by the Sanitarian for the Southeastern Utah Health Department regarding human waste at White Wash Sand Dunes. The problems identified by the Sanitarian include frequent dumping of holding tanks from recreational vehicles along the main access road (presumably done as people leave the area), human waste on the ground at camping areas, and the high density of poorly buried human waste near camping areas. The Health Department has received several complaints about this situation. These conditions represent an immediate threat to human health, and cause a continuous nuisance to recreational visitors and users of nearby lands.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

These interim final supplementary rules are not a significant regulatory action and are not subject to review by the Office of Management and Budget under Executive Order 12866. The interim final supplementary rules will not have an annual effect of $100 million or more on the economy. They are not intended to affect commercial

activity, but impose a rule on disposal of the human waste of recreational visitors for health protection reasons in a limited area of public lands. The supplementary rules will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The interim final supplementary rules will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, but in fact are in furtherance of cooperation with State and local agencies. The interim final supplementary rules do not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor do they raise novel legal or policy issues. They merely impose a requirement to possess and use portable toilets on recreational users of a limited portion of the public lands in Utah in order to protect human health, safety, and the environment.

Clarity of the Interim Final Supplementary Rules

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these interim final supplementary rules easier to understand, including answers to questions such as the following:

(1) Are the requirements in the interim final supplementary rules clearly stated?

(2) Do the interim final supplementary rules contain technical language or jargon that interferes with their clarity?

(3) Does the format of the interim final supplementary rules (grouping and order of sections, use of headings, paragraphing, *etc.*) aid or reduce their clarity?

(4) Would the interim final supplementary rules be easier to understand if they were divided into more (but shorter) sections?

(5) Is the description of the interim final supplementary rules in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the interim final supplementary rules? How could this description be more helpful in making the interim final supplementary rules easier to understand?

Please send any comments you may have on the clarity of the interim final supplementary rules to one of the addresses specified in the **ADDRESSES** section.

National Environmental Policy Act

The interim final supplementary rules do not constitute a major Federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C). BLM has determined that this supplementary rule requiring the use of portable toilets for overnight camping is an example of routine and continuing government business, including such things as supervision, administration, operations, maintenance and replacement activities having limited context and intensity, *e.g.*, limited size and magnitude or short-term effects. Therefore, it is categorically excluded from environmental review under section 102(2)(C) of the National Environmental Policy Act, pursuant to 516 Departmental Manual (DM), *Chapter 2, Appendix 1*. In addition, the supplementary rule does not meet any of the 10 criteria for exceptions to categorical exclusions listed in *516 DM, Chapter 2, Appendix 2*. Pursuant to Council on Environmental Quality regulations (*40 CFR 1508.4*) and the environmental policies and procedures of the Department of the Interior, the term ''categorical exclusions'' means a category of actions which do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (RFA) of 1980, as amended, 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA requires a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities. The interim final supplementary rules do not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific public lands. Therefore, BLM has determined under the RFA that the interim final supplementary rules would not have a significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

These interim final supplementary rules do not constitute a ''major rule'' as defined at 5 U.S.C. 804(2). The interim final supplementary rules merely contain a requirement that recreational users use portable toilets and remove their solid human wastes from certain public lands. The interim final supplementary rules would not affect business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

The interim final supplementary rules would not impose an unfunded mandate on State, local, or tribal governments in the aggregate, or the private sector, of more than $100 million per year; nor would they have a significant or unique effect on small governments. These interim final supplementary rules do not require anything of State, local, or tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The interim final supplementary rules are not a government action capable of interfering with constitutionally protected property rights. The interim final supplementary rules do not address property rights in any form, and do not cause the impairment of anybody's property rights. Therefore, the Department of the Interior has determined that these interim final supplementary rules would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132, Federalism

The interim final supplementary rules 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. The interim final supplementary rules apply on a limited area of land in only one State, Utah, and are intended to comply with State and local government requirements. Therefore, BLM has determined that the interim final supplementary rules do not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, we have determined that the interim final supplementary rules will not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. The supplementary rules comprise a provision requiring the use of portable toilets to protect human health and the environment.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that these interim final supplementary rules do not include policies that have tribal implications. The interim final supplementary rules do not affect lands held for the benefit of Indians, Aleuts, or Eskimos.

Paperwork Reduction Act

These interim final supplementary rules do not contain information collection requirements that the Office of Management and Budget must approve under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Author

The principal author of the interim final supplementary rules is Russell von Koch, Recreation Branch Chief, Moab Field Office, Bureau of Land Management.

Human Waste Carry-Out Supplementary Rules

1. Definition

Portable toilets may be—

a. A containerized and reusable system;

b. A commercially available biodegradable system that is landfill disposable; or

c. A toilet within a camper, trailer, or motor home.

2. Rules

a. You must possess, set up for usage, and use portable toilets for solid human body waste during overnight camping activity in the following area: Public lands administered by the Bureau of Land Management in and adjacent to the White Wash Sand Dunes near Green River, Utah, in the following sections: T. 23 S., R. 17 E., Sections 21, 22, and 28.

b. You must dispose of portable toilet waste off public land. This requirement is effective on a year-round basis and will remain in effect for camping use until modified by the authorized officer or until such time as constructed toilets are installed to provide reasonable coverage of the geographic area.

c. Campers at the above-described area at White Wash Sand Dunes must not bury, or leave exposed, solid human body waste and toilet paper soiled with solid human body waste. The draining of sewage from a trailer or other vehicle upon the public lands, except in places or receptacles provided for that purpose, is prohibited by 43 CFR 8365.1–1(b)(3).

3. Exceptions

The portable toilet requirements do not apply to activities specifically exempted by BLM, or to military, fire, emergency, and law enforcement actions. Backpacking is not regulated by these supplementary rules. Backpacking is defined as camping more than 1 mile from a road without a vehicle.

4. Implementation

This notice and a map depicting the area included under this human waste carry-out requirement are available for public review at the Moab Field Office. The area covered by this requirement is also shown on a map on the Moab Field Office's Web site at *http://www.blm.gov/utah/moab*. BLM will provide public land users with information about the human waste carry-out requirement using signs at or leading to major camping areas in the White Wash Sand Dunes area. Enforcement of the human waste carry-out rules will be taken as necessary in accordance with 43 CFR 8360.0–7, or violators may be subject to the enhanced penalties provided for by 18 U.S.C 3571.

5. Future Planning

This notice shall not be construed as a limitation on BLM's future planning efforts and/or management of camping use on the public lands. BLM will periodically monitor resource conditions and trends in the area described above and may modify this notice or implement additional limitations or closures as necessary.

Dated: August 2, 2006.

Gene R. Terland,

Acting, State Director.

[FR Doc. 06–7929 Filed 9–19–06; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

White-Tailed Deer Management Plan Environmental Impact Statement, Rock Creek Park, Washington, DC

AGENCY: National Park Service.

ACTION: Notice of intent to prepare a White-tailed Deer Management Plan Environmental Impact Statement, Rock Creek Park, Washington, DC.

SUMMARY: Under the provisions of the National Environmental Policy Act of 1969, the National Park Service (NPS) is preparing a White-tailed Deer Management Plan Environmental Impact Statement (EIS) for Rock Creek Park, Washington, DC. The purpose of this plan and EIS is to develop a deer management plan that supports long-term protection, preservation, and restoration of native vegetation and other natural and cultural resources within the park. A scoping brochure will be prepared that details the issues identified to date, and possible alternatives to be considered. Copies of the brochure may be obtained from Rock Creek Park Natural Resources Division or the NPS Web site (*http://www.nps.gov/rocr*).

DATES: The NPS will accept comments from the public for 60 days from the publication of this notice. In addition, public scoping meetings will be conducted at the Rock Creek Park Nature Center. Please check the local newspapers, the NPS Web site (*http://www.nps.gov/rocr*) or contact the Natural Resources Division, Rock Creek Park.

ADDRESSES: Information will be available for public review and comment at the Rock Creek Park Nature Center, local public libraries, NPS Web site (*http://www.nps.gov/rocr*), and the Planning, Environment and Public Comment (PEPC) Web site (*http://parkplanning.nps.gov*).

FOR FURTHER INFORMATION CONTACT: Adrienne A. Coleman, Superintendent, Rock Creek Park, 3545 Williamsburg Lane, NW., Washington, DC 20008, (202) 895–6000.

SUPPLEMENTARY INFORMATION: The purpose of this plan and environmental impact statement is to develop a deer management plan that supports long-term protection, preservation, and restoration of native vegetation and other natural and cultural resources within the park. A deer management plan is needed at this time to address: the potential of deer becoming the dominant force in the park's ecosystem and adversely impacting native vegetation and other wildlife, excessive deer browse causing a decline in forest regeneration and impacting the existing shrubs and herbaceous species, deer impacts on cultural landscapes, and opportunities for coordinating management actions with other jurisdictional entities.

There are a number of objectives for this plan. The plan would develop and implement informed, scientifically-based vegetation impact levels and corresponding measures of deer population size that would serve as a threshold for taking management actions. In addition, it would maintain, restore and promote the natural abundance, distribution, and diversity of native plant species by reducing excessive deer browsing, trampling, and non-native seed dispersal. The plan would allow for white-tailed deer populations within the park while protecting the natural abundance, distribution, and diversity of other native wildlife, including ground nesting birds, from the adverse effects of deer. The plan would also protect the habitat of rare plant and animal species from deer impacts. In addition, the protection of cultural landscapes and visitor safety conflicts with deer would also be addressed. Finally, an objective of the plan would be to call for the sharing of information regarding the role and management of white-tailed deer among park staff, surrounding communities, the public, and other nearby governmental entities managing deer.

Preliminary alternatives that will be considered to meet the purpose and need include: reproductive control, fencing of large park areas to exclude park deer, lethal reduction with and without firearms, limited capture and euthanasia, and a combination of these management strategies. The continuation of current management (no action alternative) will also be analyzed.

Persons commenting on the purpose, need, objectives, preliminary alternatives, or any other issues associated with the plan, may submit comments by any one of several methods. To be most helpful to the scoping process, comments should be received within 60 days of the publication of this Notice of Intent. Comments may be mailed to Natural Resource Management, Rock Creek Park, 3545 Williamsburg Lane, NW., Washington, DC 20008. Comments may also be sent via the Internet at *http://parkplanning.nps.gov.* Please submit Internet comments as a text file avoiding the use of special characters and any form of encryption. Please put ''Deer Management'' in the subject line and include your name and return address in your Internet message. If commenters do not receive a receipt confirmation from the system, please contact the Natural Resources Division at (202) 895–6221. Comments may also be hand-delivered to Rock Creek Park Headquarters, 3545 Williamsburg Lane, NW., Washington, DC 20008.

It is the NPS's practice to make comments, including names, home addresses, home phone numbers and e-mail addresses of respondents, available for public review. Individual respondents may request that we withhold their names and/or home addresses, etc., but if they wish us to consider withholding this information they must state this prominently at the beginning of their comments. In addition, they must present a rationale for withholding this information. This rationale must demonstrate that disclosure would constitute a clearly unwarranted invasion of privacy. Unsupported assertions will not meet this burden. In the absence of exceptional, documentable circumstances, this information will be released. The NPS will always make submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

If commenters wish to have names and/or addresses withheld and comment through the NPS Web site, it is still possible to receive additional information on the project in the future by filling in the name and address field and marking ''keep my contact information private'' where indicated. If commenters do not want to receive any additional information on the project in the future, they may type ''N/A'' in the name and address field.

Dated: August 4, 2006.

Joseph M. Lawler,

Regional Director, National Capital Region.

[FR Doc. 06–7981 Filed 9–19–06; 8:45 am]

BILLING CODE 4312–34–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–538]

In the Matter of Certain Audio Processing Integrated Circuits and Products Containing Same; Notice of Commission Final Determination of a Violation of Section 337 as to Two Patents and Issuance of a Limited Exclusion Order; Termination of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that there is a violation of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, by Actions Semiconductor Co. of Guangdong, China (''Actions'') with respect to United States Patent Nos. 6,633,187 (''the '187 patent''), and 6,366,522 (''the '522 patent'') and has issued a limited exclusion order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Steven W. Crabb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 708–5432. Copies of the public version of the ALJ's initial determination (''ID'') and all other nonproprietary documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, telephone 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 18, 2005, based on a complaint filed on behalf of SigmaTel, Inc. (''complainant'') of Austin, Texas. 70 FR 20172. The complaint alleged violations of section 337 in the importation into the United States, sales for importation, and sale within the United States after importation of certain audio processing integrated circuits and products containing same by reason of infringement of claim 10 of U.S. Patent No. 6,137,279 (''the '279 patent''), and claim 13 of the '187 patent. *Id.* The notice of investigation named Actions as the only respondent.

On June 9, 2005, the ALJ issued an ID (Order No. 5) granting complainant's motion to amend the complaint and notice of investigation to add further allegations of infringement of the previously asserted patents and to add an allegation of a violation of section 337 by reason of infringement of claims 1, 6, 9, and 13 of the '522 patent. That ID was not reviewed by the Commission.

On October 13, 2005, the ALJ issued an ID (Order No. 9) granting complainant's motion to terminate the

investigation as to the '279 patent. On October 31, 2005, the Commission determined not to review the ID.

On March 20, 2006, the ALJ issued his final ID and recommended determination on remedy and bonding. The ALJ concluded that there was a violation of section 337. Specifically, he found that claim 13 of the '187 patent was not invalid and was infringed by Actions' accused product families 207X, 208X, and 209X. The ALJ also determined that claims 1, 6, 9, and 13 of the '522 patent were not invalid and were infringed by Actions' accused product families 208X and 209X.

On May 5, 2006, the Commission determined to review the ALJ's construction of a claim limitation of the '522 patent, infringement of the '522 patent, and the ALJ's determination that SigmaTel met the technical prong of the domestic industry requirement in regard to the '522 patent. 71 FR 27512 (May 11, 2006). The Commission also determined to review the AlJ's claim construction of the term ''memory'' in claim 13 of the '187 patent and simultaneously to modify that construction by removing the apparently inadvertent inclusion of the word ''firmware.'' *Id.* The Commission declined to review the remainder of the ID. *Id.* The Commission requested briefing on the issues under review and on remedy, the public interest, and bonding. *Id.* Briefs and responses on the issues under review and on remedy, the public interest, and bonding were filed by all parties in a timely manner.

On June 12, 2006, Actions filed a paper with the Commission titled ''Actions' Identification of Erroneous Citations to the Evidentiary Record by SigmaTel and the Initial Determination that are Material to Remedy Issues'' alleging that testimony regarding the size of memory typically used in MP3 players incorporating the accused chips was inaccurately portrayed by SigmaTel and the ALJ. SigmaTel filed an opposition on June 13, 2006, and the Commission investigative attorney (''IA'') filed a response on June 15, 2006. SigmaTel filed another submission on the same subject on August 21, 2006. On August 24, 2006, Actions' filed a motion to strike SigmaTel's August 21, 2006, submission. Because the allegedly erroneous citations were not raised in Actions' petition for review, and were in fact expressly agreed to by Actions in response to SigmaTel's proposed findings of act, we do not consider Actions' arguments. Thus, SigmaTel's June 13, 2006, and August 21, 2006, submissions; the IA's June 15, 2006, submission; and Actions' August 24, 2006, submission have all be rendered moot and have not been considered.

On August 24, 2006, SigmaTel filed ''Complainant SigmaTel, Inc.'s Motion for Leave to File a Short Brief to Correct an Error in Actions' Reply to SigmaTel's Comments on the ALJ's Remand Findings and Determination.'' Both Actions and the IA filed responses to SigmaTel's motion. We hereby deny this motion.

On review, the Commission construed the disputed claim phrase ''produce the system clock control signal and power supply control signal based on a processing transfer characteristic of the computation engine'' to mean that both the system clock control signal and the power supply control signal are required to be produced during operation of the integrated circuit such that the voltage and the frequency of the integrated circuit are adjusted based on a processing transfer characteristic, but that the processing transfer characteristic is not determined in any particular manner. 71 FR 36358–36358 (June 26, 2006). The Commission determined, with respect to the accused products that do not use the version 952436 firmware, that the ALJ made sufficient findings to find infringement of the asserted claims of the '522 patent under the Commission's claim construction, and adopted his findings with respect to those products. *Id.* The Commission determined that SigmaTel's products satisfy the technical prong of the domestic industry requirement with regard to the '522 patent under the Commission's claim construction. *Id.* The Commission remanded the investigation to the ALJ for the sole issue of determining whether Actions' products using the 952436 version firmware infringe the asserted claims of the '522 patent. The Commission deferred addressing issues relating to remedy, public interest, and bonding, for both the '187 patent and the '522 patent. *Id.*

The ALJ issued a remand initial determination (''Remand ID'') on August 3, 2006, finding that Actions' accused products using the 952436 version firmware, other than the 2051, 2180, and PMA 300 models, do not infringe claims 1, 6, 9, and 13 of the '522 patent.

In its remand notice, the Commission invited comments from the parties addressing the ALJ's determination on remand (71 FR 36358 (June 26, 2006)). On August 11, 2006, SigmaTel filed non-responsive comments addressing the appropriate remedy, and Actions and the IA filed comments supporting the ALJ's determination on remand. On August 18, 2006, Actions and the IA each filed responses to SigmaTel's comments, supporting the ALJ's determinations on remand and noting that SigmaTel's comments addressed only remedy issues. Because the Commission limited the parties' comments to the remand issue, it has disregarded SigmaTel's additional comments on remedy.

Having examined the record of this investigation, including the ALJ's final ID and Remand ID and the submissions of the parties, the Commission has determined (1) that there is a violation of section 337 by Actions with regard to claim 13 of the '187 patent; (2) that there is a violation of section 337 by Actions with regard to claims 1, 6, 9, and 13 of the '522 patent, except with respect to those products using the 952436 version firmware as noted in the ALJ's Remand ID; and (3) to issue a limited exclusion order with respect to Actions' infringing products. The Commission's order was delivered to the President and to the U.S. Trade Representative on the day of its issuance.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.45, 210.49, and 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.45, 210.49, and 210.50).

By order of the Commission.

Issued: September 15, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–7794 Filed 9–19–06; 8:45 am]

BILLING CODE 7020–02–P

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 31, 2006, a proposed Consent Decree in *United States* v. *City of New Orleans, et al.,* Civil Action No. 02–3618, Section ''E'', was lodged with the United States District Court for the Eastern District of Louisiana.

In this action the United States, on behalf of the United States Environmental Protection Agency (''EPA''), sought to recover response costs from certain parties. EPA incurred such costs in response to releases and threatened releases of hazardous substances from the Agriculture Street Landfill (the ''Site'') located in New Orleans, Louisiana. The proposed Consent Decree requires BFI Waste Systems of North America, Inc. (''BFI''),

a third-party defendant, to pay $335,000 towards the response costs incurred by EPA. The proposed Consent Decree resolves BFI's liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), for costs already incurred at the site by EPA or by the Department of Justice on behalf of EPA.

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 for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, NW., Washington, DC 20044–7611, and should refer to *United States* v. *City of New Orleans, et al.,* D.J. Ref. 90–11–3–1683/2.

The Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Louisiana, 500 Poydras Street, Suite 210, New Orleans, Louisiana 70130, and at the offices of EPA, Region 6, 1445 Ross Ave., Dallas, TX 75202–2733. During the public comment period, the Consent Decree, may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $5.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Thomas A. Mariani, Jr.,

Assistant Section Chief, Envirionmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 06–7782 Filed 9–19–06; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Alltel Corp. Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given, pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, proposed Final Judgment, Preservation of Assets Stipulation, and Competitive Impact Statement were filed with the United States District Court for the District of Minnesota in *United States* v. *ALLTEL Corp.,* Civ. Action No. 0:06–cv–03631 (RHK/AJB). On September 7, 2006, the United States filed a Complaint alleging that the proposed acquisition of Midwest Wireless Holdings L.L.C. by ALLTEL Corp. would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the provision of mobile wireless telecommunications services in four Minnesota markets. The proposed Final Judgment, lodged at the same time as the Complaint, requires ALLTEL to divest its mobile wireless telecommunication business assets in four markets in rural Minnesota in order to proceed with ALLTEL's acquisition of Midwest Wireless. A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, and the remedies available to private litigants who may have been injured by the alleged violation.

Copies of the Complaint, proposed Final Judgment, Preservation of Assets Stipulation, and Competitive Impact Statement are available for inspection at the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 215, Washington, DC 20530 (202–514–2481), on the Internet at *http://www.usdoj.gov/atr*, and at the Clerk's Office of the United States District Court for Minnesota. Copies of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments and responses thereto will be published in the **Federal Register** and filed with the Court. Comments should be directed to Nancy Goodman, Chief, Telecommunications & Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530 (202–514–5621).

J. Robert Kramer II,

Director of Operations Antitrust Division.

United States of America Department of Justice, Antitrust Division, 1401 H Street, NW., Suite 8000 Washington, DC 20530, and State of Minnesota Minnesota Attorney General's Office, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101, Plaintiffs, v. ALLTEL Corporation, One Allied Drive, Little Rock, Arkansas 72202, and Midwest Wireless Holdings L.L.C., 2000 Technology Drive, Mankato, Minnesota 56002, Defendants

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, and the State of Minnesota, by its Attorney General Mike Hatch, bring this civil action to enjoin the merger of two mobile wireless telecommunications service providers, ALLTEL Corporation (''ALLTEL'') and Midwest Wireless Holdings L.L.C. (''Midwest Wireless''), and to obtain other relief as appropriate. Plaintiffs allege as follows:

1. ALLTEL entered into an agreement to acquire Midwest Wireless, dated November 17, 2005, under which the two companies would combine their mobile wireless telecommunications services businesses (''Transaction Agreement''). Plaintiffs seek to enjoin this transaction because it will substantially lessen competition for mobile wireless telecommunications services in several geographic markets where ALLTEL and Midwest Wireless are each other's most significant competitor.

2. ALLTEL provides mobile wireless telecommunications services in 35 states serving approximately 11 million subscribers. Midwest Wireless provides mobile wireless telecommunications services in three Midwestern states serving approximately 440,000 subscribers. The combination of ALLTEL and Midwest Wireless will substantially lessen competition for mobile wireless telecommunications services in four geographic areas in southern Minnesota where currently both ALLTEL and Midwest Wireless operate. As a result of the proposed acquisition, residents of these mostly rural areas will face the likelihood of increased prices, diminished quality or quantity of services provided, and less investment in network improvements for these services.

I. Jurisdiction and Venue

3. This Complaint is filed by the United States under Section 15 of the Clayton Act, 15 U.S.C. 25, to prevent and restrain defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18. Plaintiff Minnesota, by and through its Attorney General, brings this action in its sovereign capacity and as parens patriae on behalf of the citizens, general welfare, and economy of the State of Minnesota under Section 16 of the Clayton Act, 15 U.S.C. 26, to prevent defendants from violating Section 7 of the Clayton Act, 15 U.S.C. 18.

4. ALLTEL and Midwest Wireless both provide mobile wireless telecommunications services in the State of Minnesota, as well as other states. The provision of mobile wireless telecommunications services is a commercial activity that substantially affects, and is in the flow of, interstate trade and commerce. The defendants purchase substantial quantities of handsets and equipment from sources

outside of Minnesota. They also have entered into roaming and other service agreements with companies located outside of Minnesota. The Court has jurisdiction over the subject matter of this action and jurisdiction over the parties pursuant to 15 U.S.C. 22, 25, and 26, and 28 U.S.C. 1331, 1337.

5. Venue in the District is proper under 15 U.S.C. 22 and 28 U.S.C. 1391(c).

II. The Defendants and the Transaction

6. ALLTEL, with headquarters in Little Rock, Arkansas, is a corporation organized and existing under the laws of the state of Delaware. ALLTEL is the fifth largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 11 million customers. It provides mobile wireless telecommunications services in 233 Rural Service Areas and 116 Metropolitan Statistical Areas located within 35 states and roaming services to other mobile wireless providers who use CDMA, TDMA and GSM technology in these areas. In 2005, ALLTEL earned wireless revenues of approximately $6.572 billion.

7. Midwest Wireless, with headquarters in Mankato, Minnesota, is a privately-held Delaware limited-liability company. Midwest Wireless provides wireless service in 14 Rural Service Areas and one Metropolitan Statistical Area located in Minnesota, Iowa, and Wisconsin and has approximately 440,000 customers. In 2005, Midwest Wireless earned approximately $264 million in revenues.

8. Pursuant to the Transaction Agreement dated November 17, 2005, ALLTEL will acquire Midwest Wireless for approximately $1.075 billion in cash. If this transaction is consummated, ALLTEL and Midwest Wireless combined would have approximately 11.5 million subscribers in the United States, with $7.8 billion in revenues and operations in 35 states.

III. Trade and Commerce

A. Nature of Trade and Commerce

9. Mobile wireless telecommunications services allow customers to make and receive telephone calls and use data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. Mobility is highly prized by customers, as demonstrated by the more than 180 million people in the United States who own mobile wireless telephones. In 2005, revenues from the sale of mobile wireless services in the United States were over $113 billion. To meet this desire for mobility, mobile wireless telecommunications services providers must deploy an extensive network of switches and radio transmitters and receivers, and interconnect this network with the networks of wireline carriers and with other wireless providers.

10. The first wireless voice systems were based on analog technology, now referred to as first-generation or ''1G'' technology. These analog systems were launched after the Federal Communications Commission (''FCC'') issued the first licenses for mobile wireless telephone service: two cellular licenses (A-block and B-block) in each geographic area in the early to mid-1980s. The licenses are in the 800 MHz range of the radio spectrum, each license consists of 25 MHz of spectrum, and they are issued for each Metropolitan Statistical Area (''MSA'') and Rural Service Area (''RSA'') (collectively, ''Cellular Marketing Areas'' or ''CMAs''), with a total of 734 CMAs covering the entire United States. In 1982, one of the licenses was issued to the incumbent local exchange carrier in the market, and the other was issued by lottery to someone other than the incumbent. In the relevant geographic markets, ALLTEL and Midwest Wireless each own one of the cellular licenses.

11. In 1995, the FCC allocated and subsequently issued licenses for additional spectrum for the provision of Personal Communications Services (''PCS''), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1.9 GHz range of the radio spectrum and are divided into six blocks: A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas (''MTAs''), and C, D, E, and F-block licenses are issued by Basic Trading Areas (''BTAs''), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing capacity, shrinking handsets, and extending battery life. In 1996, one provider, a specialized mobile radio (''SMR'' or ''dispatch'') spectrum licensee, began to use its SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or ''push-to-talk,'' service. Although there are a number of providers holding spectrum licenses in each area of the country, not all providers have fully built out their networks throughout each license area. In particular, because of the characteristics of PCS spectrum, providers holding this type of spectrum have found it less attractive to build out in rural areas.

12. Today, more than 99% of the total U.S. population lives in counties where mobile wireless telecommunications services operators offer digital service, and nearly all mobile wireless voice service has migrated to second-generation or ''2G'' digital technologies: TDMA (time division multiple access), GSM (global standard for mobile, a type of TDMA standard used by all carriers in Europe), and CDMA (code division multiple access). Mobile wireless telecommunications services providers have chosen to build their networks on these incompatible technologies and most have chosen CDMA or GSM, with TDMA having been orphaned by equipment vendors. (The SMR providers use a fourth incompatible technological standard better suited to the spectrum they own, and, as SMR licensees, they have no obligation to support a specific technology standard.) Even more advanced technologies (''2.5G'' and ''3G'') have begun to be deployed for voice and data.

B. Relevant Product Market

13. Mobile wireless telecommunications services is a relevant product market. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allows customers to maintain their telephone calls or data sessions without wires, such as when traveling. There are no cost-effective alternatives to mobile wireless telecommunications services. Fixed wireless services are not mobile (e.g., Wi-Fi), and therefore are not a viable alternative to mobile wireless telecommunications service. It is unlikely that a sufficient number of customers would switch away from mobile wireless telecommunications services to make a small but significant price increase in those services unprofitable. Mobile wireless telecommunications services is a relevant product market under Section 7 of the Clayton Act, 15 U.S.C. 18.

C. Relevant Geographic Markets

14. The large majority of customers use mobile wireless telecommunications services in close proximity to their

workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they are located and travel on a regular basis: home, work, other areas they commonly visit, and areas in between. The number and identity of mobile wireless telecommunications services providers varies among geographic areas, along with the quality of their services and the breadth of their geographic coverage, all of which are significant factors in customers' purchasing decisions. Mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas, effectively varying the price for customers by geographic area.

15. The United States comprises numerous local geographic markets for mobile wireless telecommunications services. The FCC has licensed a limited number of mobile wireless telecommunications services providers in each local area based upon the availability of radio spectrum. These FCC spectrum licensing areas often represent the core of the business and social sphere where customers face the same competitive choices for mobile wireless telecommunications services. The relevant geographic markets in which this transaction will substantially lessen competition in mobile wireless telecommunications services are effectively represented, but not defined, by FCC spectrum licensing areas.

16. The relevant geographic markets, under Section 7 of the Clayton Act, 15 U.S.C. 18, where the transaction will substantially lessen competition for mobile wireless telecommunications services are represented by the following FCC spectrum licensing areas which are all RSAs located in southern Minnesota: Minnesota RSA–7 (CMA 488), Minnesota RSA–8 (CMA 489), Minnesota RSA–9 (CMA 490), and Minnesota RSA–10 (CMA 491). It is unlikely that a sufficient number of customers would switch to mobile wireless telecommunications services providers in a different geographic market to make a small but significant price increase in the relevant geographic markets unprofitable for mobile wireless telecommunications services.

D. Anticompetitive Effects

1. Mobile Wireless Telecommunications Services

17. The companies' combined market shares for mobile wireless telecommunications services in the relevant markets described above, as measured in terms of subscribers, range from over 60% to nearly 95%. In each relevant geographic market, Midwest Wireless has the largest market share and, in all but one RSA, ALLTEL is the second-largest mobile wireless telecommunications services provider. In all of the relevant geographic markets, ALLTEL and Midwest Wireless own the only 800 MHz band cellular spectrum licenses, which are more efficient in serving rural areas than 1900 MHz band PCS spectrum. As a result of holding the cellular spectrum licenses and being early entrants into these markets, ALLTEL's and Midwest Wireless's networks provide greater depth and breadth of coverage than their competitors, which are operating on PCS spectrum in the relevant geographic markets, and thus are more attractive to consumers.

In addition, mobile wireless telecommunications services providers with partial coverage in a geographic area do not aggressively market their services in these markets because potential customers would use their wireless telephones primarily in areas where these providers have no network. In theory, these less-built-out providers could serve residents of the rural areas through roaming agreements but, as a practical matter, when service is provided on another carrier's network, the providers have to pay roaming charges to, and rely on, that provider to maintain the quality of the network. Because of these constraints, carriers with limited network coverage in an area are reluctant to market their services to residents of that area. Therefore, ALLTEL and Midwest Wireless are likely closer substitutes for each other than the other mobile wireless telecommunications services providers who own only PCS spectrum in the relevant geographic markets.

18. The relevant geographic markets for mobile wireless services are highly concentrated. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to this Complaint, concentration in these markets ranges from over 3600 to more than 5600, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After ALLTEL's proposed acquisition of Midwest Wireless is consummated, the HHIs in the relevant geographic markets will range from over 4700 to over 9100, with increases in the HHI as a result of the merger ranging from over 1000 to over 4100, significantly beyond the thresholds at which the Department considers a transaction likely to cause competitive harm.

19. Competition between ALLTEL and Midwest Wireless in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services, than would otherwise have existed in these geographic markets. In these areas, consumers consider ALLTEL and Midwest Wireless to be the most attractive competitors because other providers' networks lack coverage or provide lower-quality service. If ALLTEL's proposed acquisition of Midwest Wireless is consummated, the relevant geographic markets for mobile wireless telecommunications services will become substantially more concentrated, and the competition between ALLTEL and Midwest Wireless in mobile wireless telecommunications services will be eliminated in these markets. As a result, the loss of competition between ALLTEL and Midwest Wireless increases the likelihood of unilateral actions by the merged firm in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements. Therefore, ALLTEL's proposed acquisition of Midwest Wireless will likely result in substantially less competition in mobile wireless telecommunications services in the relevant geographic markets.

2. Entry

20. Entry by a new mobile wireless telecommunications services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring the acquisition of spectrum licenses and the build-out of a network. Expansion by providers who hold spectrum in these areas is also unlikely as the relevant geographic markets are rural service areas where the combined firm would own all of the available 800 MHz cellular spectrum. Due to propagation characteristics of 800 MHz cellular spectrum and 1900 MHz PCS spectrum, the 800 MHz signals can cover a substantially broader area than the 1900 MHz signals. The estimated coverage advantage of the 800 MHz cellular spectrum in rural areas ranges from two to as much as five times greater than PCS. In rural markets, this difference results in higher build-out costs for PCS networks than for cellular networks. The high costs of constructing PCS networks in rural markets combined with the relatively low population density makes it less likely that carriers that own PCS spectrum

would build out in the relevant geographic markets. Therefore, new entry in response to a small but significant price increase for mobile wireless services by the merged firm in the relevant geographic markets would not be timely, likely, or sufficient to thwart the competitive harm resulting from ALLTEL's proposed acquisition of Midwest Wireless, if it were to be consummated.

IV. Violation Alleged

21. The effect of ALLTEL's proposed acquisition of Midwest Wireless, if it were to be consummated, may be substantially to lessen competition in interstate trade and commerce in the relevant geographic markets for mobile wireless telecommunications services, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

22. Unless restrained, the transaction will likely have the following effects in mobile wireless telecommunications services in the relevant geographic markets, among others:

a. Actual and potential competition between ALLTEL and Midwest Wireless will be eliminated;

b. Competition in general will be lessened substantially;

c. Prices are likely to increase;

d. The quality and quantity of services are likely to decrease; and

e. Incentives to improve wireless networks will be reduced.

V. Requested Relief

The plaintiffs request:

23. That ALLTEL's proposed acquisition of Midwest Wireless be adjudged to violate Section 7 of the Clayton Act, 15 U.S.C. 18;

24. That defendants be permanently enjoined from and restrained from carrying out the Transaction Agreement, dated November 17, 2005, or from entering into or carrying out any agreement, understanding, or plan, the effect of which would be to bring the wireless services businesses of ALLTEL and Midwest Wireless under common ownership or control;

25. That plaintiffs be awarded their costs of this action; and

26. That plaintiffs have such other relief as the Court may deem just and proper.

Dated:

Respectfully Submitted,

For Plaintiff United States of America

Thomas O. Barnett,
Assistant Attorney General, Antitrust Division.

J. Bruce McDonald,
Deputy Assistant Attorney General, Antitrust Division.

J. Robert Kramer II,
Director of Operations, Antitrust Division.

Nancy Goodman,
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Appendix A—Herfindahl-Hirschman Index

''HHI'' means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four finns with shares of 30, 30, 20, and 20 percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2 = 2600$). (**Note:** Throughout the Complaint, market share percentages have been rounded to the nearest whole number, but HHIs have been estimated using unrounded percentages in order to accurately reflect the concentration of the various markets.) The HHI takes into account the relative size distribution of the firms in a market and approaches zero when a market consists of a large number of small firms. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be highly concentrated. *See Horizontal Merger Guidelines* ¶1.51 (revised Apr. 8, 1997). Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the guidelines issued by the U.S. Department of Justice and Federal Trade Commission. *See id.*

In the United States District Court for the District of Minnesota

United States of America and State of Minnesota Plaintiffs, v. ALLTEL Corporation and Midwest Wireless Holdings L.L.C., Defendants

Final Judgment

Whereas, plaintiffs, United States of America and the State of Minnesota, filed their Complaint on September 7, 2006, plaintiffs and defendants, ALLTEL Corporation (''ALLTEL'') and Midwest Wireless Holdings L.L.C. (''Midwest Wireless''), by their respective attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law, and without this Final Judgment constituting any evidence against or admission by any party regarding any issue of fact or law;

And Whereas, defendants agree to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is the prompt and certain divestiture of certain rights or assets by defendants to assure that competition is not substantially lessened;

And Whereas, plaintiffs require defendants to make certain divestitures for the purpose of remedying the loss of competition alleged in the Complaint;

And Whereas, defendants have represented to plaintiffs that the divestitures required below can and will be made and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

Now Therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the parties, it is *Ordered, Adjudged and Decreed:*

I. Jurisdiction

This Court has jurisdiction over the subject matter of and each of the parties to this action. The Complaint states a claim upon which relief may be granted against defendants under Section 7 of the Clayton Act, 15 U.S.C. 18.

II. Definitions

As used in this Final Judgment:

A. ''*Acquirer*'' means the entity to whom defendants divest the Divestiture Assets.

B. ''*ALLTEL*'' means defendant ALLTEL Corporation, a Delaware

corporation with headquarters in Little Rock, Arkansas, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

C. ''*CMA*'' means cellular market area which is used by the Federal Communications Commission (''FCC'') to define cellular license areas and which consists of Metropolitan Statistical Areas (''MSAs'') and Rural Service Areas (''RSAs'').

D. ''*Divestiture Assets*'' means each mobile wireless telecommunications services business to be divested under this Final Judgment, including all types of assets, tangible and intangible, used by defendants in the operation of the mobile wireless telecommunications services businesses to be divested. ''Divestiture Assets'' shall be construed broadly to accomplish the complete divestiture of the entire business of ALLTEL in each of the following RSA license areas as required by this Final Judgment and to ensure that the divested mobile wireless telecommunications services businesses remain viable, ongoing businesses:

(1) Minnesota RSA–7 (CMA 488);
(2) Minnesota RSA–8 (CMA 489);
(3) Minnesota RSA–9 (CMA 490); and
(4) Minnesota RSA–10 (CMA 491)

provided that ALL TEL may retain all of the PCS spectrum it currently holds in each of these RSAs and equipment that is used only for wireless transmissions over this PCS spectrum, and provided that ALL TEL need not divest the assets used solely to operate ALLTEL's GSM roaming business in these RSAs, including GSM roaming contracts and equipment.

The Divestiture Assets shall include, without limitation, all types of real and personal property, monies and financial instruments, equipment, inventory, office furniture, fixed assets and furnishings, supplies and materials, contracts, agreements, leases, commitments, spectrum licenses issued by the FCC and all other licenses, permits and authorizations, operational support systems, cell sites, network infrastructure, switches, customer support and billing systems, interfaces with other service providers, business and customer records and information, customer contracts, customer lists, credit records, accounts, and historic and current business plans which relate primarily to the wireless businesses being divested, as well as any patents, licenses, sub-licenses, trade secrets, know-how, drawings, blueprints, designs, technical and quality specifications and protocols, quality assurance and control procedures, manuals and other technical information defendant ALLTEL supplies to its own employees, customers, suppliers, agents, or licensees, and trademarks, trade names and service marks or other intellectual property, including all intellectual property rights under third-party licenses that are capable of being transferred to an Acquirer either in their entirety, for assets described in (1) below, or through a license obtained through or from ALLTEL, for assets described in (2) below; provided that defendants shall only be required to divest Multi-line Business Customer contracts, if the primary business address for that customer is located within any of the four license areas described herein, and further, any subscriber who obtains mobile wireless telecommunications services through any such contract retained by defendants and who are located within the four geographic areas identified above, shall be given the option to terminate their relationship with defendants, without financial cost, at any time within one year of the closing of the Transaction. Defendants shall provide written notice to these subscribers within 45 days after the closing of the Transaction of the option to terminate.

The divestiture of the Divestiture Assets shall be accomplished by:

(1) Transferring to the Acquirer the complete ownership and/or other rights to the assets (other than those assets used substantially in the operations of ALL TEL's overall wireless telecommunications services business which must be retained to continue the existing operations of the wireless properties that defendants are not required to divest, and that either are not capable of being divided between the divested wireless telecommunications services businesses and those not divested, or are assets that the defendants and the Acquirer agree, subject to approval of plaintiff United States upon consultation with plaintiff Minnesota, shall not be divided); and

(2) Granting to the Acquirer an option to obtain a nonexclusive, transferable license from defendants for a reasonable period, subject to approval of plaintiff United States upon consultation with plaintiff Minnesota, at the election of an Acquirer to use any of ALLTEL's retained assets under paragraph (1) above, used in the operation of the mobile wireless telecommunications services businesses being divested, so as to enable the Acquirer to continue to operate the divested mobile wireless telecommunications services businesses without impairment. Defendants shall identify in a schedule submitted to plaintiffs and filed with the Court, as expeditiously as possible following the filing of the Complaint and in any event prior to any divestiture and before the approval by the Court of this Final Judgment, any intellectual property rights under third-party licenses that are used by the mobile wireless telecommunications services businesses being divested but that defendants could not transfer to an Acquirer entirely or by license without third-party consent, and the specific reasons why such consent is necessary and how such consent would be obtained for each asset.

E. ''*GSM*'' means global system for mobile communications which is one of the standards used for the infrastructure of digital cellular service.

F. ''*Midwest Wireless*'' means defendant Midwest Wireless Holdings L.L.C., a Delaware Limited Liability Company, with headquarters in Mankato, Minnesota, its successors and assigns, and its subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and their directors, officers, managers, agents, and employees.

G. ''*Multi-line Business Customer*'' means a corporate or business customer that contracts with ALLTEL for mobile wireless services to provide multiple telephones to its employees or members whose services are provided pursuant to a contract with the corporate or business customer.

H. ''*Transaction*'' means the Transaction Agreement between ALLTEL and Midwest Wireless, dated November 17, 2005.

III. Applicability

A. This Final Judgment applies to defendants ALLTEL and Midwest Wireless, as defined above, and all other persons in active concert or participation with any of them who receive actual notice of this Final Judgment by personal service or otherwise.

B. Defendants shall require, as a condition of the sale or other disposition of all or substantially all of their assets or of lesser business units that include the Divestiture Assets, that the purchaser agrees to be bound by the provisions of this Final Judgment, provided that defendants need not obtain such an agreement from the Acquirer.

IV. Divestitures

A. Defendants are ordered and directed, within 120 days after consummation of the Transaction, or five days after notice of entry of this Final Judgment, whichever is later, to

divest the Divestiture Assets to an Acquirer acceptable to plaintiff United States in its sole discretion upon consultation with plaintiff Minnesota, or, if applicable, to a Divestiture Trustee designated pursuant to Section V of this Final Judgment. Plaintiff United States, in its sole discretion upon consultation with plaintiff Minnesota, may agree to one or more extensions of this time period not to exceed 60 days in total, and shall notify the Court in such circumstances. With respect to divestiture of the Divestiture Assets by defendants or the Divestiture Trustee, if applications have been filed with the FCC within the period permitted for divestiture seeking approval to assign or transfer licenses to the Acquirer of the Divestiture Assets, but an order or other dispositive action by the FCC on such applications has not been issued before the end of the period permitted for divestiture, the period shall be extended with respect to divestiture of those Divestiture Assets for which FCC approval has not been issued until five days after such approval is received. Defendants agree to use their best efforts to accomplish the divestitures set forth in this Final Judgment and to seek all necessary regulatory approvals as expeditiously as possible. This Final Judgment does not limit the FCC's exercise of its regulatory powers and process with respect to the Divestiture Assets. Authorization by the FCC to conduct the divestiture of a Divestiture Asset in a particular manner will not modify any of the requirements of this decree.

B. In accomplishing the divestitures ordered by this Final Judgment, defendants shall promptly make known, if they have not already done so, by usual and customary means, the availability of the Divestiture Assets. Defendants shall inform any person making inquiry regarding a possible purchase of the Divestiture Assets that they are being divested pursuant to this Final Judgment and provide that person with a copy of this Final Judgment. Defendants shall offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information and documents relating to the Divestiture Assets customarily provided in a due diligence process except such information or documents subject to the attorney-client or work product privileges. Defendants shall make available such information to plaintiffs at the same time that such information is made available to any other person.

C. Defendants shall provide to the Acquirer and plaintiffs information relating to the personnel involved in the operation, development, and sale of mobile wireless telecommunications services in the relevant RSAs to enable the Acquirer to make offers of employment. Defendants will not interfere with any negotiations by the Acquirer to employ any defendant employee whose primary responsibility is the operation, development, or sale of mobile wireless services in the relevant RSAs.

D. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make inspections of the Divestiture Assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, and other documents and information customarily provided as part of a due diligence process.

E. Defendants shall warrant to the Acquirer that (1) The Divestiture Assets will be operational on the date of sale, and (2) every wireless spectrum license is in full force and effect on the date of sale.

F. Defendants shall not take any action that will impede in any way the permitting, licensing, operation, or divestiture of the Divestiture Assets.

G. Defendants shall warrant to the Acquirer of the Divestiture Assets that there are no defects in the environmental, zoning, licensing or other permits pertaining to the operation of each asset that will have a material adverse effect on the operator of the mobile wireless telecommunications services business in which the asset is primarily used, and that following the sale of the Divested Assets, defendants will not undertake, directly or indirectly, any challenges to the environmental, zoning, licensing or other permits relating to the operation of the Divestiture Assets.

H. Unless plaintiff United States upon consultation with plaintiff Minnesota otherwise consents in writing, the divestitures pursuant to Section IV, or by a Divestiture Trustee appointed pursuant to Section V of this Final Judgment, shall include the entire Divestiture Assets, and shall be accomplished in such a way as to satisfy plaintiff United States in its sole discretion upon consultation with plaintiff Minnesota that these assets can and will be used by the Acquirer as part of a viable, ongoing business engaged in the provision of mobile wireless telecommunications services. The Divestiture Assets shall all be divested to a single Acquirer. The divestiture of the Divestiture Assets, whether pursuant to Section IV or Section V of this Final Judgment,

(1) Shall be made to an Acquirer that, in plaintiff United States's sole judgment upon consultation with plaintiff Minnesota, has the intent and capability (including the necessary managerial, operational, technical, and financial capability) of competing effectively in the provision of mobile wireless telecommunications services; and

(2) Shall be accomplished so as to satisfy plaintiff United States in its sole discretion upon consultation with plaintiff Minnesota, that none of the terms of any agreement between the Acquirer and any defendant shall give defendants the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere with the ability of the Acquirer to compete effectively.

I. At the option of the Acquirer of the Divestiture Assets, defendants shall enter into a contract for transition services customarily provided in connection with the sale of a business providing mobile wireless telecommunications services sufficient to meet all or part of the needs of the Acquirer for a period of up to one year. The terms and conditions of any contractual arrangement meant to satisfy this provision must be reasonably related to market conditions.

J. To the extent that the Divestiture Assets use intellectual property, as required to be identified by Section II.D, that cannot be transferred or assigned without the consent of the licensor or other third parties, defendants shall use their best efforts to obtain those consents.

V. Appointment of Divestiture Trustee

A. If defendants have not divested the Divestiture Assets within the time period specified in Section IV.A, defendants shall notify plaintiffs of that fact in writing, specifically identifying the Divestiture Assets that have not been divested. Then, upon application of plaintiff United States upon consultation with plaintiff Minnesota, the Court shall appoint a Divestiture Trustee selected by plaintiff United States and approved by the Court to effect the divestiture of the Divestiture Assets. The Divestiture Trustee will have all the rights and responsibilities of the Management Trustee appointed pursuant to the Preservation of Assets Order, and will be responsible for:

(1) Accomplishing divestiture of all Divestiture Assets transferred to the Divestiture Trustee from defendants, in accordance with the terms of this Final Judgment, to an Acquirer approved by plaintiff United States upon consultation with plaintiff Minnesota,

under Section IV.A of this Final Judgment; and

(2) exercising the responsibilities of the licensee of any transferred Divestiture Assets and controlling and operating any transferred Divestiture Assets, to ensure that the businesses remain ongoing, economically viable competitors in the provision of mobile wireless telecommunications services in the four license areas specified in Section II.D, until they are divested to an Acquirer, and the Divestiture Trustee shall agree to be bound by this Final Judgment.

B. Defendants shall submit a proposed trust agreement (''Trust Agreement'') to plaintiffs, which must be consistent with the terms of this Final Judgment and which must receive approval by plaintiff United States in its sole discretion upon consultation with plaintiff Minnesota, who shall communicate to defendants within 10 business days its approval or disapproval of the proposed Trust Agreement, and which must be executed by the defendants and the Divestiture Trustee within five business days after approval by plaintiff United States.

C. After obtaining any necessary approvals from the FCC for the assignment of the licenses of the Divestiture Assets to the Divestiture Trustee, defendants shall irrevocably divest the Divestiture Assets to the Divestiture Trustee, who will own such assets (or own the stock of the entity owning such assets, if divestiture is to be effected by the creation of such an entity for sale to Acquirer) and control such assets, subject to the terms of the approved Trust Agreement.

D. After the appointment of a Divestiture Trustee becomes effective, only the Divestiture Trustee shall have the right to sell the Divestiture Assets. The Divestiture Trustee shall have the power and authority to accomplish the divestiture to an Acquirer acceptable to plaintiff United States, in its sole judgment upon consultation with plaintiff Minnesota, at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee, subject to the provisions of Sections IV, V, and VI of this Final Judgment, and shall have such other powers as this Court deems appropriate. Subject to Section V.G of this Final Judgment, the Divestiture Trustee may hire at the cost and expense of defendants the Management Trustee appointed pursuant to the Preservation of Assets Order, and any investment bankers, attorneys or other agents, who shall be solely accountable to the Divestiture Trustee, reasonably necessary in the Divestiture Trustee's judgment to assist in the divestiture.

E. In addition, notwithstanding any provision to the contrary, plaintiff United States, in its sole discretion upon consultation with plaintiff Minnesota, may require defendants to include additional assets, or allow, with the written approval of plaintiff United States upon consultation with plaintiff Minnesota, defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the Divestiture Trustee to facilitate prompt divestiture to an acceptable Acquirer.

F. Defendants shall not object to a sale by the Divestiture Trustee on any ground other than the Divestiture Trustee's malfeasance. Any such objections by defendants must be conveyed in writing to plaintiffs and the Divestiture Trustee within 10 calendar days after the Divestiture Trustee has provided the notice required under Section VI.

G. The Divestiture Trustee shall serve at the cost and expense of defendants, on such terms and conditions as plaintiff United States approves, and shall account for all monies derived from the sale of the assets sold and all costs and expenses so incurred. After approval by the Court of the Divestiture Trustee's accounting, including fees for its services and those of any professionals and agents retained by the Divestiture Trustee, all remaining money shall be paid to defendants and the trust shall then be terminated. The compensation of the Divestiture Trustee and any professionals and agents retained by the Divestiture Trustee shall be reasonable in light of the value of the Divestiture Assets and based on a fee arrangement providing the Divestiture Trustee with an incentive based on the price and terms of the divestiture, and the speed with which it is accomplished, but timeliness is paramount.

H. Defendants shall use their best efforts to assist the Divestiture Trustee in accomplishing the required divestitures including their best efforts to effect all necessary regulatory approvals and will provide any necessary representations or warranties as appropriate related to sale of the Divestiture Assets. The Divestiture Trustee and any consultants, accountants, attorneys, and other persons retained by the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and defendants shall develop financial and other information relevant to the assets to be divested as the Divestiture Trustee may reasonably request, subject to reasonable protection for trade secret or other confidential research, development, or commercial information. Defendants shall take no action to interfere with or to impede the Divestiture Trustee's accomplishment of the divestitures.

I. After its appointment, the Divestiture Trustee shall file monthly reports with plaintiffs and the Court setting forth the Divestiture Trustee's efforts to accomplish the divestitures ordered under this Final Judgment. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. If the Divestiture Trustee designates any information as ''confidential'' in any report or notice he submits pursuant to this Final Judgment, within five business days after the submission of such report, any plaintiff that objects to the designation of information as ''confidential'' will notify the Divestiture Trustee. Such reports shall include the name, address, and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person. The Divestiture Trustee shall maintain full records of all efforts made to divest the Divestiture Assets.

J. If the Divestiture Trustee has not accomplished such divestitures within six months after its appointment, the Divestiture Trustee shall promptly file with the Court a report setting forth (1) The Divestiture Trustee's efforts to accomplish the required divestitures, (2) the reasons, in the Divestiture Trustee's judgment, why the required divestitures have not been accomplished, and (3) the Divestiture Trustee's recommendations. To the extent such reports contain information that the Divestiture Trustee deems confidential, such reports shall not be filed in the public docket of the Court. The Divestiture Trustee shall at the same time furnish such report to the plaintiffs, who shall have the right to make additional recommendations consistent with the purpose of the trust. The Court thereafter shall enter such orders as it shall deem appropriate to carry out the purpose of the Final Judgment, which may, if necessary, include extending the trust and the term of the Divestiture Trustee's appointment by a period requested by plaintiff United States upon consultation with plaintiff Minnesota.

K. After defendants transfer the Divestiture Assets to the Divestiture Trustee, and until those Divestiture Assets have been divested to an Acquirer approved by plaintiff United States pursuant to Sections IV.A and IV.R, the Divestiture Trustee shall have sole and complete authority to manage and operate the Divestiture Assets and to exercise the responsibilities of the licensee, and shall not be subject to any control or direction by defendants. Defendants shall not use or retain any economic interest in the Divestiture Assets transferred to the Divestiture Trustee, apart from the right to receive the proceeds of the sale or other disposition of the Divestiture Assets.

L. The Divestiture Trustee shall operate the Divestiture Assets consistent with the Preservation of Assets Order and this Final Judgment, with control over operations, marketing, and sales. Defendants shall not attempt to influence the business decisions of the Divestiture Trustee concerning the operation and management of the Divestiture Assets, and shall not communicate with the Divestiture Trustee concerning divestiture of the Divestiture Assets or take any action to influence, interfere with, or impede the Divestiture Trustee's accomplishment of the divestitures required by this Final Judgment, except that defendants may communicate with the Divestiture Trustee to the extent necessary for defendants to comply with this Final Judgment and to provide the Divestiture Trustee, if requested to do so, with whatever resources or cooperation may be required to complete divestiture of the Divestiture Assets and to carry out the requirements of the Preservation of Assets Order and this Final Judgment. Except as provided in this Final Judgment and the Preservation of Assets Order, in no event shall defendants provide to, or receive from, the Divestiture Trustee or the mobile wireless telecommunications services businesses to be divested any non-public or competitively sensitive marketing, sales, pricing or other information relating to their respective mobile wireless telecommunications services businesses.

VI. Notice of Proposed Divestitures

A. Within two business days following execution of a definitive divestiture agreement, defendants or the Divestiture Trustee, whichever is then responsible for effecting the divestitures required herein, shall notify plaintiffs in writing of any proposed divestiture required by Section IV or V of this Final Judgment. If the Divestiture Trustee is responsible, it shall similarly notify defendants. The notice shall set forth the details of the proposed divestiture and list the name, address, and telephone number of each person not previously identified who offered or expressed an interest in or desire to acquire any ownership interest in the Divestiture Assets, together with full details of the same.

B. Within 15 calendar days of receipt by plaintiffs of such notice, plaintiffs may request from defendants, the proposed Acquirer, any other third party, or the Divestiture Trustee if applicable additional information concerning the proposed divestiture, the proposed Acquirer, and any other potential Acquirer. Defendants and the Divestiture Trustee shall furnish any additional information requested within 15 calendar days of the receipt of the request, unless the parties shall otherwise agree.

C. Within 30 calendar days after receipt of the notice or within 20 calendar days after plaintiffs have been provided the additional information requested from defendants, the proposed Acquirer, any third party, and the Divestiture Trustee, whichever is later, plaintiff United States upon consultation with plaintiff Minnesota, shall provide written notice to defendants and the Divestiture Trustee, if there is one, stating whether it objects to the proposed divestiture. If plaintiff United States provides written notice that it does not object, the divestiture may be consummated, subject only to defendants' limited right to object to the sale under Section V.F of this Final Judgment. Absent written notice that plaintiff United States does not object to the proposed Acquirer or upon objection by plaintiff United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by defendants under Section V.F, a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII. Financing

Defendants shall not finance all or any part of any divestiture made pursuant to Section IV or V of this Final Judgment.

VIII. Preservation of Assets

Until the divestitures required by this Final Judgment have been accomplished, defendants shall take all steps necessary to comply with the Preservation of Assets Order entered by this Court and cease use of the Divestiture Assets during the period that the Divestiture Assets are managed by the Management Trustee, except to the extent use of such assets is permitted under Section XI. Defendants shall take no action that would jeopardize the divestitures ordered by this Court.

IX. Affidavits

A. Within 20 calendar days of the filing of the Complaint in this matter, and every 30 calendar days thereafter until the divestitures have been completed under Section IV or V of this Final Judgment, defendants shall deliver to plaintiffs an affidavit as to the fact and manner of its compliance with Section IV or V of this Final Judgment. Each such affidavit shall include the name, address, and telephone number of each person who during the preceding 30 days, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the Divestiture Assets, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts defendants have taken to solicit buyers for the Divestiture Assets, and to provide required information to prospective Acquirers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by plaintiff United States upon consultation with plaintiff Minnesota, to information provided by defendants, including limitation on information, shall be made within 14 calendar days of receipt of such affidavit.

B. Within 20 calendar days of the filing of the Complaint in this matter, defendants shall deliver to plaintiffs an affidavit that describes in reasonable detail all actions defendants have taken and all steps defendants have implemented on an ongoing basis to comply with Section VIII of this Final Judgment. Defendants shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in defendants' earlier affidavits provided pursuant to this section within 15 calendar days after the change is implemented.

C. Defendants shall keep all records of all efforts made to preserve and divest the Divestiture Assets until one year after such divestitures have been completed.

X. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time

duly authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to defendants, be permitted:

(1) Access during defendants' office hours to inspect and copy, or at plaintiff United States' option, to require defendants provide copies of, all books, ledgers, accounts, records and documents in the possession, custody, or control of defendants, relating to any matters contained in this Final Judgment; and

(2) To interview, either informally or on the record, defendants' officers, employees, or agents, who may have their individual counsel present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by defendants.

B. Upon the written request of a duly authorized representative of the Assistant Attorney General in charge of the Antitrust Division, defendants shall submit written reports, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by plaintiff United States to any person other than an authorized representative of the executive branch of the United States or, pursuant to a customary protective order or waiver of confidentiality by defendants, the FCC, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by defendants to plaintiff United States, defendants represent and identify in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and defendants mark each pertinent page of such material, ''Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure,'' then plaintiff United States shall give defendants 10 calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

XI. No Reacquisition

Defendants may not reacquire or lease any part of the Divestiture Assets during the term of this Final Judgment provided however that defendants shall not be precluded from entering commercially reasonable agreements, for a period not to exceed two years from the date of the closing of the Transaction, with the Acquirer to obtain the right to use equipment that defendant ALLTEL used to support both its GSM roaming business and the provision of wireless services using other technological formats, and provided however that defendants may lease, for a period not to exceed 30 days, from the Management Trustee appointed by this Court pursuant to the Preservation of Assets Order, 2.5 MHz of spectrum in each RSA included in the Divestiture Assets.

XII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

XIII. Expiration of Final Judgment

Unless this Court grants an extension, this Final Judgment shall expire 10 years from the date of its entry.

XIV. Public Interest Determination

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

Competitive Impact Statement

Plaintiff United States of America (''United States''), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (''APPA'' or ''Tunney Act''), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Defendants entered into a Transaction Agreement dated November 17, 2005, pursuant to which ALLTEL Corporation (''ALLTEL'') will acquire Midwest Wireless Holdings L.L.C. (''Midwest Wireless''). Plaintiffs filed a civil antitrust Complaint on September 7, 2006 seeking to enjoin the proposed acquisition. The Complaint alleges that the likely effect of this acquisition would be to lessen competition substantially for mobile wireless telecommunications services in four geographic areas in the state of Minnesota in violation of Section 7 of the Clayton Act, 15 U.S.C. 18. This loss of competition would result in consumers facing higher prices and lower quality or quantity of mobile wireless telecommunications services.

At the same time the Complaint was filed, the parties moved this Court to enter a Preservation of Assets Order and plaintiff United States lodged a proposed Final Judgment, which are designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, which is explained more fully below, defendants are required to divest ALLTEL's mobile wireless telecommunications services businesses and related assets in four markets (''Divestiture Assets''). Under the terms of the Preservation of Assets Order, defendants will take certain steps to ensure that: (a) These assets are preserved and that the Divestiture Assets are operated as competitively independent, economically viable and ongoing businesses; (b) they will remain independent and uninfluenced by defendants or the consummation of the transaction; and (c) competition is maintained during the pendency of the ordered divestiture.

Plaintiffs and defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof. Defendants have also stipulated that they will comply with the terms of the Preservation of Assets Order and the proposed Final Judgment from the date of signing of the Preservation of Assets Stipulation, pending entry of the proposed Final Judgment by the Court and the required divestiture. Should the Court decline to enter the proposed Final Judgment, defendants have also committed to continue to abide by its requirements and those of the Preservation of Assets Order until the expiration of time for appeal.

II. Description of the Events Giving Rise to the Alleged Violation

A. The Defendants and the Proposed Transaction

ALLTEL, with headquarters in Little Rock, Arkansas, is a corporation organized and existing under the laws of

the state of Delaware. ALLTEL is the fifth largest provider of mobile wireless voice and data services in the United States by number of subscribers; it serves approximately 11 million customers. It provides mobile wireless telecommunications services in 233 rural service areas and 116 metropolitan statistical areas located within 35 states and roaming services to other mobile wireless providers who use CDMA, TDMA and GSM technology in these areas. In 2005, ALLTEL earned wireless revenues of approximately $6.572 billion.

Midwest Wireless, with headquarters in Mankato, Minnesota, is a privately held Delaware limited liability company. Midwest Wireless provides wireless service in 14 rural service areas and one metropolitan statistical area located in Minnesota, Iowa and Wisconsin and has approximately 440,000 customers. In 2004, Midwest Wireless earned approximately $264 million in revenues.

Pursuant to a Transaction Agreement dated November 17, 2005, ALLTEL will acquire Midwest Wireless for $1.075 billion in cash. If this transaction is consummated, ALLTEL and Midwest Wireless combined would have approximately 11.5 million subscribers, with $7.8 billion in revenues and operations in 35 states.

The proposed transaction, as initially agreed to by defendants, would lessen competition substantially for mobile wireless telecommunications services in four markets. This acquisition is the subject of the Complaint and proposed Final Judgment filed by plaintiffs.

B. Mobile Wireless Telecommunications Services Industry

Mobile wireless telecommunications services allow customers to make and receive telephone calls and use data services using radio transmissions without being confined to a small area during the call or data session, and without the need for unobstructed line-of-sight to the radio tower. This mobility is highly prized by customers, as demonstrated by the more than 180 million people in the United States who own mobile wireless telephones. In 2005, revenues for the sale of mobile wireless telecommunications services in the United States were over $113 billion. To provide these services, mobile wireless telecommunications services providers must acquire adequate and appropriate spectrum, deploy an extensive network of switches, radio transmitters, and receivers, and interconnect this network with those of local and long-distance wireline telecommunications providers and other mobile wireless telecommunications services providers.

The first wireless voice systems were based on analog technology, now referred to as first-generation or ''IG'' technology. These analog systems were launched after the FCC issued the first licenses for mobile wireless telephone service: two cellular licenses (A-block and B-block) in each geographic area in the early to mid-1980s. The licenses are in the 800 MHz range of the radio spectrum, each license consists of 25 MHz of spectrum, and they are issued for each Metropolitan Statistical Area (''MSA'') and Rural Service Area (''RSA'') (collectively, ''Cellular Marketing Areas'' or ''CMAs''), with a total of 734 CMAs covering the entire United States. In 1982, one of the licenses was issued to the incumbent local exchange carrier in the market, and the other was issued by lottery to someone other than the incumbent.

In 1995, the FCC allocated and subsequently issued licenses for additional spectrum for the provision of Personal Communications Services (''PCS''), a category of services that includes mobile wireless telecommunications services comparable to those offered by cellular licensees. These licenses are in the 1.9 GHz range of the radio spectrum and are divided into six blocks: A, B, and C, which consist of 30 MHz each; and D, E, and F, which consist of 10 MHz each. Geographically, the A and B-block 30 MHz licenses are issued by Major Trading Areas (''MTAs''), and C, D, E, and F-block licenses are issued by Basic Trading Areas (''BTAs''), several of which comprise each MTA. MTAs and BTAs do not generally correspond to MSAs and RSAs. With the introduction of the PCS licenses, both cellular and PCS licensees began offering digital services, thereby increasing capacity, shrinking handsets, and extending battery life. In 1996, one provider, a specialized mobile radio (''SMR'' or ''dispatch'') spectrum licensee, began to use its SMR spectrum to offer mobile wireless telecommunications services comparable to those offered by other mobile wireless telecommunications services providers, in conjunction with its dispatch, or ''push-to-talk,'' service.

Today, more than 99% of the U.S. population lives in counties where mobile wireless telecommunications services operators offer digital service, and nearly all mobile wireless voice service has migrated to second-generation or ''2G'' digital technologies: TDMA (time division multiple access), GSM (global standard for mobile, a type of TDMA standard used by all carriers in Europe), and CDMA (code division multiple access). Mobile wireless telecommunications services providers have chosen to build their networks on these incompatible technologies and most have chosen CDMA or GSM, with TDMA having been orphaned by equipment vendors. (The SMR providers use a fourth incompatible technological standard better suited to the spectrum they own, and, as SMR licensees, they have no obligation to support a specific technology standard.) Even more advanced technologies (''3G'') have begun to be deployed for voice and data. In all of the geographic areas alleged in the complaint, ALLTEL and Midwest Wireless own the 25 MHz cellular licenses and each own some additional PCS licenses. Cellular spectrum, because of its propagation characteristics, is more efficient to use in serving rural areas.

C. The Competitive Effects of the Transaction on Mobile Wireless Telecommunications Services

ALLTEL's proposed acquisition of Midwest Wireless will substantially lessen competition in mobile wireless telecommunications services in four relevant geographic areas. Mobile wireless telecommunications services include both voice and data services provided over a radio network and allow customers to maintain their telephone calls or data sessions without wires, such as when traveling. Fixed wireless services and other wireless services that have a limited range (e.g., Wi-Fi) do not offer a viable alternative to mobile wireless telecommunications services primarily because customers using these services cannot maintain a call or data session while moving from one location to another.

Most customers use mobile wireless telecommunications services in close proximity to their workplaces and homes. Thus, customers purchasing mobile wireless telecommunications services choose among mobile wireless telecommunications services providers that offer services where they are located and travel on a regular basis: home, work, other areas they commonly visit, and areas in between. The number and identity of mobile wireless telecommunications services providers varies from geographic area to geographic area, along with the quality of their services and the breadth of their geographic coverage, all of which are significant factors in customers' purchasing decisions. Mobile wireless telecommunications services providers can and do offer different promotions, discounts, calling plans, and equipment subsidies in different geographic areas,

effectively varying the actual price for customers by geographic area.

The relevant geographic markets for mobile wireless telecommunications services are, therefore, local in nature. The FCC has licensed a limited number of mobile wireless telecommunications services providers in these and other geographic areas based upon the availability of radio spectrum. These FCC spectrum licensing areas often represent the core of the business and social sphere where customers face the same competitive choices for mobile wireless telecommunications services. Although not all FCC spectrum licensing areas are relevant geographic areas for the purpose of analyzing the antitrust impact of this transaction, the FCC spectrum licensing areas that encompass the four geographic areas of concern in this transaction are where consumers in these communities principally use their mobile wireless telecommunications services. As described in the Complaint, the relevant geographic markets where the transaction will substantially lessen competition for mobile wireless telecommunications services are represented by the following FCC spectrum licensing areas which are all RSAs in southern Minnesota: Minnesota RSA–7 (CMA 488), Minnesota RSA–8 (CMA 489), Minnesota RSA–9 (CMA 490), and Minnesota RSA–10 (CMA 491). These four RSAs include the counties of Blue Earth, Brown, Chippewa, Cottonwood, Fairbault, Freeborn, Jackson, Kandiyohi, Lac qui Parle, Le Sueuer, Lincoln, Lyon, Martin, McLeod, Meeker, Murray, Nicollet, Nobles, Pipestone, Redwood, Renville, Rice, Rock, Sibley, Steele, Waseca, Watowan and Yellow Medicine.

The four geographic markets of concern for mobile wireless telecommunications services were identified by a fact-specific, market-by-market analysis that included consideration of, but was not limited to, the following factors: The number of mobile wireless telecommunications services providers and their competitive strengths and weaknesses; ALLTEL's and Midwest Wireless's market shares along with those of the other providers; whether additional spectrum is or is likely soon to be available; whether any providers are limited by insufficient spectrum or other factors in their ability to add new customers; the concentration of the market, and the breadth and depth of coverage by different providers in each market; and the likelihood that any provider would expand its existing coverage.

ALLTEL and Midwest Wireless both own businesses that offer mobile wireless telecommunications services in the four relevant geographic areas. The companies' combined market shares for mobile wireless telecommunications services in the relevant markets as measured in terms of subscribers range from over 60% to nearly 95%. In each relevant geographic market, Midwest Wireless has the largest market share, and, in all but one RSA, ALLTEL is the second-largest mobile wireless telecommunications services provider. In all of the relevant geographic markets, ALLTEL and Midwest Wireless own the only 800 MHz band cellular spectrum licenses which are more efficient in serving rural areas than 1900 MHz band PCS spectrum. As a result of holding the cellular spectrum licenses and being early entrants into these markets, ALLTEL's and Midwest Wireless's networks provide greater depth and breadth of coverage than their competitors, which are operating on PCS spectrum in the relevant geographic markets, and thus are more attractive to consumers.

In addition, mobile wireless telecommunications services providers with partial coverage in a geographic area do not aggressively market their services in this location because potential customers would use their wireless telephones primarily in places where these providers have no network. In theory, these less built-out providers could service residents of these rural areas through roaming agreements but, as a practical matter, when service is provided on another carrier's network, the providers would have to pay roaming charges to, and rely on, that carrier to maintain the quality of the network. Because of these constraints, the other providers who own partially built-out networks in the four geographic areas are reluctant to market their services to rural residents of these areas. Therefore, ALLTEL and Midwest Wireless are likely closer substitutes for each other than the other mobile wireless telecommunications services providers in the relevant geographic markets. Additionally, postmerger in these markets, there will be insufficient remaining competitors, with the type of coverage desired by customers, and the ability to compete effectively to defeat a small, but significant price increase by the merged firm.

The relevant geographic markets for mobile wireless telecommunications services are highly concentrated. As measured by the Herfindahl-Hirschman Index (''HHI''), which is commonly employed in merger analysis and is defined and explained in Appendix A to the Complaint, concentration in these markets ranges from over 3600 to more than 5600, which is well above the 1800 threshold at which the Department considers a market to be highly concentrated. After ALLTEL's proposed acquisition of Midwest Wireless is consummated, the HHIs in the relevant geographic markets will range from over 4700 to over 9100, with increases in the HHI as a result of the merger ranging from over 1000 to over 4100.

Competition between ALLTEL and Midwest Wireless in the relevant geographic markets has resulted in lower prices and higher quality in mobile wireless telecommunications services than would otherwise have existed in these geographic markets. If ALLTEL's proposed acquisition of Midwest Wireless is consummated, the competition between ALLTEL and Midwest Wireless in mobile wireless telecommunications services will be eliminated in these markets and the relevant geographic markets for mobile wireless telecommunications services will become substantially more concentrated. As a result, the loss of competition between ALLTEL and Midwest Wireless increases the likelihood of unilateral actions by the merged firm in the relevant geographic markets to increase prices, diminish the quality or quantity of services provided, and refrain from or delay making investments in network improvements.

Entry by a new mobile wireless telecommunications services provider in the relevant geographic markets would be difficult, time-consuming, and expensive, requiring the acquisition of spectrum licenses and the build-out of a network. Expansion by providers who hold spectrum in these areas and are only partially built-out is also unlikely as the relevant geographic markets are rural service areas where the combined firm would own all of the available 800 MHz spectrum. Due to propagation characteristics of 800 MHz cellular spectrum and 1900 MHz PCS spectrum, the 800 MHz signals can cover a substantially broader area than the 1900 MHz signals. The estimated coverage advantage of the 800 MHz spectrum in rural areas ranges from two to as much as five times greater than PCS. In rural markets, this difference results in higher build-out costs for PCS networks than for cellular networks. The high costs of constructing PCS networks in rural markets combined with the relatively low population density makes it less likely that carriers that own PCS spectrum would build out in the relevant geographic markets. Therefore, new entry in response to a small but significant price increase for mobile wireless telecommunications services by the merged firm in the relevant

geographic markets would not be timely, likely, or sufficient to thwart the competitive harm that would result from ALLTEL's proposed acquisition of Midwest Wireless.

For these reasons, plaintiffs concluded that ALLTEL's proposed acquisition of Midwest Wireless will likely substantially lessen competition, in violation of Section 7 of the Clayton Act, in the provision of mobile wireless telecommunications services in the relevant geographic markets.

III. Explanation of the Proposed Final Judgment

The divestiture requirements of the proposed Final Judgment will eliminate the anticompetitive effects of the acquisition in mobile wireless telecommunications services in the four geographic markets of concern. The proposed Final Judgment requires defendants, within 120 days after the filing of the Complaint, or 5 days after notice of the entry of the Final Judgment by the Court, whichever is later, to divest the Divestiture Assets. The Divestiture Assets are essentially ALLTEL's entire mobile wireless telecommunications services business and 800 MHz cellular spectrum in the four markets where ALLTEL and Midwest Wireless are each other's closest competitors for mobile wireless telecommunications services. These assets must be divested in such a way as to satisfy plaintiff United States in its sole discretion upon consultation with plaintiff Minnesota, that they will be operated by the purchaser as a viable, ongoing business that can compete effectively in the relevant market. Defendants must take all reasonable steps necessary to accomplish the divestitures quickly and shall cooperate with prospective purchasers.

The merged firm may retain ALLTEL's PCS wireless spectrum in the four geographic areas and ALLTEL's GSM roaming business, including GSM roaming contracts and equipment. ALLTEL's PCS spectrum is used primarily to provide roaming services to other providers who use GSM technology. Midwest Wireless does not currently provide GSM roaming and therefore the proposed acquisition will not lessen competition in providing these services. In requiring divestitures, plaintiffs seek to make certain that the potential buyer acquires all the assets it may need to be a viable competitor and replace the competition lost by the merger. The 25 MHz of cellular spectrum that must be divested will support the operation and expansion of the mobile wireless telecommunications services businesses being divested, allowing the buyer to be a viable competitor to the merged entity.

The proposed Final Judgment requires that the Divestiture Assets be divested to a single acquirer who, as a result, will be able to supply service to customers that require mobile wireless telecommunications service throughout southern rural Minnesota in the same way that ALLTEL is currently able to provide that service. This provision resolves concerns about the loss of competition for customers that demand coverage over a combination of Minnesota FCC licensing areas, in addition to the concerns due to eliminating competition within each licensing area.

A. Timing of Divestitures

In antitrust cases involving mergers or joint ventures in which plaintiff United States seeks a divestiture remedy, it requires completion of the divestitures within the shortest time period reasonable under the circumstances. In this case, Section IV.A of the proposed Final Judgment requires the divestiture of the Divestiture Assets, within 120 days after the filing of the Complaint, or 5 days after notice of the entry of the Final Judgment by the Court, whichever is later. Plaintiff United States in its sole discretion upon consultation with plaintiff Minnesota may extend the date for divestiture of the Divestiture Assets by up to 60 days. Because the FCC's approval is required for the transfer of the wireless licenses to a purchaser, Section IV.A provides that if applications for transfer of a wireless license have been filed with the FCC, but the FCC has not acted dispositively before the end of the required divestiture period, the period for divestiture of those assets shall be extended until 5 days after the FCC has acted.

The divestiture timing provisions of the proposed Final Judgment will ensure that the divestitures are carried out in a timely manner, and at the same time will permit defendants an adequate opportunity to accomplish the divestitures through a fair and orderly process. Even if all Divestiture Assets have not been divested upon consummation of the transaction, there should be no adverse impact on competition given the limited duration of the period of common ownership and the detailed requirements of the Preservation of Assets Order.

B. Use of a Management Trustee

The Preservation of Assets Stipulation and the Preservation of Assets Order, submitted simultaneously with this Competitive Impact Statement, ensures that, prior to divestiture, the Divestiture Assets are maintained and remain an economically viable ongoing business concern. The Divestiture Assets will remain preserved, independent and uninfluenced by defendants, so that competition is maintained during the pendency of the ordered divestiture.

The Preservation of Assets Order appoints a management trustee selected by plaintiff United States upon consultation with plaintiff Minnesota to oversee the Divestiture Assets in the relevant geographic markets. The appointment of a management trustee in this unique situation is required because the Divestiture Assets are not independent facilities that can be held separate and operated as standalone units by the merged firm. Rather, the Divestiture Assets are an integral part of a larger network, and to maintain their competitive viability and economic value, they should remain part of that network during the divestiture period. To insure that these assets are preserved and supported by defendants during this period, yet run independently, a management trustee is necessary to oversee the continuing relationship between defendants and these assets. The management trustee will have the power to operate the Divestiture Assets in the ordinary course of business, so that they will remain preserved, independent, and uninfluenced by defendants, and so that the Divestiture Assets remain an ongoing and economically viable competitor to defendants and to other mobile wireless telecommunications services providers. The management trustee will preserve the confidentiality of competitively sensitive marketing, pricing, and sales information; insure defendants' compliance with the Preservation of Assets Order and the proposed Final Judgment; and maximize the value of the Divestiture Assets so as to permit expeditious divestiture in a manner consistent with the proposed Final Judgment.

The Preservation of Assets Order provides that defendants will pay all costs and expenses of the management trustee, including the cost of consultants, accountants, attorneys, and other representatives and assistants hired by the management trustee as are reasonably necessary to carry out his or her duties and responsibilities. After his or her appointment becomes effective, the management trustee will file monthly reports with plaintiffs setting forth the efforts to accomplish the goals of the Preservation of Assets Order and the proposed Final Judgment and the extent to which defendants are fulfilling their responsibilities. Finally, the

management trustee may become the divestiture trustee, pursuant to the provisions of Section V of the proposed Final Judgment.

C. Use of a Divestiture Trustee

In the event that defendants do not accomplish the divestiture within the periods prescribed in the proposed Final Judgment, the Final Judgment provides that the Court will appoint a trustee selected by plaintiff United States upon consultation with plaintiff Minnesota to effect the divestitures. As part of this divestiture, defendants must relinquish any direct or indirect financial ownership interests and any direct or indirect role in management or participation in control. Pursuant to Section V of the proposed Final Judgment, the divestiture trustee will own and control the Divestiture Assets until they are sold to a final purchaser, subject to safeguards to prevent defendants from influencing their operation.

Section V details the requirements for the establishment of the divestiture trust, the selection and compensation of the divestiture trustee, the responsibilities of the divestiture trustee in connection with the divestiture and operation of the Divestiture Assets, and the termination of the divestiture trust. The divestiture trustee will have the obligation and the sole responsibility, under Section V.D, for the divestiture of any transferred Divestiture Assets. The divestiture trustee has the authority to accomplish divestitures at the earliest possible time and ''at such price and on such terms as are then obtainable upon reasonable effort by the Divestiture Trustee.'' In addition, to insure that the divestiture trustee can promptly locate and divest to an acceptable purchaser, plaintiff United States, in its sole discretion upon consultation with plaintiff Minnesota, may require defendants to include additional assets, or allow defendants to substitute substantially similar assets, which substantially relate to the Divestiture Assets to be divested by the divestiture trustee.

The divestiture trustee will not only have responsibility for sale of the Divestiture Assets, but will also be the authorized holder of the wireless licenses, with full responsibility for the operations, marketing, and sales of the wireless businesses to be divested, and will not be subject to any control or direction by defendants. Defendants will no longer have any role in the ownership, operation, or management of the Divestiture Assets following consummation of the transaction, as provided by Section V, other than the right to receive the proceeds of the sale, and certain obligations to provide support to the Divestiture Assets, and cooperate with the divestiture trustee in order to complete the divestiture, as indicated in Section V.L and in the Preservation of Assets Order.

The proposed Final Judgment provides that defendants will pay all costs and expenses of the divestiture trustee. The divestiture trustee's commission will be structured, under Section V.G of the proposed Final Judgment, so as to provide an incentive for the divestiture trustee based on the price obtained and the speed with which the divestitures are accomplished. After his or her appointment becomes effective, the divestiture trustee will file monthly reports with the Court and plaintiffs setting forth his or her efforts to accomplish the divestitures. Section V.J requires the divestiture trustee to divest the Divestiture Assets to an acceptable purchaser no later than six months after the assets are transferred to the divestiture trustee. At the end of six months, if all divestitures have not been accomplished, the trustee and plaintiff United States upon consultation with plaintiff Minnesota, will make recommendations to the Court, which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or term of the trustee's appointment.

The divestiture provisions of the proposed Final Judgment will eliminate the anticompetitive effects of the transaction in the provision of mobile wireless telecommunications services. The divestitures of the Divestiture Assets will preserve competition in mobile wireless telecommunications services by maintaining an independent and economically viable competitor in the relevant geographic markets.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no prima facie effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

Plaintiffs and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that plaintiff United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to plaintiff United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within 60 days of the date of publication of this Competitive Impact Statement in the **Federal Register**. All comments received during this period will be considered by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of plaintiff United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Nancy M. Goodman, Chief, Telecommunications and Media Enforcement Section, Antitrust Division, U.S. Department of Justice, 1401 H Street, NW., Suite 8000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against defendants. Plaintiff United States could have continued the litigation and sought preliminary and permanent injunctions against ALLTEL's acquisition of Midwest Wireless. Plaintiff United States is satisfied, however, that the divestiture of assets and other relief described in the proposed Final Judgment will preserve competition for the provision of mobile wireless telecommunications services in the relevant markets and, thus, would achieve all or substantially all of the relief the government would

have obtained through litigation, but without the time and expense of a trial.

VII. Standard of Review Under the APPA for the Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a 60 day comment period, after which the Court shall determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. 16(e)(1). In making that determination, the Court shall consider:

> (A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
>
> (B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(l)(A) & (B).[1] As the United States Court of Appeals for the District of Columbia Circuit has held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the consent judgment is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the consent judgment may positively harm third parties. *See United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1458–62 (D.C. Cir. 1995).

With respect to the adequacy of the relief secured by the decree, a court may not ''engage in an unrestricted evaluation of what relief would best serve the public.'' *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft*, 56 F.3d at 1460–62. Courts have held that

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is ''*within the reaches of the public interest.*'' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[2] In making its public interest determination, a district court must accord due respect to the government's prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case. *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003).

Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a funding of liability. ''[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' '' *United States* v. *AT&T Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting Gillette Co., 406 F. Supp. at 716), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy).

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the Court to ''construct [its] own hypothetical case and then evaluate the decree against that case.'' *Microsoft,* 56 F.3d at 1459. Because the ''court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place,'' it follows that ''the court is only authorized to review the decree itself,'' and not to ''effectively redraft the complaint'' to inquire into other matters that the United States did not pursue. *Id.* at 1459–60.

In its 2004 amendments to the Tunney Act, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction ''[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene.'' 15 U.S.C. § 16(e)(2). This language codified the intent of the original 1974 statute, expressed by Senator Tunney in the legislative history: ''The court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process.'' 119 Cong. Rec. 24,598 (1973) (statement of Senator Tunney). Rather:

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977).

VIII. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by plaintiff United States in formulating the proposed Final Judgment.

Dated: September 7, 2006.

Respectfully submitted,

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[1] In 2004, Congress amended the APPA to ensure that courts take into account the above-quoted list of relevant factors when making a public interest determination. Compare 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16 (e)(1) (2006) (substituting ''shall'' for ''may'' in directing relevant factors for courts to consider and amending list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms). On the points discussed herein, the 2004 amendments did not alter the substance of the Tunney Act, and the pre-2004 precedents cited below remain applicable.

[2] *Cf. BNS,* 858 F.2d at 464 (holding that the court's ''ultimate authority under the [APPA] is limited to approving or disapproving the consent decree''); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to ''look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass''); *see generally Microsoft,* 56 F.3d at 1461 (discussing whether ''the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest' '').

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

September 15, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting the Department of Labor (DOL). To obtain documentation, contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Bureau of Labor Statistics (BLS), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (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: Bureau of Labor Statistics.

Type of Review: Revision of a currently approved collection.

Title: National Longitudinal Survey of Youth 1997.

OMB Number: 1220–0157.

Frequency: Annually.

Type of Response: Reporting.

Affected Public: Individuals or households.

Number of Respondents: 7,700.

From	Total responses	Average time per response (minutes)	Estimated total burden (hours)
Main Round 10 Interview	7,500	60	7,500
Round 10 Validation Interview	750	6	75
Round 11 Pretest	200	60	200
Totals	8,450	.....	7,775

Total Annualized capital/startup costs: $0

Total Annual Costs (operating/maintaining systems or purchasing services): $0

Description: The information obtained in this survey will be used by the Department of Labor, other government agencies, academic researchers, the news media, and the general public to understand the employment experiences and school-to-work transitions of young men and women born in the years 1980 to 1984.

Ira L. Mills,

Departmental Clearance Officer

[FR Doc. 06–7908 Filed 9–19–06; 8:45 am]

BILLING CODE 4510–24–U

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 20, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6440.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0139.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Overdraft and Lending-Related Incentive Pay Plan Policies (formerly Organization and Operations of Federal Credit Unions).

Description: Federal Credit Unions wishing to pay lending-related incentives to employees must establish written policies.

Respondents: Certain Federal Credit Unions.

Estimated No. of Respondents/Record keepers: 2,000.

Estimated Burden Hours Per Response: One.

Frequency of Response: On Occasion.

Estimated Total Annual Burden Hours: 5,500.

Estimated Total Annual Cost: $137,500.

By the National Credit Union Administration Board on September 14, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6–15610 Filed 9–19–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Review; Comment Request.

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until October 20, 2006.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer listed below:

Clearance Officer: Mr. Neil McNamara, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–837–2861, E-mail: *mcnamara@ncua.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or a copy of the information collection request should be directed to Tracy Sumpter at the National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428, or at (703) 518–6440.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0121.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Title: Notice of Change of Officials and Senior Executive Officers.

Description: The regulations direct newly chartered and troubled credit unions to provide NCUA with 30 days notice before making a management change. 12 CFR parts 701.14 and 741.205.

Estimated No. of Respondents/ Recordkeepers: 262.

Estimated Burden Hours Per Response: 2.0 hours.

Frequency of Response: Reporting and on occasion.

Estimated Total Annual Burden Hours: 524.

Estimated Total Annual Cost: $ 0.

By the National Credit Union Administration Board on September 14, 2006.

Mary Rupp,

Secretary of the Board.

[FR Doc. E6–15614 Filed 9–19–06; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field support camps with emergency provisions for the Expedition Vessels, *Professor Molchanov, Professor Multanovsiy, M/V Orlove, Akademik Shokalsiy* and *M/V Sarpik Ittuk* for the 2006–2007 season and the two following austral summers. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 20, 2006. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale, Environmental Officer, at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of expeditions to Antarctica. During each trip, passengers are taken ashore at selected sites by Zodiac (rubber raft) for approximately two to four hours at a time. On each zodiac landing, emergency gear would be taken ashore in case weather deteriorations and passengers are required to camp on shore. Anything taken ashore will be removed from Antarctica and disposed of in Ushuaia, Argentina, Port Stanley, Falkland Islands, or a substitute port of disembarkation. No hazardous domestic products or wastes (aerosol cans, paints, solvents, etc) will be brought ashore. Cooking stoves, fuels will be used only in an emergency where passengers are forced to spend night on shore. Conditions of the permit would include requirements to report on the removal of materials, and any accidential releases, and management of all waste, including human waste, in accordance with Antarctic waste regulations.

Application for the permit is made by: Pat Shaw, President, Quark Expeditions, Inc. 1019 Boston Post Road, Darien, CT 06820.

Location: Antarctica (south of 60 degrees south latitude).

Dates: November 1, 2006 to March 31, 2009.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 06–7757 Filed 9–19–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications received under the Antarctic Conservation Act.

SUMMARY: Notice is hereby given that the National Science Foundation (NSF) has received a waste management permit application for operation of remote field camps during dual helicopter flights from Punta Arenas, Chile to South Pole and return. The application is submitted to NSF pursuant to regulations issued under the Antarctic Conservation Act of 1978.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 20, 2006. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Dr. Polly A. Penhale, Environmental Officer, at the above address or (703) 292–8030.

SUPPLEMENTARY INFORMATION: NSF's Antarctic Waste Regulation, 45 CFR part 671, requires all U.S. citizens and entities to obtain a permit for the use or release of a designated pollutant in Antarctica, and for the release of waste in Antarctica. NSF has received a permit application under this Regulation for the operation of an expedition to Antarctica. Polar First plans for four pilots to fly two Bell 407 Helicopters from Punta Arenas, Chile to the South Pole and return to Punta Arenas. All drums of fuel at Vernadsky, Bravo, Fowler, Patriot Hills and Thiel will be cached and removed by Antarctic Logistics and Expeditions (ALE).

Application for the permit is made by: Jennifer Murray, Director, Solo World Challenge Ltd. ''Polar First'', Flat 2, One Onslow Gardens, London, SW7 3LX England.

Location: Antarctic Peninsula and South Geographic Pole.

Dates: January 1, 2007 to February 6, 2007.

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 06–7758 Filed 9–19–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Proposal Review; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces its intent to hold proposal review meetings throughout the year. The purpose of these meetings is to provide advice and recommendations concerning proposals submitted to the NSF for financial support. The agenda for each of these meetings is to review and evaluate proposals as part of the selection process for awards. The review and evaluation may also include assessment of the progress of awarded proposals. The majority of these meetings will take place at NSF, 4201 Wilson Blvd., Arlington, Virginia 22230.

These meetings will be closed to the public. The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act. NSF will continue to review the agenda and merits of each meeting for overall compliance of the Federal Advisory Committee Act.

These closed proposal review meetings will not announced on an individual basis in the **Federal Register**. NSF intends to publish a notice similar to this on a quarterly basis. For an advance listing of the closed proposal review meetings that include the names of the proposal review panel and the time, date, place, and any information on changes, corrections, or cancellations, please visit the NSF Web site at: *http://www.nsf.gov*. This information may also be requested by telephoning, 703/292–8182.

Dated: September 15, 2006.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 06–7778 Filed 9–19–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Sunshine Act Meeting

AGENCY HOLDING MEETING: National Science Foundation, National Science Board and its Subdivisions.

DATE AND TIME: September 27–28, 2006.

Wednesday, September 27, 2006, 8:30 a.m.–5:15 p.m.

8:30–9:30 Open.
9:30–10:15 Open.
10:15–11 Open.
11–12 Open.
12–12:30 Closed.
2–2:15 Open.
2:15–2:30 Closed.
2:30–3:15 Open.
3:15–5:15 Open.

Thursday, September 28, 2006, 9 a.m.–3 p.m.

9–9:15 Open.
9:15–9:30 Closed.
9:30–10:30 Open.
10:30–12 Open.
1:15–1:20 Closed.
1:20–1:25 Closed.
1:25–3 Open.

PLACE: National Science Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA 22230.

PUBLIC MEETING ATTENDANCE: All visitors must report to the NSF's visitor's desk at the 9th and N. Stuart Streets entrance to receive a visitor's badge.

FOR FURTHER INFORMATION CONTACT: Please refer to the National Science Board Web site (*http://www.nsf.gov/nsb*) for updated schedule. NSB Office: Dr. Robert Webber, (703) 292–7000.

STATUS: Part of this meeting will be closed to the public. Part of this meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Wednesday, September 27, 2006

Open

CPP Subcommittee on Polar Issues (8:30 a.m.–9:30 a.m.)
- Chairman's Remarks
- Approval of Minutes
- Director's Remarks
- FY06 International Polar Year Solicitation Outcomes:
  - Education and Outreach
  - Research
- Emerging International Polar Partnerships
- Infrastructure Upgrades at Barrow, Toolik and Summit Research Stations
- McMurdo Access and Icebreaker Support

CPP Task Force on Transformative Research (9:30 a.m.–10:15 a.m.)
- Approval of Minutes for August 2006 Meeting
- Review of TR Draft Report and Recommendations

CPP Task Force on Hurricane Science and Engineering (10:15 a.m.–11 a.m.)
- Approval of Minutes for August 2006 Meeting
- Discussion of the Draft Report
- Future Activities of the Task Force

Committee on Audit and Oversight Open: (11 a.m.–12 p.m.)
- Approval of Minutes of August 2006 Meeting
- Audit of Interest in NSF Providing More Research Results
- FY 2007 Audit Plan
- CFO Update

Executive Committee Open: (2 p.m.–2:15 p.m.)
- Approval of Minutes for August 2006 Meeting
- Updates or New Business from Committee Members

CPP Task Force on International Science (2:30 p.m.–3:15 p.m.)
- Approval of Minutes
- Summary of the September 25 Roundtable Discussion
- Discussion of Future Task Force Activities

EHR Subcommittee on Science and Engineering Indicators (3:15 p.m.–5:15 p.m.)
- Approval of August Minutes
- Chairman's Remarks
- Introduction of Chapter Authors
- Discussion of Narrative Chapter Outlines
- Presentation by Dr. David Lightfoot, AD/SBE, on Science of Science Policy
- Parallel Discussion of Science and Engineering Indicators 2010
- Chairman's Summary

Closed

Committee on Audit and Oversight Closed: (12 p.m.–12:30 p.m.)
- Pending Investigations

Executive Committee Closed: (2:15 p.m.–2:30 p.m.)
- Specific Personnel Matters
- Future Budgets

Thursday, September 28, 2006

Open

Committee on Strategy and Budget Open: (9 a.m.–9:15 a.m.)
- Approval of August 10, 2006 CSB

Minutes
- Update on NSF Working Group on the Impact of Proposal and Award Management Mechanisms Study of Award Size, Duration and Proposal Success Rates
- Status of NSF FY 2007 Budget Request
- Status of NSF Strategic Plan, FY 2006–2011

Committee on Programs and Plans (9:30 a.m.–10:30 a.m.)
- Approval of Minutes
- Status Reports:
  - Task Force on Transformative Research
  - Task Force on Hurricane Science & Engineering
  - Subcommittee on Polar Issues
  - Task Force on International Science
- Timing and Circumstances for Annual Board Reexamination of Priority Order of MREFC Candidates for New Start Projects: Dr. Ken Ford
- Transmitting Director's Review Board Packages to the National Science Board: Review of Process

Committee on Education and Human Resources (10:30 a.m.–12 p.m.)
- Approval of May 2006 Minutes
- Science Mathematics and Research for Transformation (SMART) Program
- Doctoral Completion Project
- Ensuring America's Competitive Edge through Education and Research: The NSF Role
- Subcommittee on Science and Engineering Indicators
- Update on November 7, 2006 NSB Workshop: ''Moving Forward to Improve Engineering Education''
- NSB items

Closed

Committee on Strategy and Budget Closed: (9:15 a.m.–9:30 a.m.)
- Status of NSF FY 2008 Budget Request

Plenary Sessions of the Board (1:15 p.m.–3 p.m.)

Plenary Executive Closed (1:15 p.m.–1:20 p.m.)
- Approval of August 2006 Minutes

Plenary Closed (1:20 p.m.–1:25 p.m.)
- Approval of August 2006 Minutes
- Closed Committee Reports

Plenary Open (1:25 p.m.–3 p.m.)
- Approval of August 2006 Minutes
- Resolution to Close November 2006 Meeting
- Chairman's Report
- Director's Report
- Open Committee Reports

Michael P. Crosby,

Executive Officer and NSB Office Director.

[FR Doc. 06–7914 Filed 9–18–06; 12:53 pm]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: ''General Licensee Registration,'' NRC Form 664.
2. Current OMB approval number: 3150–0198.
3. How often the collection is required: Annually.
4. Who is required or asked to report: General Licensees of the NRC who possess devices subject to registration under 10 CFR 31.5.
5. The estimated number of annual respondents: 1,000.
6. The number of hours needed annually to complete the requirement or request: 333 hours annually (1,000 respondents × 20 minutes per form).
7. Abstract: NRC Form 664 is used by NRC general licensees to make reports regarding certain generally licensed devices subject to registration. The registration program allows NRC to better track general licensees, so that they can be contacted or inspected as necessary, and to make sure that generally licensed devices can be identified even if lost or damaged, and to further ensure that general licensees are aware of and understand the requirements for the possession of devices containing byproduct material. Greater awareness helps to ensure that general licensees will comply with the requirements for proper handling and disposal of generally licensed devices and would reduce the potential for incidents that could result in unnecessary radiation exposure to the public and contamination of property.

Submit, by November 20, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 14th day of September 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–15577 Filed 9–19–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333]

Notice of Acceptance for Docketing of the Application, Notice of Opportunity for Hearing and Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process for Facility Operating License No. DPR–59 for an Additional 20-Year Period, Entergy Nuclear Operations, Inc., James A. Fitzpatrick Nuclear Power Plant

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering an application for the renewal of Operating License No. DPR–59, which authorizes Entergy Nuclear Operations, Inc. (Entergy), to operate the James A. FitzPatrick Nuclear Power Plant (JAFNPP) at 2536 megawatts thermal. The renewed license would authorize the applicant to operate the JAFNPP for an additional 20 years beyond the period specified in the current license. JAFNPP is located on Lake Ontario in Oswego County,

approximately seven miles northeast of the City of Oswego, New York. The current operating license for the JAFNPP expires on October 17, 2014.

On August 1, 2006, the Commission's staff received the application from Entergy, to renew the Operating License No. DPR–59 for JAFNPP, pursuant to 10 CFR part 54. A Notice of Receipt and Availability of the license renewal application (LRA) was published in the **Federal Register** on August 11, 2006 (71 FR 46245).

The Commission's staff has reviewed the LRA for its acceptability and has determined that Entergy has submitted sufficient information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c), and the application is acceptable for docketing. The current Docket No. 50–333 for Operating License No. DPR–59 will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of each requested renewed license, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. In accordance with 10 CFR 54.29, the NRC may issue a renewed license on the basis of its review if it finds that actions have been identified and have been or will be taken with respect to: (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review, such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB), and that any changes made to the plant's CLB comply with the Act and the Commission's regulations. The Commission also must first find that the requirements of subpart A of 10 CFR 51 have been satisfied, and that matters raised under 10 CFR 2.335 have been addressed.

Within 60 days after the date of publication of this **Federal Register** Notice, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the renewal of the license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2.

Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852 and is accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* If a request for a hearing/petition for leave to intervene is filed within the 60-day period, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request/petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing/petition for leave to intervene is filed within the 60-day period, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR parts 51 and 54, renew the license without further notice.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR parts 51 and 54. The petition must specifically, explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the requestor/petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The requestor/petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

The Commission requests that each contention be given a separate numeric or alpha designation within one of the following groups: (1) Technical (primarily related to safety concerns); (2) environmental; or (3) miscellaneous.

As specified in 10 CFR 2.309, if two or more requestors/petitioners seek to co-sponsor a contention or propose substantially the same contention, the requestors/petitioners will be required to jointly designate a representative who shall have the authority to act for the requestors/petitioners with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail

[1] To the extent that the application contains attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitions desired access to this information should contact the applicant or applicant's counsel to discuss the need for a protective order.

addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at 301–415–1101, verification number is 301–415–1966.[2] A copy of the request for hearing and petition for leave to intervene must also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the applicant, Mr. Terrence A. Burke, Entergy Nuclear, 1340 Echelon Parkway, Mail Stop—ECH–62, Jackson, Mississippi 39213.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition, request and/or contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

In addition, the purpose of this notice is to inform the public that the NRC will be preparing an environmental impact statement (EIS) related to the review of the LRA and to provide the public an opportunity to participate in the environmental scoping process, as defined in 10 CFR 51.29. In accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that will be used as a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants'' (GEIS), dated May 1996. Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the NRC staff intends to hold a public scoping meeting. In addition, as outlined in 36 CFR 800.8, ''Coordination with the National Environmental Policy Act,'' the NRC plans to coordinate compliance with section 106 of the National Historic Preservation Act in meeting the requirements of the National Environmental Policy Act of 1969 (NEPA).

In accordance with 10 CFR 51.53(c) and 10 CFR 54.23, Entergy prepared and submitted the Environmental Report (ER) as part of the LRA. The LRA and the ER are publicly available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, or from the NRC's ADAMS. The ADAMS Public Electronic Reading Room is accessible at *http://adamswebsearch.nrc.gov/dologin.htm.* The ADAMS Accession Numbers for the LRA and the ER are ML062160494 and ML062160557, respectively. Persons who do not have access to ADAMS, or who encounter problems in accessing the documents located in ADAMS, should contact the NRC's PDR reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail at *pdr@nrc.gov.* The LRA and the ER may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/fitzpatrick.html.* In addition, the LRA and the ER are available for public inspection near the JAFNPP at the following public libraries: Penfield Library SUNY, 7060 State Route 104, Oswego, New York 13126; and Oswego Public Library, 140–142 East Second Street, Oswego, New York 13126.

Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. The NRC is required by 10 CFR 51.95 to prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with 10 CFR 51.26.

The NRC staff will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in the scoping process by members of the public and local, State, Tribal, and Federal government agencies are encouraged. As described in 10 CFR 51.29, the scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other ElSs that are being or will be prepared that are related to, but are not part of, the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, and include any contractor assistance to be used.

The NRC invites the following entities to participate in scoping:

a. The applicant, Entergy Nuclear Operations, Inc.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who has petitioned or intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC will hold public meetings for the JAFNPP license renewal supplement to the GEIS, at the Town Municipal Building, 42 Creamery Road, Oswego, New York 13126, on Thursday, October 12, 2006. There will be two identical meetings to accommodate interested parties. The first meeting will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second meeting will convene at 7 p.m. and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include: (1) An overview by the NRC staff of the NRC's license renewal review process; (2) an overview by the NRC staff of the NEPA environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; and (3) the opportunity for interested government agencies, organizations, and individuals to submit

[2] If the request/petition is filed by e-mail or facsimile, an original and two copies of the document must be mailed within 2 (two) business days thereafter to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; Attention: Rulemaking and Adjustication Staff.

comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No formal comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. For more information about the proposed action, the scoping process, and the environmental impact statement, please contact the NRC Environmental Project Manager, Mr. Samuel Hernandez, at Mail Stop O–11F1, U.S. Nuclear Regulatory Commission, Washington, DC 20555, by telephone at 1–800–368–5642, extension 4049, or by e-mail at *shq@nrc.gov.* Persons may register to attend or present oral comments at the meetings on the scope of the NEPA review by contacting Mr. Hernandez. Members of the public may also register to speak at the meeting within 15 minutes of the start of each meeting. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. Mr. Hernandez will need to be contacted no later than September 29, 2006, if special equipment or accommodations are needed to attend or present information at the public meeting, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the JAFNPP license renewal review to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D59, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to the U.S. Nuclear Regulatory Commission, Mail Stop T–6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, 20852, from 7:30 a.m. to 4:15 p.m. during Federal workdays. To be considered in the scoping process, written comments should be postmarked by November 14, 2006. Electronic comments may be sent by e-mail to the NRC at *FitzPatrickEIS@nrc.gov,* and should be sent no later than November 14, 2006, to be considered in the scoping process. Comments will be available electronically and accessible through ADAMS.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for viewing in ADAMS. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public viewing at the above-mentioned addresses, and one copy per request will be provided free of charge, to the extent of supply. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public viewing.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Hernandez at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 14th day of September 2006.

For the Nuclear Regulatory Commission.

Eric J. Benner,

Acting Director, Division of License Renewal, Office of Nuclear Reactor Regulation.

[FR Doc. 06–7974 Filed 9–19–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 And 50–323]

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Unit Nos. 1 and 2 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.90 for Facility Operating Licenses, Nos. DPR–80 and DPR–82, issued to Pacific Gas and Electric Company (PG&E, the licensee) for operation of the Diablo Canyon Power Plant, Unit Nos. 1 and 2 (DCPP or facility), located in San Luis Obispo County, California. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would delete the antitrust license conditions from the licenses.

The proposed action is in accordance with the licensee's application dated January 19, 2006, as supplemented by letter dated June 20, 2006.

The Need for the Proposed Action

Circumstances have changed significantly from those that existed when the antitrust license conditions were first imposed 28 years ago. In particular, there have been recent developments in the law at both the Federal and State levels to ensure competition in the industry in California and elsewhere. Moreover, agreements binding PG&E related to the Stanislaus Commitments will continue to be in effect whether or not the antitrust conditions actually remain a part of the DCPP licenses, and competitors have voiced no opposition to the removal of the conditions. Finally, under the limited statutory authority granted to the NRC under Section 105 of the Atomic Energy Act of 1954, it appears that the NRC lacks the authority now to continue to impose the antitrust conditions against PG&E through the DCPP licenses. Accordingly, in consideration of all of the foregoing, the licensee has requested to remove the antitrust conditions from the licenses as the conditions are no longer necessary to serve the original intended purpose.

Environmental Impacts of the Proposed Action

The NRC has completed its safety evaluation of the proposed action and concludes that the proposed license amendment involves administrative actions which have no effect on plant equipment or operation.

The details of the staff's safety evaluation will be provided in the license amendment that will be issued as part of the letter to the licensee approving the license amendment.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released off site. There is no significant increase in the amount of any effluent released off site. There is no significant increase in occupational or public radiation exposure. Therefore,

there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for DCPP, dated May 1973, and Addendum to Final Supplemental Environmental Impact Statement for DCPP dated May 1976.

Agencies and Persons Consulted

In accordance with its stated policy, on July 27, 2006, the staff consulted with the California State official, Steve Hsu of the Radiologic Health Branch, Department of Health Services, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated January 19, 2006, as supplemented by letter dated June 20, 2006. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 14th day of September 2006.

For the Nuclear Regulatory Commission.

Alan Wang,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E6–15589 Filed 9–19–06; 8:45 am]

BILLING CODE 7590–01–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 11Ac1–1; SEC File No. 270–404; OMB Control No. 3235–0461.

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'') intends to submit to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 11Ac1–1 (17 CFR 240.11Ac1–1), Dissemination of Quotations, contains two related collections of information necessary to disseminate market makers' published quotations to buy and sell securities to the public. The first collection of information is found in Rule 11Ac1–1(c) (17 CFR 240.11Ac1–1(c)). This reporting requirement obligates each ''responsible broker or dealer,'' as defined under the rule, to communicate to its exchange or association its best bids, best offers, and quotation sizes for any subject security, as defined under the rule. The second collection of information is found in Rule 11Ac1–1(b), (17 CFR 240.11Ac1–1(b)). This reporting requirement obligates each exchange and association to make available to quotation vendors for dissemination to the public the best bid, best offer, and aggregate quotation size for each subject security.[1] Brokers, dealers, other market participants, and members of the public rely on published quotation information to determine the best price and market for execution of customer orders.

It is anticipated that 721 respondents, consisting of 180 exchange specialists and 541 OTC market makers, will make 246,788,000 total annual responses pursuant to Rule 11Ac1–1, resulting in an annual aggregate burden of approximately 205,486 hours.

Written comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collections of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collections of information on those who are to respond, 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*. Comments must be submitted within 60 days of this notice.

Dated: September 7, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–15585 Filed 9–19–06; 8:45 am]

BILLING CODE 8010–01–P

[1] A third requirement under the Rule 11Ac1–1, as amended at 17 CFR 11Ac1–1(c)(5), gives electronic communications networks (''ECNs'') the option of reporting to an exchange or association for public dissemination, on behalf of their OTC market maker or exchange specialist customers, the best priced orders and the full size for such orders entered by market makers, to satisfy such market makers' reporting obligation under Rule 11Ac1–1(c). Because this reporting requirement is an alternative method of meeting the market makers' reporting obligation, and because it is directed to nine or fewer persons (ECNs), this collection of information is not subject to OMB review under the Paperwork Reduction Act.

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 17Ad–4(b) and (c); SEC File No. 270–264; OMB Control No. 3235–0341.

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'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17Ad–4(b) and (c) (17 CFR 240.17Ad–4) under the Securities Exchange Act of 1934 (17 U.S.C. 78a *et seq.*) is used to document when transfer agents are exempt, or no longer exempt, from the minimum performance standards and certain recordkeeping provisions of the Commission's transfer agent rules. Rule 17Ad–4(c) sets forth the conditions under which a registered transfer agent loses its exempt status. Once the conditions for exemption no longer exist, the transfer agent, to keep the appropriate regulatory authority (''ARA'') apprised of its current status, must prepare, and file if the ARA for the transfer agent is the Board of Governors of the Federal Reserve System (''BGFRS'') or the Federal Deposit Insurance Corporation (''FDIC''), a notice of loss of exempt status under paragraph (c). The transfer agent then cannot claim exempt status under Rule 17Ad–4(b) again until it remains subject to the minimum performance standards for non-exempt transfer agents for six consecutive months. The ARAs use the information contained in the notice to determine whether a registered transfer agent qualifies for the exemption, to determine when a registered transfer agent no longer qualifies for the exemption, and to determine the extent to which that transfer agent is subject to regulation.

The BGFRS receives approximately twelve notices of exempt status and six notices of loss of exempt status annually. The FDIC receives approximately eighteen notices of exempt status and three notices of loss of exempt status annually. The Commission and the Office of the Comptroller of the Currency (''OCC'') do not require transfer agents to file a notice of exempt status or loss of exempt status. Instead, transfer agents whose ARA is the Commission or OCC need only to prepare and maintain these notices. The Commission estimates that approximately sixteen notices of exempt status and loss of exempt status are prepared annually by transfer agents whose ARA is the Commission. Similarly, the OCC estimates that the transfer agents for which it is the ARA prepare and maintain approximately fifteen notices of exempt status and loss of exempt status annually. Thus, a total of approximately seventy notices of exempt status and loss of exempt status are prepared and maintained by transfer agents annually. Of these seventy notices, approximately forty are filed with an ARA. Any additional costs associated with filing such notices would be limited primarily to postage, which would be minimal. Since the Commission estimates that no more than one-half hour is required to prepare each notice, the total annual burden to transfer agents is approximately thirty-five hours. The average cost per hour is approximately $30. Therefore, the total cost of compliance to the transfer agent community is $1,050.

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 shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. 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: September 11, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. E6–15586 Filed 9–19–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54437; File No. SR–CHX–2005–06]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Approving a Proposed Rule Change and Amendment No. 1 and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to a Proposed Rule Change Relating to Disciplinary and Delisting Procedures

September 13, 2006.

I. Introduction

On March 7, 2005, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposal to revise the Exchange's disciplinary and delisting procedures. The Exchange filed Amendment No. 1 to the proposed rule change on June 2, 2006. The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on June 27, 2006.[3] The Commission received no comments regarding the proposal, as amended by Amendment No. 1. On August 10, 2006, the Exchange filed Amendment No. 2 to the proposed rule change.[4] This order approves the proposal, as amended. In addition, the Commission is publishing notice to solicit comments on, and is simultaneously approving, on an accelerated basis, Amendment No. 2.

II. Description of the Proposal

The proposal revises a number of rules governing the CHX's disciplinary and delisting procedures. According to the CHX, the Exchange reviewed its rules, in part, to respond to the requirements of the Commission's 2003 order instituting public administrative

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 54021 (June 20, 2006), 71 FR 36571 (''Notice'').

[4] Amendment No. 2 revises the proposal to: (1) Clarify that the Exchange will use its emergency suspension authority under CHX Art. VII, Rule 2(a)(1)(i) only with respect to CHX Participants, and not with respect to associated persons of CHX Participants; (2) confirm that the Exchange will not use its emergency suspension authority under CHX Art. VII, Rule 2(a)(1)(i) unless the Exchange believes that the rule violation suggests that a Participant is in such financial or operational difficulty that the Participant cannot be permitted to continue to do business as a Participant with safety to investors, creditors, other Participants, or the Exchange; and (3) clarify that only a Participant, but not an associated person of a Participant, may hold a trading permit.

proceedings against the Exchange,[5] and in light of the Commission's guidance that a self-regulatory organization (''SRO'') should ensure that its ''regulatory function is strong, vigorous, and sufficiently independent and insulated from improper influence from management or any regulated entity.'' [6]

A. Authorization of Formal Disciplinary Actions and Other Proceedings

Several CHX rules currently require the CHX's Chief Executive Officer (''CEO'') to authorize the institution of disciplinary and related proceedings.[7] The proposal revises these rules to authorize the CHX's Chief Regulatory Officer (''CRO''), rather than its CEO, to institute these proceedings. The Exchange believes that requiring the CRO, rather than the CEO, to authorize proceedings under these rules will eliminate any appearance of a conflict of interest and bolster the apparent and actual independence of the Exchange's regulatory processes.[8]

The proposal will allow either the CRO or the CEO to institute proceedings under CHX Art. XI, Rule 8, ''Operational Capability,'' based upon a Participant's failure to maintain operational capability, and to impose restrictions on Participant Firm operations under CHX Art. XI, Rule 3(d), ''Restrictions on Operations,'' relating to net capital and aggregate indebtedness requirements. The Exchange believes that allowing either the CEO or the CRO to authorize proceedings under these rules is appropriate because they may involve a mixture of business and regulatory concerns.

B. Initial Decision by Hearing Officers

To eliminate any appearance of a conflict of interest, the proposal eliminates the provisions in current CHX Art. XII, Rule 5(b), ''Decision,'' that authorize the CEO to review a Hearing Officer's proposed decision and modify its conclusions, remand the matter for additional findings or supplemental proceedings, or conduct further proceedings himself.[9] The revised rule provides that the Hearing Officer's decision will be final, although it may be appealed to a Judiciary Committee or to the Board, as applicable, in accordance with CHX Art. XII, Rule 6.

C. Criteria for the Selection of Hearing Officers in Disciplinary and Delisting Proceedings

The proposal revises CHX Article XII, Rule 5, ''Hearing Procedure,'' to delineate the criteria that the CEO must consider in selecting a Hearing Officer for a disciplinary proceeding [10] and to create a process through which a respondent may object to a particular Hearing Officer on the grounds of bias or conflict of interest.[11] The proposal adopts identical criteria and objection procedures with respect to Hearing Officers for delisting hearings.[12]

D. Elimination of Redundant Procedures

The proposal eliminates the summary hearing process in current CHX Art. XII, Rule 2(b), ''Summary Hearing and Penalty,'' which the Exchange believes is redundant of other CHX disciplinary processes and, therefore, unnecessary. Similarly, the proposal deletes the suspension and termination rules applicable to specialists, odd-lot dealers, and market makers in CHX Articles XXX, XXXI, and XXXIV, respectively, because the Exchange believes that these provisions are obsolete and redundant of the Emergency Suspension provisions provided under CHX Art. VII, Rule 2.

E. Appeal of Disciplinary Proceedings

The proposal revises CHX Art. XII, Rule 6 to allow the Exchange, as well as a respondent, to appeal decisions to a Judiciary Committee.[13] Similarly, the proposal revises CHX Art. XXVIII, Rule 4(e) to allow the Exchange, as well as an issuer, to appeal the decision of a Hearing Officer in a delisting proceeding.

In addition, the proposal streamlines the current appellate review process for disciplinary actions. Currently, appeals are heard first by a Judiciary Committee, then by the Executive Committee and finally, on a discretionary basis, by the Board.[14] The proposal eliminates appellate review by the Executive Committee and provides that appeals will be heard by a Judiciary Committee and, on a discretionary basis, by the full Board.[15] The Exchange believes that the revised procedures should reduce the time required to reach a final judgment, thus contributing to the fair and effective enforcement of the Exchange's rules.

F. Failure to Promptly Pay Fines

Under CHX Art. XIV, Rule 10, ''Failure to Pay Debts,'' a Participant who fails to pay a fine owed to the Exchange within 60 days may be suspended, after due notice, until payment is made. The proposal revises this rule to authorize the Exchange to initiate a disciplinary proceeding under Art. XII against a Participant or associated person for the failure to pay a debt owed to the Exchange. The Exchange believes that the revised rule will provide the Exchange with the flexibility to assess additional fines or other sanctions, either in lieu of or in addition to a suspension, as an added inducement to avoid late payment of a fine owed to the Exchange.

G. Procedural Changes

The proposal revises several CHX rules to provide greater clarity to the Exchange's disciplinary and delisting procedures. In this regard, the proposal sets forth clear timeframes for responding to charges, scheduling hearings, filing motions, and issuing orders.[16] The proposal also: (i) Specifies

[5] *See* Securities Exchange Act Release No. 48566 (September 30, 2003), Administrative Proceeding File No. 3–11282 (''Order''). The Exchange noted that certain aspects of the proposed rule change are based on the recommendations of the Independent Counsel appointed by the terms of the Order.

[6] *See* Securities Exchange Act Release No. 48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (order approving File No. SR–NYSE–2003–34).

[7] *See, e.g.*, CHX Art. VII, Rule 2, ''Emergency Suspensions'' (authorizing the CEO to suspend a Participant or associated person under certain circumstances); CHX Art. XII, Rule 2(a), ''Minor Infraction,'' (authorizing the CEO to censure a respondent or impose a fine for a minor infraction); and CHX Article XII, Rule 2(d) (renumbered by the proposal as 2(b), ''Collateral Proceedings'') (authorizing the CEO to suspend or expel a Participant or associated person sanctioned by another SRO). *See also* CHX Art. XII, Rule 1(b) (requiring the CEO to direct the CHX's staff to prefer written charges if it appears to the CEO that there has been a violation of the CHX's rules).

[8] Although the CRO reports to the CEO, and therefore could potentially be influenced by the CEO's views on a proposed disciplinary matter, the Exchange noted that the CRO is required to appear before, and report on the Exchange's regulatory programs to, the Exchange's Regulatory Oversight Committee not less than quarterly. The Regulatory Oversight Committee, a committee of the CHX's Board of Directors (''Board'') composed predominately of independent directors, is charged with oversight of the Exchange's regulatory function. The Exchange believes that this review by the Regulatory Oversight Committee serves as a reasonable mechanism to prevent any conflict of interest from interfering with the Exchange's regulatory role.

[9] The proposal renumbers this provision as CHX Art. XII, Rule 5(f).

[10] *See* CHX Art. XII, Rule 5(e), ''Appointment of Hearing Officer.'' Specifically, the rule states that the CEO should give reasonable consideration to a prospective Hearing Officer's professional competence and reputation, experience in the securities industry, familiarity with the subject matter involved, the absence of bias and any conflict of interest, and any other relevant factors.

[11] *See* CHX Art. XII, Rule 5(h), ''Impartiality of Hearing Officer.'' The rule permits a respondent to file a motion seeking the disqualification of a Hearing Officer for bias or conflict of interest within 15 days of the Hearing Officer's appointment.

[12] *See* CHX Art. XXVIII, Rule 4(d).

[13] Specifically, the revised rule allows the Exchange to appeal an order issued under CHX Art. XII, Rules 2(b), 4(b), and 5.

[14] *See* CHX Art. XII, Rule 6.

[15] *See* CHX Art. XII, Rule 6.

[16] For example, the proposal revises CHX Art. XII, Rule 5, to require that: (i) A respondent file a written answer to charges within 30 days from the

the information that must be included in certain notices;[17] (ii) creates limited rights to prehearing discovery for all parties to a proceeding;[18] (iii) sets timeframes for motions and appeals;[19] (iv) confirms that the Board or the Executive Committee could direct the CRO to initiate a disciplinary proceeding;[20] (v) confirms that a Hearing Officer must make specific findings as to each proffered charge and impose an appropriate sanction for violations that are found to have occurred;[21] (vi) clarifies that fines assessed under the summary procedure of CHX Art. XII, Rule 2 are not publicly reported, except as may be required by Rule 19d–1 under the Act;[22] and (vii) confirms that the three-person Board panel that hears an appeal from an emergency suspension decision will consist of at least two public directors on the Board.[23] The proposal also adopts provisions that set forth the required content of settlement agreements in disciplinary proceedings.[24]

H. Removal of Securities

The proposal revises CHX Art. XXVIII, Rule 4, ''Removal of Securities,'' to provide that the Listing Unit of the CHX's Market Regulation Department, rather than the Board, will make the initial determination to delist a security. The proposal also eliminates the CEO's review of a Hearing Officer's findings with respect to a delisting. In addition, the proposal confirms that a Hearing Officer's decision is final unless a review is specifically demanded,[25] and sets forth the process and standards that the Executive Committee must follow with respect to any appeal of a Hearing Officer's decision.[26]

I. Role of Exchange Counsel

The proposal clarifies the role of Exchange counsel in disciplinary and delisting proceedings by providing that, in both types of proceedings, the Exchange counsel acting as counsel to the Hearing Officer may not be an employee of the CHX's Market Regulation Department and may not have directly participated in any examination, investigation, or decision associated with the initiation or conduct of the proceeding.[27]

J. Additional Changes

The proposal also revises several terms used throughout CHX Art. XII. For example, the proposal revises CHX Art. XII to substitute the term ''respondent'' for ''accused'' and ''hearing'' for ''trial.''

K. Effective Date of the Rule Changes

The Exchange states that the rule changes contained in the proposal will apply to any formal disciplinary proceeding, suspension decision, or delisting proceeding that the Exchange initiates on or after a date that immediately follows the date of the Commission's approval. The Exchange will issue a notice to Participants announcing this date.

L. Amendment No. 2

CHX Art. VII, Rule 2(a)(1)(i), as amended, provides the Exchange with emergency suspension authority over a Participant that has failed to perform its contracts, is insolvent, or is in such financial or operational condition or otherwise conducting its business in such a manner that the Participant cannot be permitted to continue in business with safety to its customers, creditors, or the Exchange, including a reasonable belief that the Participant is violating and will continue to violate any provision of the CHX's rules, the federal securities laws or rules or regulations thereunder, or any condition or restriction imposed pursuant to the provisions of CHX Art. XI, Rule 3(d), or CHX Art. XI, Rule 8(a). Amendment No. 2 revises the proposal to: (1) Clarify that the Exchange will use its emergency suspension authority under CHX Art. VII, Rule 2(a)(1)(i) only with respect to CHX Participants, and not with respect to associated persons of CHX Participants; (2) confirm that the Exchange will not use its emergency suspension authority under CHX Art. VII, Rule 2(a)(1)(i) unless the Exchange believes that the rule violation suggests that a Participant is in such financial or operational difficulty that the Participant cannot be permitted to continue to do business as a Participant with safety to investors, creditors, other Participants, or the Exchange; and (3) clarify that only a Participant, but not an associated person of a Participant, may hold a trading permit. The proposal also revises CHX Art. VII, Rule 2(a)(1) to allow the Exchange to use its emergency suspension authority with respect to an associated person who has been barred or suspended from being associated with a member of any SRO.

III. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

date of service of the charges; (ii) the Hearing Officer schedule a hearing within 30 days after the filing of an answer; and (iii) the Hearing Officer ordinarily issue an order within 90 days after the conclusion of a hearing. Similarly, the proposal revises CHX Art. XXVIII, Rule 4(d), ''Hearing,'' to require that a Hearing Officer in a delisting hearing to schedule a hearing within 30 days after receipt of an issuer's demand for a hearing, and that the Hearing Officer issue an order within 90 days after the conclusion of a hearing.

[17] Specifically, the proposal revises Article XII, Rule 1(b), ''Written Charges,'' to state that a respondent must be served with written charges identifying with specificity each Exchange rule or provision of the federal securities laws alleged to have been violated. The proposal revises CHX Art. XII, Rule 2(a), ''Minor Infraction,'' to state explicitly that the person against whom a fine is imposed shall be served with a written statement (the ''Notice of Fines''), signed by the CRO or his designee, setting forth: (i) The rule(s) or policy(ies) alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each such violation; (iv) the date on which such action is taken; and (v) the date on which such determination becomes final and such fine becomes due and payable to the Exchange, or on which such action must be contested. The Exchange represents that it currently provides this notice to persons against whom a fine is imposed, and that the language added to the rule confirms that this practice should continue.

[18] The parties must exchange a list of witnesses that they plan to call to testify at least 30 days before the hearing. *See* CHX Art. XII, Rule 5(c)(1). In addition, any party may request production of some or all of the documents that an opposing party intends to introduce as evidence. This request must be made at least 45 days prior to the hearing, and the documents must be produced at least 30 days before the hearing. *See* CHX Art. XII, Rule 5(c)(2). A party that does not identify witnesses or produce requested documents will be barred from presenting those witnesses or documents at the hearing, unless the party seeking to introduce the evidence can show good cause for the failure to earlier identify the witnesses or documents and can establish that the failure to allow the presentation of the evidence would result in undue hardship to that party. *See* CHX Art. XII, Rules 5(c)(1) and 5(c)(2).

[19] *See, e.g.*, CHX Art. XII, Rule 5(h) (regarding motions to disqualify the hearing examiner) and CHX Art. XII, Rule 6(a) (regarding appeals to the Judiciary Committee).

[20] *See* CHX Art. XII, Rule 1(b)(2).

[21] *See* CHX Art. XII, Rule 5(f).

[22] *See* CHX Art. XII, Rule 2(a).

[23] *See* CHX Art. VII, Rule 2(b).

[24] *See* CHX Art. XII, Rule 1(d). The proposal deletes the current provisions in CHX Art. XII, Rule 2(c) governing settlement agreements and adopts new Rule 1(d) of CHX Art. XII. This provision confirms that a respondent could settle a proceeding at any time by entering into a settlement agreement with the Exchange without admitting or denying the charges, except as to jurisdiction, which must be admitted. The settlement agreement must contain a waiver by the respondent of all rights to appeal and a proposed penalty to be imposed, which must be reasonable under the circumstances and consistent with the seriousness of the alleged violations. The CRO will have the sole right to approve a proposed settlement agreement.

[25] Appeals from a Hearing Officer's decision would be heard by the Executive Committee. *See* CHX Art. XXVIII, Rule 4(e).

[26] *See* CHX Art. XXVIII, Rules 4(d) and (e). As noted above, the proposal also adopts provisions setting forth the criteria that a CEO must consider in selecting a Hearing Officer for a delisting proceeding and provides a process for objecting to a Hearing Officer on the grounds of bias or conflict of interest. *See* notes 10–12, *supra*, and accompanying text.

[27] *See* CHX Art. XII, Rule 5(g) and CHX Art. XXVIII, Rule 4(d).

a national securities exchange.[28] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(1) of the Act,[29] which requires, among other things, that a national securities exchange have the capacity to enforce compliance by its members and persons associated with its members with the provisions of the Act and the rules and regulations thereunder, and with the rules of the exchange; with Section 6(b)(5) of the Act,[30] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and a national market system and, in general, to protect investors and the public interest; and with Section 6(b)(7) of the Act,[31] which requires that the rules of a national securities exchange provide a fair procedure for the disciplining of members and persons associated with members. In addition, the Commission finds that the proposal, as amended, is consistent with Section 6(d)(1) of the Act,[32] which requires, among other things, that a national securities exchange, in determining whether a member or associated person should be disciplined, bring specific charges, notify the member or associated person of, and give him an opportunity to defend against the charges, and keep a record. The Commission also finds that the proposal, as amended, is consistent with Section 6(d)(3) of the Act,[33] which, among other things, allows a national securities exchange to summarily suspend a member or person associated with a member who has been and is expelled or suspended from any SRO or barred or suspended from being associated with a member of any SRO, and to summarily suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange.

The Commission finds that the rule changes [34] requiring the CRO, rather than the CEO, to authorize the institution of disciplinary and related proceedings could help to reduce the appearance of, or potential for, a conflict of interest in the institution of such proceedings, thereby helping the Exchange to provide a fair procedure for disciplining members, as required by Section 6(b)(7) of the Act,[35] and helping to separate the CHX's business and regulatory functions. Similarly, the Commission finds that the proposal to eliminate the provisions in current CHX Art. XII, Rule 5(b) that allow the CEO to review and modify a Hearing Officer's proposed decision should help to eliminate the appearance of a conflict of interest in the Exchange's disciplinary process. The Commission believes that the proposal to amend CHX Art. XI, Rules 3(d) and 8(a), to allow the CRO, as well as the CEO, to authorize proceedings under those rules is reasonable because those rules govern matters that raise both business and regulatory concerns.

The Commission finds that the adoption of criteria that the CEO should consider in selecting a Hearing Officer for disciplinary proceedings, and the procedures for objecting to a Hearing Officer in a disciplinary proceeding,[36] are consistent with Section 6(b)(7) of the Act because they should help the Exchange to provide a fair procedure for disciplining members. The Commission finds that the comparable provisions relating to the criteria for selection of Hearing Officers for delisting proceedings [37] are consistent with Section 6(b)(5) of the Act because they should help the Exchange to provide a fair procedure for delisting proceedings.

Similarly, the Commission believes that the rule changes prohibiting the person acting as Exchange counsel to the Hearing Officer in a disciplinary or delisting proceeding from being an employee of the CHX's Market Regulation Department or from having directly participated in any examination, investigation, or decision associated with the initiation or conduct of the proceeding [38] should help the Exchange to provide fair disciplinary and delisting proceedings by ensuring that such counsel did not participate in the initiation or conduct of the matter before the Hearing Officer.

The Exchange believes that the procedures in current CHX Art. XII, Rule 2(b), and in CHX Articles XXX, XXXI, and XXXIV are obsolete and redundant of the emergency suspension provisions of CHX Art. VII, Rule 2.[39] Accordingly, the Commission believes that the deletion of these provisions should simplify the CHX's rules.

The Commission finds that the rule changes [40] allowing the Exchange to appeal the decision of the Hearing Officer in disciplinary and delisting proceedings are consistent with Section 6(b)(1) of the Act because these provisions could enhance the Exchange's ability to enforce its rules and the federal securities laws and the rules and regulations thereunder. In addition, the Commission believes that the changes to CHX Art. XII, Rule 6 that eliminate Executive Committee review of Judiciary Committee decisions could allow disciplinary matters to be resolved more efficiently. The Commission notes that respondents will continue to have the ability to appeal a Hearing Officer's decision to the Judiciary Committee, and that the Board will continue to have the ability to review decisions of the Judiciary Committee on a discretionary basis.[41] Accordingly, although the proposal eliminates Executive Committee review of decisions by the Judiciary Committee, the Commission believes that the CHX's rules will continue to provide a fair procedure for disciplining members, consistent with Section 6(b)(7) of the Act.

The Commission believes that the amendments to CHX Art. XIV, Rule 10 authorizing the Exchange to initiate a disciplinary proceeding under CHX Art. XII for failure to pay a debt owed to the Exchange could facilitate the Exchange's collection of fines by providing the Exchange with an additional mechanism for sanctioning Participants, associated persons, and other persons or entities subject to the CHX's jurisdiction that fail to pay fines within the time prescribed in the CHX's rules.

As described more fully in Section II.G., *supra,* the proposal also revises the CHX's rules to, among other things, set timeframes for filing motions and appeals, scheduling hearings, and issuing orders; provide for pre-hearing discovery, with timeframes for exchanging witness lists and producing documents; and specify the required content of settlement agreements in

[28] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[29] 15 U.S.C. 78f(b)(1).

[30] 15 U.S.C. 78f(b)(5).

[31] 15 U.S.C. 78f(b)(7).

[32] 15 U.S.C. 78f(d)(1).

[33] 15 U.S.C. 78f(d)(3).

[34] *See* note 7, *supra,* and accompanying text.

[35] Although the CRO reports to the CEO, the CRO must report not less than quarterly to the Board's Regulatory Oversight Committee, which is composed predominately of independent directors and assists the Board in monitoring the design, implementation, and effectiveness of the CHX's regulatory programs. *See* CHX Article IV, Rule 4, ''Regulatory Oversight Committee.''

[36] *See* notes 10–12, *supra,* and accompanying text.

[37] *See* CHX Art, XXVIII, Rule 4(d).

[38] *See* CHX Art, XII, Rule 5(g) and CHX Art. XXVIII, Rule 4(d).

[39] *See* Section II.D., *supra.*

[40] *See* Section II.E., *supra.*

[41] *See* CHX Art. XII, Rule 6.

disciplinary proceedings. The Commission finds that these changes should help the Exchange to provide a fair procedure for disciplining members, as required by Section 6(b)(7) of the Act, by adding clarity and specificity to the CHX's disciplinary rules and by establishing timeframes for respondents and Hearing Officers that could facilitate the timely resolution of disciplinary matters.

The Commission finds that proposal to revise CHX Art. XII, Rule 1(b) and CHX Art. XII, Rule 2(a)[42] to clarify in its rules that the Exchange must provide a respondent with written charges identifying the laws or rules allegedly violated is consistent with Section 6(d)(1) of the Act, which, among other things, requires that a national securities exchange, in a proceeding to determine whether to discipline a member or associated person, bring specific charges, notify the member or person of, and give him an opportunity to defend against, the charges, and keep a record.[43] Similarly, the Commission finds that the proposed changes to CHX Art. XII, Rule 5(f) requiring, among other things, that a Hearing Officer's order make specific findings as to each charge brought by the Exchange and, where a violation is found, impose an appropriate sanction,[44] is consistent with the requirements in Section 6(d)(1)(B) and (C) of the Act that a national securities exchange's determination to impose a disciplinary sanction be supported by a statement setting forth the specific law, rule, or regulation violated and the sanction imposed and the reasons therefor.

As described more fully above,[45] the proposal revises CHX Art. VII, Rule 2(a)(1) to clarify the manner in which the Exchange would use its emergency suspension authority and to allow the Exchange to use its emergency authority with respect to a Participant that it believes is violating any condition or restriction imposed pursuant to the provisions of CHX Art. XI, Rule 3(d), or CHX Art. XI, Rule 8(a).[46] The Commission finds that these changes are consistent with Section 6(d)(3)(B) of the Act, which allows a national securities exchange to summarily suspend a member who is in such financial or operating difficulty that the exchange determines and so notifies the Commission that the member cannot be permitted to continue to do business as a member with safety to investors, creditors, other members, or the exchange. Similarly, the Commission finds that the revisions to CHX Art. VII, Rule 2(a)(1)(ii) that allow the Exchange to use its emergency authority with respect to an associated person barred or suspended from being associated with a member of any SRO is consistent with Section 6(d)(3)(A) of the Act, which allows a national securities exchange to summarily suspend a member or associated person who has been and is expelled or suspended from any SRO or barred or suspended from being associated with a member of any SRO.

In addition, the proposal confirms that the three-person Board panel that hears an appeal from an emergency suspension will include two public members of the Board.[47] The Commission believes that this change could help to ensure the impartiality of the panels that hear appeals from emergency suspensions, thereby helping the Exchange to provide a fair procedure for disciplining members and associated persons, as required by Section 6(b)(7) of the Act.

The Commission finds that the changes to CHX Art. XXVIII, Rule 4, relating to delisting procedures, are intended to clarify the CHX's delisting procedures and to ensure the fairness of the CHX's delisting proceedings and thus are consistent with the Act. In this regard, the proposal eliminates the CEO's review of a Hearing Officer's findings with respect to a delisting, thereby avoiding the appearance of, or potential for, a conflict of interest. Similarly, the proposal revises the CHX's rules to provide that the Listing Unit of the CHX's Market Regulation Department, rather than the Board, will make the initial determination to delist a security, thereby ensuring that the entity that initiates a delisting will not participate in an appellate review of the initial delisting determination. An issuer may request a hearing of a delisting before a Hearing Officer, and the Hearing Officer's decision will be final unless either the issuer or the Exchange requests review of the decision by the Executive Committee of the CHX Board.[48] The Executive Committee must uphold the Hearing Officer's decision if it finds that the Hearing Officer's factual conclusions are supported by substantial evidence and his or her decision is not arbitrary, capricious, or an abuse of discretion.[49] The Commission believes that adopting these processes and standards for review should help promote fairness with respect to the CHX's appellate process.

The Commission finds that the technical changes to revise certain terms used throughout the CHX's disciplinary rules are consistent with the Act.

The Commission finds good cause for approving Amendment No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. As described more fully above, Amendment No. 2 clarifies the proposal by confirming that the Exchange will use its emergency suspension authority under CHX Art. VII, Rule 2(a)(1)(i) only with respect to Participants and only when the Exchange believes that a rule violation suggests that a Participant is in such financial or operational difficulty that the Participant cannot be permitted to continue to do business as a Participant with safety to investors, creditors, other Participants, or the Exchange. Accordingly, the Commission finds that it is consistent with Sections 6(b)(5) and 19(b) of the Act to approve Amendment No. 2 on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2, including whether Amendment No. 2 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–CHX–2005–06 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–CHX–2005–06. This file

[42] *See* note 17, *supra.*

[43] The Exchange has represented that it currently provides respondents with written notice of the charges and that the proposed rule change is intended to confirm that this practice should continue.

[44] *See* Section II.G., *supra.*

[45] *See* Section II.L., *supra.*

[46] CHX Art. XI, Rule 3(d) allows the CEO or the CRO to impose restrictions or conditions on a Participant that fails to maintain necessary operational personnel or facilities or engages in an activity that casts doubt on the Participant's continued compliance with the CHX's net capital requirements. CHX Art. XI, Rule 8(a) allows the CEO or the CRO to impose conditions or restrictions on a Participant that fails to maintain adequate operational capability, including making and keeping current books and records in accordance with Rules 17a–3 and 17a–4 under the Act, 17 CFR 240.17a–3 and 17a–4.

[47] *See* CHX Art. VII, Rule 2(b).

[48] *See* CHX Art. XXVIII, Rule 4(e).

[49] *See id.*

number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2005–06 and should be submitted on or before October 11, 2006.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[50] that the proposed rule change (SR–CBOE–2005–06), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[51]

Nancy M. Morris,

Secretary.

[FR Doc. E6–15588 Filed 9–19–06; 8:45 am]

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[50] 15 U.S.C. 78s(b)(2).

[51] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54435; File No. SR–NASDAQ–2006–031]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Exempt All Securities Included in the NASDAQ-100 Index From the Price Test Set Forth in NASDAQ Rule 3350(a)

September 13, 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 21, 2006, The NASDAQ Stock Market LLC (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. In addition, the Commission is granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq has submitted a proposed rule change to exempt all securities included in the Nasdaq-100 Index from the price test set forth in NASDAQ Rule 3350(a). The text of the proposed rule change is below. Proposed new language is italicized.

3350 Short Sale Rule [3]

(a)–(b) No Change.

(c)(1)–(9) No Change.

(10) Sales of securities included in the Nasdaq 100 Index.

(d)–(l) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is proposing to amend Rule 3350(c) to create an exemption from the short sale rule for securities included in the Nasdaq-100 Index. The National Association of Securities Dealers, Inc. (''NASD''), on behalf of Nasdaq, filed a similar proposal on June 15, 2006, SR–NASD–2006–076. On August 1, 2006, Nasdaq began operating as a national securities exchange.[4] Therefore, Nasdaq is filing this proposal as a national securities exchange. The previous filing, SR–NASD–2006–076, was published for notice and comment and no comments were received.[5]

The NASDAQ-100 Index. First introduced in 1985, the Nasdaq-100 Index was created to track the performance of the largest non-financial companies listed on The Nasdaq Stock Market, Inc. Nasdaq states that the Nasdaq-100 Index Tracking Stock, also known as ''QQQ,'' is the most actively traded ETF and the most actively traded listed equity security in the U.S. by average daily share trading volume. As of the end of the fourth quarter of 2005, QQQ traded an average of 90.4 million shares per day. Nasdaq notes that QQQ has grown significantly since its inception: From $14.5 million in assets at the start to $20.3 billion in assets as of December 31, 2005, and from 300,000 total shares outstanding to 501.95 million at the end of the fourth quarter of 2005.

Nasdaq states that in addition to the QQQ, nearly 150 licensees have contracted with Nasdaq to use the Nasdaq-100 and other Nasdaq indices as benchmarks for the issuing and trading of their global financial products. Nasdaq also states that these third-party underwritten products, such as equity-linked notes, index warrants, certificates of deposits, leveraged products and basket securities, were sold in 32 countries and amounted to $157.05 billion in underlying notional value as of December 31, 2005. Further, Nasdaq notes that a total of 33 domestic and international mutual funds use this barometer index as a benchmark as well.

Nasdaq notes that, as a result, the Nasdaq-100 stocks are highly liquid. For

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Following discussions with Jeffrey Davis, Associate General Counsel, Nasdaq, Commission staff made technical changes to the proposed rule text.

[4] The Commission approved Nasdaq's application to register as a national securities exchange on January 13, 2006. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006). On June 30, 2006, the Commission issued an order modifying the conditions for the operation of Nasdaq as a national securities exchange. The Commission's order enabled Nasdaq to begin operating as an exchange for securities listed on The NASDAQ Stock Market LLC and reported to the Joint Self-Regulatory Organization Plan Governing The Collecting, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis. *See* Securities Exchange Act Release No. 54085 (June 30, 2006), 71 FR 38910 (July 10, 2006); *See also* Securities Exchange Act Release No. 54241 (July 31, 2006), 71 FR 45246 (August 8, 2006).

[5] The NASD has filed an amendment to SR–NASD–2006–076 to propose a rule change to NASD Rule 5100 (formerly, NASD Rule 3350) that would, if approved, exempt all securities included in the Nasdaq-100 Index from the NASD's price test.

the month of April 2006, the average daily volume for that group of securities was over 880 million shares. The average daily volume of an individual Nasdaq-100 security was over 8.8 million shares and the mean daily trading value of those securities was over 3.4 million shares.

The Regulation SHO Pilot. Nasdaq notes that on June 23, 2004, the Commission approved new and amended short sale regulations in Regulation SHO under the Act. In addition, Nasdaq notes that on July 28, 2004, the Commission issued an order creating a one year Pilot (''Pilot'') suspending the provisions of Rule 10a–1(a) under the Act and any short sale price test of any exchange or national securities association for short sales of certain securities. The Pilot was created pursuant to Rule 202T of Regulation SHO, which established procedures to allow the Commission to temporarily suspend short sale price tests so that the Commission could study the effectiveness of short sale price tests. Nasdaq also notes that on April 20, 2006, the Commission issued an order extending the termination date of the Pilot to August 6, 2007, the date on which temporary Rule 202T expires.

Nasdaq notes that the Pilot exempts a selected list of securities from short sale price test restrictions of SEC Rule 10a–1 and the rules of self regulatory organizations, including Nasdaq Rule 3350. In addition, Nasdaq states that of the roughly 1000 such securities, roughly 47 percent are listed on Nasdaq and, of those, 24 currently are included in the Nasdaq-100 Index.

Rationale for Proposed Exemption. Nasdaq believes that the proposed exemption is consistent with the goals of short sale regulation because the stocks included in the Nasdaq-100 Index are highly liquid and not implicated by the objectives of the short sale rule. In addition, Nasdaq states that Congressional and Commission objectives included allowing relatively unrestricted short selling in an advancing market, preventing short selling at successively lower prices; and preventing short sellers from accelerating a declining market by exhausting all remaining bids at one price level. Thus, Nasdaq believes that given the highly liquid nature of securities listed in the Nasdaq-100 Index, the proposed exemption poses no risk to investors.

Nasdaq believes that this conclusion is supported by the results of the Regulation SHO Pilot to date. Nasdaq asserts that numerous academics have used the implementation of Regulation SHO as a natural experiment to study the effects of price-test exemptions on various measures of market quality and trading behavior. Nasdaq asserts that a recurring finding among these studies is that there is no indication that the pilot increased short-sale volume or volatility, decreased returns, or sacrificed market efficiency. In addition, Nasdaq states that the results also show that bid test rules had little-to-no effect on market quality or trading behavior for Nasdaq pilot stocks. Nasdaq believes that this finding is consistent with the ability of short-sellers to circumvent Nasdaq's bid test rule by routing orders to markets without short-sale restrictions.

Given the highly liquid nature of Nasdaq-100 securities and the absence of a material impact from the removal of price-based short sale restrictions on 24 of those securities, Nasdaq believes it would benefit investors to exempt the remaining stocks in the Nasdaq-100 Index. As Nasdaq describes above, Nasdaq believes that the Nasdaq-100 Index serves as the basis for billions of dollars of assets and trading in the basket of securities that make up the index. Nasdaq believes that the disparity of regulatory treatment between Nasdaq-100 securities that are included in the Pilot and those that are not is inefficient and potentially harmful to investors.

In addition, Nasdaq believes that the proposed exemption will also remove the disparity in short sale regulation that currently exists between markets. Nasdaq states that as opposed to the Nasdaq, which has voluntarily adopted a short sale rule for Nasdaq securities, several exchanges that trade Nasdaq securities do so with no short sale regulation, encouraging market participants to route short sale orders to their markets to avoid any regulatory restriction. As a result, Nasdaq believes that the level of regulatory protection an investor receives depends almost entirely on the market to which the investor's order is routed. Nasdaq asserts that this disparity harms customers on all markets by forcing traders to choose between bypassing limit orders posted on Nasdaq, delaying executing those orders, or declining to execute. Nasdaq believes that the proposed exemption is designed to help to alleviate these issues.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act, in general, and with Section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, remove impediments to a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the 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. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2006–031 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–NASDAQ–2006–031. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 100 F Street, NE., Washington,

DC 20549–1090. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2006–031 and should be submitted on or before October 11, 2006.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act[6] and the rules and regulations thereunder applicable to a national securities exchange.[7] In particular, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Exchange Act,[8] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

Nasdaq Rule 3350 prohibits short sales in Nasdaq Global Market securities at or below the current best (inside) bid displayed in the Nasdaq Market Center when the current best (inside) bid is below the previous best (inside) bid in the security (the ''bid test''). Nasdaq Rule 3350 is inapplicable to National Capital Market securities. The proposed rule change amends Nasdaq Rule 3350(c) to exempt from its price test securities included in the Nasdaq-100 Index.

The Commission is currently conducting the Pilot to study and evaluate the overall effectiveness and necessity of short sale prices tests.[9] On April 20, 2006, we extended the Pilot in order to maintain the status quo for price tests of Pilot securities while we complete our analysis of the results of the Pilot and conduct any additional rulemaking that we determine may be warranted.[10]

We have not reached any conclusions regarding price tests. However, we believe that this proposed rule change is consistent with the statute. In accordance with Section 6(b) of the Act, the proposed amendment is designed to remove impediments to and perfect the mechanism of a free and open market and a national market system. In addition, the proposed amendment does not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Nasdaq securities are currently not subject to any price test when traded on other exchanges. Currently, Nasdaq and the NASD (for Nasdaq securities traded over the counter and reported to a NASD facility) are the only markets required to apply a price test to Nasdaq securities. Thus, Nasdaq believes it is at a competitive disadvantage with regard to these securities as market participants may make order routing decisions based on this disparity. In addition, we note that the stocks included in the Nasdaq-100 Index are highly liquid and less likely to be subject to manipulation than less liquid stocks.

Nasdaq has requested that the Commission find good cause for approving the proposed rule change prior to the 30th day after publication of notice thereof in the **Federal Register.** The Commission notes that a substantially similar rule filing, SR–NASD–2006–076, that would have exempted all securities included in the Nasdaq-100 Index from the price test in former NASD Rule 3350, was previously filed by NASD on June 15, 2006, through its subsidiary, The Nasdaq Stock Market, Inc., prior to Nasdaq commencing operations as a national securities exchange.[11] SR–NASD–2006–076 was published for comment in the **Federal Register** on June 22, 2006. The Commission received no comments on the proposal. Accordingly, the Commission finds good cause exists, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[12] to approve the proposed rule change on an accelerated basis, prior to the 30th day after the date of publication of the notice of filing thereof in the **Federal Register.**

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act that the proposed rule change (SR–NASDAQ–2006–031) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–15572 Filed 9–19–06; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78f.

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Securities Exchange Act Release No. 50104 (July 28, 2004), 69 FR 48032 (August 6, 2004) (''First Pilot Order''). The Pilot suspended price tests for the following: (1) Short sales in the securities identified in Appendix A to the First Pilot Order; (2) short sales in the securities included in the Russell 1000 index effected between 4:15 p.m. EST and the open of the effective transaction reporting plan of the Consolidated Tape Association (''consolidated tape'') on the following day; and (3) short sales in any security not included in paragraphs (1) and (2) effected in the period between the close of the consolidated tape and the open of the consolidated tape on the following day.

[10] *See* Order Extending Term of Short Sale Pilot, Release No. 34–53684 (April 20, 2006), 71 FR 24765 (April 26, 2006).

[11] *See also,* supra n. 4.

[12] 15 U.S.C. 78f(b)(5); 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–54438; File No. SR–NYSEArca–2006–43]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Fees for Tracking Orders Submitted and Executed on NYSE Arca, Inc., Regulatory Filing and Registration Fees for Equity Trading Permit Holders, and Drop Copy Processing Fees for Certain Trades in Listed and Nasdaq Securities

September 13, 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 June 30, 2006, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange''), through its wholly owned subsidiary NYSE Arca Equities, Inc. (''NYSE Arca Equities''), 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 NYSE Arca Equities. On August 16, 2006, the Exchange amended the proposed rule change.[3] On September 8, 2006, the Exchange again amended the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Amendment No. 1.

[4] *See* Amendment No. 2.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Schedule of Fees and Charges (''Equities Schedule'') to (i) clarify the description of the Equity Trading Permit (''ETP'') Holder transaction credit applicable to round lots in Nasdaq securities; (ii) remove rebates applicable to Tracking Orders; (iii) move regulatory fees from NYSE Arca's Schedule of Fees and Charges to the Equities Schedule; and (iv) remove drop copy processing fees. The text of the proposed rule change is available at the Commission's Public Reference Room, at the Exchange, and on the Exchange's Web site at *http://www.nysearca.com*.

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, as amended. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Schedule, effective July 1, 2006, to reflect (i) clarification of the description of the ETP Holder transaction credit applicable to round lots in Nasdaq securities; (ii) removal of the current eligible rebates for Tracking Orders; (iii) addition of the regulatory fees applicable to Equity Trading Permit (''ETP'') Holders and their registered representatives currently only listed within NYSE Arca's Schedule of Fees and Charges; and (iv) removal of the processing fee listed for drop copies for transactions of off-board trades in listed and Nasdaq securities.

ETP Holder Transaction Credits and Tracking Order Rebates

The Exchange proposes to amend the description of the ETP Holder transaction credit applicable to round lots in Nasdaq securities so that the description is consistent with the description of the credit applicable to round lots in listed securities (except NYSE non-ETF listed securities). Specifically, the Exchange wishes to amend the Schedule to clarify that the credit for round lots in Nasdaq securities applies to limit orders residing in the Book *that execute* against inbound marketable orders. Such language was inadvertently omitted from the Schedule.[5]

Currently, Tracking Orders (in addition to all limit orders that provide liquidity for the NYSE Arca Equities Book as noted above), are eligible for this ETP Holder transaction credit applicable to round lots. Because the Exchange no longer wishes to provide an incentive to attract Tracking Orders to the Exchange, the Exchange has amended the Schedule so that the Exchange no longer provides this ETP Holder transaction credit to Tracking Orders.

In addition, the Exchange has amended the Schedule to state that Tracking Orders will no longer be eligible for a type of market data revenue sharing credit referred to as the liquidity provider credit. Specifically, the Exchange has amended the Schedule to eliminate the liquidity provider credit for Tracking Orders in over-the-counter securities on Tape B (previously only exchange-listed securities were ineligible to receive the liquidity provider credit).

Regulatory Fees for ETP Holders

Regulatory fees that are applicable to both Options and Equity Permit holders have been listed on NYSE Arca's Schedule of Fees and Charges. To more clearly identify all regulatory fees that are assessed to ETP Firms in one place, the Exchange is adding the list of regulatory fees applicable to ETPs that was formerly listed in the NYSE Arca Schedule of Fees and Charges to the NYSE Arca Equities' Schedule.

In so doing, the Exchange changed the term ''Registered Options Principal'' to ''Registered Principal'' to make clear that all Registered Principals, not just Registered Options Principals, are subject to the registration fees listed on the Schedule. Such change is proposed in order to make the Schedule consistent with the general registration requirements of NYSE Arca Equities Rules.

Drop Copy Processing Fee

Currently, the Schedule identifies a ''Drop Copy Processing Fee'' of $0.001 per share, applicable to off-board trades in listed and Nasdaq securities. The Exchange believes that such fees were introduced years ago as a means to cover any additional costs associated in providing drop copies. The Exchange's practice over the years, however, has been to supply drop copies to those ETP Holders that request them without assessing any fees. Therefore, in order to make the Schedule consistent with Exchange practice, the Exchange is amending the Schedule to eliminate this fee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[6] in general, and Section 6(b)(4) of the Act,[7] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its ETP Holders, issuers, and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[8] and subparagraph (f)(2) of Rule 19b–4 thereunder[9] because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon receipt of the filing by the Commission. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[5] This is the only change made to the Schedule in Amendment No. 1 as compared to the Exchange's original proposed rule change.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A)(ii).

[9] 17 CFR 240.19b–4(f)(2).

or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–NYSEArca–2006–43 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 No. SR–NYSEArca–2006–43. 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 will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NYSEArca–2006–43 and should be submitted on or before October 11, 2006.

[10] 15 U.S.C. 78s(b)(3)(C). For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposal, the Commission considers the period to commence on September 8, 2006, the date on which the Exchange filed Amendment No. 2.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–15587 Filed 9–19–06; 8:45 am]

BILLING CODE 8010–01–P

[11] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 20, 2006.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Pam Swilling, Program Review Analyst, Office of Surety Guarantee, Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Pam Swilling, Program Review Analyst, Office of Surety Guarantee 202–205–6546 *pam.swilling@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: ''Surety Bond Guarantee Assistance''.

Description of Respondents: Small Business Contractors Applying for the Surety Bond Guarantee Program.

Form Nos: 990, 991, 994, 994B, 994C, 994F, 994H.

Annual Responses: 31,113.

Annual Burden: 15,071.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to David Caulfield, Senior Program Analyst, Office of HUBZone Empowerment Contracting, Small Business Administration, 409 3rd Street, SW., 8th Floor, Washington, DC 20416

FOR FURTHER INFORMATION CONTACT: David Caulfield, Senior Program Analyst, Office of Surety Guarantee 202–205–6457 *david.caulfield@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov*.

SUPPLEMENTARY INFORMATION:

Title: ''HUBZone Application Data Update''.

Description of Respondents: Small Business Concerns.

Form No: N/A.

Annual Responses: 6,000.

Annual Burden: 3,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 06–7786 Filed 9–19–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new and/or currently approved information collection.

DATES: Submit comments on or before November 20, 2006.

ADDRESSES: Send all comments regarding whether these information collections are necessary for the proper performance of the function of the agency, whether the burden estimates are accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collections, to Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance, Small Business Administration, 409 3rd Street, SW., Suite 8300, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Gail Hepler, Chief 7a Loan Policy Branch, Office of Financial Assistance 202–205–7530 *gail.hepler@sba.gov* or Curtis B. Rich, Management Analyst, 202–205–7030 *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

Title: ''Gulf Coast Relief Financing Pilot Information Collection''.

Description of Respondents: Small Business devastated by Hurricanes Katrina and Rita.

Form Nos: 2276 A/B/C, 2281, 2282.

Annual Responses: 500.

Annual Burden: 375.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 06–7946 Filed 9–19–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10614]

Arizona Disaster # AZ–00005

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Arizona (FEMA–1660–DR), dated 09/07/2006.

Incident: Severe Storms and Flooding.

Incident Period: 07/25/2006 through 08/04/2006.

Effective Date: 09/07/2006.

Physical Loan Application Deadline Date: 11/06/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 09/07/2006, applications for Private Non-Profit organizations that provide essential services of a governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Pima

Pinal

The Gila River Indian Community Within Pinal County.

The Tohono O'odham Nation Within Pima and Pinal Counties.

The Interest Rates are:

	(Percent)
Other (including non-profit organizations) with credit available elsewhere	5.000
Businesses and non-profit organizations without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 10614.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 06–7788 Filed 9–19–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 10567 and # 10568]

Texas Disaster Number TX–00195

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Texas (FEMA–1658–DR), dated 08/15/2006.

Incident: Severe Storms and Flooding.

Incident Period: 07/27/2006 and continuing through 08/25/2006.

DATES: *Effective Date:* 09/12/2006.

Physical Loan Application Deadline Date: 10/16/2006.

EIDL Loan Application Deadline Date: 05/15/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Texas, dated 08/15/2006, is hereby amended to re-establish the incident period for this disaster as beginning 07/27/2006 and continuing through and including 08/25/2006. The incident type is also amended and is now severe storms and flooding.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 06–7787 Filed 9–19–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending August 25, 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–2006–25707.

Date Filed: August 22, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC2 Europe-Middle East Resolutions and Specified Fares Tables (Memo 0226), *Intended effective date:* 1 January 2007.

Docket Number: OST–2006–25716.

Date Filed: August 23, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC2 Within Middle East Resolutions and Specified Fares Tables (Memo 0164), *Intended effective date:* 1 January 2007.

Docket Number: OST–2006–25717.

Date Filed: August 23, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC23/123 Middle East-TC3 Mail Vote 504, Special Passenger Amending Resolution 010w, From Pakistan to Jeddah (Memo 0300), *Intended effective date:* 01 September 2006.

Docket Number: OST–2006–25718.

Date Filed: August 23, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC2 Europe-Africa Mail Vote 505, Special Passenger Amending Resolution 010x, From Libya to Europe, Middle East, (Memo 0239/Memo 0147), *Intended effective date:* 7 September 2006.

Docket Number: OST–2006–25726.

Date: Filed August 24, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC12 North Atlantic Canada-Europe, Resolutions and Specified Fares Tables (Memo 0122), Minutes: TC12 North Atlantic Canada, USA-Europe Minutes, (Memo 0123), *Intended effective date:* 1 November 2006.

Docket Number: OST–2006–25727.

Date Filed: August 24, 2006.

Parties: Members of the International Air Transport Association.

Subject: TC12 North Atlantic USA-Europe and Mail Vote 493, (except Austria, Belgium, Czech Republic, Finland, France, Germany, Iceland, Italy, Netherlands, Scandinavia, Switzerland), (Memo 0195), Technical Correction: TC12 North Atlantic USA-Europe and Mail Vote 493, (Memo 0196), *Minutes:* TC12 North Atlantic Canada, USA-Europe Minutes, (Memo 0197), *Intended effective date:* 1 November 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 06–7789 Filed 9–19–06; 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 25, 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–2006–25711.

Date Filed: August 23, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 13, 2006.

Description: Application of Maine Aviation Aircraft Charter, LLC requesting authority to operate scheduled passenger service as a commuter air carrier.

Docket Number: OST–2006–25731.

Date Filed: August 25, 2006.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: September 12, 2006.

Description: Application of Ocean Airlines S.p.A. (''Ocean'') requesting a foreign air carrier permit to authorize the carrier to provide all-cargo scheduled service from points behind Italy via Italy and intermediate points to a point or points in the United States and beyond. Ocean also seeks authority to provide charter service between any point or points in Italy and any point or points in the United States and between any point or points in Italy and any point or points in a third country or countries, provided that such service constitutes part of a continuous operation that includes service to Italy and the United States.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 06–7805 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Programmatic Environmental Impact Statement: Launches and Reentries Under an Experimental Permit

AGENCY: Federal Aviation Administration (FAA), Office of Commercial Space Transportation.

ACTION: Notice of extension of scoping for the Programmatic Environmental Impact Statement (PEIS) for Experimental Permits.

SUMMARY: On March 27, 2006, the FAA published a Notice of Intent to prepare a PEIS for Experimental Permits in the **Federal Register** (71 FR 15251). On May 9, 2006, the FAA published a Notice of Extension of scoping for the PEIS. The FAA has decided to extend the scoping period for the preparation of the PEIS to October 31, 2006. All comments received by October 31, 2006 will be considered in the preparation of the Draft PEIS.

FOR FURTHER INFORMATION CONTACT: Comments may be directed to Ms. Stacey M. Zee, FAA Environmental Specialist, c/o ICF International, 9300 Lee Highway, Fairfax, VA 22031; via e-mail *PEIS-Experimental-Permits@icfi.com;* or via fax at 703–934–3951. Envelopes and the subject line of e-mails or faxes should be labeled ''Scoping for the Experimental Permits PEIS''.

Date Issued: September 13, 2006.

Place Issued: Washington, DC.

Herbert Bachner,

Manager, Space Systems, Development Division.

[FR Doc. E6–15557 Filed 9–19–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–459 (Sub-No. 3X)]

The Central Railroad Company of Indiana—Discontinuance of Service Exemption—in Decatur County, IN

The Central Railroad Company of Indiana (CIND) has filed a verified notice of exemption under 49 CFR part 1152 subpart F—*Exempt Abandonments and Discontinuances of Service* to discontinue service over a 2.6-mile line of railroad between milepost 64.67 and milepost 67.27, near Greenburg, in Decatur County, IN. The line traverses United States Postal Service Zip Code 47240.

CIND has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (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 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[1]

As a condition to this exemption, any employee adversely affected by the discontinuance 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 October 20, 2006,[2] unless stayed pending reconsideration. Petitions to stay and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[3] must be filed by October 2, 2006. Petitions to reopen must be filed by October 10, 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 applicant's representative: Louis E. Gitomer, 600 Baltimore Avenue, Suite 301, Towson, MD 21204.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at ''*WWW.STB.DOT.GOV.*''

Decided: September 12, 2006.

[1] Because this is a discontinuance of service proceeding and not an abandonment, the proceeding is exempt from the requirements of 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), and 49 CFR 1105.11 (transmittal letter).

[2] Because this is a discontinuance proceeding, trail use/rail banking and public use conditions are not applicable.

[3] Each OFA must be accompanied by the filing fee, which was increased to $1,300 effective on April 19, 2006. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services–2006 Update,* STB Ex Parte No. 542 (Sub-No. 13) (STB served Mar. 20, 2006).

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–15512 Filed 9–19–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 14, 2006.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before October 20, 2006 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0029.

Type of Review: Extension.

Title: Certification of Tax Determination—Wine.

Form: TTB F 5120.20.

Description: TTB F 5120.20 supports the exporter's claim for drawback, as the producing winery verifies that the wine being exported was in fact tax paid.

Respondents: Private Sector.

Estimated Total Burden Hours: 500 hours.

OMB Number: 1513–0038.

Type of Review: Extension.

Title: Application for Transfer of Spirits and/or Denatured Spirits in Bond.

Form: TTB F 5100.16.

Description: TTB F 5100.16 is completed by distilled spirits plant proprietors who wish to receive spirits in bond from other distilled spirits plants. TTB uses the information to determine if the applicant has sufficient bond coverage for the additional tax liability assumed when spirits are transferred in bond.

Respondents: Private Sector.

Estimated Total Burden Hours: 300 hours.

OMB Number: 1513–0012.

Type of Review: Extension.

Title: User's Report of Denatured Spirits.

Form: TTB F 5150.18.

Description: The information on TTB F 5150.18 is used to pinpoint unusual activities in the use of specially denatured spirits. The form shows a summary of activities at permit premises. TTB examines and verifies certain entries on these reports to identify unusual activities, errors and omissions.

Respondents: Private Sector.

Estimated Total Burden Hours: 830 hours.

OMB Number: 1513–0081.

Type of Review: Extension.

Title: Registration and Records of Vinegar Vaporizing Plants (TTB REC 5110/9).

Description: Data is necessary to identify persons producing and using distilled spirits in the manufacture of vinegar and to account for spirits so produced and used. TTB uses this information to identify persons producing vinegar and to verify that spirits so produced are not unlawfully diverted.

Respondents: Private Sector.

Estimated Total Burden Hours: 1 hour.

OMB Number: 1513–0046.

Type of Review: Extension.

Title: Formula for Distilled Spirits Under the Federal Alcohol Administration Act.

Form: TTB F 5110.38.

Description: TTB F 5110.38 is used to determine the classification of distilled spirits for labeling and for consumer protection. The form describes the person filing, type of product to be made, and restrictions to the labeling and manufacture. The form is used by TTB to ensure that a product is made and labeled properly and to audit distilled spirits operations.

Respondents: Private Sector.

Estimated Total Burden Hours: 4,000 hours.

OMB Number: 1513–0011.

Type of Review: Extension.

Title: Formula and/or Process for Articles Made With Specially Denatured Spirits.

Form: TTB F 5150.19.

Description: TTB F 5150.19 is completed by persons who use specially denatured spirits in the manufacture of certain articles. TTB uses the information provided on the form to ensure the manufacturing formulas and processes conform to the requirement of 26 U.S.C. 5273.

Respondents: Private Sector.

Estimated Total Burden Hours: 2,415 hours.

Clearance Officer: Frank Foote (202) 927–9347, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. 06–7926 Filed 9–19–06; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Centennial Casualty Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 1 to the Treasury Department Circular 570; 2006 Revision, published June 30, 2006, at 71 FR 37694.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6850.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued under 31 U.S.C. 9305 to the following Company:

Centennial Casualty Company (NAIC #34568). *Business Address:* 2200 Woodcrest Place, Suite 200, Birmingham, AL 35209. *Phone:* (205) 877–4500. *Underwriting Limitation b/:* $4,313,000. *Surety Licenses c/:* Al. *Incorporated in:* Alabama.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570 (''circular''), 2006 Revision, to reflect this addition.

Certificates of Authority expire on June 30th each year, unless revoked prior to that date. The Certificates are subject to subsequent annual renewal as long as the companies remain qualified (*see* 31 CFR part 223). A list of qualified companies is published annually as of July 1st in the circular, which outlines details as to underwriting limitations, areas in which companies are licensed to transact surety business, and other information.

The circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570.*

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management

Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F01, Hyattsville, MD 20782.

Dated: September 14, 2006.

Vivan L. Cooper,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 06–7767 Filed 9–19–06; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee September 2006 Public Meeting

Summary: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for September 28, 2006.

Date: September 28, 2006.

Time: 10 a.m. to 11 a.m.

Location: The meeting will occur *via teleconference.* Interested members of the public may attend the meeting at the United States Mint; 801 Ninth Street, NW.; Washington, DC; 2nd floor.

Subject: Review Tuskegee Airmen Congressional Gold Medal candidate designs, and other business.

Interested persons should call 202–354–7502 for the latest update on meeting time and room location.

Public Law 108–15 established the CCAC to:

- Advise the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advise the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Make recommendations with respect to the mintage level for any commemorative coin recommended.

For Further Information Contact: Cliff Northup, United States Mint Liaison to the CCAC, 801 Ninth Street, NW., Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6830.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: September 13, 2006.

Edmund C. Moy,

Director, United States Mint.

[FR Doc. E6–15573 Filed 9–19–06; 8:45 am]

BILLING CODE 4810–37–P

Federal Register

Wednesday,
September 20, 2006

Part II

Department of Veterans Affairs

38 CFR Part 5
Dependents and Survivors; Proposed Rule

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 5

RIN 2900–AL94

Dependents and Survivors

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize and rewrite in plain language general provisions applicable to its compensation and pension regulations, including those relating to dependents and survivors of veterans and other VA claimants and beneficiaries. These revisions are proposed as part of VA's rewrite and reorganization of all of its compensation and pension rules in a logical, claimant-focused, and user-friendly format. The intended effect of the proposed revisions is to assist claimants and VA personnel in locating and understanding these provisions.

DATES: Comments must be received by VA on or before November 20, 2006.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to Director, Regulations Management (00REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AL94—Dependents and Survivors.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *http://www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Bob White, Acting Chief, Regulations Rewrite Project (00REG2), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–9515.

SUPPLEMENTARY INFORMATION: The Secretary of Veterans Affairs has established an Office of Regulation Policy and Management to provide centralized management and coordination of VA's rulemaking process. One of the major functions of this office is to oversee a Regulation Rewrite Project (the Project) to improve the clarity and consistency of existing VA regulations. The Project responds to a recommendation made in the October 2001 ''VA Claims Processing Task Force: Report to the Secretary of Veterans Affairs.'' The Task Force recommended that the compensation and pension regulations be rewritten and reorganized in order to improve VA's claims adjudication process. Therefore, the Project began its efforts by reviewing, reorganizing and redrafting the content of the regulations in 38 CFR part 3 governing the compensation and pension program of the Veterans Benefits Administration. These regulations are among the most difficult VA regulations for readers to understand and apply.

Once rewritten, the proposed regulations will be published in several portions for public review and comment. This is one such portion. It includes proposed rules regarding dependents in general; the effect of dependency changes on benefits; and surviving spouse, child and parent status. After review and consideration of public comments, final versions of these proposed regulations will ultimately be published in a new part 5 in 38 CFR.

Outline

Overview of New Part 5 Organization
Overview of Proposed Subpart D Organization
Table Comparing Current Part 3 Rules With Proposed Part 5 Rules
Content of Proposed Regulations

General Dependency Provisions

5.180 Evidence of dependency—award of, or an increase in, VA benefits
5.181 Evidence of dependency—reduction or discontinuance of VA benefits
5.182 Beneficiary's responsibility to report changes in status of dependents
5.183 Effective date for additional benefits based on the existence of a dependent
5.184 Effective date of reduction or discontinuance of VA benefits due to the death of a beneficiary's dependent
5.1850–5.189 [Reserved]

Marriage, Divorce, and Annulment

5.190 Status as a spouse
5.191 Marriages VA recognizes as valid
5.192 Evidence of marriage
5.193 Proof of marriage termination where evidence is in conflict or termination is protested
5.194 Acceptance of divorce decrees
5.195 Void marriages
5.196 Evidence of void or annulled marriages
5.197 Effective date of reduction or discontinuance of Improved Pension, compensation, or dependency and indemnity compensation due to marriage or remarriage
5.198 Effective date of reduction or discontinuance of Improved Pension, compensation, or dependency and indemnity compensation due to divorce or annulment
5.199 [Reserved]

Surviving Spouse Status

5.200 Status as a surviving spouse
5.201 Surviving spouse status based on a deemed-valid marriage
5.202 Effect of Federal court decisions on remarriage determinations
5.203 Effect of remarriage on a surviving spouse's benefits
5.204 Effective date of discontinuance of VA benefits to a surviving spouse who holds himself, or herself, out as the spouse of another person
5.205 Effective date of resumption of benefits to a surviving spouse due to termination of a remarriage
5.206 Effective date of resumption of benefits to a surviving spouse who stops holding himself, or herself, out as the spouse of another 5.207–5.219 [Reserved]

Child Status

5.220 Status as a child for VA benefit purposes
5.221 Evidence to establish a parent-natural child relationship
5.222 Adoption arrangements recognized by VA
5.223 Child adopted after a veteran's death recognized as the veteran's child
5.224 Child status despite adoption out of a veteran's family
5.225 Child status based on adoption into a veteran's family under foreign law
5.226 Child status based on being a veteran's stepchild
5.227 Child status based on permanent incapacity for self-support
5.228 Exceptions applicable to termination of child status based on marriage of the child
5.229 Proof of age and birth
5.230 Effective date of award of pension or dependency and indemnity compensation to, or based on the existence of, a child born after the veteran's death
5.231 Effective date of reduction or discontinuance—child reaches age 18 or 23
5.232 Effective date of reduction or discontinuance—terminated adoptions
5.233 Effective date of reduction or discontinuance—stepchild no longer a member of the veteran's household
5.234 Effective date of an award, reduction, or discontinuance of benefits based on child status due to permanent incapacity for self-support
5.235 Effective date of an award of benefits due to termination of a child's marriage
5.236–5.239 [Reserved]

Parent Status

5.240 Status as a veteran's parent
5.241–5.249 [Reserved]
Note Concerning § 3.503(a)(2)
Note Concerning § 3.400(w)
Endnote Regarding Amendatory Language
Paperwork Reduction Act
Regulatory Flexibility Act
Executive Order 12866
Unfunded Mandates

Catalog of Federal Domestic Assistance Numbers

List of Subjects in 38 CFR Part 5

Overview of New Part 5 Organization

We plan to organize the part 5 regulations so that all provisions governing a specific benefit are located in the same subpart, with general provisions pertaining to all compensation and pension benefits also grouped together. We believe this organization will allow claimants, beneficiaries, and their representatives, as well as VA personnel, to find information relating to a specific benefit more quickly than the organization provided in current part 3.

The first major subdivision would be ''Subpart A—General Provisions.'' It would include information regarding the scope of the regulations in new part 5, general definitions and general policy provisions for this part. This subpart was published as proposed on March 31, 2006. *See* 71 FR 16464.

''Subpart B—Service Requirements for Veterans'' would include information regarding a veteran's military service, including the minimum service requirement, types of service, periods of war, and service evidence requirements. This subpart was published as proposed on January 30, 2004. *See* 69 FR 4820.

''Subpart C—Adjudicative Process, General'' would inform readers about claims and benefit application filing procedures, VA's duties, rights and responsibilities of claimants and beneficiaries, general evidence requirements, and general effective dates for new awards, as well as revision of decisions and protection of VA ratings. This subpart will be published as three separate Notices of Proposed Rulemaking (NPRM)s due to its size. The first, concerning the duties of VA and the rights and responsibilities of claimants and beneficiaries, was published as proposed on May 10, 2005. *See* 70 FR 24680.

''Subpart D—Dependents and Survivors'' would inform readers how VA determines whether an individual is a dependent or a survivor for purposes of determining eligibility for VA benefits. It would also provide the evidence requirements for these determinations. This subpart is the subject of this document.

''Subpart E—Claims for Service Connection and Disability Compensation'' would define service-connected disability compensation and service connection, including direct and secondary service connection. This subpart would inform readers how VA determines service connection and entitlement to disability compensation. The subpart would also contain those provisions governing presumptions related to service connection, rating principles, and effective dates, as well as several special ratings. This subpart will be published as three separate NPRMs due to its size. The first, concerning presumptions related to service connection, was published as proposed on July 27, 2004. *See* 69 FR 44614.

''Subpart F—Nonservice-Connected Disability Pensions and Death Pensions'' would include information regarding the three types of nonservice-connected pension: Improved Pension, Old-Law Pension, and Section 306 Pension. This subpart would also include those provisions that state how to establish entitlement to Improved Pension, and the effective dates governing each pension. This subpart will be published as two separate NPRMs due to its size. The portion concerning Old-Law Pension, Section 306 Pension, and elections of Improved Pension was published as proposed on December 27, 2004. *See* 69 FR 77578.

''Subpart G—Dependency and Indemnity Compensation, Death Compensation, Accrued Benefits, and Special Rules Applicable Upon Death of a Beneficiary'' would contain regulations governing claims for dependency and indemnity compensation (DIC); death compensation; accrued benefits; benefits awarded, but unpaid at death; and various special rules that apply to the disposition of VA benefits, or proceeds of VA benefits, when a beneficiary dies. This subpart would also include related definitions, effective-date rules, and rate-of-payment rules. This subpart will be published as two separate NPRMs due to its size. The portion concerning accrued benefits, special rules applicable upon the death of a beneficiary, and several effective-date rules, was published as proposed on October 1, 2004. *See* 69 FR 59072. The portion concerning DIC benefits and general provisions relating to proof of death and service-connected cause of death was published as proposed on October 21, 2005. *See* 70 FR 61326.

''Subpart H—Special and Ancillary Benefits for Veterans, Dependents, and Survivors'' would pertain to special and ancillary benefits available, including benefits for children with various birth defects.

''Subpart I—Benefits for Certain Filipino Veterans and Survivors'' would pertain to the various benefits available to Filipino veterans and their survivors.

''Subpart J—Burial Benefits'' would pertain to burial allowances.

''Subpart K—Matters Affecting the Receipt of Benefits'' would contain provisions regarding bars to benefits, forfeiture of benefits, and renouncement of benefits. This subpart was published as proposed on May 31, 2006. *See* 71 FR 31062.

''Subpart L—Payments and Adjustments to Payments'' would include general rate-setting rules, several adjustment and resumption regulations, and election-of-benefit rules. Because of its size, proposed regulations in subpart L will be published in two separate NPRMs.

The final subpart, ''Subpart M—Apportionments and Payments to Fiduciaries and Incarcerated Beneficiaries,'' would include regulations governing apportionments, benefits for incarcerated beneficiaries, and guardianship.

Some of the regulations in this NPRM cross-reference other compensation and pension regulations. If those regulations have been published in this or earlier NPRMs for the Project, we cite the proposed part 5 section. We also include, in the relevant portion of the Supplementary Information, the **Federal Register** page where a proposed part 5 section published in an earlier NPRM may be found. However, where a regulation proposed in this NPRM would cross-reference a proposed part 5 regulation that has not yet been published, we cite to the current part 3 regulation that deals with the same subject matter. The current part 3 section we cite may differ from its eventual part 5 counterpart in some respects, but we believe this method will assist readers in understanding these proposed regulations where no part 5 counterpart has yet been published. If there is no part 3 counterpart to a proposed part 5 regulation that has not yet been published, we have inserted ''[regulation that will be published in a future Notice of Proposed Rulemaking]'' where the part 5 regulation citation would be placed.

Because of its large size, proposed part 5 will be published in a number of NPRMs, such as this one. VA will not adopt any portion of part 5 as final until all of the NPRMs have been published for public comment.

In connection with this rulemaking, VA will accept comments relating to a prior rulemaking issued as a part of the Project, if the matter being commented on relates to both NPRMs.

Overview of Proposed Subpart D Organization

This NPRM pertains to regulations governing dependents and survivors of

veterans and of other claimants and beneficiaries. These regulations would be contained in proposed Subpart D of new 38 CFR part 5. Although these regulations have been substantially restructured and rewritten for greater clarity and ease of use, most of the basic concepts contained in these proposed regulations are the same as in their existing counterparts in 38 CFR part 3. However, a few substantive changes are proposed.

Table Comparing Current Part 3 Rules With Proposed Part 5 Rules

The following table shows the relationship between the current regulations in part 3 and the proposed regulations contained in this NPRM:

Proposed part 5 section or paragraph	Based in whole or in part on 38 CFR part 3 section or paragraph
5.180(a)	3.213, 1st sentence.
5.180(b)	3.204(a)(1).
5.180(c)	3.204(a)(2).
5.180(d)	3.204(b).
5.180(e)	3.204(c).
5.181(a)	New.
5.181(b)	3.213(a) and (c).
5.181(c)	3.213(b).
5.182	New and 3.213(a), 3.277(b), and 3.660(a)(1).
5.183(a)	3.401(b)(1)(ii) and 3.660(c), second sentence.
5.183(b)(1)	3.401(b)(1)(i), 3.403(a)(5), 3.660(c) first sentence.
5.183(b)(2)	3.401(b)(3).
5.183(b)(3)	3.401(b)(4).
5.183(c)	3.401(b)(2).
5.184	3.500(g)(2)(ii) and 3.660(a)(2), last sentence.
5.190	3.50(a).
5.191	3.1(j).
5.192(a)	New.
5.192(b)	3.205(b).
5.192(c), except for (c)(6)(i).	3.205(a).
5.192(c)(6)(i)	New.
5.193	3.205(b), last sentence.
5.194(a)	First sentence of 3.206.
5.194(b)(1) and (2)	3.206(a).
5.194(b)(3)	New.
5.194(c)(1)	3.206(b).
5.194(c)(2)	3.206(c).
5.195	New.
5.196(a)	3.207(a).
5.196(b)	3.207(b).
5.197(a)	New.
5.197(b)(1)	3.500(n)(1).
5.197(b)(2)	3.500(n)(2)(ii).
5.198(a)	New.
5.198(b)	3.501(d)(2).
5.200(a)	3.50(b).
5.200(b)(1)(i)	3.53(a), first sentence.
5.200(b)(1)(ii)	New.
5.200(b)(2)	3.53(b), second sentence.
5.200(b)(3)	3.53(a), second sentence.
5.200(b)(4)	3.53(b), first sentence.
5.200(b)(5)	3.53(b), last sentence.
5.201(a)	Introduction to 3.52.
5.201(b)	3.52(a).
5.201(c), introduction	3.52(b).
5.201(c)(1) and (2)	New.
5.201(c)(3)	3.205(c).
5.201(d)	3.52(c).
5.201(e)	3.52(d).
5.202(a)	3.214.
5.202(b)	New.
5.203(a)	New.
5.203(b)	3.55(a)(1).
5.203(c)(1) through 3	3.55(a)(2).
5.203(c)(4)	3.55(a)(5) and (a)(8), 3.215.
5.203(d)(1), introduction, (i) and (ii).	3.55(a)(3).
5.203(d)(1)(iii)	3.55(a)(6).
5.203(d)(2)	3.55(a)(3).
5.203(e)	New.
5.204	3.500(n)(3).
5.205(a)	3.400(v)(1).
5.205(b)	3.400(v)(2).
5.205(c)	3.400(v)(4).
5.205(d)	3.400(v)(3).
5.206	3.400(w) .
5.220, except for 5.220(b)(2)(i).	3.57(a).
5.220(b)(2)(i)	3.57(a)(1)(ii) and first sentence of 3.356(b).
5.221	3.210(a) and (b).
5.222(a)	New.
5.222(b)(1), (3), and (4).	Introduction to 3.57(c), introduction to 3.210(c).
5.222(b)(2)	Introduction to 3.210(c)(1) and 3.210(c)(1)(i).
5.223(a)	3.57(c)(1) through (3).
5.223(b)	3.210(c)(2).
5.224(a)	3.58.
5.224(b)	Introduction to 3.210(c)(1) and 3.210(c)(1)(ii).
5.225(a)	3.57(e)(1).
5.225(b)(1)	3.57(e)(2).
5.225(b)(2)	3.57(e)(4).
5.225(c)	New.
5.225(d)	3.57(e)(3).
5.226(a) and (b)	3.57(b) and 3.210(d).
5.226(c) and (d)	New.
5.227(a)	3.356(a).
5.227(b)(1)(i)	3.356(b)(1).
5.227(b)(1)(ii)	3.356(b)(2), last sentence.
5.227(b)(1)(iii)	3.356(b)(4).
5.227(b)(1)(iv)	3.356(b)(3), last sentence.
5.227(b)(2)(i)	3.356(b)(3).
5.227(b)(2)(ii)	3.356(b) introduction, third sentence.
5.227(c)(1)	3.356(b)(3) and new.
5.227(c)(2)(i)	3.356(b) introduction, second sentence.
5.227(c)(2)(ii) and (iii)	New.
5.227(d), except for (d)(3).	New.
5.227(d)(3)	3.356(b)(2), first sentence.
5.228(a) and (b)	New.
5.228(c)	3.55(b).
5.229(a), introduction	3.204(b).
5.229(a)(1)	3.209(a), first sentence.
5.229(a)(2)	3.209(b), first sentence, and 3.209(g).
5.229(a)(3)	3.209(c).
5.229(a)(4)	3.209(d).
5.229(a)(5)	3.209(e).
5.229(a)(6)	3.209(f).
5.229(a)(7)	3.209(g).
5.229(b)(1)	3.209(a), last sentence.
5.229(b)(2)	3.209(b), last sentence.
5.230	3.403(a)(3).
5.231	3.503(a)(1).
5.232	3.503(a)(10).
5.233	3.503(a)(6).
5.234(a)	New.
5.234(b)	3.403(a)(1).
5.234(c)(1)	3.503(a)(3)(i).
5.234(c)(2)	3.503(a)(3)(ii).
5.235(a)	New.
5.235(b)	3.400(u).
5.240(a)	3.59(a) and the first sentence of (b).
5.240(b)	New.
5.240(c)	3.59(a), first sentence.
5.240(d)	New.
5.240(e)(1) and (2)(i)	3.59(b), second and third sentences.
5.240(e)(2)(ii) and (f)	New.

Readers who use this table to compare existing regulatory provisions with the proposed provisions, and who observe a substantive difference between them, should consult the text that appears later in this document for an explanation of significant changes in each regulation. Not every paragraph of every current part 3 section regarding the subject matter of this rulemaking is accounted for in the table. In some instances, other portions of the part 3 sections that are addressed in these proposed regulations will appear in subparts of part 5 that are being published separately for public comment. For example, a reader might find a reference to paragraph (a) of a part 3 section in the table, but no reference to paragraph (b) of that section because paragraph (b) will be addressed in a separate NPRM. The table also does not include provisions from part 3 regulations that will not be repeated in part 5. Such provisions are discussed

specifically under the appropriate part 5 heading in this preamble. Readers are invited to comment on the proposed part 5 provisions and also on our proposals to omit those part 3 provisions from part 5.

Content of Proposed Regulations

A number of regulations in current part 3 refer to payment of various VA benefits to ''or for'' a veteran, a surviving spouse, or a child. The ''or for'' language is sometimes used as a shorthand way of indicating that a payment of benefits may be made to a fiduciary for a beneficiary. At other times, it refers to the fact that additional benefit payments may be made to a VA beneficiary based on the existence of a dependent (a dependent's allowance).

We believe that use of ''or for'' in these contexts may be confusing to many regulation users and propose not to repeat it in part 5. We propose not to include the ''or for'' qualifier in proposed regulations where the phrase refers to payments to a fiduciary on behalf of a beneficiary because it is unnecessary. Benefits are always potentially payable to a fiduciary on behalf of a beneficiary. We propose to replace the ''or for'' phrase with ''based on the existence of'' in situations where ''or for'' refers to payment of a dependent's allowance. We intend no substantive change by omission or replacement of the ''or for'' language.

Some current part 3 regulations by their terms limit their application to dependents of veterans when, in fact, they may be applicable to dependents of VA claimants or beneficiaries who are not veterans. For a specific example, see the supplementary information concerning proposed § 5.190 that appears later in this NPRM. Throughout this NPRM if a current regulation is too narrowly drawn in this way we have written its proposed part 5 counterpart to be more generally applicable.

General Dependency Provisions

5.180 Evidence of dependency—award of, or an increase in, VA benefits

Proposed § 5.180 provides rules for determining what evidence is required for a claimant to obtain VA benefits, or for a beneficiary to obtain additional VA benefits, based upon the existence of a dependent.

Proposed § 5.180(a), which explains the purpose of § 5.180, includes the type of general information contained in the first sentence of current § 3.213(a), but clarifies that the proposed section applies to claimants seeking new benefits based on the existence of a dependent as well as to beneficiaries seeking an increase in benefits based on the existence of a dependent. Proposed § 5.180(b) is based on § 3.204(a)(1), but clarifies that a statement submitted as proof of a relationship with another person must be in writing, as required by 38 U.S.C. 5124.

Proposed § 5.180(c) is based on current § 3.204(a)(2), which describes circumstances where a statement alone is not sufficient proof of relationship. We propose to add, in § 5.180(c)(1), that additional evidence is also required if the claimant's or beneficiary's statement does not contain all of the necessary information set out in § 5.180(b).

5.181 Evidence of dependency—reduction or discontinuance of VA benefits

Proposed § 5.181 addresses evidence requirements for establishing that changes in the status of a dependent that could reduce or discontinue benefits have occurred. Generally, under § 5.181(b), VA would accept the beneficiary's report under proposed § 5.182 of a change in a dependent's status. However, VA would require more formal proof if it has information contradicting the statement. This is consistent with provisions of current § 3.213(a) that state that a ''claimant or payee['s]'' statement will be accepted ''in the absence of contradictory information'' and of § 3.213(c) that state that VA will request formal proof of a change in dependency if it has reason to believe an event occurred earlier than reported.

Proposed § 5.181(c), derived from current § 3.213(b), states that if the beneficiary's statement and any additional proof is not sufficient to establish the necessary facts, VA will reduce or discontinue the dependency benefit effective the first day of the month that follows the month for which VA last paid benefits. This proposed paragraph includes a wording change consistent with our proposal to clarify effective dates for reductions and discontinuances. Rather than saying VA will reduce or discontinue benefits ''effective the date of the last payment,'' we propose to state that VA will reduce or discontinue benefits effective ''the first day of the month that follows the month for which VA last paid benefits.'' Including this change in part 5 will provide beneficiaries with the actual date when VA will stop paying benefits or pay benefits at a reduced rate.

Current § 3.213(b) also includes procedures for VA to request a statement of the date of a change in dependency if the date of that change was not reported, together with various related procedures. We propose not to repeat those provisions in subpart D of part 5. Proposed part 5 includes notice procedures that come into play when VA proposes an adverse action concerning benefits. These procedures would, among other things, require VA to give a beneficiary whose benefits are reduced or discontinued under proposed § 5.181(c) advance notice of the adverse action, and permit the beneficiary to request a hearing and to submit evidence concerning the matter. There are also provisions for restoring benefits following adverse action under some circumstances. *See* § 5.83, ''Right to notice of decisions and proposed adverse actions'' (70 CFR 24680, 24687), and § 5.84, ''Restoration of benefits following adverse action'' (70 CFR 24680, 24688). We believe that these provisions provide as much, if not more, protection to beneficiaries as the safeguards in § 3.213(b) that would not be included in § 5.181.

5.182 Beneficiary's responsibility to report changes in status of dependents

Proposed § 5.182 is new, although it is consistent with provisions found in current part 3 regulations (for example, see current §§ 3.256(a), 3.277(b), and 3.660(a)).

Proposed § 5.182(a) states that the section is applicable to beneficiaries who are receiving additional compensation, dependency and indemnity compensation, or pension based on the existence of a dependent. Proposed § 5.182(b) states the general rule that such a beneficiary must inform VA of the day, month, and year of a change in the status of a dependent that could reduce or discontinue the beneficiary's VA benefits when the beneficiary acquires knowledge of the change.

Proposed § 5.182(c) provides that only the month and year of the event need be reported if the change in the status of a dependent results from marriage, annulment of a marriage, divorce, death of a dependent, or discontinuance of school attendance by a person recognized by VA as a child on the basis of school attendance. VA does not need to know the specific day of those events, because under 38 U.S.C. 5112(b)(2) and (7) the effective date of reduction or discontinuance of benefits based on those events is the last day of the month in which the event occurred.

For the text of § 5.104, cross-referenced at the end of proposed § 5.182, see 70 FR 24680, 24691.

5.183 Effective date for additional benefits based on the existence of a dependent

Proposed § 5.183 is derived from current § 3.401(b), which states the effective date to be assigned to the award of additional benefits based on the existence of a dependent. Proposed § 5.183(b)(1) adds information, based on current § 3.403(a)(5), concerning how VA determines the date of adoptions for VA benefit purposes.

5.184 Effective date of reduction or discontinuance of VA benefits due to the death of a beneficiary's dependent

Proposed § 5.184 is based on current § 3.500(g)(2)(ii) and applicable portions of the last sentence of § 3.660(a)(2) with one change. Under current § 3.500(g)(2)(ii), when a dependent dies, benefits (other than benefits under certain old pension programs) are reduced or discontinued ''the last day of the month in which death occurred.'' The same effective date is described in the last sentence of § 3.660(a)(2) as ''the last day of the month in which dependency ceased.'' The underlying statute, 38 U.S.C. 5112(b)(2), uses ''the last day of the month in which such * * * death occurs.'' VA interprets these rules as providing that benefits are paid through the last day of the month of death, but not for the first day of the month following the month of death and thereafter. We believe that this is more clearly expressed by stating that ''VA will pay a reduced rate or discontinue benefits based on the death of a beneficiary's dependent effective the first day of the month that follows the month in which death occurred.'' This same change of language is proposed in §§ 5.197(b) and 5.198(b).

We propose not to repeat in part 5 the language in current § 3.500(g)(2)(i) which refers to the effective date of reductions or discontinuances for the death of dependents who died before October 1, 1982, because such cases are unlikely to come before VA at this point in time. Should such a case arise, it could be processed under the controlling statute.

Marriage, Divorce, and Annulment

5.190 Status as a spouse

Proposed § 5.190 defines the term ''spouse'' for VA purposes. Current § 3.50(a) defines ''spouse'' as ''a person of the opposite sex whose marriage to the veteran meets the requirements of § 3.1(j).'' Proposed § 5.190 omits the phrase ''to the veteran.'' The term ''spouse'' has broader application in terms of VA benefit determinations. For example, see § 3.262(b)(1) concerning calculation of the income of a parent and the parent's spouse for purposes of income-tested VA benefits. We have also replaced the reference to § 3.1(j) with a reference to its part 5 equivalent.

5.191 Marriages VA recognizes as valid

Proposed § 5.191 is derived from current § 3.1(j) and addresses the marriages VA accepts as valid marriages for purposes of entitlement to VA benefits. We propose a change to make the proposed section state that a spouse must be a person of the opposite sex, consistent with long-standing VA practice and the requirements of 38 U.S.C. 101(31).

5.192 Evidence of marriage

Proposed § 5.192, based on current § 3.205(a) and (b), addresses evidence VA will accept as proof of marriage. We propose to add, in § 5.192(c)(6)(i), that VA will accept as proof of marriage a copy of the State's acknowledgement of registration of the marriage in States where common-law marriages are recognized.

5.193 Proof of marriage termination where evidence is in conflict or termination is protested

Proposed § 5.193 is based on the last sentence of current 3.205(b).

5.194 Acceptance of divorce decrees

Proposed § 5.194, derived from current § 3.206, states the criteria VA uses for determining whether a divorce decree is valid for VA purposes.

Section 3.206 says that VA will question the ''validity of a divorce decree regular on its face'' only if the validity is put into issue by a party to the divorce or by a person ''whose interest in a claim'' for VA benefits would be affected by the divorce decree's validity. We propose in § 5.194(a)(1) to add the term ''(proper)'' after ''regular'' and to describe the latter person as one ''whose entitlement to VA benefits would be affected if VA recognizes the decree as valid.'' These changes are intended only as clarifications of VA's current interpretation of section 3.206 and not as substantive changes from the current rule.

Both current § 3.206 and proposed § 5.194 use the term ''bona fide domicile.'' According to Black's Law Dictionary, a ''domicile'' is the ''true, fixed, principal and permanent home, to which [the] person intends to return and remain even though currently residing elsewhere.'' *Black's Law Dictionary,* 186 (8th ed. 2004). ''Bona fide'' is simply Latin for ''in good faith.'' The ''bona fide domicile'' is, for most individuals, their permanent home. Therefore, we have included this description of bona fide domicile in proposed § 5.194(b)(1) in order to clarify this technical term for the reader.

Proposed § 5.194(b) states the standards VA uses to determine whether a person is validly divorced if that person has not remarried. New proposed § 5.194(b)(3) adds a requirement that VA be provided with the original divorce decree, a court-certified copy, or a court-certified abstract of the original decree. This addition is necessary to insure that VA adjudicators have accurate information to assess a challenge to a divorce decree.

5.195 Void marriages

Current part 3 includes references to ''void'' marriages (*e.g., see* § 3.207(a)), but it does not explain the meaning of a ''void'' marriage. Proposed § 5.195 would provide that a marriage is void if at least one party to the marriage did not meet the legal requirements for entering into the marriage at the time the marriage took place. For example, such an illegality would exist if one of the parties was already married, or if one or both parties failed to meet the minimum-age requirement. We also propose to add a statement that VA determines whether a marriage was void in accordance with the law of the place that governs the marriage's validity, together with a cross reference to the regulation that identifies those places, § 5.191, ''Marriages VA recognizes as valid.''

5.196 Evidence of void or annulled marriages

Proposed § 5.196 is derived from current § 3.207, the regulation that describes the evidence needed to prove that a marriage is void or has been annulled.

5.197 Effective date of reduction or discontinuance of Improved Pension, compensation, or dependency and indemnity compensation due to marriage or remarriage

Proposed § 5.197 is based on current § 3.500(n). However, we propose in § 5.197(a) a new provision describing the scope of applicability of the effective date rules in § 5.197.

The last sentence of the introduction to § 3.500 states that ''[w]here an award is reduced, the reduced rate will be effective the day following the date of discontinuance of the greater benefit.'' However, the underlying statute, 38 U.S.C. 5112(b), applies to discontinuance of benefits as well as to reductions in benefits, and proposed

§ 5.197(b) is consistent with that approach.

We propose not to include the language in current § 3.500(n)(2)(i) that refers to the effective date of reductions or discontinuances because of the marriage or remarriage of dependents that occurred before October 1, 1982. We believe that, with the passage of time, this provision is now unnecessary. It is very unlikely that VA would now retroactively reduce or discontinue an award based on a dependent's marriage or remarriage that occurred more than 20 years in the past. However, should such a case arise, it could be processed under the controlling statute.

We have not included in proposed § 5.197 the special effective date rule in § 3.500(n)(ii) that applies to Old-Law and Section 306 Pension because that topic is addressed in another proposed part 5 regulation, § 5.477, Effective dates for Section 306 and Old-Law Pension reductions or discontinuances. Rather, we have simply cross referenced § 5.477 at the end of § 5.197. For the text of proposed § 5.477, see 70 FR 77578 at 77593.

5.198 Effective date of reduction or discontinuance of Improved Pension, compensation, or dependency and indemnity compensation due to divorce or annulment

Proposed § 5.198 is based on current § 3.501(d). Current § 3.501(d) is, by its terms, only applicable to the reduction or discontinuance of a veteran's benefits due to divorce or annulment. However, the underlying statute (38 U.S.C. 5112(b)(2)) applies more broadly to reductions and discontinuances of benefits based on the divorce or annulment of the marriage of any beneficiary. We have broadened proposed § 5.198 to conform with the statute and to make it clear that the proposed regulation applies to any beneficiary.

Other differences between the proposed and current regulation are similar to those occurring in proposed § 5.197. That is, the last sentence of the introduction to § 3.501 is similar to the last sentence of the introduction to § 3.500. The rule in proposed § 5.198 is also based on a paragraph of 38 U.S.C. 5112(b), and we therefore also propose to make § 5.198 applicable to discontinuances as well as reductions. For the same reasons we propose in § 5.197 not to include a rule applicable to marriage or remarriage of dependents that occurred before October 1, 1982, we propose not to repeat a rule in § 3.501(d)(1) concerning divorces and annulments that occurred prior to October 1, 1982. Finally, consistent with the approach in proposed § 5.197, we propose to simply cross reference § 5.477 at the end of § 5.198 rather than repeat a rule in § 3.501(d)(2) applicable to Section 306 and Old-Law Pension cases.

Surviving Spouse Status

5.200 Status as a surviving spouse

Proposed § 5.200 is based on current §§ 3.50(b) and 3.53. New § 5.200(b)(1)(ii) states that ''[i]n determining who was at fault in causing the separation, VA will consider the veteran's and the other person's conduct at the time the separation took place, but not conduct taking place after the separation.'' This rule is consistent with long-standing VA policy and with current §§ 3.50(b)(1) and 3.53, which focus on fault for marital separation. Events which occur later are not relevant to that assessment.

5.201 Surviving spouse status based on a deemed-valid marriage

Proposed § 5.201 is based on current §§ 3.52 and 3.205(c), except for new § 5.201(c)(1) and (2).

Current § 3.52(b) requires, as a condition of VA deeming an invalid marriage valid, that the claimant have entered into the purported marriage without knowledge of a legal impediment that prevented formation of a valid marriage. VA does not consider knowledge of a legal impediment that a claimant acquires after the marriage to be relevant. We propose to add § 5.201(c)(1) clarifying this point.

Proposed new § 5.201(c)(2) provides examples of legal impediments to marriage, namely one of the parties being underage, one of the parties having a prior undissolved marriage at the time of the attempted marriage, and, in a jurisdiction that does not recognize common-law marriages, the parties' failure to marry through a marriage ceremony. As to the latter, VA's General Counsel has interpreted the term ''legal impediment'' to include the lack of a marriage ceremony in those jurisdictions that do not recognize common-law marriages. *See* VAOPGCPREC 58–91, 56 FR 50149, October 3, 1991.

5.202 Effect of Federal court decisions on remarriage determinations

Proposed § 5.202 is derived from current § 3.214. We propose to add a new provision in § 5.202(b) stating that the provisions of this section do not apply to VA determinations regarding whether a surviving spouse has held himself or herself out openly to the public as the spouse of another person as described in § 5.200(a)(2). This change will clarify that the concept of holding oneself out to the public as a spouse of another is a separate and distinct concept from remarriage.

Finally, we propose not to repeat the provisions of current § 3.214 stating that the section is effective July 15, 1958. We believe that statement of the effective date has been rendered unnecessary due to the passage of time. We know of no affected claims pending from before that date.

5.203 Effect of remarriage on a surviving spouse's benefits

Proposed § 5.203 contains provisions from current §§ 3.55 and 3.215, as well as certain new regulatory provisions described below.

Proposed § 5.203(a) is new; however, it is not a substantive change. It restates a part of the statutory definition of ''surviving spouse'' in 38 U.S.C. 101(3), which precludes surviving spouse status for someone who has remarried or (in cases not involving remarriage) has, ''since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.''

Proposed § 5.203(c) pertains to reinstatement of eligibility for surviving spouses who, because of remarriage, may have been ineligible for benefits under law in effect before 1971, whose remarriages ended before November 1, 1990. Included in this provision is proposed § 5.203(c)(4), which is a consolidation of rules in current §§ 3.55(a)(5), 3.55(a)(8), and 3.215. Under current § 3.215, benefits may be paid to a surviving spouse who stops living with another person and holding himself or herself out openly to the public as that person's spouse upon filing of an application and ''satisfactory evidence.'' In order to clarify what evidence is satisfactory, we propose to replace the phrase ''satisfactory evidence'' with ''competent, credible evidence.'' The definition of ''competent evidence'' will be proposed in a separate NPRM. ''Credible'' evidence is just evidence that is believable. (''Credible testimony is that which is plausible or capable of being believed.'' *Caluza* v. *Brown,* 7 Vet. App. 498, 511 (1995)). We also propose to make a consistent change to a similar provision in proposed § 5.203(d)(1)(iii), which is based on current § 3.55(a)(6).

Proposed § 5.203(d) is based on current § 3.55(a)(3) and (6), which authorizes reinstatement of eligibility for dependency and indemnity compensation for surviving spouses who, because of remarriage, may have been ineligible for benefits under laws

in effect before June 9, 1998. Section 3.55(a)(3) and (6) refer to an effective date of October 1, 1998. Those references are derived from section 8207(b) of Public Law 105–178, 112 Stat. 495, which prohibits payment by reason of the amendments made by section 8207(a) for any month before October 1998. Proposed § 5.203(d)(2) carries over that limitation. However, § 5.203(d)'s caption refers to law in effect before June 9, 1998, which is the date Public Law 105–178, was enacted. The difference in the effective dates is because the Public Law was effective on June 9, 1998, the date of enactment, with a provision prohibiting payments for any period before October 1, 1998.

Proposed new § 5.203(e) would implement section 101 of the Veterans Benefits Act of 2003 (the Act) as it applies to eligibility for DIC. (Sec. 101, Pub. L. 108–183, 117 Stat. 2651, 2652 (Dec. 16, 2003)). Under the Act, eligibility for DIC is extended to surviving spouses who remarry after December 15, 2003, and after they reach the age of 57.

We propose not to include a provision contained in section 101(e) of the Act in § 5.203 because the time to take advantage of that provision has now passed. Section 101(e) provides a special period during which a surviving spouse who had remarried after age 57, but before December 16, 2003 (the date of enactment of the Act), could apply for DIC. This category of surviving spouses must have filed an application for such benefits before December 16, 2004. We are not including this category of eligible beneficiaries in proposed § 5.203 because the period for filing a claim under those circumstances has already closed. VA would award benefits to those who qualify under section 101(e) under the authority of the statute, so this omission will not result in any loss of benefits to eligible claimants.

We have not included in proposed § 5.203 two provisions in current § 3.55, § 3.55(a)(4) and (a)(7). These provisions concern eligibility for certain medical care, educational assistance, and housing loans. As its title indicates, proposed part 5 deals with compensation, pension, burial and related benefits. Medical care, education, and housing loans are the subjects of other parts of title 38 of the Code of Federal Regulations. For the same reason, we have not included provisions of section 101 of the Veterans Benefits Act of 2003 concerning eligibility for educational assistance under 38 U.S.C. chapter 35 and housing loans under 38 U.S.C. chapter 37 for surviving spouses who remarry after reaching age 57.

Finally, we note that the authority citation for current § 3.55(a)(3) and (a)(6) is 38 U.S.C. 1311(e). However, section 502 of Public Law 106–117, 113 Stat. 1545, 1574 (Nov. 30, 1999), deleted 38 U.S.C. 1311(e) and moved those provisions to 38 U.S.C. 103(d). Therefore, we have updated this authority citation where applicable.

5.204 Effective date of discontinuance of VA benefits to a surviving spouse who holds himself, or herself, out as the spouse of another person

Proposed § 5.204 is derived from current § 3.500(n)(3). As with other proposed part 5 regulations concerning discontinuances, we propose to express the effective date in terms of the first day that benefits are stopped, rather than in terms of the last day for which benefits are paid. We intend no substantive change. We are also correcting the authority citation for § 3.500(n)(3).

5.205 Effective date of resumption of benefits to a surviving spouse due to termination of a remarriage

Proposed § 5.205 addresses the effective dates for the award of benefits to surviving spouses who are eligible for the restoration of benefits due to the termination of a remarriage. The proposed regulation is derived from current § 3.400(v). We propose not to repeat a provision in current § 3.400(v)(3) and (4). Those paragraphs specify that benefits are not payable unless the requirements for termination of a remarriage through death or divorce are met. We consider it unnecessary to specify that in proposed § 5.205 because a resumption of benefits would not be in order unless the termination of remarriage satisfied all applicable criteria.

5.206 Effective date of resumption of benefits to a surviving spouse who stops holding himself, or herself, out as the spouse of another

Proposed § 5.206 updates an effective date rule in current § 3.400(w) that was based on former 38 U.S.C. 5110(m). That statute stated that ''[t]he effective date of an award of benefits to a surviving spouse based upon termination of actions described in section 103(d)(3) of this title shall not be earlier than the date of receipt of application therefor filed after termination of such actions and after December 31, 1970.'' The ''actions described in section 103(d)(3) of this title'' are ''living with another person and holding himself or herself out openly to the public as that person's spouse.''

Congress repealed subsection (m) of 38 U.S.C. 5110 in section 1201(i)(8) of Public Law 103–446, the ''Veterans' Benefits Improvements Act of 1994,'' and does not appear to have enacted a specific substitute effective date provision. Consequently, the default effective date provision stated in 38 U.S.C. 5110(a) would apply. Under 38 U.S.C. 5110(a), ''the effective date of an award based on an original claim, a claim reopened after final adjudication, or a claim for increase, of compensation, dependency and indemnity compensation, or pension, shall be fixed in accordance with the facts found, but shall not be earlier than the date of receipt of application therefor.'' In line with 38 U.S.C. 103(d)(3) and 5110(a), we propose in § 5.206 to state that ''[t]he effective date of an award resumed because a surviving spouse no longer holds himself or herself out as the spouse of another is the date the surviving spouse stopped living with that person and holding himself or herself out openly to the public as that person's spouse, but not earlier than the date VA receives an application for benefits.''

Child Status

5.220 Status as a child for VA benefit purposes

Proposed § 5.220 pertains to status as a child for VA benefit purposes. It is based on current § 3.57(a).

Section 101(4)(A) of title 38, U.S.C., and 38 CFR 3.57 use the terms ''legitimate'' and ''illegitimate'' to distinguish between two categories of children: Children whose mothers were married when the children were born and children whose mothers were not married when the children were born. The distinction between the two categories for VA benefit purposes lies in differences in evidence required to establish a parent-child relationship. We propose to retain that distinction in proposed part 5. However, because use of the terms ''legitimate'' and ''illegitimate'' in describing children is becoming somewhat outmoded, we will no longer use those terms. We propose to use the term ''natural child'' to designate a child of either category and to maintain the distinction when necessary by describing the child's parents' marital status when the child was born. The proposed change in language is not intended to either diminish or enlarge the group of eligible claimants.

Proposed § 5.220(b)(2)(ii) relates to status as a child based on school

attendance. It is based on current § 3.57(a)(1)(iii), which states that ''[f]or the purposes of this section and § 3.667, the term 'educational institution' means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria. The term includes schools, colleges, academies, seminaries, technical institutes, and universities, but does not include home-school programs.''

In *Theiss* v. *Principi*, 18 Vet. App. 204, 214 (2004), the Court of Appeals for Veterans Claims invalidated the provision in current § 3.57(a)(1)(iii) that excludes home-school programs from the definition of ''educational institution;'' holding that an amendment that adopted the exclusion did not meet procedural notice and comment requirements of 5 U.S.C. 553.

Although the court invalidated the rule on procedural grounds and did not foreclose reinstating it through proper procedures, its opinion also supports the idea that an ''educational institution'' could equally as well be interpreted to include a home school. Particularly in view of the fact that home schooling is becoming more common and that many jurisdictions now have procedures in place for accrediting home schools, VA proposes to include home-school programs within the definition of an ''educational institution'' in § 5.220(b)(2)(ii). To help guard against possible abuses, we also propose to specify that any educational institution must operate in compliance with the compulsory attendance laws of the State in which it is located, whether treated as a private school or home school under State law, and that the term ''home schools'' is limited to courses of instruction for grades kindergarten through 12. (VA has previously proposed to make such amendments to 38 CFR 3.57. *See* 71 FR 39616 (July 13, 2006).

5.221 Evidence to establish a parent-natural child relationship

Proposed § 5.221 is based on the concepts in current § 3.210(a) and (b). It omits references to legitimacy or illegitimacy for the reasons noted above, but retains distinctions between the types of evidence required to establish a parent-natural child relationship when the child's parents were married to each other at the time of the child's birth and when they were not.

5.222 Adoption arrangements recognized by VA

New proposed § 5.222(a) states the scope of § 5.222: ''This section describes the types of adoption arrangements and evidence of those arrangements that VA will accept as proof of an adoption for purposes of establishing a person as a child under § 5.220, ''Status as a child for VA benefit purposes.''

Proposed paragraph (b) is based on portions of § 3.57(c) and § 3.210(c). We have added clarification of a term used in current § 3.57(c), ''interlocutory decree.'' *Black's Law Dictionary* defines ''interlocutory'' as ''interim or temporary, not constituting a final resolution of the whole controversy.'' *Black's Law Dictionary*, 832 (8th ed. 2004). Therefore, we have parenthetically added the word ''temporary'' after the word ''interlocutory'' in § 5.222(b)(3) in order to clarify the meaning of that term. Current § 3.57(c) also provides that VA will, subject to certain conditions, recognize an interlocutory decree that is ''unrescinded.'' We propose, also in § 5.222(b)(3), to provide instead that VA will recognize an interlocutory decree that has not been rescinded or rendered obsolete. Interlocutory awards may be rendered obsolete based on the passage of time or some other event.

5.223 Child adopted after a veteran's death recognized as the veteran's child

Proposed § 5.223, derived from current §§ 3.57(c)(1) through (3) and 3.210(c)(2), concerns conditions under which VA will recognize as the child of a deceased veteran a child adopted by the veteran's surviving spouse.

One of the requirements, as currently stated in current § 3.57(c)(2), is that the child must have been adopted ''under a decree issued within 2 years after August 25, 1959, or the veteran's death[,] whichever is later.'' The 1959 date was the date of an applicable amendment to the authorizing statute, 38 U.S.C. 101(4). Pub. L. 86–195, 73 Stat. 424 (1959). However, that portion of 38 U.S.C. 101(4) was subsequently amended again. Sec. 4(2), Pub. L. 97–295, 96 Stat. 1304 (1982). The requirement now is that the child must have been ''legally adopted by the veteran's surviving spouse before August 26, 1961, or within two years after the veteran's death.'' However, we propose to omit the date from proposed § 5.223 rather than correcting it. A new claim for VA benefits based on a person qualifying as a child by virtue of having been adopted by a surviving spouse before August 26, 1961, rather than within two years after the veteran's death, would now be extremely rare due to the passage of time. As a practical matter, it would require a claim that depended upon establishing status as a child through adoption by a surviving spouse after the veteran's death, but before August 26, 1961, in the case of a child who became permanently incapable of self-support before reaching 18 years of age. Should such a now rare case arise, it could be adjudicated under the controlling statute.

To be consistent with current 38 U.S.C. 101(4), we also propose to refer to ''regular contributions'' in § 5.223(a)(3), rather than to ''recurring contributions'' used in current §§ 3.57(c)(3) and 3.210(c)(2). While regular contribution will always be recurring contributions, recurring contributions might not be regular.

5.224 Child status despite adoption out of a veteran's family

Proposed § 5.224, based on §§ 3.58 and 3.210(c)(1), concerns continuing status as a veteran's child despite the child's adoption out of the veteran's family. Although 38 U.S.C. 101(4) does not provide whether a child adopted out of a veteran's family is still the veteran's ''child'' for VA benefits purposes, longstanding VA practice has been to continue to consider such a child as retaining status as the veteran's ''child'' as defined currently in § 3.57. This practice prevents a child from losing eligibility for benefits as a veteran's ''child'' based merely on adoption out of the veteran's family.

5.225 Child status based on adoption into a veteran's family under foreign law

Proposed § 5.225, based on current § 3.57(e), describes the requirements for status as a child based on adoption into a veteran's family under foreign law.

One of the requirements for recognizing a person adopted under foreign law as the legally adopted child of a living veteran when that person lives in a foreign country ''with such veteran (or in the case of divorce following adoption, with the divorced spouse who is also an adoptive or natural parent) except for periods during which such person is residing apart from such veteran (or such divorced spouse) for purposes of full-time attendance at an educational institution or during which such person or such veteran (or such divorced spouse) is confined in a hospital, nursing home, other health-care facility, or other institution * * *.'' *See* 38 U.S.C. 101(4)(B)(i)(IV).

Current § 3.57(e)(2)(iv) omits the information in the final parenthetical relating to the confinement in a hospital, nursing home, or other medical institution or health-care facility, of a divorced spouse. Proposed § 5.225(b)(1)(iv) corrects this omission.

Current § 3.57 provides rules for determining the validity of an adoption under foreign law in a case where the veteran is alive and the adopted person is living in a foreign country, but it does not indicate how that issue is resolved when the veteran is alive and the adopted person is not living in a foreign country. New proposed § 5.225(c) clarifies that in such cases VA will apply the rules in §§ 5.220 and 5.222 it normally applies to determine the validity of adoptions.

Current § 3.57(e)(3) also addresses the circumstances under which VA will recognize, as a child of the veteran, a person adopted after the veteran's death. Proposed § 5.225(d)(1) clarifies this provision by describing its applicability.

5.226 Child status based on being a veteran's stepchild

Proposed § 5.226 provides details about how child status is established for VA benefit purposes on the basis of a parent-stepchild relationship between a veteran and another person. Proposed § 5.226(a) and (b) consolidate concepts in current § 3.57(b), which defines a stepchild, and in current § 3.210(d), which describes the evidence necessary to establish child status by virtue of being a veteran's stepchild. Current § 3.57(b) defines a stepchild as ''a legitimate or an illegitimate child of the veteran's spouse.'' We propose to clarify in § 5.226(a)(1) that a veteran's stepchild can be either the natural or adopted child of the veteran's spouse. The applicable statute, 38 U.S.C. 101(4), does not constrain the meaning of ''stepchild'' to a natural child.

Proposed § 5.226(b) restates, with clarifying changes, language in current § 3.210(d), which describes what is needed to establish a veteran-stepchild relationship.

There is very little information concerning stepchildren in current part 3. In order to provide more guidance, we propose to include in proposed § 5.226(c) and (d) provisions derived from long-standing VA practice to fill gaps left by the current regulations.

As indicated in proposed § 5.220(c)(2), one factor in establishing a veteran-stepchild relationship is that the person must be a member of the veteran's household, or have been a member of the veteran's household at the time of the veteran's death. Proposed § 5.226(c) clarifies the term ''member of the veteran's household'' in this context. It explains that a stepchild is recognized as a member of the veteran's household when that stepchild resides with the veteran or when the veteran provides at least half of the stepchild's support. It provides examples of when the latter would apply, including a stepchild who lives apart from the veteran solely for medical, educational, or similar reasons and a stepchild whom the veteran supports who is living with another person who has legal custody of the stepchild. Proposed § 5.226(d) explains the effect of termination of a marriage between a veteran and the stepchild's parent on the veteran-stepchild relationship.

5.227 Child status based on permanent incapacity for self-support

Proposed § 5.227 would serve essentially the same function in proposed part 5 as § 3.356 does in current part 3. As stated in proposed § 5.220(b)(1), one of the requirements for status as a child for the purpose of VA benefits is that the person be under 18 years of age. However, this requirement is subject to two exceptions. One of these exceptions, which permits child status to continue beyond 18 years of age if the person became permanently incapable of self-support before reaching 18 years of age, is the subject of proposed § 5.227, as indicated in proposed § 5.227(a).

Proposed § 5.227(a) serves a function similar to the function of current § 3.356(a). However, we note that current § 3.356(a) states that the incapacity must be permanent ''at the date of attaining the age of 18 years'' (emphasis added), whereas the underlying statute 38 U.S.C. 101(4)(A)(ii), requires that the person became permanently incapable of self-support ''*before* attaining the age of eighteen years'' (emphasis added). Proposed § 5.220(b)(2)(i), cross-referenced in proposed § 5.227(a), more closely tracks the statute in this regard (as does current § 3.57(a)(1)(ii)). A person who becomes ''permanently'' incapable of self-support before the date that he or she turns 18 will of course continue to be incapable of self-support at the age of 18.

Proposed § 5.227(b) begins a new organization and simplification of other concepts contained in current § 3.356. Current § 3.356(b) discusses both ''permanence'' and ''incapacity for self-support'' in the same set of rules. The proposed reorganization separates the question of whether a person is incapable of self-support from the question of whether that incapacity is permanent. We propose this reorganization because the current rule may suggest that evidence of employment is of paramount importance in all respects, based on the fact that the current rule lists only four ''[p]rincipal factors for consideration'' and all of those factors discuss employment. Employment evidence is certainly relevant to a determination of permanent incapacity for self-support. However, employment evidence tends to reveal capacity or incapacity for economic self-support that existed at the time of the employment in question. It may not be sufficient to show whether the incapacity is permanent. In practice, VA evaluates whether incapacity is permanent based primarily on the nature of the disability itself. Yet, the current regulation does not list that factor as a ''[p]rincipal factor for consideration.'' The current rule stresses economic factors with comparatively little discussion of non-economic factors. Both are important in determinations of helpless child status. The proposed reorganization would correct the potential for improperly minimizing the importance of evidence of social and medical disability.

Proposed § 5.227(b) discusses the factors considered in determining whether a person is incapable of self-support. Proposed paragraph (b)(1) lists employment history as the first principal factor for consideration in a determination of incapacity for self-support. Proposed paragraphs (b)(1)(i) through (b)(1)(iv) list the types of employment history for consideration (productive employment, intermittent employment, charitable and therapeutic employment, and the lack of employment) and how they impact incapacity for self-support determinations.

Proposed § 5.227(b)(2) lists criteria for evaluating the nature and extent of a person's disability as the second factor in a determination of incapacity for self-support. Proposed criteria include whether the disability would render the average person incapable of self-support, the impact of the disability on self-care and performing tasks ordinarily expected of a person of the same age, and consideration of the person's educational accomplishments.

Proposed paragraph (c) describes how VA determines whether incapacity for self-support is ''permanent.'' The proposed factors in paragraph (c)(1) add detail to the requirement in § 3.356(b) and in proposed § 5.220(b)(2)(i) that determinations will be based on whether the child is permanently incapable of self-support through his own efforts by reason of physical or mental disability. Proposed factors include the following: the nature and extent of disability, whether the disability has worsened or improved over time, and whether there is a reasonable possibility that the disability will improve in the future.

Proposed § 5.227(c)(2)(i) restates concepts in the second sentence of the introduction to current § 3.356(b), which essentially provides that a determination of permanent incapacity for self-support is a case-by-case question of fact based on the evidence of record. Additional material in proposed paragraph (c)(2)(ii) governs the types of evidence most commonly used to support a claim that a child is permanently incapable of self-support. This would include various medical evidence and statements from persons who have observed the child's condition, such as statements from teachers, social workers, or tutors having knowledge of the facts. We believe that this should be included so that claimants will be aware of the types of evidence that they may submit, as well as making adjudicators aware that such evidence is particularly relevant in determinations under this rule.

Proposed § 5.227(d) addresses revision of previous VA determinations that child status is warranted for a person after reaching 18 years of age because of permanent incapacity for self-support.

New proposed § 5.227(d)(1) clarifies that a VA determination that a child is permanently incapable of self-support is not subject to protection under current § 3.951(b) or § 3.952. This is consistent with provisions of the introduction to current § 3.356(b) and proposed § 5.227(b)(2)(ii) that specify that rating criteria applicable to disabled veterans are not controlling.

New proposed § 5.227(d)(2) states that VA will order a reexamination in such cases only in unusual circumstances. Inasmuch as VA would necessarily have found that incapacity for self-support was permanent when making the initial determination, a need for reexamination later should rarely be necessary. This new provision protects a helpless child from needless reexamination while at the same time recognizing that rare cases do occur in which updated medical information may be warranted.

Proposed new § 5.227(d)(4) states that when a child who was formerly found by VA to have been permanently incapable of self-support based on mental incompetency is later found competent by a court, VA will determine whether the child continues to be permanently incapable of self-support. This would help to ensure that VA does not consider as children people who are capable of self-support. This reflects current VA practice, but it is not currently stated in our regulations.

We propose not to repeat the rules in current § 3.950 in part 5. Current § 3.950, which is titled ''Helpless children; Spanish American and prior wars,'' states that ''[m]arriage is not a bar to the payment of pension or compensation to a helpless child under an award approved prior to April 1, 1944. The presumption, arising from the fact of marriage, that helplessness has ceased may be overcome by positive proof of continuing helplessness. As to awards approved on or after April 1, 1944, pension or compensation may not be paid to a helpless child who has married.''

Current § 3.950 was added to 38 CFR in 1961 as part of the codification of a large number of VA rules. In particular, § 3.950 was a codification of VA Rule 1950, which, in turn, was a restatement of VA Regulation (VAR) 2502(B)(1). The current rule has not been amended since that 1961 codification.

We acknowledge that current § 3.950 protects persons who had been found to be helpless children prior to April 1, 1944, by establishing a rebuttable presumption, as opposed to a complete bar, against payment to a married ''helpless'' child. However, we do not believe that this potential protection has application to any existing or potential claimants because of the passage of time. Therefore, removing § 3.950 would not harm any person potentially benefited by the provision.

5.228 Exceptions applicable to termination of child status based on marriage of the child

Proposed § 5.228 is based on current § 3.55(b), but includes two new clarifying provisions.

Proposed new § 5.228(a), an applicability paragraph, explains that the section states exceptions to the requirement in § 5.220(a) (and in 38 U.S.C. 101(4)(A)) that, for a person to have status as a ''child'' for VA benefit purposes, that person must be unmarried.

Proposed new § 5.228(b) clarifies that the requirement that a person be unmarried to be recognized as a ''child'' for VA benefit purposes does not extend to benefits under 38 U.S.C. chapter 18, which provides benefits based upon birth defects suffered by certain children of Vietnam Era veterans and children of certain veterans who served in Korea. *See* 38 U.S.C. 1821 and 1831. (The requirement is also inapplicable to certain insurance benefits and to a statutory provision relating to the disposition of unclaimed personal property. *See* 38 U.S.C. 101(4)(A). However, that is beyond the scope of proposed part 5.)

Current § 3.55(b)(2) states that ''[o]n or after January 1, 1975, marriage of a child terminated prior to November 1, 1990, shall not bar the furnishing of benefits to or for such child provided that the marriage: (i) [h]as been terminated by death, or (ii) [h]as been dissolved by a court with basic authority to render divorce decrees unless the Department of Veterans Affairs determines that the divorce was secured through fraud by either party or by collusion.''

Proposed § 5.228(c)(3) and (4) retain the basic rules in current § 3.55(b)(2), but we have omitted the January 1, 1975, effective date, which is now unnecessary due to the passage of time. (January 1, 1975, was the effective date of the Veterans and Survivors Pension Adjustment Act of 1974, Pub. L. 93–527, 88 Stat. 1702.)

5.229 Proof of age and birth

Proposed § 5.229 is derived from current §§ 3.204(b) and 3.209(a) through (g).

5.230 Effective date of award of pension or dependency and indemnity compensation to, or based on the existence of, a child born after the veteran's death

Proposed § 5.230 is based on current § 3.403(a)(3). The current regulation refers, in part, to a ''notice of the expected or actual birth meeting the requirements of an informal claim.'' In this particular context, ''an informal claim'' means a ''communication or action, indicating an intent to apply for one or more benefits under the laws administered by the Department of Veterans Affairs.'' *See* current § 3.155(a). Therefore, in § 5.230, we propose to refer to the notice in question as being one that ''is sufficient to indicate an intent to apply for pension or DIC benefits'' for, or based on the existence of, a child born after the death of the parent-veteran.

The introduction to current § 3.403(a) states that it applies to awards of pension, compensation, or dependency and indemnity compensation. In the context of § 3.403(a)(3), compensation would be death compensation. However, we have not included death compensation provisions in proposed § 5.230. Death compensation is only payable based upon the death of a veteran who died before January 1, 1957. *See* 38 U.S.C. 1121 and 1141. VA does not anticipate receiving any more claims for death compensation that would fall within the scope of proposed § 5.230.

5.231 Effective date of reduction or discontinuance—child reaches age 18 or 23

Proposed § 5.231 is based on current § 3.503(a)(1). Current § 3.503(a)(1)

provides that the effective date for a reduction or discontinuance of benefits that occurs when a child reaches age 18 or 23, as applicable, is ''[d]ay before 18th (or 23d birthday) [sic]''. However, the introduction to § 3.503(a) states that ''[w]here an award is reduced, the reduced rate will be payable the day following the date of discontinuance of the greater benefit.'' To simplify this rule, and in keeping with the approach used generally in proposed part 5 to state effective dates for reductions and discontinues in terms of the first day that payments are reduced or discontinued rather than the last day of payment at the old rate, we propose to state in § 5.231(b) that ''VA will pay a reduced rate or discontinue benefits effective on the child's 18th or 23rd birthday, as applicable.'' We intend no substantive change.

5.232 Effective date of reduction or discontinuance—terminated adoptions

Proposed § 5.232 is based on current § 3.503(a)(10). For the same reasons noted with respect to proposed § 5.230 (*i.e.*, because of the way current 3.503(a) is structured and the way effective dates are framed in proposed part 5), we propose to state that the effective date of reduction or discontinuance is the day after the day the child left the custody of the adopting parent, etc., rather than the date the child left the custody of the adopting parent. In other words, benefits would continue to be paid at the old rate for the day the child left, but would be discontinued or paid at the reduced rate the day after the child left. We intend no substantive change.

5.233 Effective date of reduction or discontinuance '' stepchild no longer a member of the veteran's household

Proposed § 5.233 is based on current § 3.503(a)(6). For the same reasons noted with respect to proposed §§ 5.231 and 5.232 (*i.e.*, because of the way current 3.503(a) is structured and the way effective dates are framed in proposed part 5), we propose to state that the effective date of reduction or discontinuance is the day following the date the child ceased being a member of the veteran's household, rather than the last day the child was a member of the veteran's household. In other words, benefits would continue to be paid at the old rate for the day the child left the veteran's household, but would be discontinued or paid at the reduced rate the day after the child left. We intend no substantive change.

5.234 Effective date of an award, reduction, or discontinuance of benefits based on child status due to permanent incapacity for self-support

Proposed § 5.234 is based on current §§ 3.403(a)(1) and 3.503(a)(3). New § 5.234(a) states when the section is applicable. Proposed paragraph (c) includes wording changes consistent with our previously described proposal to state effective dates for reductions and discontinuances of benefits in terms of the day the reduction or discontinuance actually goes into effect, rather than in terms of the last day old rates are paid. The text of § 5.83, referenced in proposed § 5.234(c)(2), may be found at 70 FR 24680 at 24687–88.

5.235 Effective date of an award of benefits due to termination of a child's marriage

Proposed § 5.235 is based on current § 3.400(u). A new applicability provision, § 5.235(a), clarifies that the section states the effective dates of awards to, or based upon the existence of, a child when status as a child for the purpose of VA benefits has been restored due to termination of the child's marriage.

Proposed § 5.235(b)(3) consolidates provisions of current § 3.400(u)(3) and (4) by stating that ''[a]wards under § 5.228(c)(3) or (4) (pertaining to marriages terminated by death or divorce prior to November 1, 1990) are effective on the date VA receives an application for benefits.'' Current § 3.400(u)(3) and (4) provide earlier alternate effective dates where claims are received within 1 year of the date of death or date the divorce decree became final. We have omitted those provisions inasmuch as the death or divorce in question must have occurred prior to November 1, 1990. Therefore, no new applications for benefits could meet the criteria for the earlier alternate effective date.

Parent Status

5.240 Status as a veteran's parent

Proposed § 5.240 contains the rules in current § 3.59, which defines whom VA considers to be a parent of a veteran. We also propose to add additional guidance as to how VA determines status as a parent, based on long-standing VA practice. Throughout this section the term ''child'' refers to the person who later became the veteran.

Proposed § 5.240(a) is based on current § 3.59(a) and the first sentence of § 3.59(b). We propose two clarifying changes as to the latter, which reads: ''Foster relationship must have begun prior to the veteran's 21st birthday.''

First, we propose to omit the term ''foster relationship.'' It was an unnecessary addition to the regulation that is now § 3.59(b) and it could be subject to misinterpretation.

The relevant relationship in the underlying statute, 38 U.S.C. 101(5), is not a ''foster relationship,'' but a relationship between a veteran and an individual who ''stood in the relationship of a parent to a veteran.'' The traditional legal term is ''*in loco parentis*'' (Latin meaning ''in the place of a parent''). The first sentence of § 3.59(b) has its origins in an October 1948 amendment to one of several predecessor regulations eventually consolidated into § 3.59, VAR 2514(D). That amendment, in turn, resulted from a series of decisions by the Administrator of Veterans Affairs, A.D. No. 536, October 22, 1943; A.D. No. 675, November 27, 1945; and A.D. No. 793, September 14, 1948. Cumulatively, these decisions essentially held that an *in loco parentis* relationship with a veteran must have begun while the veteran was still a minor and that the common law definition of the age of majority (age 21) prevails over State statutes establishing ages of majority. The last of these decisions, A.D. No. 793, happened to arise in a case in which the person who was claiming to be in an *in loco parentis* relationship to a deceased veteran had ''satisfactorily established foster parentage,'' but ''foster'' parentage was only incidental to the facts of the particular case and not a ground for the holding. Therefore, ''foster relationship'' was a debatable addition to what is now § 3.59(b) in the first instance.

In addition, ''foster relationship'' could be misinterpreted in this context. VA has not traditionally applied it in the technical sense of a foster parent. A ''foster parent'' is ''[a]n adult who, though without blood ties or legal ties, cares for and rears a child.'' *Black's Law Dictionary* 1145 (8th ed. 2004). That definition excludes persons such as grandparents, aunts, uncles, or even adult siblings who may care for and rear a minor child. VA does not exclude such persons from being considered a veteran's parents for VA benefit purposes in appropriate circumstances.

The second change is in proposed § 5.240(a)(3)(ii), which shows more clearly that while such a relationship must have begun before the veteran's 21st birthday, the relationship may have ended at any time (subject to the requirement in § 5.240(a)(3)(i) that the relationship must have existed for at least one year at sometime before the

veteran's entry into active military service). This is implicit in the current regulation, and we intend no substantive change.

New proposed § 5.240(b) clarifies that VA will not recognize an institution as a ''parent'' for VA purposes, even though the institution may be providing care for a veteran. This reflects current VA practice and, we believe, appropriately provides for the allocation of VA benefits to or on behalf of persons and not institutions. Further, interpreting ''parent'' to mean an institution would be inconsistent with the requirements of 38 U.S.C. 101(5): ''The term 'parent' means * * * a father, a mother, a father through adoption, a mother through adoption, or an individual who for a period of not less than one year stood in the relationship of a parent to a veteran * * *.''

Proposed § 5.240(c) clarifies a rule in the first sentence of current § 3.59(a) that states that the term ''parent'' includes a natural mother or father of an illegitimate child ''if the usual family relationship existed.'' Proposed § 5.240(c) provides VA will recognize a natural parent who was not married to the veteran's other natural parent when the veteran was born if that parent accepted the child as a member of his or her household and/or provided ''substantial financial support to the veteran consistently from the date of the veteran's birth until the veteran reached the age of 21, married, or entered active military service.'' Through a reference to § 5.221, proposed § 5.240(c) makes it clear that meeting one or both of these criteria does not replace the basic requirement that there be evidence to establish the parent-veteran relationship.

Proposed § 5.240(d) provides that a natural or adoptive parent who had abandoned a child is not eligible for VA benefits based on being the parent of that child and defines the term ''abandoned'' for purposes of this provision. This discourages the allocation of VA benefits to a parent who did not fulfill that role. However, consistent with VA practice, the rule permits recognition as a parent if that parent subsequently assumes parental obligations with respect to the abandoned child.

Proposed § 5.240(e)(1) and (2)(i) are based on rules in the second and third sentences of current 3.59(b). Under the third sentence of § 3.59(b), if two persons stood in the relationship of father or mother for one year or more, VA recognizes as the parent the person who last stood is such relationship before the veteran last entered active military service. Proposed § 5.240(e)(2) generalizes the rule of recognizing as the parent the last person who qualified as a parent through any of the means listed in § 5.240(a). New proposed § 5.240(e)(2)(ii) states that ''VA will recognize a veteran's natural parent who was the last person to have a parental relationship to the veteran before the veteran last entered active military service as the mother or father of the veteran even though that parent's rights have been terminated by a court.'' This rule, which represents current VA practice, makes a natural parent the ''default'' parent in cases where parental rights have been terminated but there is no other person who assumed the parental relationship with the veteran prior to service.

Proposed new § 5.240(f) defines the phrase ''relinquished parental control'' and expresses a preference for a natural or adoptive parent by requiring a person asserting to be a veteran's parent under § 5.240(a)(3) to prove that a natural or adoptive parent had relinquished parental control. As proposed § 5.240(f) states, relinquishment of parental control means that a parent ceased to provide for the veteran and that the parent-veteran relationship has been broken.

Note Concerning § 3.503(a)(2)

We propose not to include in part 5 the last sentence of current § 3.503(a)(2), which contains the following rule relating to the effective date of a reduction or discontinuance to or for a child when that child enters services. The rules state: ''Date of last payment of apportioned disability benefits for child not in custody of estranged spouse. Full rate payable to veteran. No change where payments are being made for the child to the veteran, his (her) estranged spouse, his (her) surviving spouse, or to the fiduciary of a child not in the surviving spouse's custody.''

The first two sentences of this rule will be addressed in another NPRM pertaining to apportionments. We do not need to state that VA will not reduce or discontinue payments being made on behalf of a child since there is no general rule that VA will reduce such payments when the child enters service.

Note Concerning § 3.400(w)

We are not including paragraph (w) of current § 3.400 because the statutory authority for that provision no longer exists. The substantive rule restated by paragraph (w) originally derived from 38 U.S.C. 5110(m). The provision was repealed in section 1201(i)(8) of Pub. L. 103–446.

Endnote Regarding Amendatory Language

We intend to ultimately remove part 3 entirely, but we are not including amendatory language to accomplish that at this time. VA will provide public notice before removing part 3.

Paperwork Reduction Act

Although this document contains provisions constituting a collection of information at §§ 5.180, 5.181, 5.182, 5.192, 5.193, 5.194, 5.196, 5.221, and 5.229 under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this proposed rule. The information collection requirements for §§ 5.180, 5.181, 5.182, 5.192, 5.193, 5.194, 5.196, 5.221, and 5.229 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 2900–0043, 2900–0089, 2900–0115, and 2900–0624.

Regulatory Flexibility Act

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

Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Order classifies a rule as a significant regulatory action requiring review by the Office of Management and Budget if it meets any one of a number of specified conditions, including: having an annual effect on the economy of $100 million or more, creating a serious inconsistency or interfering with an action of another agency, materially altering the budgetary impact of entitlements or the rights of entitlement recipients, or raising novel legal or policy issues. VA has examined the economic, legal, and policy implications of this proposed rule and has concluded that it is a significant regulatory action

because it may raise novel legal or policy issues.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any given year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers and titles for this proposal are 64.102, Compensation for Service-Connected Deaths for Veterans' Dependents; 64.104, Pension for Non-Service-Connected Disability for Veterans; 64.105, Pension to Veterans Surviving Spouses, and Children; 64.109, Veterans Compensation for Service-Connected Disability; 64.110, Veterans Dependency and Indemnity Compensation for Service-Connected Death; and 64.127, Monthly Allowance for Children of Vietnam Veterans Born with Spina Bifida.

List of Subjects in 38 CFR Part 5

Administrative practice and procedure, Claims, Disability benefits, Veterans.

Approved: June 12, 2006.

Gordon H. Mansfield,

Deputy Secretary of Veterans Affairs.

For the reasons set out in the preamble, VA proposes to further amend 38 CFR part 5 as proposed to be added at 69 FR 4832, January 30, 2004, by adding subpart D to read as follows:

PART 5—COMPENSATION, PENSION, BURIAL, AND RELATED BENEFITS

Subpart D—Dependents and Survivors

General Dependency Provisions

Sec.
5.180 Evidence of dependency—award of, or an increase in, VA benefits.
5.181 Evidence of dependency—reduction or discontinuance of VA benefits.
5.182 Beneficiary's responsibility to report changes in status of dependents.
5.183 Effective date for additional benefits based on the existence of a dependent.
5.184 Effective date of reduction or discontinuance of VA benefits due to the death of a beneficiary's dependent.
5.185–5.189 [Reserved]

Marriage, Divorce, And Annulment

5.190 Status as a spouse.
5.191 Marriages VA recognizes as valid.
5.192 Evidence of marriage.
5.193 Proof of marriage termination where evidence is in conflict or termination is protested.
5.194 Acceptance of divorce decrees.
5.195 Void marriages.
5.196 Evidence of void or annulled marriages.
5.197 Effective date of reduction or discontinuance of Improved Pension, compensation, or dependency and indemnity compensation due to marriage or remarriage.
5.198 Effective date of reduction or discontinuance of Improved Pension, compensation, or dependency and indemnity compensation due to divorce or annulment.
5.199 [Reserved]

Surviving Spouse Status

5.200 Status as a surviving spouse.
5.201 Surviving spouse status based on a deemed-valid marriage.
5.202 Effect of Federal court decisions on remarriage determinations.
5.203 Effect of remarriage on a surviving spouse's benefits.
5.204 Effective date of discontinuance of VA benefits to a surviving spouse who holds himself, or herself, out as the spouse of another person.
5.205 Effective date of resumption of benefits to a surviving spouse due to termination of a remarriage.
5.206 Effective date of resumption of benefits to a surviving spouse who stops holding himself, or herself, out as the spouse of another.
5.207–5.219 [Reserved]

Child Status

5.220 Status as a child for VA benefit purposes.
5.221 Evidence to establish a parent-natural child relationship.
5.222 Adoption arrangements recognized by VA.
5.223 Child adopted after a veteran's death recognized as the veteran's child.
5.224 Child status despite adoption out of a veteran's family.
5.225 Child status based on adoption into a veteran's family under foreign law.
5.226 Child status based on being a veteran's stepchild.
5.227 Child status based on permanent incapacity for self-support.
5.228 Exceptions applicable to termination of child status based on marriage of the child.
5.229 Proof of age and birth.
5.230 Effective date of award of pension or dependency and indemnity compensation to, or based on the existence of, a child born after the veteran's death.
5.231 Effective date of reduction or discontinuance—child reaches age 18 or 23.
5.232 Effective date of reduction or discontinuance—terminated adoptions.
5.233 Effective date of reduction or discontinuance—stepchild no longer a member of the veteran's household.
5.234 Effective date of an award, reduction, or discontinuance of benefits based on child status due to permanent incapacity for self-support.
5.235 Effective date of an award of benefits due to termination of a child's marriage.
5.236–5.239 [Reserved]

Parent Status

5.240 Status as a veteran's parent.
5.241–5.249 [Reserved]

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

Subpart D—Dependents and Survivors

General Dependency Provisions

§ 5.180 Evidence of dependency—award of, or an increase in, VA benefits.

(a) *Purpose.* Eligibility for a claimant to receive VA benefits, or for a beneficiary to receive an increase in VA benefits, based on the existence of a dependent requires that the claimant or beneficiary show his or her relationship to the dependent. This section describes the types of evidence VA will accept as proof of the claimant's or beneficiary's relationship to another person in such cases.

(b) *When a written statement alone is sufficient.* Except as noted in paragraph (c) of this section, in determining whether a claimant is entitled to benefits, or a beneficiary is entitled to additional benefits, based on acquiring one or more dependents, VA will accept a claimant's or a beneficiary's written statement as sufficient proof of marriage, termination of marriage, birth of a child, or death of a dependent. The statement must contain all of the applicable information described in paragraphs (b)(1) through (b)(4) of this section.

(1) The date (month and year) and place of the marriage, marriage termination, birth, or death.

(2) The full name and relationship of the other person to the claimant or beneficiary.

(3) The Social Security number of the person who the claimant or beneficiary asserts is a dependent and on whose behalf the claimant or beneficiary is claiming benefits. *See* § 5.102, ''Requirement to report Social Security numbers.''

(4) The name and address of the person who has custody of any child who the claimant or beneficiary asserts is a dependent, if the dependent does not reside with the claimant or beneficiary.

(c) *When a written statement alone is not sufficient.* Additional supporting evidence will be required in the following cases:

(1) When the statement does not contain all of the applicable information required by paragraphs (b)(1) through (b)(4) of this section.

(2) When the claimant or beneficiary does not reside in a State, as that term is defined in § 3.1(i) of this chapter.

(3) When something in the statement raises a question as to its validity.

(4) When the statement conflicts with other evidence in the record.

(5) When there is a reasonable indication, either in the statement or in the other evidence in the record, of fraud or misrepresentation of the relationship in question.

(d) *Evidence listed by order of preference.* The types of additional supporting evidence required by paragraph (c) of this section are set forth in §§ 5.192 through 5.194, 5.221, 5.229 and 3.211 of this chapter. Where evidence is set forth in a particular section in the order of preference, VA may accept evidence from a lower class of preference if it is sufficient to prove the fact at issue.

(e) *Acceptability of photocopies.* VA will accept photocopies of documents supporting the relationship if it is satisfied that the photocopies are authentic and free from alteration. Otherwise, VA may require certified copies of documents from the custodian of the documents, bearing the custodian's signature and official seal.

(Authority: 38 U.S.C. 501(a), 5124)

§ 5.181 Evidence of dependency—reduction or discontinuance of VA benefits.

(a) *Scope.* This section describes the types of evidence VA will accept as proof of a change in the status of a dependent that would result in reduction or discontinuation of pension, compensation, or dependency and indemnity compensation. It also states the actions VA takes if the required evidence is not received.

(b) *Evidence of changes.* VA will accept a beneficiary's statement of a change in the status of a dependent described in § 5.182 as proof of the change if VA has no information contradicting the statement. (See § 3.217 of this chapter, ''Submission of statements or information affecting entitlement to benefits,'' for information concerning acceptable statements.) Otherwise, VA will require formal proof regarding the matter.

(c) *Information not reported.* If neither the statement described in, nor any additional proof required under, paragraph (b) of this section is sufficient to establish the necessary facts, VA will reduce or discontinue benefits, as appropriate, effective the first day of the month that follows the month for which VA last paid benefits.

(Authority: 38 U.S.C. 501(a), 5112)

Cross Reference: § 5.83, ''Right to notice of decisions and adverse actions;'' § 5.84, ''Restoration of benefits following adverse action;'' and § 5.104, ''Certifying continuing eligibility to receive benefits.''

§ 5.182 Beneficiary's responsibility to report changes in status of dependents.

(a) *Applicability.* This section applies to VA beneficiaries who are receiving additional compensation, dependency and indemnity compensation, or pension based on the existence of a dependent.

(b) *General rule.* Except as provided in paragraph (c) of this section, a beneficiary must inform VA of the day, month, and year of a change in the status of a dependent that could reduce or discontinue his or her benefits. The change must be reported when the beneficiary acquires knowledge of the change.

(c) *Marriage, annulment, divorce, death, or discontinuance of school attendance.* With respect to the date, the beneficiary need only report the month and year of any of the following:

(1) The marriage, annulment of marriage, divorce, or death of a dependent, or

(2) Discontinuation of school attendance by a person recognized by VA as a child on the basis of attendance at an approved educational institution. *See* § 5.220(b)(2)(ii) (concerning status as a child based on attendance at an approved educational institution).

(Authority: 38 U.S.C. 501(a), 5112)

Cross Reference: § 5.104, ''Certifying continuing eligibility to receive benefits.''

§ 5.183 Effective date for additional benefits based on the existence of a dependent.

(a) *General rule.* Unless specifically provided otherwise in this part, the effective date for the award or increased award of additional benefits based on the existence of a dependent will be the date VA received written notice of the existence of the dependent, if evidence of dependency is received within one year of VA's request for such evidence. If VA does not receive evidence of the dependency within one year of VA's request for such evidence, the effective date for the award or increased award of additional benefits based on the existence of a dependent will be the date VA received the claim.

(b) *Specific applications and exceptions.* The effective date for the award or increased award of additional benefits based on the existence of a dependent in the following circumstances will be:

(1) The date of marriage or of the birth or adoption of a child, if VA receives written evidence of the event within one year of the event. With respect to adoption, the date of the event is the earliest of the following, as applicable:

(i) The date of the adoption placement agreement;

(ii) The date of the interlocutory (temporary) adoption decree; or

(iii) The date of the final adoption decree.

(2) The effective date of the qualifying disability rating, if VA receives written evidence of dependency within one year of the date VA sent notice of the rating action.

(3) The same day as the effective date of an award of benefits other than benefits based on the existence of a dependent (the primary benefits), if:

(i) Benefits based on the existence of a dependent are claimed on the same benefit application as the claim for the primary benefits, or

(ii) VA receives an application for benefits based on the existence of a dependent within one year of the effective date of the award of the primary benefits.

(c) *Limitation.* (1) In no case will VA award additional benefits based on the existence of a dependent effective before dependency for VA purposes arose.

(2) In no case will VA award additional benefits for dependency effective before the date of an original claim.

(Authority: 38 U.S.C. 5103(b), 5110(a), (f), (n))

Cross Reference: § 5.235, ''Effective date of an award of benefits due to termination of a child's marriage.''

§ 5.184 Effective date of reduction or discontinuance of VA benefits due to the death of a beneficiary's dependent.

Except as provided in § 5.477(a) (applicable to section 306 and old-law pension), VA will pay a reduced rate or discontinue benefits based on the death of a beneficiary's dependent effective the first day of the month that follows the month in which death occurred.

(Authority: 38 U.S.C. 5112(b)(2))

§§ 5.185–5.189 [Reserved]

Marriage, Divorce, and Annulment

§ 5.190 Status as a spouse.

For VA purposes, a ''spouse'' is a person of the opposite sex whose marriage meets the requirements for a valid marriage under § 5.191, ''Marriages VA recognizes as valid.''

(Authority: 1 U.S.C. 7; 38 U.S.C. 101(31))

§ 5.191 Marriages VA recognizes as valid.

Except as provided in § 5.201, ''Surviving spouse status based on a deemed-valid marriage,'' a valid marriage for VA purposes is one between persons of the opposite sex that

exists in either of the following circumstances:

(a) The marriage is valid under the law of the place where the parties lived at the time of the union; or

(b) The marriage is valid under the law of the place where the parties lived at the time the right to benefits arose.

(Authority: 38 U.S.C. 101(31), 103(c))

§ 5.192 Evidence of marriage.

(a) *Applicability.* This section describes the evidence of marriage VA will accept when more is required than the statement of a claimant or beneficiary described in § 5.180, ''Evidence of dependency—award of, or an increase in, VA benefits,'' or § 5.181, ''Evidence of dependency—reduction or discontinuance of VA benefits.''

(b) *Evidence of a valid marriage.* In the absence of contrary evidence, VA will accept a marriage as valid when the claimant or beneficiary provides VA with any of the evidence described in paragraph (c) of this section and the facts established by such evidence are sufficient to establish a valid marriage under § 5.191, ''Marriages VA recognizes as valid.'' If one or both parties to the marriage were previously married, VA must also receive the claimant's or beneficiary's certified statement giving the date, place, and circumstances under which such prior marriages ended.

(c) *Acceptable evidence of marriage.* VA will accept any of the following as proof of marriage.

(1) A copy or abstract of the public record of marriage, or a copy of the church record of marriage. The copy or abstract must include the names of the persons married, the date and place of the marriage, and the number of any prior marriages if shown on the official record.

(2) An official report from the service department if the veteran is a party to the marriage and the marriage took place during the veteran's military service.

(3) An affidavit from the official or clergyman who performed the ceremony.

(4) The original marriage certificate if VA is satisfied that it is genuine and free from alteration.

(5) The affidavits or certified statements of two or more eyewitnesses to the ceremony.

(6) For informal or common-law marriages in jurisdictions where marriages other than by ceremony are recognized:

(i) A copy of the State's acknowledgement of registration, if the State has a procedure for registering informal or common-law marriages, or

(ii) The affidavit or certified statement of one of the parties to the marriage, giving all the facts and circumstances concerning the alleged marriage. This includes details of the agreement made by the parties at the time they began living together, the length of time in months and years they have lived together, the location of each residence and the dates the parties lived there, and whether children were born as the result of the relationship. Such affidavits or certified statements must be accompanied by affidavits or certified statements from two or more persons who know from personal observation the relationship that existed between the parties. The affidavits or statements of these persons must include when the parties lived together, the places of the parties' residence, whether they referred to themselves as married in the communities they lived in, and whether those communities generally accepted them as being married.

(7) Any other evidence that would reasonably allow a VA decision maker to conclude that a valid marriage did occur.

(Authority: 38 U.S.C. 103(c), 501(a))

Cross Reference: § 5.201, ''Surviving spouse status based on a deemed-valid marriage.''

§ 5.193 Proof of marriage termination where evidence is in conflict or termination is protested.

When there is conflicting evidence on file, or there is a protest from an interested party, VA will accept any of the following as proof of the termination of a prior marriage:

(a) Proof of the former spouse's death.

(b) Proof of divorce as specified in § 5.194(b) or (c), as applicable.

(c) A court-certified copy of the final decree of annulment or a court-certified abstract of such a decree.

(Authority: 38 U.S.C. 501(a))

§ 5.194 Acceptance of divorce decrees.

(a) *General rule.*—(1) VA will accept as valid a divorce decree that is regular (proper) on its face unless its validity is challenged by either of the following:

(i) One of the parties named in the divorce decree, or

(ii) Any person whose entitlement to VA benefits would be affected if VA recognizes the decree as valid.

(2) In case of such a challenge, VA will make an independent decision about the validity of the divorce decree based on the criteria in paragraph (b) or (c) of this section, as applicable.

(b) *Challenged divorce decree—party to the divorce has not remarried.* If the issue is whether a person is validly divorced and that person has not remarried, VA will accept the divorce decree as valid if all the following conditions are met:

(1) The person who obtained the divorce had a bona-fide domicile (permanent home) in the place where the divorce decree was issued;

(2) The person satisfied all the legal requirements for obtaining a divorce in the place in which the divorce decree was issued; and

(3) VA has been provided with the original divorce decree, a court-certified copy of the original decree, or a court-certified abstract of the original decree.

(c) *Challenged divorce decree—party to the divorce has remarried.*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, if the issue is whether a person who has remarried was validly divorced from a prior spouse, then VA will accept the validity of the prior divorce decree if either:

(i) The law of the place where the parties were living when they were married recognizes the validity of the divorce decree; or

(ii) The law of the place where the parties were living when the right to VA benefits arose recognizes the validity of the divorce decree.

(2) *Foreign decree granted to residents of a State.* VA will accept as valid a divorce decree obtained outside of a State by residents of that State if both of the following conditions are met:

(i) The State in which the parties to the divorce lived at the time they obtained the decree recognizes the decree as valid, and

(ii) No court of last resort in the places where the parties lived when they were married or when the right to VA benefits arose has found the divorce decree invalid.

(Authority: 38 U.S.C. 103(c), 501(a))

§ 5.195 Void marriages.

A marriage is void if at least one party to the marriage did not meet the legal requirements for entering into the marriage at the time the marriage took place. Examples of void marriages include marriages in which at least one party was already married and marriages in which at least one party failed to meet the minimum age requirement for marriage. Whether a marriage is void will be determined under the law of the place that governs the marriage's validity. *See* § 5.191, ''Marriages VA recognizes as valid.''

(Authority: 38 U.S.C. 103(c), (d), (e); 501(a))

§ 5.196 Evidence of void or annulled marriages.

(a) *Void marriage.* To establish that a marriage was void, VA must receive a

certified statement from the claimant or beneficiary describing the facts that made the marriage void. VA may require the claimant or beneficiary to submit additional evidence as the individual circumstances may require. *See also* [regulation that will be published in a future Notice of Proposed Rulemaking] (defining ''certified statement'').

(b) *Annulled marriage.* To establish that a marriage has been annulled, VA must receive a copy or abstract of the court's annulment decree. VA will accept the decree as valid unless one of the following conditions applies:

(1) The copy or abstract of the decree discloses irregularities.

(2) VA has reason to question the court's authority to issue the annulment decree.

(3) There is evidence to show that the annulment might have been obtained by fraud of either party or by collusion of the parties.

(Authority: 38 U.S.C. 103(d), (e), 501(a))

§ 5.197 Effective date of reduction or discontinuance of improved pension, compensation, or dependency and indemnity compensation due to marriage or remarriage.

(a) *Scope.* This section provides effective date rules applicable when VA determines that a reduction or discontinuance of improved pension, compensation, or dependency and indemnity compensation is required based on the marriage or remarriage of a beneficiary, an apportionee of a beneficiary's VA benefits, or a beneficiary's dependent.

(b) *Effective date of reduction or discontinuance.* (1) *Beneficiary or apportionee.* VA will pay the reduced rate or discontinue benefits effective the first day of the month in which the marriage or remarriage occurred.

(2) *Dependent of a beneficiary.* VA will pay the reduced rate or discontinue benefits effective the first day of the month that follows the month in which the marriage or remarriage occurred.

(Authority: 38 U.S.C. 5112(b)(1))

Cross Reference: § 5.477, ''Effective dates for section 306 and old-law pension reductions or discontinuances.''

§ 5.198 Effective date of reduction or discontinuance of Improved Pension, compensation, or dependency and indemnity compensation due to divorce or annulment.

(a) *Scope.* This section provides effective date rules applicable when VA determines that a reduction or discontinuance of Improved Pension, compensation, or dependency and indemnity compensation is required based on termination of the marriage of a beneficiary due to divorce or annulment of the marriage.

(b) *Effective date of reduction or discontinuance.* VA will pay the reduced rate or discontinue benefits effective the first day of the month that follows the month in which the divorce or annulment occurred.

(Authority: 38 U.S.C. 5112(b)(2))

Cross Reference: § 5.477, Effective dates for section 306 and old-law pension reductions or discontinuances.

§ 5.199 [Reserved]

Surviving Spouse Status

§ 5.200 Status as a surviving spouse.

(a) *General.* A ''surviving spouse'' is a person who meets the following requirements:

(1) Subject to § 5.201, ''Surviving spouse status based on a deemed-valid marriage,'' the person met the requirements in § 5.190, ''Status as a spouse,'' for being the veteran's ''spouse'' at the time the veteran died;

(2) Except as otherwise provided in § 5.203, ''Effect of remarriage on a surviving spouse's benefits,'' the person has neither remarried nor, since the death of the veteran and after September 19, 1962, held himself or herself out to the public, through a pattern or course of conduct, as the spouse of another person of the opposite sex with whom he or she has lived; and

(3) Subject to paragraph (b) of this section, the person lived continuously with the veteran from the date of marriage to the date of the veteran's death.

(b) *Continuous cohabitation.* The following considerations apply, as applicable, in determining whether the requirement of paragraph (a)(3) of this section is met:

(1) *Person not at fault in the separation.* (i) *Criteria.* Even if the veteran and the person separated during the marriage, the continuous cohabitation requirement of paragraph (a)(3) of this section will be considered met if the following requirements are met:

(A) The person was not at fault in causing the separation, and

(B) The veteran brought about the separation or the veteran's misconduct caused the separation.

(ii) *When misconduct occurred.* In determining who was at fault in causing the separation, VA will consider the veteran's and the other person's conduct at the time the separation took place, but not conduct taking place after the separation.

(2) *Separation by mutual consent.* If the evidence shows that the veteran and the other person both consented to the separation, and that the intent of the person was not to desert the veteran or to abandon the marriage, but to accomplish some other purpose such as convenience, health, or business, then VA will not consider the separation to have broken the continuity of cohabitation.

(3) *Temporary separations.* Temporary separations that ordinarily occur, regardless of who is at fault in bringing about the separation, do not break the continuity of cohabitation.

(4) *Statement as evidence.* VA will accept the person's statement explaining the reason for the separation from the veteran in the absence of contradictory information.

(5) *State law not controlling.* State laws do not control VA's assessment of whether separation has resulted from desertion. VA will, however, give due consideration to findings of fact made in court decisions dealing with this issue that were made during the lifetime of the veteran.

(Authority: 38 U.S.C. 101(3), 501(a))

§ 5.201 Surviving spouse status based on a deemed-valid marriage.

(a) *Marriages deemed valid.* VA will recognize a marriage to a veteran that does not meet the requirements of § 5.191, ''Marriages VA recognizes as valid,'' as valid for the purposes of entitlement to VA death benefits if all the criteria in paragraphs (b) through (e) of this section are met.

(b) *Marriage requirement.* The person and the veteran were purportedly married for at least one year before the veteran died, unless the person and the veteran had a child during or before the marriage. If a child was born of or before the marriage, the marriage could have existed for any length of time when the veteran died. *See* § 3.54(d) of this chapter (definition of ''child born of the marriage'').

(c) *No knowledge of legal impediment.* At the time of the attempted marriage, the person did not know that there was a legal impediment to the marriage. VA follows these guidelines:

(1) Only the person's knowledge at the time of the attempted marriage, but not knowledge acquired after the marriage, is relevant.

(2) Legal impediments include one of the parties being underage, one of the parties having a prior undissolved marriage at the time of the attempted marriage, and, in a jurisdiction that does not recognize common-law marriages, the parties' failure to marry through a marriage ceremony.

(3) If the person submits as proof of the marriage one of the kinds of

evidence listed in § 5.192(c), and satisfies the other requirements in this section, then VA will accept a signed statement from the person that he or she had no knowledge of the impediment to the marriage as proof of that fact, unless there is evidence showing otherwise.

(d) *Continuous cohabitation.* The person lived with the veteran continuously from the day of the marriage to the day of the veteran's death. The considerations for application in determining whether this requirement is satisfied are the same as those in § 5.200(b).

(e) *No other legal surviving spouse.* No legal surviving spouse (one who qualifies as a ''surviving spouse'' under § 5.200) has already filed a claim for death benefits for which that person meets all the legal and factual criteria and to which he or she has been determined by VA to be entitled. However, a legal surviving spouse's entitlement to accrued benefits or benefits awarded, but unpaid at death, does not prevent another claimant from being considered the veteran's surviving spouse through a marriage deemed valid under this section.

(Authority: 38 U.S.C. 103(a), 501(a))

Cross References: [regulation that will be published in a future Notice of Proposed Rulemaking] (concerning deemed-valid marriages and Improved Death Pension adjusted annual income determinations); §§ 5.550 through 5.559 (concerning accrued benefits and benefits awarded, but unpaid at death).

§ 5.202 Effect of Federal court decisions on remarriage determinations.

(a) *General rule.* In determining eligibility for pension, death compensation, or dependency and indemnity compensation, VA will accept the decision of a Federal court that a surviving spouse has not remarried if the U.S. Government was a party to the case in which that decision was rendered.

(b) *Application to § 5.200(a)(2).* This section does not apply to VA determinations regarding whether a surviving spouse has held himself or herself out openly to the public as the spouse of another person under § 5.200(a)(2).

(Authority: 38 U.S.C. 501(a))

§ 5.203 Effect of remarriage on a surviving spouse's benefits.

(a) *General rule.* Except as otherwise provided in this section, VA will not provide benefits governed by this part to a person as the surviving spouse of a veteran if either of the following applies:

(1) The person has remarried.

(2) The person has held himself or herself out as the spouse of another as described in § 5.200(a)(2).

(Authority: 38 U.S.C. 101(3))

(b) *Void or annulled remarriages.* Remarriage will not prevent a surviving spouse from receiving VA benefits if the remarriage was either:

(1) Void (*see* § 5.195, ''Void marriages''); or

(2) Annulled by a court having authority to annul marriages, unless VA determines that the annulment was obtained through fraud by either party or by collusion of the parties.

(Authority: 38 U.S.C. 103(d)(1))

(c) *Reinstatement of eligibility for benefits for surviving spouses who, because of remarriage, may have been ineligible for benefits under laws in effect before January 1, 1971, and whose remarriages ended before November 1, 1990.* After December 31, 1970, none of the following will prevent a surviving spouse who may have been ineligible for VA benefits under laws in effect before January 1, 1971, because of remarriage from receiving benefits:

(1) Remarriage that ended by death before November 1, 1990.

(2) Remarriage that ended by divorce provided that proceedings began before November 1, 1990, unless VA determines that the divorce was obtained through fraud by the surviving spouse or by collusion of the parties.

(3) Remarriage that was dissolved by a court with authority to render divorce decrees in legal proceedings begun by the surviving spouse before November 1, 1990, unless VA determines that the divorce was obtained through fraud by the surviving spouse or by collusion of the parties.

(4) The fact that the surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of that person, provided that competent, credible evidence shows that the surviving spouse stopped living with that person and holding himself or herself out openly to the public as that person's spouse before November 1, 1990. Such evidence may consist of the surviving spouse's certified statement of the fact.

(Authority: 38 U.S.C. 501(a); Sec. 4, Pub. L. 91–376, 84 Stat. 789; Sec. 8004, Pub. L. 101–508, 104 Stat. 1388–343; Sec. 502, Pub. L. 102–86, 105 Stat. 424; Sec. 103, Pub. L. 102–568, 106 Stat. 4322)

(d) *Reinstatement of eligibility for dependency and indemnity compensation (DIC) for surviving spouses who, because of remarriage, may have been ineligible for DIC under laws in effect before June 9, 1998*—(1) *Termination of remarriage.* None of the following will prevent a surviving spouse who may have been ineligible for DIC under laws in effect before June 9, 1998, because of remarriage from receiving benefits:

(i) Remarriage ended by death;

(ii) Remarriage ended by divorce, unless VA determines that the divorce was obtained through fraud by the surviving spouse or by collusion of the parties; or

(iii) The fact that the surviving spouse has lived with another person and has held himself or herself out openly to the public as the spouse of that person, provided that competent, credible evidence shows that the surviving spouse stopped living with that person and holding himself or herself out openly to the public as that person's spouse. Such evidence may consist of the surviving spouse's certified statement of the fact.

(2) *Limitation.* No payment may be made under this paragraph (d) for any month before October 1998.

(Authority: 38 U.S.C. 103(d)(2); Sec. 8207, Pub. L. 105–178, 112 Stat. 495)

(e) *Remarriages after age 57.*—(1) A surviving spouse's remarriage after reaching the age of 57 will not prevent the surviving spouse from receiving DIC if the surviving spouse remarried after December 15, 2003.

(2) No payment may be made under this paragraph (e) for any month before January 2004.

(Authority: 38 U.S.C. 103(d)(2)(B); Sec. 101, Pub. L. 108–183, 117 Stat. 2652)

§ 5.204 Effective date of discontinuance of VA benefits to a surviving spouse who holds himself, or herself, out as the spouse of another person.

When a surviving spouse lives with another person of the opposite sex and holds himself or herself out openly to the public as the spouse of that person, VA will discontinue that surviving spouse's benefits effective the first day of the month that the relationship began.

(Authority: 38 U.S.C. 101(3), 5112(b)(1))

§ 5.205 Effective date of resumption of benefits to a surviving spouse due to termination of a remarriage.

(a) *Void remarriage.* The effective date of an award resumed because a surviving spouse's remarriage is void is the later of the following dates:

(1) The date the surviving spouse and the other person stopped living together; or

(2) The date VA receives an application from the surviving spouse for resumption of benefits.

(b) *Annulment.* The effective date of an award resumed because a surviving spouse's remarriage is annulled is:

(1) The date the annulment decree became final, if the surviving spouse files an application for resumption of benefits within one year of that date; otherwise,

(2) The date VA receives an application for resumption of benefits.

(c) *Divorce.* The effective date of an award resumed because a surviving spouse's remarriage ends in divorce, provided the surviving spouse meets the requirements of § 5.203(c) and (d) for reinstatement, is:

(1) The date the divorce decree became final if the surviving spouse files an application for resumption of benefits within one year of that date; otherwise,

(2) The date VA receives an application for resumption of benefits.

(d) *Death.* The effective date of an award resumed because a surviving spouse's remarriage ends due to a death, provided the surviving spouse meets the requirements of § 5.203 is:

(1) The date of death, if the surviving spouse files an application for resumption of benefits within one year of that date; otherwise,

(2) The date VA receives an application for resumption of benefits.

(Authority: 38 U.S.C. 5110(a), (k), (l))

§ 5.206 Effective date of resumption of benefits to a surviving spouse who stops holding himself, or herself, out as the spouse of another.

The effective date of an award resumed because a surviving spouse no longer holds himself or herself out as the spouse of another is the date the surviving spouse stopped living with that person and holding himself or herself out openly to the public as that person's spouse, but not earlier than the date VA receives an application for benefits.

(Authority: 38 U.S.C. 103(d)(3), 5110(a))

§§ 5.207–5.219 [Reserved]

Child Status

§ 5.220 Status as a child for VA benefit purposes.

The following criteria must be met for a person to be recognized as a ''child'' for the purpose of VA benefits governed by this part:

(a) *Marital status.* Except as provided in § 5.228, ''Exceptions applicable to termination of child status based on marriage of the child,'' the person must be unmarried.

(b) *Age.* (1) *General rule.* The person must be under 18 years of age.

(2) *Exceptions.* The person may be 18 years of age or older under either of the following conditions:

(i) The person, before reaching 18 years of age, became permanently incapable of self-support through his or her own efforts by reason of physical or mental disability (*see* § 5.227, ''Child status based on permanent incapacity for self-support'') or

(ii) The person is under 23 years of age and is pursuing a course o of instruction at an educational institution approved by the Department of Veterans Affairs. For the purposes of this section, the term ''educational institution'' means a permanent organization that offers courses of instruction to a group of students who meet its enrollment criteria. The term includes schools, colleges, academies, seminaries, technical institutes, and universities. The term also includes home schools that operate in compliance with the compulsory attendance laws of the States in which they are located, whether treated as private schools or home schools under State law. The term ''home schools'' is limited to courses of instruction for grades kindergarten through 12.

(c) *Relationship.* The person must bear one of the following relationships to the veteran:

(1) The veteran's natural child.

(2) The veteran's stepchild who became a stepchild under one of the following conditions:

(i) The person became the veteran's stepchild before reaching 18 years of age and is a member of the veteran's household, or was a member of the veteran's household at the time of the veteran's death, or

(ii) The person is a person described in paragraph (b)(2)(ii) of this section who became the veteran's stepchild after reaching 18 years of age, but before reaching 23 years of age, and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death.

(3) The veteran's legally adopted child. *See* § 5.222, ''Adoption arrangements recognized by VA.'' The person must have been adopted by the veteran before the person reached 18 years of age, except for the following persons:

(i) A person who became permanently incapable of self-support before reaching 18 years of age and was a member of the veteran's household at the time he or she became 18 years of age, or

(ii) A person described in paragraph (b)(2)(ii) of this section who was adopted after reaching 18 years of age, but before reaching 23 years of age.

(Authority: 38 U.S.C. 101(4)(A), 104, 501(a))

§ 5.221 Evidence to establish a parent-natural child relationship.

(a) *Parents married at date of child's birth.* If additional evidence of relationship is required under § 5.180(c) and the parents were married to each other at the time of the child's birth, a claimant or beneficiary may prove a parent-natural child relationship as follows:

(1) *Mother.* Any of the evidence described in § 5.229, ''Proof of age and birth,'' that shows a mother-natural child relationship may be used to establish such a relationship.

(2) *Father.* Any of the evidence described in § 5.229, ''Proof of age and birth,'' that shows a father-natural child relationship may be used to establish such a relationship. If such evidence does not show that a male who was married to the child's mother when the child was born is the child's father, or shows someone else as the child's father, VA will evaluate the facts surrounding the case, make any necessary requests for evidence and information, and then determine whether or not the male is the child's natural parent.

Note to paragraph (a)(2): The fact that the evidence does not establish a father-natural child relationship between a child and a male married to the child's mother at the time of the child's birth does not preclude VA recognition of that child as that male's stepchild under the provisions of § 5.226, ''Child status based on being a veteran's stepchild,'' where applicable.

(b) *Parents unmarried at date of child's birth.* If additional evidence of relationship is required under § 5.180(c) and the parents were not married to each other at the time of the child's birth, a claimant or beneficiary may prove a parent-natural child relationship as follows:

(1) *Mother.* Any of the evidence described in § 5.229, ''Proof of age and birth,'' that shows a mother-natural child relationship may be used to establish such a relationship.

(2) *Father.* Any one of the following may be used to establish a father-natural child relationship:

(i) A male's statement in writing and signed by him acknowledging himself as the natural father of the child;

(ii) Evidence showing that a specific male has been identified as the child's father by judicial decree; or

(iii) Other competent evidence showing that a child is the natural child of a specific male, including any of the following:

(A) A copy of the public record of birth or a church record of baptism showing that a specific male was the informant and was named as the parent of the child,

(B) Statements from individuals who know that a specific male accepted the child as his own, or

(C) Service department records or public records, such as records from schools or welfare agencies, showing that, with his knowledge, a specific male was named as the child's father.

(Authority: 38 U.S.C. 101(4), 501(a))

§ 5.222 Adoption arrangements recognized by VA.

(a) *Scope.* This section describes the types of adoption arrangements and evidence of those arrangements that VA will accept as proof of an adoption for purposes of establishing a person as a child under § 5.220, ''Status as a child for VA benefit purposes.''

(b) *Establishing a legal adoption.* Any one of the following establishes a child's adoption into a family:

(1) A final adoption decree.

(2) A revised birth certificate showing the child as the child of the adopting parent(s) in cases where release of adoption documents or information is prohibited or requires petition to a court (records sealed by a court, for example).

(3) An interlocutory (temporary) adoption decree, provided that the decree has not been rescinded or superseded and the child remains in the custody of the adopting parent(s) during the interlocutory period.

(4) An adoption placement agreement between a parent, or parents, and an agency authorized by law to arrange adoptions. VA will recognize such an agreement for the duration of its term, provided that the adoptive parent(s) maintain custody of the child.

(Authority: 38 U.S.C. 101(4))

§ 5.223 Child adopted after a veteran's death recognized as the veteran's child.

(a) *Circumstances under which adoption will be recognized.* VA will recognize a person adopted by a veteran's surviving spouse as the veteran's child as of the date of the veteran's death if all of the following conditions are met:

(1) The adoption took place under a decree issued within two years of the veteran's death;

(2) The person adopted was living in the veteran's household at the time of the veteran's death; and

(3) At the time of the veteran's death the person adopted was not receiving regular contributions sufficient to provide for the major portion of the child's support, from any public or private welfare organization that furnishes services or assistance for children or from a person other than the veteran or the veteran's spouse.

(b) *Evidence.* In the absence of information to the contrary, VA will accept the statement of the surviving spouse or the custodian of the child that the requirements described in paragraphs (a)(2) and (a)(3) of this section have been met.

(Authority: 38 U.S.C. 101(4))

§ 5.224 Child status despite adoption out of a veteran's family.

(a) *Retention of eligibility for VA benefits.* The adoption of a veteran's child out of the veteran's family, whether before or after the veteran's death, does not terminate that person's status as the veteran's child for purposes of eligibility for VA benefits.

(b) *Evidence.*—(1) *Evidence of adoption where release of adoption records is restricted or prohibited.* To establish status as a veteran's child for a child who was adopted out of a veteran's family, in those jurisdictions where a petition must be made to a court for release of documents or information or when release of such documents or information is prohibited, either of the following will be accepted as proof of status as the veteran's child:

(i) A statement over the signature of the judge or the clerk of the court setting forth the child's former name and the date of adoption.

(ii) A certified statement by the veteran, the veteran's surviving spouse, a person receiving an apportionment of benefits, or their fiduciaries setting forth the child's former name, the child's date of birth, and the date and fact of adoption together with evidence indicating that the child's original public record of birth has been removed from such records.

(2) *Evidence of child-natural parent relationship in apportionment cases.* If VA receives an application for an apportionment under § 3.458(d) of this chapter on behalf of a child adopted out of a veteran's family, the evidence must be sufficient to establish the veteran as the natural parent of the child. *See* § 5.221, ''Evidence to establish a parent-natural child relationship.''

(Authority: 38 U.S.C. 501(a))

§ 5.225 Child status based on adoption into a veteran's family under foreign law.

(a) *General.*—(1) *Purpose.* VA will apply the provisions of this section to determine the validity of an adoption for VA benefit purposes when a person was adopted into a veteran's family under the laws of a foreign country.

(2) *Foreign country.* For purposes of this section, the term ''foreign country'' means a place other than a State as defined in § 3.1(i) of this chapter and other than the Commonwealth of the Northern Mariana Islands.

(3) *Inclusion of certain Philippine veterans.* For purposes of this section, the term ''veteran'' includes a Commonwealth Army veteran or new Philippine Scout as defined in 38 U.S.C. 3566.

(b) *Living veteran—adopted person living in a foreign country.*—(1) *Requirements for recognition of adoption.* If the veteran is alive and the person adopted under the law of a foreign country lives in a foreign country, VA will recognize the person's adoption as valid if all of the following conditions are met:

(i) The person was under age 18 when adopted;

(ii) The veteran provides one-half or more of the person's support;

(iii) The person's natural parent does not have custody of the person (this requirement does not apply if the natural parent is also the veteran's spouse); and

(iv) The person lives with the veteran or with the divorced spouse of the veteran if the divorced spouse is also the natural or adoptive parent. This requirement does not apply when the person is attending an educational institution full-time, or when the person, the veteran, or the divorced spouse is confined in a hospital, nursing home, other institution, or other health-care facility.

(2) *Continuing requirements.* The requirements noted in paragraphs (b)(1)(ii) through (iv) of this section must continue to be met following the adoption. VA may from time to time verify that these requirements are being met after the initial award of benefits to or based on the existence of the child. A beneficiary's failure to provide verifying information or documents upon VA's request may result in suspension or discontinuance of payments until VA receives proof that the requirements are still met.

(c) *Living veteran—adopted person not living in a foreign country.* If the veteran is alive and the person adopted under foreign law does not live in a foreign country, VA will determine the validity of the adoption under §§ 5.220, ''Status as a child for VA benefit purposes,'' and 5.222, ''Adoption arrangements recognized by VA.''

(d) *Deceased veteran and surviving spouse adoptions.* (1) *Applicability.* This paragraph (d) applies if a veteran adopted a person under the laws of a foreign country, but the parent-child

relationship had not been established for VA purposes during the veteran's lifetime. This paragraph (d) also applies if a surviving spouse adopted a person under the laws of a foreign country after the veteran's death.

(2) *Requirements for recognition of adoption.* VA will recognize the person's adoption as valid if the veteran was entitled to and was receiving a VA dependent's allowance or similar VA monetary benefit for the person at any time within one year before the veteran's death or if all of the following conditions are met:

(i) The person was under age 18 when adopted, and

(ii) All of the following conditions were met for at least one year before the veteran's death:

(A) The veteran provided one half or more of the person's support,

(B) The person's natural parent did not have custody of the person unless the natural parent is the veteran's surviving spouse, and

(C) The person lived with the veteran or with the divorced spouse of the veteran if the divorced spouse is also the natural or adoptive parent. This requirement does not apply when the person is attending an educational institution full-time, or when the person, the veteran, or the divorced spouse is confined in a hospital, nursing home, other institution, or other health-care facility.

(3) *Additional requirements when the person was adopted by a surviving spouse after the veteran's death.* In the case of adoption by a surviving spouse after the veteran's death, the adoption must also meet the requirements of § 5.223, ''Child adopted after a veteran's death recognized as the veteran's child.''

(Authority: 38 U.S.C. 101(4), 501(a))

§ 5.226 Child status based on being a veteran's stepchild.

(a) *Definitions.* The following definitions apply for purposes of this section:

(1) *Stepchild* means a natural or adopted child of a veteran's spouse, but not of the veteran, to include the child of a surviving spouse whose marriage to the veteran is deemed valid under the provisions of § 5.201, ''Surviving spouse status based on a deemed-valid marriage.''

(2) *Veteran-stepchild relationship* means a relationship between the veteran and the stepchild that meets the requirements of § 5.220(c)(2).

(b) *Proof of veteran-stepchild relationship.* Proof of the veteran-stepchild relationship must include, in addition to evidence that the criteria described in § 5.220(c)(2) are met, evidence of both of the following:

(1) The child is related to the spouse of the veteran by birth or adoption; and

(2) The veteran is or, in the case of a deceased veteran, was at the time of his or her death married to the natural or adoptive parent of the child.

(c) *Member of veteran's household.* VA will consider a stepchild as being or having been a member of the veteran's household for purposes of § 5.220(c)(2) when either of the following conditions are met:

(1) The child resides with the veteran or resided with the veteran on the date the veteran died; or

(2) The stepchild does not reside with the veteran or did not reside with the veteran on the date the veteran died, but the stepchild receives or received at least half of his or her support from the veteran. This includes a stepchild living apart from the veteran solely for medical, school, or similar reasons and a stepchild who is living with another person who has legal custody of the child.

(d) *Effect of termination of marriage or legal separation on stepchild relationship*—(1) *General rule.* Termination of a marriage, or formal legal separation, between a veteran and a stepchild's natural or adoptive parent terminates the veteran-stepchild relationship.

(2) *Exception.* The veteran-stepchild relationship remains intact if either:

(i) The stepchild continues to live with the veteran, or

(ii) The veteran continues to provide at least half of the stepchild's support.

(3) If the marriage between a veteran and a stepchild's natural or adoptive parent ended, or they legally separated, before the date of the veteran's entitlement to VA benefits, the stepchild can still be established as the veteran's child provided the validity of the marriage can be proved and the stepchild continues after termination of the marriage to be a member of the veteran's household as defined in paragraph (c) of this section.

(Authority: 38 U.S.C. 101(4), 501(a))

§ 5.227 Child status based on permanent incapacity for self-support.

(a) *Applicability.* This section sets out criteria VA uses to determine whether a person can be recognized as a ''child'' for VA benefit purposes under § 5.220(b)(2)(i) after reaching 18 years of age because the person became permanently incapable of self-support before reaching the age of 18.

(b) *Determining incapacity for self-support.* The principal factors VA considers in determining whether a person is capable of self-support are:

(1) *Employment history.* (i) *Productive employment.* A person who by his or her own efforts earns sufficient income for his or her reasonable support is not incapable of self-support.

(ii) *Intermittent employment.* Employment that is only part of a tryout or that is casual, intermittent, unsuccessful, or terminated after a short period by reason of disability does not preclude a finding of incapacity of self-support due to mental or physical disability that is otherwise established under this section.

(iii) *Charitable or therapeutic employment.* VA will not find capacity for self-support based on employment afforded solely upon sympathetic, therapeutic, or charitable considerations and that involves no actual or substantial provision of services.

(iv) *Lack of employment.* Evidence that a person was not employed before or after reaching 18 years old tends to show incapacity for self-support when the lack of employment was due to the person's physical or mental disabilities and not due to unwillingness to work or other factors unrelated to the person's disability.

(2) *Nature and extent of disability.* (i) In cases where the person is not provided with sufficient income for his or her reasonable support by his or her own efforts, VA will consider the following:

(A) Whether the extent and nature of disability would render the average person incapable of self-support;

(B) The impact of the disability on the person's ability to care for himself or herself and to perform the ordinary tasks expected of a person of the same age; and

(C) Whether the person attended school, and the highest grade completed.

(ii) Rating criteria applicable to disabled veterans set out in part 4 of this chapter are not controlling.

(c) *Determining permanence of incapacity.* (1) *Principal factors.* The principal factors for determining whether incapacity is permanent include the following:

(i) The nature and extent of disability;

(ii) Whether the disability has worsened or improved over time; and

(iii) Whether there is a reasonable possibility that the disability will improve in the future.

(2) *Case-by-case determinations.* (i) VA will determine the person's permanent incapacity for self-support on a case-by-case basis based on the evidence of record.

(ii) Evidence VA will consider may include:

(A) A VA examination if deemed necessary.

(B) Medical or psychiatric examination or treatment records.

(C) Statements of persons having knowledge of the facts who have observed the child's condition, such as teachers, tutors, or social workers, or statements from institutions where the child received care, schooling, or other related services.

(iii) VA may consider relevant evidence dated before or after the child reached 18 years of age.

(d) *Revision of child status determinations.*—(1) *Certain protection provisions inapplicable.* A VA determination that a child is permanently incapable of self-support is not subject to protection under § 3.951(b) or § 3.952 of this chapter.

(2) *Reexamination.* Only in unusual cases will VA request reexamination after it has found that a child is permanently incapable of self-support.

(3) *Intermittent employment.* A child previously shown by competent evidence to have been permanently incapable of self-support before reaching 18 years of age may be held to remain so at a later date even though there may have been a short intervening period or periods of employment of the type described in paragraph (b)(1)(ii) of this section, provided the cause of the incapacity is the same as that upon which VA previously found permanent incapacity and there was no intervening disease or injury that could be considered a major factor in current incapacity.

(4) *Court competency findings.* If VA receives evidence that shows that a child formerly found by VA to have been permanently incapable of self-support before reaching 18 years of age based on mental incompetency has been found competent by a court, VA will determine whether the child continues to be permanently incapable of self-support under this section. Such court determinations are not binding upon VA.

(Authority: 38 U.S.C. 101(4)(A)(ii); 501(a))

§ 5.228 Exceptions applicable to termination of child status based on marriage of the child.

(a) *Applicability.* This section states exceptions to the requirement in § 5.220(a) that for a person to have status as a ''child'' for VA benefit purposes that person must be unmarried.

(b) *Rule inapplicable to chapter 18 benefits.* The requirement that the child of a veteran be unmarried does not apply to benefits for birth defects of the children of certain veterans under 38 U.S.C. chapter 18 (Benefits for Children of Vietnam Veterans).

(c) *Termination of marriage.* A child's marriage will not prevent a child from receiving benefits or a claimant or beneficiary from receiving benefits based on the existence of a child if the child's marriage:

(1) Was void (for a definition of a ''void'' marriage, see § 5.195, ''Void marriages'');

(2) Was annulled by a court having authority to annul marriages, unless VA determines that the annulment was obtained through fraud by either party or by collusion of the parties (*see* § 5.196, ''Evidence of void or annulled marriages'');

(3) Ended by death before November 1, 1990; or

(4) Ended by divorce before November 1, 1990, by a court with authority to render divorce decrees, unless VA determines that the divorce was obtained through fraud by either party or by collusion of the parties.

(Authority: 38 U.S.C. 101(4), 103(e), 501(a), 1821, 1831; Sec. 9, Pub. L. 93–527, 88 Stat. 1702, 1705; Sec. 8004, Pub. L. 101–508, 104 Stat. 1388, 1388–343)

§ 5.229 Proof of age and birth.

(a) *Proof of birth in preferred order.* The classes of evidence to be furnished for the purpose of establishing age or birth are listed below in the order of preference. Failure to furnish more preferred evidence, however, does not preclude the acceptance of less preferred evidence if the evidence furnished is sufficient to prove the point involved. *See also* § 5.180(e), ''Acceptability of photocopies.''

(1) A birth certificate (copy or abstract), subject to paragraph (b) of this section;

(2) Church record of baptism (original or copy), subject to paragraph (b) of this section;

(3) Service department records of birth;

(4) An affidavit or certified statement from a physician or midwife present during the birth;

(5) A copy of a Bible or other family record containing reference to the birth. The copy must be accompanied by a statement from a notary public, or other officer who has authority to administer oaths, certifying all the following criteria:

(i) The year the Bible or other family record was printed;

(ii) Whether it appears the record has been erased or changed in any way;

(iii) Whether it appears the entries were made on the date noted in the record.

(6) Affidavits or certified statements from two or more persons, preferably disinterested, who have knowledge of the name of the person born; the month, year, and place of birth of that person; and the parents' names. These persons must also provide VA with their own ages and an explanation as to how they came to know the facts surrounding the birth; or

(7) Other reliable and convincing evidence that provides relevant information. This includes any of the following:

(i) Census records.

(ii) Hospital records.

(iii) Insurance policies.

(iv) School records.

(v) Employment records.

(vi) Naturalization records.

(vii) Immigration records.

(b) *Overcoming lack of contemporaneous evidence.* VA will accept as proof of age or relationship:

(1) A copy or abstract of the public record of birth established more than 4 years after the birth if it is consistent with material on file with VA, or if it shows on its face that it is based upon evidence that would be acceptable under this section.

(2) An original or a copy of a church record of baptism performed more than 4 years after the birth if it is consistent with material on file with VA. Such material must include at least one reference to age or relationship made when such a reference was not essential to establishing entitlement to the benefit claimed.

(Authority: 38 U.S.C. 501(a))

§ 5.230 Effective date of award of pension or dependency and indemnity compensation to, or based on the existence of, a child born after the veteran's death.

(a) *Applicability.* The section provides the effective date of an award of pension or dependency and indemnity compensation (DIC) to, or an increase in such an award based on the existence of, a child born after the death of the parent-veteran upon whom eligibility for the award is based.

(b) *Effective date.* (1) The effective date is the date the child was born, if VA receives either of the following within the time specified:

(i) Proof of birth received within one year of the date of birth; or

(ii) Notification of the expected or actual birth received within one year after the veteran's death, provided that the notice is sufficient to indicate an intent to apply for pension or DIC benefits described in paragraph (a) of this section.

(2) In all other cases, the effective date of the award or increase is the date VA

receives an application for pension or DIC benefits described in paragraph (a) of this section.

(Authority: 38 U.S.C. 5110(a), (n))

§ 5.231 Effective date of reduction or discontinuance—child reaches age 18 or 23.

(a) *Applicability.* The effective date rule in this section applies to the reduction or discontinuance of pension, compensation, or dependency and indemnity compensation required when a person no longer qualifies as a child for VA benefit purposes under § 5.220(b) because the person has reached 18 years of age or is attending an approved educational institution and has reached 23 years of age.

(b) *Effective date.* VA will pay a reduced rate or discontinue benefits effective on the child's 18th or 23rd birthday, as applicable.

(Authority: 38 U.S.C. 5112(a))

Note to § 5.231: For effective dates of reductions or discontinuance applicable when a child completes the course of education or otherwise terminates school attendance prior to his or her 23rd birthday, see § 3.667 of this chapter.

§ 5.232 Effective date of reduction or discontinuance—terminated adoptions.

(a) *Applicability.* The effective date rule in this section applies to the reduction or discontinuance of pension, compensation, or dependency and indemnity compensation required when a person no longer qualifies as a child for VA benefit purposes as an adopted child under §§ 5.220(c)(3) and § 5.222, ''Adoption arrangements recognized by VA.''

(b) *Effective date.* When an adoption terminates, VA will pay a reduced rate or discontinue benefits on the earliest of the following dates, as applicable:

(1) The day after the day the child left the custody of the adopting parent during the interlocutory period;

(2) The day after the day the child left the custody of the adopting parent during the term of an adoption placement agreement;

(3) The day after the date of rescission of the adoption decree; or

(4) The day after the date of termination of the adoption placement agreement.

(Authority: 38 U.S.C. 5112(a))

§ 5.233 Effective date of reduction or discontinuance—stepchild no longer a member of the veteran's household.

(a) *Applicability.* The effective date rule in this section applies to the reduction or discontinuance of pension, compensation, or dependency and indemnity compensation required when a person no longer qualifies as a child for VA benefit purposes as a stepchild under § 5.220(c)(2) because the person is no longer a member of the veteran's household. *See* § 5.226(c) (defining ''member of the veteran's household'').

(b) *Effective date.* VA will pay a reduced rate or discontinue benefits when a stepchild is no longer a member of the veteran's household effective the day following the date the child ceased being a member of the household.

(Authority: 38 U.S.C. 5112(a))

§ 5.234 Effective date of an award, reduction, or discontinuance of benefits based on child status due to permanent incapacity for self-support.

(a) *Applicability.* This section provides the effective dates for an award, a reduction, or a discontinuance of pension, compensation, or dependency and indemnity compensation to, or based upon the existence of, a person who is a ''child'' for VA benefit purposes under § 5.220(b)(2)(i) because the person became permanently incapable of self-support before reaching the age of 18 or due to termination of such child status because the person is no longer incapable of self-support.

(b) *Awards.*—(1) *Initial awards.* The effective dates of initial awards are governed by applicable effective date rules in § 5.183, ''Effective date for additional benefits based on the existence of a dependent.''

(2) *Claim for continuation of benefits.* The effective date of a continuation of benefits previously awarded to, or based upon the existence of, a child after the child reaches 18 years of age is the date of the child's 18th birthday if VA receives an application for the continuation of such benefits based upon the child's permanent incapacity for self-support not later than one year after the child's 18th birthday. Otherwise, the effective date is the date VA receives an application for benefits.

(c) *Reduction or discontinuance of VA benefits.* (1) *Pension benefits.* VA will pay the reduced rate or discontinue pension benefits because the person recognized as a child is no longer incapable of self-support effective the first day of the month that follows the month in which VA last paid benefits.

(2) *Compensation or dependency and indemnity compensation benefits.* VA will pay the reduced rate or discontinue compensation or dependency and indemnity compensation benefits because the person recognized as a child is no longer incapable of self-support effective the first day of the month following expiration of the 60-day notice period described in § 5.83, ''Right to notice of decisions and proposed adverse actions.''

(Authority: 38 U.S.C. 5110, 5112)

§ 5.235 Effective date of an award of benefits due to termination of a child's marriage.

(a) *Applicability.* This section states the effective dates of awards to, or based upon the existence of, a child when status as a child for the purpose of VA benefits has been restored due to termination of the child's marriage. *See* § 5.228. ''Exceptions applicable to termination of child status based on marriage of the child.''

(b) *Effective date.*—(1) *Void marriages.* If a child's marriage is void, the effective date of an award of benefits is the later of the following dates:

(i) The date the child and the other person stopped living together; or

(ii) The date VA receives an application for benefits.

(2) *Annulled marriages.* If a child's marriage is annulled, the effective date for an award of benefits is:

(i) The date the annulment decree became final, if VA receives an application for benefits within one year of that date; otherwise,

(ii) The date VA receives an application for benefits.

(3) *Marriage terminated by death or divorce before November 1, 1990.* Awards under § 5.228(c)(3) or (4) (pertaining to marriages terminated by death or divorce prior to November 1, 1990) are effective on the date VA receives an application for benefits.

(Authority: 38 U.S.C. 501(a), 5110(a), (k), (l); Sec. 9, Pub. L. 93–527, 88 Stat. 1702, 1705; Sec. 8004, Pub. L. 101–508, 104 Stat. 1388, 1388–343)

§§ 5.236–5.239 [Reserved]

Parent Status

§ 5.240 Status as a veteran's parent.

(a) *Persons who qualify as a veteran's parent for VA purposes.* Except as otherwise provided in this section and subject to the requirements of this subpart concerning proof of the relationship described, a parent of a veteran is one of the following:

(1) A veteran's natural mother or father,

(2) A veteran's mother or father through adoption, or

(3) A person who stands in the relationship of a parent to a veteran, subject to the following requirements:

(i) The person must have stood in the relationship of a parent to the veteran for a period of not less than 1 year at any time before the veteran's entry into active military service, and

(ii) Such a relationship must have begun prior to the veteran's 21st

birthday, although it may have ended before, on, or after that birthday.

(b) *Institutions do not qualify.* VA will not recognize an institution as a veteran's parent, even if the institution is providing care for the veteran in place of a parent.

(c) *Natural parent who was not married to the other natural parent at the time of the veteran's birth.* VA will recognize a natural parent who was not married to the veteran's other natural parent at the time of birth as a veteran's parent for VA purposes if the requirements of § 5.221, ''Evidence to establish a parent-natural child relationship,'' are met and that natural parent did one or both of the following:

(1) Accepted the veteran as a member of his or her household.

(2) Provided substantial financial support to the veteran consistently from the date of the veteran's birth until the veteran reached the age of 21, married, or entered active military service.

(d) *Abandonment.* VA will not provide benefits to a person based on that person's status as a veteran's natural or adoptive parent if that person abandoned the veteran unless that person subsequently assumed the legal and moral obligations of a parent with respect to the veteran. For purposes of this paragraph, abandoned means that a veteran's natural or adoptive parent did not assume the legal and moral obligations of a parent with respect to the veteran. Abandonment implies not just a failure to provide support, but a refusal to do so. It is not necessary to show that someone else assumed the parental relationship for abandonment to occur.

(e) *Not more than one mother and one father recognized.*—(1) *General rule.* VA will recognize not more than one father and not more than one mother as parents of a veteran.

(2) *Different persons qualified as a veteran's mother or father at different times.* (i) If two or more persons qualified as a veteran's mother or father under this section at different points in time, VA will recognize the person who last qualified before the veteran's last entry into active military service as the veteran's mother or father.

(ii) VA will recognize a veteran's natural parent who was the last person to have a parental relationship to the veteran before the veteran last entered active military service as the mother or father of the veteran even though that parent's parental rights have been terminated by a court.

(f) *A person claims status as a veteran's mother or father under paragraph (a)(3) of this section while the veteran's natural or adoptive mother or father is still living.* VA will not recognize a person as the veteran's mother or father under paragraph (a)(3) of this section if the veteran's natural or adoptive mother or father was living at the time the person claims to have stood in the relationship of a mother or father to the veteran unless the natural or adoptive mother or father had relinquished parental control of the veteran. For purposes of this paragraph, *relinquished parental control* means that a veteran's natural or adoptive parent ceased to provide for the child and that the parent and child relationship was broken. It is not necessary that a court have terminated parental rights. Relinquishment of control does not necessarily mean abandonment by the parent. However, a finding of abandonment would automatically establish relinquishment of control.

(Authority: 38 U.S.C. 101(5), 501(a))

§§ 5.241–5.249 [Reserved]

[FR Doc. 06–7759 Filed 9–19–06; 8:45 am]

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Federal Register

Wednesday,
September 20, 2006

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

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

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AU42

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

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule prescribes special early season migratory bird hunting regulations for certain tribes on Federal Indian reservations, off-reservation trust lands, and ceded lands. This responds to tribal requests for U.S. Fish and Wildlife Service (hereinafter Service or we) recognition of their authority to regulate hunting under established guidelines. This rule allows the establishment of season bag limits and, thus, harvest at levels compatible with populations and habitat conditions.

DATES: This rule takes effect on September 1, 2006.

ADDRESSES: You may inspect comments received on the proposed special hunting regulations and tribal proposals during normal business hours in room 4107, Arlington Square Building, 4501 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, (703/358–1967).

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act (MBTA) of July 3, 1918 (40 Stat. 755; 16 U.S.C. 703 *et seq.*), authorizes and directs the Secretary of the Department of the Interior, having due regard for the zones of temperature and for the distribution, abundance, economic value, breeding habits, and times and lines of flight of migratory game birds, to determine when, to what extent, and by what means such birds or any part, nest, or egg thereof may be taken, hunted, captured, killed, possessed, sold, purchased, shipped, carried, exported, or transported.

In the August 17, 2006, **Federal Register** (71 FR 47461), we proposed special migratory bird hunting regulations for the 2006–07 hunting season for certain Indian tribes, under the guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467). The guidelines respond to tribal requests for Service recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal members and nonmembers on their reservations. The guidelines include possibilities for:

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

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

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits. In all cases, the regulations established under the guidelines must be consistent with the March 10–September 1 closed season mandated by the 1916 Migratory Bird Treaty with Canada.

In the April 11, 2006, **Federal Register** (71 FR 18562), we requested that tribes desiring special hunting regulations in the 2006–07 hunting season submit a proposal including details on:

(a) Harvest anticipated under the requested regulations;

(b) Methods that would be employed to measure or monitor harvest (such as bag checks, mail questionnaires, etc.);

(c) Steps that would be taken to limit level of harvest, where it could be shown that failure to limit such harvest would adversely impact the migratory bird resource; and

(d) Tribal capabilities to establish and enforce migratory bird hunting regulations. No action is required if a tribe wishes to observe the hunting regulations established by the State(s) in which an Indian reservation is located. We have successfully used the guidelines since the 1985–86 hunting season. We finalized the guidelines beginning with the 1988–89 hunting season (August 18, 1988, **Federal Register** [53 FR 31612]).

Although the proposed rule included generalized regulations for both early- and late-season hunting, this rulemaking addresses only the early-season proposals. Late-season hunting will be addressed in late-September. As a general rule, early seasons begin during September each year and have a primary emphasis on such species as mourning and white-winged dove. Late seasons begin about October 1 or later each year and have a primary emphasis on waterfowl.

Population Status and Harvest

The following paragraphs provide a brief summary of information on the status and harvest of waterfowl excerpted from various reports. The August 17 proposed rule contained a brief summary on the status and harvest of migratory shore and upland game birds. For more detailed information on methodologies and results, you may obtain complete copies of the various reports at the address indicated under **ADDRESSES** or from our Web site at *http://migratorybirds.fws.gov*.

Status of Ducks

Federal, provincial, and State agencies conduct surveys each spring to estimate the size of breeding populations and to evaluate the conditions of the habitats. These surveys are conducted using fixed-wing aircraft and helicopters and encompass principal breeding areas of North America, and cover over 2.0 million square miles. The Traditional survey area comprises Alaska, Canada, and the north central United States, and includes approximately 1.3 million square miles. The Eastern survey area includes parts of Ontario, Quebec, Labrador, Newfoundland, Nova Scotia, Prince Edward Island, New Brunswick, New York, and Maine, an area of approximately 0.7 million square miles.

Breeding Ground Conditions

Despite a very warm winter, breeding waterfowl habitat quality in the United States and Canada is slightly better this year than last year. Improvements in Canadian and U.S. prairie habitats were primarily due to average to above-average precipitation, warm spring temperatures, and carry-over effects from the good summer conditions of 2005. Improved habitat conditions were reflected in the higher number of ponds counted in Prairie Canada this year compared to last year. The 2006 estimate of ponds in Prairie Canada was 4.4 ± 0.2 million ponds, a 13 percent increase from last year's estimate of 3.9 ± 0.2 million ponds, and 32 percent above the 1955–2005 average. Habitat conditions on the U.S prairies were more variable than those on the Canadian prairies. The 2006 pond estimate for the northcentral United States (1.6 ± 0.1 million) was similar to last year's estimate and the long-term average. The total pond estimate (Prairie Canada and United States combined) was 6.1 ± 0.2 million ponds. This was 13 percent greater than last year's estimate of 5.4 ± 0.2 million and 26 percent higher than the long-term average of 4.8 ± 0.1 million ponds.

In the Eastern Survey Area (strata 51–72), spring-like conditions also arrived early with an early ice break-up and relatively mild temperatures. Biologists reported that habitat conditions were generally good across most of the survey area.

Breeding Population Status

In the Waterfowl Breeding Population and Habitat Survey traditional survey area (strata 1–18, 20–50, and 75–77), the total duck population estimate was 36.2 ± 0.6 [SE] million birds. This was 14 percent greater than last year's estimate of 31.7 ± 0.6 million birds and 9 percent above the 1955–2005 long-term average. Mallard (*Anas platyrhynchos*) abundance was 7.3 ± 0.2 million birds, which was similar to last year's estimate of 6.8 ± 0.3 million birds and to the long-term average. Blue-winged teal (*A. discors*) abundance was 5.9 ± 0.3 million birds. This value was 28 percent greater than last year's estimate of 4.6 ± 0.2 million birds and 30 percent above the long-term average. The estimated abundance of green-winged teal (*A. crecca*; 2.6 ± 0.2 million) was 20 percent greater than last year and 39 percent above the long-term average. The estimated number of gadwall (*A. strepera*; 2.8 ± 0.2 million) was 30 percent greater than last year and was 67 percent above the long-term average, and the estimated number of redheads (*Aythya americana*; 0.9 ± 0.1 million) increased 55 percent relative to 2005 and was 47 percent above the long-term average. The canvasback estimate (*A. valisineria*; 0.7 ± 0.1 million) was 33 percent higher than last year's and was 23 percent higher than the long-term average. The Northern shoveler (*Anas clypeata*; 3.7 ± 0.2 million) estimate was similar to last year's, and 69 percent above the long-term average. Although estimates for most species increased relative to last year's and were greater than their long-term averages, American wigeon (*A. americana*; 2.2 ± 0.1 million) and scaup (*Aythya affinis* and *A. marila* combined; 3.2 ± 0.2 million) estimates were unchanged relative to 2005, but remained 17 percent and 37 percent below their long-term averages, respectively. The estimate for scaup was a record low for the second consecutive year. The Northern pintail (*Anas acuta*; 3.4 ± 0.2 million) estimate was 18 percent below its 1955–2005 average, although this year's estimate was 32 percent greater than that of last year.

The eastern survey area was restratified in 2005, and is now composed of strata 51–72. Mergansers (red-breasted [*Mergus serrator*], common [*M. merganser*], and hooded [*Lophodytes cucullatus*]), mallards, American black ducks (*A. rubripes*), Ringnecked ducks (*Aythya collaris*), goldeneyes (common [*Bucephala clangula*] and Barrow's [*B. islandica*]) and green-winged teal were all similar to their 2005 estimates. American wigeon (–51 percent) and buffleheads ([*B. albeola*], –58 percent) were lower than their 2005 estimates. None of the species in the eastern survey area differed from long-term averages.

Fall Flight Estimate

The mid-continent mallard population is composed of mallards from the traditional survey area, Michigan, Minnesota, and Wisconsin, and is 7.9 ± 0.2 million. This is similar to the 2005 estimate of 7.5 ± 0.3 million. The projected mallard fall flight index was 9.8 ± 0.1 million, similar to the 2005 estimate of 9.3 ± 0.1 million birds. These indices were based on revised mid-continent mallard population models, and therefore, differ from those previously published.

Status of Geese and Swans

We provide information on the population status and productivity of North American Canada geese (*Branta canadensis*), brant (*B. bernicla*), snow geese (*Chen caerulescens*), Ross' geese (*C. rossii*), emperor geese (*C. canagica*), white-fronted geese (*Anser albifrons*), and tundra swans (*Cygnus columbianus*). In 2006, the timing of spring snowmelt in important goose and swan nesting areas in most of the Arctic and subarctic was earlier than average. Delayed nesting phenology or reduced nesting effort was indicated for only Alaska's Yukon Delta, other coastal areas of Alaska, and near the Mackenzie River Delta in the western Canadian Arctic. Primary abundance indices in 2006 increased from 2005 levels for 13 goose populations and decreased for 11 goose populations. Primary abundance indices in 2006 for both populations of tundra swans increased from 2005 levels. The Mississippi Flyway Giant and the Atlantic Canada goose populations, the Western Arctic/Wrangel Island snow goose population, and the Pacific white-fronted goose population displayed significant positive trends during the most recent 10-year period. The Short Grass Prairie Canada goose and the Mid-continent light goose populations showed significant negative 10-year trends. The forecast for the production of geese and swans in North America in 2006 is generally favorable and improved from that of 2005.

Waterfowl Harvest and Hunter Activity

During the 2005–06 hunting season, both duck and goose harvest increased from the previous year. U.S. hunters harvested 12,510,800 ducks in 2005–06, compared to 12,385,700 in 2004–05, and they harvested 3,660,700 geese, compared to 3,200,400 geese taken in 2004–05. The five most commonly harvested duck species were mallard (4,466,927), green-winged teal (1,500,479), gadwall (1,363,954), wood duck (1,119,921), and blue-winged/cinnamon teal (703,534).

Comments and Issues Concerning Tribal Proposals

For the 2006–07 migratory bird hunting season, we proposed regulations for 28 tribes and/or Indian groups that followed the 1985 guidelines and were considered appropriate for final rulemaking. Some of the proposals submitted by the tribes had both early- and late-season elements. However, as noted earlier, only those with early-season proposals are included in this final rulemaking; 21 tribes have proposals with early seasons. The comment period for the proposed rule, published on August 17, 2006, closed on August 28, 2006. Because of the necessary brief comment period, we will respond to any comments on the proposed rule and/or these regulations postmarked by August 28, but not received prior to final action by us, in the September late-season final rule.

Great Lakes Indian Fish and Wildlife Commission's (GLIFWC) Proposal

We received 23 comments in response to our April 11, 2006, notice of intent announcing regulations for migratory bird hunting by Native American Tribal members, GLIFWC's proposal we received, and our August 17, 2006, proposed rule. The Mississippi Flyway Council, the Minnesota Department of Natural Resources, the Wisconsin Department of Natural Resources, the Wisconsin Conservation Congress, and a number of individuals were strongly opposed to the GLIFWC's proposal that requested: (1) Increased bag limits for most species (from 20 to 40 birds per day); and (2) removal of the restriction on baiting on ceded lands. They requested we deny both of these proposed changes believing that the increase in harvest would create a conservation concern to locally breeding duck populations. They also believed that the use of bait on ceded lands would effectively close hunting for the general public in and around baited areas because Federal and State

regulations prevent hunting over bait regardless of a person's knowledge of a baited area.

The GLIFWC also responded to our August 17 proposed rule. GLIFWC believed that we did not provide sufficient biological, public health, or safety rationale and supporting data for rejecting their proposal. They believed that we examined the proposal through the ''lens of sport hunting and its fair chase precepts rather than pursuant to and consistent with the nature and extent of the tribes' court-affirmed treaty hunting rights.'' They further state that our response should be based upon law and objective rationale rather than ''polemics'' and ''hyperbole.'' GLIFWC asserts that hunting over and with bait is a common practice for many species, as well as a court-approved practice within the scope of the tribes' ceded-territory treaty rights. GLIFWC similarly rejects our assertion that the proposal would cause confusion and resentment among the general public and other hunters

Service Response: As we stated in the August 17 proposed rule, we do not support the increase in bag limits and removal of baiting restrictions proposed by the GLIFWC due to legal, social, and conservation concerns. While we recognize that baiting is an accepted hunting practice for a number of resident game species, like whitetail deer or bear, it is not a recognized, legitimate, or accepted hunting practice for migratory game birds. Since its prohibition in the 1930's, we have not allowed the hunting of migratory game birds over baited areas for a number of well-documented biological, conservation, ethical, and social considerations. Further, this is the first time that we know of that a tribe or tribal organization has asserted that the baiting of migratory game birds is within treaty hunting rights. In that regard, while we believe that is not the case, we are willing to further discuss the issue with the GLIFWC. Until such time as we agree or it is determined to be properly part of a treaty right, we do not believe that GLIFWC's proposal to allow baiting for the 2006–07 hunting season is in the best interests of the Service, the GLIFWC, the general public, or the migratory bird resource.

Additionally, while we acknowledge that tribal harvest and participation has declined in recent years, we are not of the opinion that allowing baiting is the best way to increase tribal hunter participation. As we stated above, removing the present restrictions on waterfowl baiting would lead to confusion and frustration on the part of the public, hunters, wildlife-management agencies, and law enforcement officials due to the inherent difficulties of different sets of baiting regulations for different areas and groups of hunters, especially on ceded lands that are not in the ownership of the Tribes. Further, from the standpoint of conservation of the resources involved, baiting could potentially seriously impact local migratory bird populations, and widespread baiting could potentially affect overall migratory patterns. Luring local and migrating flocks in ever-greater numbers by artificial means could also provide increased opportunities for disease transmission, increased competition for limited food supplies, and increased susceptibility to wide-spread disease outbreaks like avian cholera, duck plague, and avian botulism.

Recent GLIFWC harvest surveys (1996–98, 2001, and 2004) indicate that tribal off-reservation waterfowl harvest has averaged less than 1,000 ducks and 120 geese annually. In the latest survey year (2004), an estimated 53 hunters took an estimated 421 trips and harvested 645 ducks (1.5 ducks per trip) and 84 geese (0.2 geese per trip). Further, in the last 5 years of harvest surveys, only one hunter reported harvesting 20 ducks in a single day. Analysis of hunter survey data over the period in question (1996–2004) indicates a general downward trend in both harvest and hunter participation.

Based on this data, present daily bag limits do not appear to be a hindrance or limiting factor for tribal harvest. Therefore, we do not accept the GLIFWC's proposal for significantly increased daily bag limits for most species in the 1837 and 1842 Treaty Areas at this time. However, if we develop or are presented information that shows otherwise, we would certainly entertain increasing bag limits for waterfowl, coots, moorhens, and mourning doves to meet tribal needs within conservation limits. We do, however, support the proposals for increasing the daily bag limits for mergansers, snipe, and woodcock in the 1837 and 1842 Treaty Areas to bring them more in line with current GLIFWC daily bag limits for ducks and geese. In addition, the Service is willing to meet with the GLIFWC to explore possible ways to increase tribal participation in migratory bird hunting opportunities. Finally, as with all tribal harvest, we request that the GLIFWC monitor the member bands' harvest.

NEPA Consideration

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

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

Endangered Species Act Considerations

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 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 and may have caused modification of some regulatory measures previously proposed. The final frameworks reflect any modifications. Our biological opinions resulting from this Section 7 consultation are public documents available for public inspection in the Service's Division of Endangered Species and Division of Migratory Bird Management, 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 through 1996, updated in 1998, and updated again in 2004. It is further discussed below under the heading Regulatory Flexibility Act. Results from the 2004 analysis indicate that the expected economic benefit of the annual migratory bird hunting frameworks is on the order of $734 to $1,064 million, with a mid-point estimate of $899 million. Copies of the cost-benefit analysis are available upon request from the address indicated under **ADDRESSES** or from our Web site at *http://www.migratorybirds.gov*.

Regulatory Flexibility Act

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

Small Business Regulatory Enforcement Fairness Act

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

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Surveys and assigned clearance number 1018–0015 (expires 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 Questionnaire 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

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

Takings Implication Assessment

In accordance with Executive Order 12630, this 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.

Federalism Effects

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

Government-to-Government Relationship With Tribes

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. Thus, in accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on federally recognized Indian tribes and have

determined that there are no effects on Indian trust resources. However, by virtue of the tribal proposals process, we have consulted with all the tribes affected by this rule.

List of Subjects in 50 CFR Part 20

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

■ Accordingly, part 20, subchapter B, chapter I of title 50 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.

Note: The following hunting regulations provided for by 50 CFR 20.110 will not appear in the Code of Federal Regulations because of their seasonal nature.

■ 2. Section 20.110 is revised to read as follows:

§ 20.110 Seasons, limits, and other regulations for certain Federal Indian reservations, Indian Territory, and ceded lands.

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

Doves

Season Dates: Open September 1, through September 15, 2006; then open November 11, through December 25, 2006.

Daily Bag and Possession Limits: For the early season, daily bag limit is 10 mourning or white-winged doves, singly, or in the aggregate. For the late season, the daily bag limit is 10 mourning doves. Possession limits are twice the daily bag limits.

General Conditions: All persons 14 years and older must be in possession of a valid Colorado River Indian Reservation hunting permit before taking any wildlife on tribal lands. Any person transporting game birds off the Colorado River Indian Reservation must have a valid transport declaration form. Other tribal regulations apply, and may be obtained at the Fish and Game Office in Parker, Arizona.

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

Tribal Members Only

Ducks (Including Mergansers)

Season Dates: Open September 1, 2006, through March 9, 2007.

Daily Bag and Possession Limits: The Tribe does not have specific bag and possession restrictions for Tribal members. The season on harlequin duck is closed.

Coots

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

Geese

Season Dates: Same as ducks.

Daily Bag and Possession Limits: Same as ducks.

General Conditions: Tribal and Nontribal hunters must comply with all basic Federal migratory bird hunting regulations contained in 50 CFR part 20 regarding manner of taking. In addition, shooting hours are sunrise to sunset, and each waterfowl hunter 16 years of age or older must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Confederated Salish and Kootenai Tribes also apply on the reservation.

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

Sandhill Cranes

Season Dates: Open September 10, through October 16, 2006.

Daily Bag Limit: Three sandhill cranes.

Permits: Each person participating in the sandhill crane season must have a valid Federal sandhill crane hunting permit in his or her possession while hunting.

Doves

Season Dates: Open September 1, through October 30, 2006.

Daily Bag Limit: 15 mourning doves.

General Conditions: The possession limit is twice the daily bag limit. Tribal and nontribal hunters must comply with basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the stamp face. Special regulations established by the Crow Creek Sioux Tribe also apply on the reservation.

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

All seasons in Minnesota, 1854 and 1837 Treaty Zones:

Doves

Season Dates: Open September 1, through October 30, 2006.

Daily Bag Limit: 30 doves.

Ducks and Mergansers

Season Dates: Open September 15, through December 3, 2006.

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

Daily Bag Limit for Mergansers: 15 mergansers, including no more than 3 hooded mergansers.

Canada Geese

Season Dates: Open September 1, through December 3, 2006.

Daily Bag Limit: 12 geese.

Coots and Common Moorhens (Gallinule)

Season Dates: Open September 15, through December 3, 2006.

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

Sora and Virginia Rails

Season Dates: Open September 1, through December 3, 2006.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate. There is no possession limit.

Common Snipe and Woodcock

Season Dates: Open September 1, through December 3, 2006.

Daily Bag Limit: Eight snipe and three woodcock.

General Conditions:

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

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

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

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

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

All seasons in Michigan, 1836 Treaty Zone:

Ducks

Season Dates: Open September 22, 2006, through January 21, 2007.

Daily Bag Limit: 12 ducks, which may include no more than 2 pintail, 2 canvasback, 3 black ducks, 1 hooded merganser, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens).

Canada and Snow Geese

Season Dates: Open September 1, through November 30, and open January 1, 2007, through February 8, 2007.

Daily Bag Limit: Five geese.

Other Geese (White-Fronted Geese and Brant)

Season Dates: Open September 20, through November 30, 2006.

Daily Bag Limit: Five geese.

Sora Rails, Common Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2006.

Daily Bag Limit: Ten rails, ten snipe, and five woodcock.

Mourning Doves

Season Dates: Open September 1, through November 14, 2006.

Daily Bag Limit: Ten mourning doves.

General Conditions: A valid Grand Traverse Band Tribal license is required and must be in possession before taking any wildlife. All other basic regulations contained in 50 CFR part 20 are valid. Other tribal regulations apply, and may be obtained at the tribal office in Suttons Bay, Michigan.

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

Ducks

A. 1837 and 1842 Treaty Areas

Season Dates: Open September 15, through December 1, 2006.

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

B. 1836 Treaty Area

Season Dates: Open September 15, through December 1, 2006.

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

Mergansers

A. 1837 and 1842 Treaty Areas

Season Dates: Open September 15, through December 1, 2006.

Daily Bag Limit: 10 mergansers.

B. 1836 Treaty Area

Season Dates: Open September 15, through December 1, 2006.

Daily Bag Limit: five mergansers.

Geese: All Ceded Areas

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

Daily Bag Limit: 10 geese in the aggregate.

Other Migratory Birds: All Ceded Areas except where noted below.

A. Coots and Common Moorhens (Common Gallinules)

Season Dates: Open September 15, through December 1, 2006.

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

B. Sora and Virginia Rails

Season Dates: Open September 15, through December 1, 2006.

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

Possession Limit: 20.

C. Common Snipe

Season Dates: Open September 15, through December 1, 2006.

Daily Bag Limit:

1837 and 1842 Treaty Areas: 16 common snipe.

1836 Treaty Area: eight common snipe.

D. Woodcock

Season Dates: Open September 5, through December 1, 2006.

Daily Bag Limit:

1837 and 1842 Treaty Areas: 10.

1836 Treaty Area: Five woodcock.

E. Mourning Doves: 1837 and 1842 Ceded Territories

Season Dates: Open September 1, through October 30, 2006.

Daily Bag Limit: 15 mourning doves.

General Conditions

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

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

C. Particular regulations of note include:

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

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

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

4. The baiting restrictions can be obtained at the Tribal office in the model ceded territory conservation codes. These codes will be amended to include language that parallels that in place for nontribal members as published by the Service in the **Federal Register** at 64 FR 29804, June 3, 1999.

5. The shell limit restrictions of the model ceded territory conservation codes will be removed.

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

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

Nontribal Hunters on Reservation

Geese

Season Dates: Open September 1, 2006, through September 17, for the early-season, and open October 1, through January 31, 2007, for the late-season. During this period, days to be hunted are specified by the Kalispel Tribe. Nontribal hunters should contact the Tribe for more detail on hunting days.

Daily Bag and Possession Limits: 5 Canada geese for the early season, and 3 light geese and 4 dark geese, for the late season. The daily bag limit is 2 brant and is in addition to dark goose limits for the late-season. The possession limit is twice the daily bag limit.

Tribal Hunters Within Kalispel Ceded Lands

Ducks

Season Dates: Open September 1, 2006, through January 31, 2007.

Daily Bag and Possession Limits: 7 ducks, including no more than 2 female mallards, 4 scaup, and 2 redheads. The seasons on canvasbacks and pintail are closed. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, 2006, through January 31, 2007.

Daily Bag Limit: 3 light geese and 4 dark geese. The daily bag limit is 2 brant and is in addition to dark goose limits.

General: Tribal members must possess a validated Migratory Bird Hunting and Conservation Stamp and a tribal ceded lands permit.

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

Ducks

Season Dates: Open September 23, through December 31, 2006.

Daily Bag Limits: 10 ducks.

Geese

Season Dates: Open September 1, through December 31, 2006.

Daily Bag Limits: 10 geese.

General: Possession limits are twice the daily bag limits. Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required. Use of live decoys, bait, and commercial use of migratory birds are prohibited. Waterfowl may not be pursued or taken while using motorized craft.

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

Ducks

Season Dates: Open September 15, 2006, through January 20, 2007.

Daily Bag and Possession Limits: 12 ducks, including no more than 2 pintail, 2 canvasback, 1 hooded merganser, 3 black ducks, 3 wood ducks, 3 redheads, and 6 mallards (only 3 of which may be hens). The possession limit is twice the daily bag limit.

Canada Geese

Season Dates: Open September 1, through February 8, 2007.

Daily Bag and Possession Limits: Five Canada geese and possession limit is twice the daily bag limit.

White-Fronted Geese, Snow Geese, Ross Geese, and Brant

Season Dates: Open September 20, through November 30, 2006.

Daily Bag and Possession Limits: Five birds and the possession limit is twice the daily bag limit.

Mourning Doves, Rails, Snipe, and Woodcock

Season Dates: Open September 1, through November 14, 2006.

Daily Bag and Possession Limits: 10 doves, 10 rails, 10 snipe, and 5 woodcock. The possession limit is twice the daily bag limit.

General:

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

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

C. Particular regulations of note include:

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

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

(3) Possession limits for each species are double the daily bag limit, except on the opening day of the season, when the possession limit equals the daily bag limit, unless otherwise noted above.

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

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

Ducks

Season Dates: Open September 15, 2006, through January 20, 2007.

Daily Bag Limits: 12 ducks, including no more than 6 mallards (only 3 of which may be hens), 3 black ducks, 3 redheads, 3 wood ducks, 2 pintail, 1 hooded merganser, and 2 canvasback.

Coots and Gallinules

Season Dates: Same as ducks.

Daily Bag Limits: 12.

Canada Geese

Season Dates: Open September 1, 2006, through February 8, 2007.

Daily Bag Limit: Five geese.

White-Fronted Geese, Snow Geese, and Brant

Season Dates: Open September 1, through November 30, 2006.

Daily Bag Limit: 10 of each species.

Sora Rails, Snipe, and Mourning Doves

Season Dates: Open September 1, through November 14, 2006.

Daily Bag Limit: 10 of each species.

Woodcock

Season Dates: Open September 1, through November 14, 2006.

Daily Bag Limit: Five woodcock.

General: Possession limits are twice the daily bag limits.

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

Tribal Members

Youth Waterfowl Hunt

Season Dates: Open September 23, through September 24, 2006.

Daily Bag and Possession Limits: Six ducks, including no more than five mallards (only one of which may be a hen), three scaup, one mottled duck, two redheads, two wood ducks, one canvasback, and one pintail. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

Nontribal Hunters

Youth Waterfowl Hunt

Season Dates: Open September 23, through September 24, 2006.

Daily Bag and Possession Limits: Five ducks, including no more than five mallards (only one of which may be a hen), three scaup, one mottled duck, two redheads, two wood ducks, one pintail, and one canvasback. Coot daily bag limit is 15. Merganser daily bag limit is five, including no more than one hooded merganser. The possession limit is twice the daily bag limit.

(l) Makah Indian Tribe, Neah Bay, Washington (Tribal Members)

Band-Tailed Pigeons

Season Dates: Open September 1, through October 31, 2006.

Daily Bag Limit: Two band-tailed pigeons.

Ducks and Coots

Season Dates: Open September 23, 2006, through January 21, 2007.

Daily Bag Limit: Seven ducks including no more than one redhead, one pintail, and one canvasback. The seasons on wood duck and harlequin are closed.

Geese

Season Dates: Open September 23, 2006, through January 21, 2007.

Daily Bag Limit: Four. The seasons on Aleutian and dusky Canada geese are closed.

General

All other Federal regulations contained in 50 CFR part 20 would apply. The following restrictions are also proposed by the Tribe: (1) As per Makah Ordinance 44, only shotguns may be used to hunt any species of waterfowl. Additionally, shotguns must not be discharged within 0.25 miles of an occupied area; (2) Hunters must be eligible, enrolled Makah tribal members and must carry their Indian Treaty Fishing and Hunting Identification Card while hunting. No tags or permits are required to hunt waterfowl; (3) The Cape Flattery area is open to waterfowl hunting, except in designated wilderness areas, or within 1 mile of Cape Flattery Trail, or in any area that is closed to hunting by another ordinance or regulation; (4) The use of live decoys and/or baiting to pursue any species of waterfowl is prohibited; (5) Steel or bismuth shot only for waterfowl is allowed; the use of lead shot is prohibited; (6) The use of dogs is permitted to hunt waterfowl.

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

Band-Tailed Pigeons

Season Dates: Open September 1, through September 30, 2006.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

Mourning Doves

Season Dates: Open September 1, through September 30, 2006.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20, regarding shooting hours and manner of taking. In addition, each waterfowl hunter 16 years of age or over must carry on his/her person a valid Migratory Bird Hunting and Conservation Stamp (Duck Stamp) signed in ink across the face. Special regulations established by the Navajo Nation also apply on the reservation.

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

Ducks (Including Mergansers)

Season Dates: Open September 23, through November 17, 2006, and open November 27, through December 3, 2006.

Daily Bag and Possession Limits: Six, including no more than six mallards (three hen mallards), six wood ducks, one redhead, two pintail, and one hooded merganser. The possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 1, through November 17 and open November 27, through December 31, 2006.

Daily Bag and Possession Limits: Three and Six Canada geese, respectively. Hunters will be issued three tribal tags for geese in order to monitor goose harvest. An additional three tags will be issued each time birds are registered. A seasonal quota of 150 birds is adopted. If the quota is reached before the season concludes, the season will be closed at that time.

Woodcock

Season Dates: Open September 1, through November 17, 2006.

Daily Bag and Possession Limits: 5 and 10 woodcock, respectively.

Dove

Season Dates: Open September 1, through November 12, 2006.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

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

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

Ducks and Mergansers

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: Seven ducks, including no more than two hen mallards, one pintail, one canvasback, one harlequin, and two redheads. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: Four geese, and may include no more than three light geese. The season on Aleutian Canada geese is closed. Possession limit is twice the daily bag limit.

Coots

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: 25 and 50 coots, respectively.

Mourning Doves

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

Snipe

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeon

Season Dates: Open September 16, through December 31, 2006.

Daily Bag and Possession Limits: 2 and 4 pigeons, respectively.

General Conditions: All hunters authorized to hunt migratory birds on the reservation must obtain a tribal hunting permit from the respective Tribe. Hunters are also required to adhere to a number of special regulations available at the tribal office.

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

Ducks

Season Dates: Open September 1, 2006, through January 15, 2007.

Daily Bag and Possession Limits: Five ducks, which may include only one canvasback. The season on harlequin ducks is closed. Possession limit is twice the daily bag limit.

Geese

Season Dates: Open September 15, 2006, through January 15, 2007.

Daily Bag and Possession Limits: Four geese, and may include no more than two snow geese. The season on Aleutian and cackling Canada geese is closed. Possession limit is twice the daily bag limit.

Brant

Season Dates: Open September 1, through December 31, 2006.

Daily Bag and Possession Limits: Two and four brant, respectively.

Coots

Season Dates: Open September 1, 2006, through January 15, 2007.

Daily Bag Limits: 25 coots.

Snipe

Season Dates: Open September 15, 2006, and through January 15, 2007.

Daily Bag and Possession Limits: 8 and 16 snipe, respectively.

Band-Tailed Pigeons

Season Dates: Open September 1, through December 31, 2006.

Daily Bag and Possession Limits: 5 and 10 pigeons, respectively.

General Conditions: All tribal hunters must obtain a Tribal Hunting Tag and Permit from the Tribe's Natural Resources Department and must have the permit, along with the member's treaty enrollment card, on his or her person while hunting. Shooting hours are one-half hour before sunrise to one-half hour after sunset, and steel shot is required for all migratory bird hunting. Other special regulations are available at the tribal office in Shelton, Washington.

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

Tribal Members

Ducks (Including Coots and Mergansers)

Season Dates: Open September 15, 2006, and through February 28, 2007.

Daily Bag and Possession Limits: 7 and 14 ducks, respectively, except that bag and possession limits may include no more than 2 female mallards, 1 pintail, 4 scaup, and 2 redheads.

Geese

Season Dates: Open September 15, 2006, and through February 28, 2007.

Daily Bag and Possession Limits: 7 and 14 geese, respectively; except that the bag limits may not include more than 2 brant and 1 cackling Canada goose. For those tribal members who engage in subsistence hunting, the Tribes set a maximum annual bag limit of 365 ducks and 365 geese.

Snipe

Season Dates: Open September 15, 2006, through February 28, 2007.

Daily Bag and Possession Limits: 8 and 16, respectively.

General Conditions: All hunters on Tulalip Tribal lands are required to adhere to shooting hour regulations set at one-half hour before sunrise to sunset, special tribal permit requirements, and a number of other tribal regulations enforced by the Tribe. Nontribal hunters 16 years of age and older, hunting pursuant to Tulalip Tribes' Ordinance No. 67, must possess a valid Federal Migratory Bird Hunting and Conservation Stamp and a valid State of Washington Migratory Waterfowl Stamp. Both stamps must be validated by signing across the face of the stamp. Other tribal regulations apply, and may be obtained at the tribal office in Marysville, Washington.

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

Mourning Dove

Season Dates: Open September 1, through December 31, 2006.

Daily Bag and Possession Limits: 12 and 15 mourning doves, respectively.

Tribal members must have the tribal identification and harvest report card on their person to hunt. Tribal members hunting on the Reservation will observe all basic Federal migratory bird hunting regulations found in 50 CFR part 20, except shooting hours would be one-half hour before official sunrise to one-half hour after official sunset.

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

Canada Geese

Season Dates: Open September 11, and through September 25, and open November 1, through February 28, 2007.

Daily Bag Limits: 5 Canada geese during the first period, 3 during the second.

Snow Geese

Season Dates: Open September 11, 2006, and through September 25, 2006.

Daily Bag Limits: 15 snow geese.

General Conditions: Shooting hours are one-half hour before sunrise to sunset. Nontoxic shot is required. All basic Federal migratory bird hunting regulations contained in 50 CFR part 20 will be observed.

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

Ducks and Mergansers

Season Dates: Open September 16, through December 17, 2006.

Daily Bag Limit for Ducks: 10 ducks, including no more than 2 mallards and 1 canvasback.

Daily Bag Limit for Mergansers: Five mergansers, including no more than two hooded mergansers.

Geese

Season Dates: Open September 1, through September 29, 2006, and open September 30, through December 17, 2006.

Daily Bag Limit: Eight geese through September 29 and five thereafter.

Coots

Season Dates: Open September 2, through November 30, 2006.

Daily Bag Limit: 20 coots.

Sora and Virginia Rails

Season Dates: Open September 2, through November 30, 2006.

Daily Bag Limit: 25 sora and Virginia rails, singly or in the aggregate.

Common Snipe and Woodcock

Season Dates: Open September 2, through November 30, 2006.

Daily Bag Limit: 10 snipe and 10 woodcock.

Mourning Dove

Season Dates: Open September 2, through November 30, 2006.

Daily Bag Limit: 25 doves.

General Conditions: Shooting hours are one-half hour before sunrise to one-half hour after sunset. Nontoxic shot is required.

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

Band-Tailed Pigeons (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2006.

Daily Bag and Possession Limits: Three and six pigeons, respectively.

Mourning Doves (Wildlife Management Unit 10 and Areas South of Y–70 and Y–10 in Wildlife Management Unit 7, Only)

Season Dates: Open September 1, through September 15, 2006.

Daily Bag and Possession Limits: 10 and 20 doves, respectively.

General Conditions: All nontribal hunters hunting band-tailed pigeons and mourning doves on Reservation lands shall have in their possession a valid White Mountain Apache Daily or Yearly Small Game Permit. In addition to a small game permit, all nontribal hunters hunting band-tailed pigeons must have in their possession a White Mountain Special Band-tailed Pigeon Permit. Other special regulations established by the White Mountain Apache Tribe apply on the reservation. Tribal and nontribal hunters will comply with all basic Federal migratory bird hunting regulations in 50 CFR part 20 regarding shooting hours and manner of taking.

Dated: September 13, 2006.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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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)

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