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4–7–06 Friday
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Contents

Federal Register
Vol. 71, No. 67
Friday, April 7, 2006

Separate Parts In This Issue

Reader Aids

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

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

7 CFR
Proposed Rules:
1496.....17767

14 CFR
39 (5 documents).....17691, 17694, 17696, 17698, 17700

21 CFR
510.....17701
520.....17701
558.....17702

22 CFR
Proposed Rules:
62.....17768

30 CFR
Proposed Rules:
205.....17774

33 CFR
100.....17703

36 CFR
Proposed Rules:
7.....17777

40 CFR
51.....17705
63 (4 documents).....17712, 17720, 17729, 17738
81.....17750

47 CFR
Proposed Rules:
90.....17786

49 CFR
571.....17752

50 CFR
223.....17757
Proposed Rules:
216.....17790

Rules and Regulations

Federal Register
Vol. 71, No. 67
Friday, April 7, 2006

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19866; Directorate Identifier 2004–NM–25–AD; Amendment 39–14541; AD 2006–07–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, and –300F series airplanes. This AD requires verifying the part and serial numbers of certain main landing gear (MLG) bogie beam pivot pins; replacing those pivot pins with new or overhauled pivot pins if necessary; and ultimately replacing all pivot pins with new, improved pivot pins. This AD also requires repetitive lubrications and inspections of the pivot pin, and related investigative and corrective actions if necessary. This AD results from reports indicating that numerous fractures of the MLG bogie beam pivot pin have been found and that some pivot pins may have had improper rework during manufacture. We are issuing this AD to prevent fracture of the MLG bogie beam pivot pin, which could lead to possible loss of the MLG truck during takeoff or landing and consequent loss of control of the airplane.

DATES: This AD becomes effective May 12, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 12, 2006.

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

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

FOR FURTHER INFORMATION CONTACT: Candice Gerretsen, Aerospace Engineer, Airframe Branch, ANM–120S, Seattle Aircraft Certification Office, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6428; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

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 street address stated in the **ADDRESSES** section.

Discussion

The FAA issued a supplemental notice of proposed rulemaking (SNPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing Model 767–200, –300, and –300F series airplanes. That SNPRM was published in the **Federal Register** on November 9, 2005 (70 FR 67939). That SNPRM proposed to require verifying the part and serial numbers of certain main landing gear (MLG) bogie beam pivot pins; replacing those pivot pins with new or overhauled pivot pins if necessary; and ultimately replacing all pivot pins with new, improved pivot pins. That SNPRM also proposed to require repetitive lubrications and inspections of the pivot pin, and related investigative and corrective actions if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

Request To Revise Paragraph (h)

The Boeing Company requests that the word "inspection" in the last sentence of paragraph (h) of the SNPRM be removed. Boeing notes that there are no inspection requirements in paragraph (h).

We agree. Paragraph (h) contains special lubrication requirements and no inspection requirements. Therefore, we have changed the final rule to clarify that doing the actions in paragraph (j) of the AD terminates the special lubrication requirements of paragraph (h), rather than the inspection requirements.

Request for New Interim Action

The Air Transport Association (ATA), on behalf of American Airlines, does not object to the proposed lubrication and terminating modification, but does not believe any of the three proposed inspection options are viable. ATA and American recommend that the FAA and the manufacturer develop a practical and effective interim action because the daily pin measurements are impractical to perform. ATA and American state that these measurements require accurate and unique tools, and they are also physically awkward. In addition, ATA and American believe that the second proposed option (the ultrasonic inspections) require unique tools and may provide faulty readings due to the stamped part number on the pin. ATA and American believe that these two options for inspections may lead to unnecessary flight cancellation. ATA and American also state that the third option (the detailed inspection) requires pin removal, and there is no value added in removing and reinstalling the old pin. American believes that airlines would prefer to replace the pins at the time of inspection, which may cause an industry shortage of pins.

We partially agree. We agree that ATA and American Airlines have valid concerns, and we recognize that the proposed inspections may not be suitable for each operator. For that reason we carefully considered a variety of inspection methods with varying levels of reliability and corresponding repeat intervals in order to ease the burden on operators. In fact, the manufacturer developed its service information with the participation of the ATA lead airline. Note that no single method is required in order to comply with the AD. By providing alternatives, we consider that a viable inspection method is available to operators. We

disagree with re-developing interim actions because a variety of inspection methods have already been provided. If American Airlines wishes to use a new alternative inspection that provides an acceptable level of safety, American Airlines may request an approval of an alternative method of compliance in accordance with the procedures in paragraph letter (l) of this AD. In regard to the availability of pins, the manufacturer has assured us that sufficient new-material pins will be supplied within the replacement schedule of this AD, so an industry shortage of pins should not occur. Given that we have received 11 reports of failed pins since the issuance of the service information that is cited in this AD, interim inspections are necessary until these pins can be replaced. We have not changed the AD in this regard.

Request for Alternate Terminating Action

Japan Airlines notes that the terminating action provided in paragraph (j) of the NPRM is written on the airplane level rather than the component level. Japan Airlines requests that we include as a terminating action in the AD the installation of an overhauled MLG assembly with a new part number (P/N) 161T1145–5 pivot pin in accordance with Boeing 767 Component Maintenance Manual (CMM) 32–11–30, new bogie beam bushings in accordance with Boeing 767 CMM 32–11–50, and inner cylinder pivot bushings in accordance with Boeing 767 CMM 32–11–40. Japan Airlines believes that installing an overhauled MLG assembly with the new part number is the same action as Part 5 of Boeing Alert Service Bulletin 767–32A0199, Revision 2, dated May 26, 2005.

We partially agree. We infer that Japan Airlines wants to track AD compliance by tracking MLG modification status rather than tracking airplane status. We agree that installing an overhauled MLG assembly with a new part number (P/N) 161T1145–5 pivot pin, is the same as the terminating action provided in paragraph (j) of the NPRM; this action would bring the airplane into compliance. However, by regulation AD compliance is tracked at the airplane level rather than at the component level. For this reason we do not agree with the commenter's request. We have not changed the AD in this regard.

Request To Revise Costs of Compliance

The Boeing Company states that the estimated costs in the SNPRM are incomplete and inaccurate. Boeing states that the costs do not reflect those in the manufacturer's service information. In addition, Boeing points out that the costs are a per-pin cost rather than a per-airplane cost.

We partially agree. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions. In this case, the costs include only the time to do the inspections, lubrications, and replacement. However, we have revised the last two rows of the Estimated Costs table to multiply by two the costs that were listed in the NPRM as "per pivot pin" to more accurately reflect the costs per airplane.

Explanation of Further Change to NPRM

We have removed Note 2 of the NPRM, which gave a definition of a "detailed inspection." Boeing Alert Service Bulletin 767–32A0199, Revision 2, now includes this definition.

Conclusion

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

Costs of Compliance

There are about 857 airplanes of the affected design in the worldwide fleet. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet costs
Pin Inspection	1	$65	None	$65	374	$24,310.
Repetitive Lubrication	1	65	None	$65, per lubrication cycle.	374	$24,310, per lubrication cycle.
Repetitive Inspection Option 1: Length Measurement.	1	65	None	$65, per inpsection cycle.	374	N/A.
Repetitive Inspection Option 2: Ultrasonic Inspection.	2	65	None	$130, per inspection cyle.	374	N/A.
Repetitive Inspection Option 3: Detailed Inspection (with Pivot Pin Removed).	14	65	None	$910, per inspection cycle.	374	N/A.
Pivot Pin Short-term Replacement (Optional), per pivot pin.	12	65	$5,369	$11,518	374	N/A.
Terminating Action (Permanent Replacement).	14	65	$11,686	$24,282	374	$9,081,468.

Authority for This Rulemaking

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

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

products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–14 Boeing: Amendment 39–14541. Docket No. FAA–2004–19866; Directorate Identifier 2004–NM–25–AD.

Effective Date

(a) This AD becomes effective May 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 767–32A0202, dated July 22, 2004, and Boeing Alert Service Bulletin 767–32A0199, Revision 2, dated May 26, 2005.

Unsafe Condition

(d) This AD results from reports indicating that numerous fractures of the main landing gear (MLG) bogie beam pivot pin have been found and that some pivot pins may have had improper rework during manufacture. We are issuing this AD to prevent fracture of the MLG bogie beam pivot pin, which could lead to possible loss of the MLG truck during takeoff or landing and consequent loss of control of the airplane.

Compliance

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

Inspection for Part Number and Serial Number, and Short-Term Replacement

(f) Within 6 months after the effective date of this AD, do a general visual inspection of the part number (P/N) and serial number (S/N) of the MLG bogie beam pivot pin in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0202, dated July 22, 2004. A review of airplane maintenance records is acceptable for compliance with this paragraph if the P/N and S/N of the MLG bogie beam pivot pin can be positively determined from that review.

(1) If the S/N of the pivot pin contains the letters "MA" or "MAM," or if the S/N of the pivot pin is not listed in Figure 1 of the service bulletin, no further action is required by this paragraph.

(2) If any pivot pin has a P/N and S/N that is listed in Figure 1 of the service bulletin: Within 6 months after the effective date of this AD, replace the pivot pin with an overhauled pin having P/N 161T1145–2, –3, or –4, that includes a chrome plate strip as part of the pin overhaul; or with a new-material pin having P/N 161T1145–5; in accordance with paragraph (j) of this AD. Replacing the pin with a new-material pin having P/N 161T1145–5 in accordance with the Accomplishment Instructions of the service bulletin, terminates the requirements of this AD for that pivot pin.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Discrepancy Reporting

(g) If any pivot pin has a P/N and S/N listed in Figure 1 of Boeing Alert Service Bulletin 767–32A0202, dated July 22, 2004, submit a report of the inspection required by paragraph (f) of this AD to the Manager, Airline Support, Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, at the applicable time specified in paragraph (g)(1) or (g)(2) of this AD. The report must include the P/N and S/N of the pivot pin, a description of any discrepancies found, the airplane serial number, and the number of landings and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was done before the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Repetitive Lubrication

(h) Within 30 days after the effective date of this AD: Do the pivot pin special lubrication in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0199, Revision 2, dated May 26, 2005. Repeat the lubrication thereafter at intervals not to exceed 14 days or 50 flight cycles, whichever occurs earlier. Doing the terminating action in paragraph (j) of this AD ends the special lubrication requirements of this paragraph.

Repetitive Pin Inspections

(i) Except as provided by paragraph (i)(1) and (i)(2) of this AD, at the applicable compliance time specified in paragraph 1.E., "Compliance," of Boeing Alert Service Bulletin 767–32A0199, Revision 2, including Appendix A, dated May 26, 2005, do one of the following inspections of the installed pivot pin in accordance with the specified part of the service bulletin: Part 2—Length Measurement, Part 3—Ultrasonic Inspection, or Part 4—Detailed Inspection; and do all applicable related investigative and corrective actions before further flight. Repeat the inspection thereafter at the applicable interval specified in paragraph 1.E., "Compliance," of the service bulletin. Doing the replacement specified in paragraph (j) of this AD ends the inspection requirements of this paragraph.

(1) Where the service bulletin specifies a compliance time based on the release date of Revision 2 of the service bulletin, this AD requires compliance based on the effective date of this AD.

(2) Where the Note at the end of Table 1 in paragraph 1.E., "Compliance," of the service bulletin specifies to contact Boeing for a longer compliance time for "Group 2 airplanes that have been operated at weights less than 353,000 pounds since pivot pin installation": Operators must contact the Manager, Seattle Aircraft Certification Office (ACO), FAA, for an alternative method of compliance in accordance with paragraph (l) of this AD for any requests for a longer compliance time.

Terminating Action

(j) At the applicable compliance time in paragraph (j)(1) or (j)(2) of this AD, replace any MLG bogie beam pivot pin having P/N 161T1145–2, –3, or –4, with a new, improved pivot pin having P/N 161T1145–5; and do all applicable related investigative and corrective actions before further flight; in accordance with Part 5 of the Accomplishment Instructions of Boeing Alert Service Bulletin 767–32A0199, Revision 2, dated May 26, 2005. Where the Note at the end of Table 1 in paragraph 1.E., "Compliance," of the service bulletin specifies to contact Boeing for a longer compliance time for "Group 2 airplanes that have been operated at weights less than 353,000 pounds since pivot pin installation": Operators must contact the Manager, Seattle ACO, for an alternative method of compliance in accordance with paragraph (l) of this AD for any requests for a longer compliance time. Doing the replacement in accordance with this paragraph terminates the requirements of this AD for that pivot pin.

(1) For airplanes identified in the service bulletin as Group 1 airplanes: Within 96 months after the effective date of this AD.

(2) For airplanes identified in the service bulletin as Group 2 airplanes: Within 48 months after the effective date of this AD.

Actions Accomplished According to Previous Issues of Service Bulletin

(k) Replacing any pivot pin with a new, improved pivot pin having P/N 161T1145–5, before the effective date of this AD in accordance with the service bulletins identified in Table 1 of this AD is considered acceptable for compliance with the corresponding action specified in this AD.

TABLE 1.—PREVIOUS ISSUES OF SERVICE BULLETIN

Boeing Alert Service Bulletin	Revision	Date
767–32A0199	Original	April 8, 2004.
767–32A0199	1	July 22, 2004.

Alternative Methods of Compliance (AMOCs)

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

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

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

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 767–32A0202, dated July 22, 2004; and Boeing Alert Service Bulletin 767–32A0199, Revision 2, dated May 26, 2005; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 24, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3194 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23798; Directorate Identifier 2005–NM–162–AD; Amendment 39–14543; AD 2006–07–16]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–400 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier Model DHC–8–400 series airplanes. This AD requires replacing all domed anchor nuts at all attachment locations of the upper fuel access panels of the center wing in the wet bay location with new nuts. This AD results from reported cases of corroded dome anchor nuts at the attachment locations of the upper surface of the fuel access panel of the center wing. We are issuing this AD to prevent corrosion or perforation of domed anchor nuts, which could result in arcing and ignition of fuel vapor in the center wing fuel tank during a lightning strike and consequent explosion of the fuel tank.

DATES: This AD becomes effective May 12, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 12, 2006.

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

Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: George Duckett, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7325; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Bombardier Model DHC–8–400 series airplanes. That NPRM was published in the **Federal Register** on February 8, 2006 (71 FR 6411). That NPRM proposed to require replacing all domed anchor nuts at all attachment locations of the upper fuel access panels of the center wing in the wet bay location with new nuts.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Change to NPRM

We have revised the telephone number in the **FOR FURTHER INFORMATION CONTACT** paragraph.

Conclusion

We have carefully reviewed the available data, and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 20 airplanes of U.S. registry. The required actions will take about 62 work hours per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $300 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $86,600, or $4,330 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–16 Bombardier, Inc. (Formerly de Havilland, Inc.): Amendment 39–14543. Docket No. FAA–2006–23798; Directorate Identifier 2005–NM–162–AD.

Effective Date

(a) This AD becomes effective May 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–400 series airplanes, certificated in any category; serial numbers 4001, and 4003 through 4115 inclusive.

Unsafe Condition

(d) This AD results from reported cases of corroded dome anchor nuts at the attachment locations of the upper surface of the fuel access panel of the center wing. We are issuing this AD to prevent corrosion or perforation of domed anchor nuts, which could result in arcing and ignition of fuel vapor in the center wing fuel tank during a lightning strike and consequent explosion of the fuel tank.

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.

Replacement With Corrosion Resistant Anchor Nuts

(f) At the applicable time in Table 1 of this AD, replace all domed anchor nuts at all attachment locations of the upper fuel access panels of the center wing in the wet bay location with new, corrosion-resistant anchor nuts. Do all the actions in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 84–57–10, Revision "A," dated March 14, 2005.

TABLE 1.—COMPLIANCE TIME

For airplanes having serial number(s)—	On which the inspection(s) specified in—	Do the replacement—
(1) 4108 through 4115 inclusive	None	Within 48 months after the date of issuance of the original standard Canadian airworthiness certificate or the date of issuance of the original Canadian export certificate of airworthiness, or within 2 months after the effective date of this AD, whichever occurs later.
(2) 4001, and 4003 through 4107 inclusive	Bombardier Service Bulletin 84–57–11, dated February 25, 2005; or Revision 'A,' dated March 9, 2005; have been done before the effective date of this AD.	Within 24 months after those inspections, or within 2 months after the effective date of this AD, whichever occurs later.
	Bombardier Service Bulletin 84–57–12, dated March 11, 2005, has been done before the effective date of this AD.	Within 48 months after that inspection, or within 2 months after the effective date of this AD, whichever occurs later.
	Bombardier Service Bulletin 84–57–11, dated February 25, 2005, or Revision 'A,' dated March 9, 2005; or Bombardier Service Bulletin 84–57–12, dated March 11, 2005; has not been done before the effective date of this AD.	Within 3 months after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(h) Canadian airworthiness directive CF–2005–08R1, dated August 10, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Bombardier Service Bulletin 84–57–10, Revision 'A,' dated March 14, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov*; or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

Issued in Renton, Washington, on March 24, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3196 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23672; Directorate Identifier 2005–NM–237–AD; Amendment 39–14544; AD 2006–07–17]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, 727–100C, and 727–200 Series Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Boeing transport category airplanes. This AD requires determining if the terminal fittings of the spars of the wings are made of 7079 aluminum alloy material. For any positive finding, the AD requires doing repetitive inspections for cracks and corrosion of all exposed surfaces of the terminal fitting bores; doing repetitive inspections for cracks, corrosion, and other surface defects, of all exposed surfaces, including the flanges, of the terminal fitting; applying corrosion inhibiting compound to the terminal fittings; and repairing or replacing any cracked, corroded, or defective part with a new part. This AD also provides for an optional terminating action for the repetitive inspections. This AD results from reports of cracking of the terminal fittings of the spars of the wings. We are issuing this AD to detect and correct stress-corrosion cracking of the terminal fittings, which could result in the failure of one of the terminal fitting connections. Such a failure, combined with a similar failure of one of the other three terminal fittings, could result in the inability of the airplane structure to carry fail-safe loads, which could result in loss of structural integrity of the wing attachment points.

DATES: This AD becomes effective May 12, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 12, 2006.

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

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

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

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Boeing transport category airplanes. That NPRM was published in the **Federal Register** on January 25, 2006 (71 FR 4069). That NPRM proposed to require determining if the terminal fittings of the spars of the wings are made of 7079 aluminum alloy material. For any positive finding, the NPRM proposed to require doing repetitive inspections for cracks and corrosion of all exposed surfaces of the terminal fitting bores; doing repetitive inspections for cracks, corrosion, and other surface defects, of all exposed surfaces, including the flanges, of the terminal fitting; applying corrosion inhibiting compound to the terminal fittings; and repairing or replacing any cracked, corroded, or defective part with a new part. The NPRM also proposed to provide an optional terminating action for the repetitive inspections.

Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comment received. The commenter, Boeing, supports the NPRM.

Conclusion

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

Interim Action

This AD is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the extent of the cracking and corrosion of the terminal fittings of the front and rear spars of the wings in the fleet, and to develop additional action if necessary to address the unsafe condition. If additional action is identified, we may consider further rulemaking.

Costs of Compliance

There are about 302 airplanes of the affected design in the worldwide fleet. This AD will affect about 157 airplanes of U.S. registry. The determination of forging number/material identification will take about 4 work hours per airplane, at an average labor rate of $65

per work hour. Based on these figures, the estimated cost of the AD for U.S. operators is $40,820, or $260 per airplane.

Accomplishing the fluorescent dye penetrant and detailed inspections, if required, will take about 16 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, we estimate the cost of the inspections to be $1,040 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 AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–17 Boeing: Amendment 39–14544. Docket No. FAA–2006–23672; Directorate Identifier 2005–NM–237–AD.

Effective Date

(a) This AD becomes effective May 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 727, 727C, 727–100, 727–100C, and 727–200 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 727–57A0185, Revision 1, dated November 3, 2005.

Unsafe Condition

(d) This AD results from reports of cracking of the terminal fittings of the front and rear spars of the wings. We are issuing this AD to detect and correct stress-corrosion cracking of the terminal fittings, which could result in the failure of one of the terminal fitting connections. Such a failure, combined with a similar failure of one of the other three terminal fittings, could result in the inability of the airplane structure to carry fail-safe loads, which could result in loss of structural integrity of the wing attachment points.

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.

Determination of Type of Terminal Fittings, Repetitive Inspections, and Corrective Actions

(f) Within 24 months after the effective date of this AD, determine if the terminal fittings of the front and rear spars of the wings are made of 7079 aluminum alloy material by either inspecting the forging number or doing a conductivity test, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 727–57A0185, Revision 1, dated November 3, 2005.

(1) If the forging number is that identified in Table 1 of this AD, or if the terminal fitting material is not made of 7079 aluminum alloy: No further action is required by this AD for that terminal fitting only.

TABLE 1.—FORGING NUMBERS OF TERMINAL FITTINGS NOT MADE OF 7079 ALUMINUM ALLOY

Forging number of terminal fittings	Location
(i) 65–16214–3	Rear spar of left wing.
(ii) 65–16213–3	Front spar of left wing.
(iii) 65–16214–4	Rear spar of right wing.
(iv) 65–16213–4	Front spar of right wing.

(2) If any forging number other than those identified in Table 1 of this AD is found, or if any forging material is made of 7079 aluminum alloy, or if the material cannot be determined: Within 24 months after the effective date of this AD, do the inspections specified in Table 2 of this AD and apply corrosion inhibiting compound (CIC) to the terminal fittings, and before further flight, repair or replace any cracked, corroded, or defective part found during the inspections. Repeat the inspections thereafter at intervals not to exceed 60 months for the first two repeat intervals, and then thereafter at intervals not to exceed 30 months. Do the inspections, application of CIC, and repair in accordance with the service bulletin, except as provided by paragraphs (h) and (i) of this AD. Do the replacement in accordance with paragraph (g) of this AD.

TABLE 2.—INSPECTIONS

Do—	For—	Of—
(i) A fluorescent dye penetrant inspection	Cracks and corrosion	All exposed surfaces of the terminal fitting bores.
(ii) A detailed inspection	Cracks, corrosion, and other surface defects ..	All exposed surfaces, including the flanges, of the terminal fitting.

Optional Terminating Action

(g) Replacement of any terminal fitting of the front and rear spars of the wings with a new terminal fitting not made of 7079 aluminum alloy, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, ends the repetitive inspections required by paragraph (f)(2) of this AD for that terminal fitting only. For the replacement to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically refer to this AD.

Exception to Service Information

(h) Where the service bulletin specifies to contact Boeing for appropriate action: Before further flight, repair the cracked, corroded, or defective part using a method approved in accordance with the procedures specified in paragraph (l) of this AD, or replace in accordance with paragraph (g) of this AD.

(i) Although the note in paragraph 3.B.7. of the service bulletin specifies procedures for a fluorescent dye penetrant inspection of the body fitting bore and repair if necessary, those procedures are not required by this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install any terminal fitting having forging number 65–16213–1/–2 or 65–16214–1/–2, or install any terminal fitting material made of 7079 aluminum alloy, on any airplane.

Reporting

(k) Submit a report of the findings (both positive and negative) of the initial inspection required by paragraph (f)(2) of this AD to Boeing Commercial Airplanes, Attention: Manager, Airline Support, P.O. Box 3707, Seattle, WA 98124–2207, at the applicable time specified in paragraph (k)(1) or (k)(2) of this AD. The report must include the operator's name, inspection results, a detailed description of any discrepancies found, the airplane serial number, and the number of flight cycles and flight hours on the airplane. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection was done after the effective date of this AD: Submit the report within 30 days after the inspection.

(2) If the inspection was accomplished prior to the effective date of this AD: Submit the report within 30 days after the effective date of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Material Incorporated by Reference

(m) You must use Boeing Alert Service Bulletin 727–57A0185, Revision 1, dated November 3, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 24, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3197 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23674; Directorate Identifier 2005–NM–234–AD; Amendment 39–14545; AD 2006–07–18]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. This AD requires a one-time inspection of the interior of the internal elevator torque tube of each elevator control surface for oxidation and corrosion, and corrective actions. This AD results from corrosion in torque tubes of the elevators found during scheduled maintenance. We are issuing this AD to detect and correct corrosion in the torque tubes of the elevators, which could lead to an unbalanced elevator and result in reduced controllability of the airplane.

DATES: This AD becomes effective May 12, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of May 12, 2006.

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

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes. That NPRM was published in the **Federal Register** on January 25, 2006 (71 FR 4075). That NPRM proposed to require a one-time inspection of the interior of the internal elevator torque tube of each elevator control surface for oxidation and corrosion, and corrective actions.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

Costs of Compliance

This AD will affect about 108 airplanes of U.S. registry. The required actions will take about 3 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, the estimated cost of this AD for U.S. operators is $21,060, or $195 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–18 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–14545. Docket No. FAA–2006–23674; Directorate Identifier 2005–NM–234–AD.

Effective Date

(a) This AD becomes effective May 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to EMBRAER Model EMB–120, –120ER, –120FC, –120QC, and –120RT airplanes, certificated in any category; as identified in EMBRAER Service Bulletin 120–55–0015, dated January 14, 2005.

Unsafe Condition

(d) This AD results from corrosion in torque tubes of the elevators found during scheduled maintenance. We are issuing this AD to detect and correct corrosion in the torque tubes of the elevators, which could lead to an unbalanced elevator and result in 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.

Detailed Inspection and Corrective Actions

(f) Within 4,000 flight hours or 730 days after the effective date of this AD, whichever is first: Do a detailed inspection of the interior of the internal elevator torque tube of each elevator control surface for oxidation and corrosion, and the applicable corrective actions, by accomplishing all of the applicable actions specified in the Accomplishment Instructions of EMBRAER Service Bulletin 120–55–0015, dated January 14, 2005. The corrective actions must be done before further flight after accomplishing the inspection.

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."

Alternative Methods of Compliance (AMOCs)

(g)(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

(h) Brazilian airworthiness directive 2005–10–03, effective November 3, 2005, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use EMBRAER Service Bulletin 120–55–0015, dated January 14, 2005, to perform the actions that are required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference of this document in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 24, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3198 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23635; Directorate Identifier 2005–NM–245–AD; Amendment 39–14546; AD 2006–07–19]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 Airplanes and Model ATR72 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Aerospatiale Model ATR42 airplanes and Model ATR72 airplanes. This AD requires installing protective ramps on trim panel 110VU; and inspecting the protective guard of the standby pitch trim switch to determine if it is missing, damaged, or ineffective, and doing the corrective action if necessary. This AD results from a finding that the protective guard of the standby pitch trim switch, which is installed on the center pedestal, could be damaged or missing. We are issuing this AD to prevent inadvertent activation of the standby pitch trim, which could result in pitch trim runaway and consequent reduced controllability of the airplane.

DATES: This AD becomes effective May 12, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of May 12, 2006.

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

Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for service information identified in this AD.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Examining the Docket

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

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to certain Aerospatiale Model ATR42 airplanes and Model ATR72 airplanes. That NPRM was published in the **Federal Register** on January 19, 2006 (71 FR 3023). That NPRM proposed to require installing protective ramps on trim panel 110VU; and inspecting the protective guard of the standby pitch trim switch to determine if it is missing, damaged, or ineffective, and doing the corrective action if necessary.

Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.

Explanation of Changes to Applicability

We have corrected the applicability in paragraph (c) of the AD to reidentify the modification as "ATR Modification 05450."

We have revised the applicability in paragraph (f) of the AD to identify model designations as published in the most recent type certificate data sheet for the affected models.

Conclusion

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

Costs of Compliance

This AD affects about 69 airplanes of U.S. registry. The required actions will take about 1 work hour per airplane, at an average labor rate of $65 per work hour. Required parts will cost about $465 per airplane. Based on these figures, the estimated cost of the AD for U.S. operators is $36,570, or $530 per airplane.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2006–07–19 Aerospatiale: Amendment 39–14546. Docket No. FAA–2006–23635; Directorate Identifier 2005–NM–245–AD.

Effective Date

(a) This AD becomes effective May 12, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Aerospatiale Model ATR42–200, –300, –320, and –500 airplanes, and Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes, certificated in any category; except those on which ATR Modification 05450 has been incorporated in production.

Unsafe Condition

(d) This AD results from a finding that the protective guard of the standby pitch trim switch, which is installed on the center pedestal, could be damaged or missing. We are issuing this AD to prevent inadvertent activation of the standby pitch trim, which could result in pitch trim runaway 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.

Installation, Inspection, and Corrective Action If Necessary

(f) Within 4 months after the effective date of this AD: Install protective ramps on trim panel 110VU; and do a general visual inspection of the protective guard of the standby pitch trim switch (18CG) to determine if it is missing, damaged, or ineffective, and do the corrective action if applicable; by accomplishing all the applicable actions specified in the Accomplishment Instructions of Avions de Transport Regional Service Bulletin ATR42–92–0010, Revision 1, dated March 11, 2003 (for Model ATR42–200, –300, –320, and –500 airplanes); or Avions de Transport Regional Service Bulletin ATR72–92–1010, Revision 1, dated March 11, 2003 (for Model ATR72–101, –201, –102, –202, –211, –212, and –212A airplanes), as applicable. The corrective action, if required, must be done before further flight after the inspection.

Note 1: For the purposes of this AD, a general visual inspection is: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to ensure visual access to all surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Alternative Methods of Compliance (AMOCs)

(g)(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

(h) French airworthiness directive 2003–106(B) R1, dated April 16, 2003, also addresses the subject of this AD.

Material Incorporated by Reference

(i) You must use Avions de Transport Regional Service Bulletin ATR42–92–0010, Revision 1, dated March 11, 2003; or Avions de Transport Regional Service Bulletin ATR72–92–1010, Revision 1, dated March 11, 2003; as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. Avions de Transport Regional Service Bulletin ATR42–92–0010, Revision 1, dated March 11, 2003, includes the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1, 4, 5, 9, 13	1	March 11, 2003.
2, 3, 6–8, 10–12	Original	February 20, 2003.

Avions de Transport Regional Service Bulletin ATR72–92–1010, Revision 1, dated March 11, 2003, includes the following effective pages:

Page Nos.	Revision level shown on page	Date shown on page
1–3, 7, 11	1	March 11, 2003.
4–6, 8–10	Original	February 20, 2003.

The Director of the Federal Register approved the incorporation by reference of these documents in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Contact Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France, for a copy of this service information. You may review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Room PL–401, Nassif Building, Washington, DC; on the Internet at *http://dms.dot.gov;* or at the National Archives and Records Administration (NARA). For information on the availability of this material at the NARA, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on March 24, 2006.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3199 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

New Animal Drugs; Change of Sponsor; Soluble Bacitracin Methylene Disalicylate and Streptomycin Sulfate Oral Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the

animal drug regulations to reflect a change of sponsor for a new animal drug application (NADA) for bacitracin methylene disalicylate and streptomycin sulfate oral powder from Veterinary Specialties, Inc., to Alpharma Inc.

DATES: This rule is effective April 7, 2006.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Veterinary Specialties, Inc., 387 North Valley Ct., Barrington, IL 60010, has informed FDA that it has transferred ownership of, and all rights and interest in, NADA 65–107 for ENTROMYCIN (bacitracin methylene disalicylate and streptomycin sulfate) Powder to Alpharma Inc., One Executive Dr., Fort Lee, NJ 07024. Accordingly, the regulations are amended in 21 CFR 520.154b to reflect this change of sponsorship and a current format.

Following these changes of sponsorship, Veterinary Specialties, Inc., is no longer the sponsor of an approved application. Accordingly, 21 CFR 510.600(c) is being amended to remove the entries for Veterinary Specialties, Inc.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

■ 2. In § 510.600, in the table in paragraph (c)(1) remove the entry for "Veterinary Specialties, Inc."; and in the table in paragraph (c)(2) remove the entry for "062925".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

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

■ 4. Revise § 520.154b to read as follows:

§ 520.154b Bacitracin methylene disalicylate and streptomycin sulfate powder.

(a) *Specifications.* Each gram of powder contains 200 units bacitracin methylene disalicylate and streptomycin sulfate equivalent to 20 milligrams of streptomycin.

(b) *Sponsor.* See No. 046573 in § 510.600(c) of this chapter.

(c) *Conditions of use in dogs*—(1) *Amount.* Administer 1 level teaspoonful per 10 pounds of body weight three times daily, mixed in a small quantity of liquid or feed.

(2) *Indications for use.* For the treatment of bacterial enteritis caused by pathogens susceptible to bacitracin and streptomycin such as *Escherichia coli*, *Proteus spp.*, *Staphylococcus spp.*, and *Streptococcus spp.*, and for the symptomatic treatment of associated diarrhea.

(3) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: March 30, 2006.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 06–3353 Filed 4–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Pennfield Oil Co. that provides for a 0-day preslaughter withdrawal time following use of chlortetracycline in cattle feed.

DATES: This rule is effective April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov*.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, filed a supplement to NADA 138–935 for PENNCHLOR (chlortetracycline) Type A medicated articles used for making medicated feeds for the treatment of various bacterial diseases of livestock. The supplemental NADA provides for a 0-day withdrawal time before slaughter when Type C medicated feeds containing chlortetracycline are fed to cattle. The application is approved as of February 28, 2006, and the regulations are amended in 21 CFR 558.128 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

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

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.128 [Amended]

■ 2. In § 558.128, amend the table in paragraph (e)(4) in the "Limitations" column as follows:

■ a. In paragraph (ii), remove "To sponsor No. 046573: zero withdrawal time. To sponsor No. 053389: 1 d withdrawal time." and add in its place "To sponsor Nos. 046573 and 048164: zero withdrawal time.";

■ b. In paragraph (iv) in entry 1, remove "To sponsor No. 053389: 1 d withdrawal time. To sponsor No. 046573: zero withdrawal time." and add in its place "To sponsor Nos. 046573 and 048164: zero withdrawal time."; and

■ c. In paragraph (viii) in entries 1 and 2, remove "For sponsor 046573: zero withdrawal time. For sponsor 053389: 1 d withdrawal time." and add in its place "To sponsor Nos. 046573 and 048164: zero withdrawal time.".

Dated: March 30, 2006.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 06–3352 Filed 4–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[CGD 11–06–002]

RIN 1625–AA08

Special Local Regulations for Marine Events; 2006 San Francisco Giants' Opening Night Fireworks Display, San Francisco Bay, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing special local regulations in the navigable waters of San Francisco Bay for the loading, transport, and launching of fireworks used during the 2006 San Francisco Giants' Opening Night Fireworks Display to be held on April 7, 2006. These special local regulations are intended to prohibit vessels and people from entering into or remaining within the regulated areas in order to ensure the safety of participants and spectators.

DATES: This rule is effective from 1 p.m. to 10 p.m. on April 7, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of the docket CGD 11–06–002 and are available for inspection or copying at Coast Guard Sector San Francisco, 278 Yerba Buena Island, San Francisco, California 94130, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Jennifer Green, U.S. Coast Guard Sector San Francisco, at (415) 556–2950 ext. 136.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(3)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Logistical details surrounding the event were not finalized and presented to the Coast Guard in time to draft and publish an NPRM. As such, the event would occur before the rulemaking process was complete. Because of the dangers posed by the pyrotechnics used in this fireworks display, special local regulations are necessary to provide for the safety of event participants, spectator craft, and other vessels transiting the event area. For the safety concerns noted, it is in the public interest to have these regulations in effect during the event.

For the same reasons listed in the previous paragraph, 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**. Any delay in the effective date of this rule would expose mariners to the dangers posed by the pyrotechnics used in this fireworks display.

Background and Purpose

The San Francisco Giants are sponsoring a brief fireworks display on April 7, 2006 in the waters of San Francisco Bay near AT&T Park. The fireworks display is meant for entertainment purposes as a finale to conclude the 2006 San Francisco Giants' Opening Night baseball game. These special local regulations are being issued to establish a temporary regulated area in San Francisco Bay around the fireworks launch barge during loading of the pyrotechnics, during the transit of the barge to the display location, and during the fireworks display. This regulated area around the launch barge is necessary to protect spectators, vessels, and other property from the hazards associated with the pyrotechnics on the fireworks barge. The Coast Guard has granted the event sponsor a marine event permit for the fireworks display.

Discussion of Rule

The Coast Guard is establishing temporary special local regulations on specified waters off of the San Francisco waterfront. During the loading of the fireworks barge, while the barge is being towed to the display location, and until the start of the fireworks display, the special local regulations apply to the navigable waters around and under the fireworks barge within a radius of 100 feet. During the 15-minute fireworks display, the area to which these special local regulations apply will increase in size to encompass the navigable waters around and under the fireworks barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 1 p.m. on April 7, 2006, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 5:30 p.m. and 7:30 p.m. on April 7, 2006. During the fireworks display, scheduled to commence at approximately 9:30 p.m., the fireworks barge will be located approximately 1,000 feet off of Pier 48 in position 37°46′57.2″ N., 122°23′58.0″ W.

The effect of the temporary special local regulations will be to restrict general navigation in the vicinity of the fireworks barge while the fireworks are loaded at Pier 50, during the transit of the fireworks barge, and until the conclusion of the scheduled display. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area. These regulations are needed to keep spectators and vessels a safe distance away from the fireworks barge to ensure the safety of participants, spectators, and transiting vessels.

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.

Although this regulation prevents traffic from transiting a portion of San Francisco Bay during the event, the effect of this regulation will not be significant due to the small size and limited duration of the regulated area. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. We expect the economic impact of this

rule to be so minimal that a full Regulatory Evaluation is unnecessary.

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 is not expected to have a significant economic impact on a substantial number of entities, some of which may be small entities. This rule may affect owners and operators of pleasure craft engaged in recreational activities and sightseeing. This rule will not have a significant economic impact on a substantial number of small entities for several reasons: (i) Vessel traffic can pass safely around the area, (ii) vessels engaged in recreational activities and sightseeing have ample space outside of the affected portion of San Francisco Bay to engage in these activities, (iii) this rule will encompass only a small portion of the waterway for a limited period of time, and (iv) the maritime public will be advised in advance of these special local regulations via public notice to mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provisions, options for compliance, or assistance in understanding this rule, please contact Lieutenant Junior Grade Jennifer Green, U.S. Coast Guard Sector San Francisco, at (510) 437–5873.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, 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, this rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation.

A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 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 temporary § 100.35-T11–075 to read as follows:

§ 100.35–T11–075 2006 San Francisco Giants' Opening Night Fireworks Display, San Francisco Bay, CA.

(a) *Regulated Area.* A regulated area is established for the waters of San Francisco Bay surrounding a barge used as the launch platform for a fireworks display to be held at the conclusion of the 2006 San Francisco Giants' Opening Night baseball game. During the loading of the fireworks barge, during the transit of the fireworks barge to the display location, and until the start of the fireworks display, the regulated area encompasses the navigable waters around and under the fireworks barge within a radius of 100 feet. During the 15 minutes preceding the fireworks display and during the 15-minute fireworks display itself, the regulated area increases in size to encompass the navigable waters around and under the fireworks launch barge within a radius of 1,000 feet. Loading of the pyrotechnics onto the fireworks barge is scheduled to commence at 1 p.m. on April 7, 2006, and will take place at Pier 50 in San Francisco. Towing of the barge from Pier 50 to the display location is scheduled to take place between 5:30 p.m. and 7:30 p.m. on April 7, 2006. During the fireworks display, scheduled to start at approximately 9:30 p.m. on April 7, 2006, the barge will be located approximately 1,000 feet off of San Francisco Pier 48 in position 37°46′57.2″ N., 122°23′58.0″ W.

(b) *Definitions.* (1) Coast Guard Patrol Commander means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Sector San Francisco.

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

(c) *Special Local Regulations.* (1) Except for 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 shall:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by an Official Patrol.

(d) *Enforcement Period.* This section will be enforced from 1 p.m. to 10 p.m. on April 7, 2006. If the event concludes prior to the scheduled termination time, the Coast Guard will cease enforcement of the special local regulations and will announce that fact via Broadcast Notice to Mariners.

Dated: March 29, 2006.

K.J. Eldridge,

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

[FR Doc. 06–3414 Filed 4–5–06; 3:09 pm]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[EPA–HQ–OAR–2004–0095; FRL–8054–3]

RIN 2060–AM21

Amendments to Vehicle Inspection Maintenance Program Requirements to Address the 8-Hour National Ambient Air Quality Standard for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: Today's action revises the Motor Vehicle Inspection/Maintenance (I/M) regulation to update submission and implementation deadlines and other timing-related requirements to more appropriately reflect the implementation schedule for meeting the 8-hour National Ambient Air Quality Standard (NAAQS) for ozone. This action is directed specifically at those areas that will be newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard; the conditions under which an existing I/M program under the 1-hour ozone standard must continue operation under the 8-hour standard are addressed through application of the Clean Air Act's anti-backsliding provisions.

DATES: This rule is effective May 8, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. OAR–2004–0095. All documents in the docket are listed on the *http://www.regulations.gov* Web site. 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 electronically through *http://www.regulations.gov* or in hard copy at the EPA Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington, DC 20004. 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.

FOR FURTHER INFORMATION CONTACT: David Sosnowski, Office of Transportation and Air Quality, Transportation and Regional Programs Division, 2000 Traverwood, Ann Arbor, Michigan 48105. Telephone (734) 214–4823.

SUPPLEMENTARY INFORMATION:

II. Summary of Action

When the I/M rule was first published in November 1992, some of the deadlines were expressed relatively (e.g., "within X years of Y * * *")

while others were set as explicit dates (e.g., "no later than November 15, 1993 * * *"). Several of those explicit deadlines have since passed or otherwise been rendered irrelevant due to actions such as the revocation of the 1-hour ozone standard (the majority of deadlines contained in the original 1992 I/M rule were linked to the 1-hour standard and its associated milestones for attainment and interim progress). Today's action finalizes the revisions to the I/M rule that were proposed January 6, 2005 (70 FR 1314). These revisions are aimed at such timing-related references as submission dates, start dates, evaluation dates, and other milestones and/or deadlines and are being made to make the I/M rule relevant for those areas that will be newly required to begin I/M programs as a result of being designated and classified under the 8-hour ozone standard.

This action does not revise or establish new requirements for existing I/M programs that were established in response to the 1-hour ozone standard. In general, if an existing I/M area was not able to redesignate to attainment for the 1-hour ozone standard prior to revocation of that standard (and is also designated as non-attainment for the 8-hour standard, regardless of classification or subpart) then that area is required to continue implementing an I/M program until it has attained the 8-hour ozone standard under EPA's anti-backsliding regulations promulgated to facilitate transition from planning for the 1-hour to the 8-hour ozone standard. Readers interested in learning more about how the Clean Air Act's (Act or CAA) anti-backsliding provisions apply to I/M under the 8-hour standard should consult 40 CFR 51.905 ("Transition from the 1-hour NAAQS to the 8-hour NAAQS and anti-backsliding") as well as the May 12, 2004 memorandum concerning exceptions to the general anti-backsliding policy for certain maintenance areas signed by Tom Helms and Leila Cook entitled "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs," a copy of which is contained in the docket for this rulemaking.

Upon becoming effective, today's action will: (1) Revise §§ 51.351 and 51.352 (the basic and enhanced I/M performance standards) to update the start date and model year coverage associated with specific elements of the basic and enhanced I/M performance standards as well as to set the benchmark comparison date(s) for performance standard modeling purposes that better reflects milestones associated with the 8-hour ozone standard; (2) revise § 51.353 (network type and program evaluation) to make the deadline for beginning the first round of program evaluation testing (which is currently listed as "no later than November 30, 1998") a relative deadline keyed to the date of program start up; (3) amend § 51.360 (waivers and compliance via diagnostic inspection) so that the deadline for establishing full waiver limits for those basic I/M programs choosing to allow waivers (currently, "no later than January 1, 1998") becomes "January 1, 1998, or coincident with program start up, whichever is later"; (4) update § 51.372 (state implementation plan submissions) to set the I/M SIP submission deadline for areas newly required to adopt I/M programs under the 8-hour ozone standard as 1 year after the effective date of today's action or 1 year after the effective date of designation and classification under the 8-hour standard (whichever is later); (5) update § 51.373 (implementation deadlines) to establish the implementation deadline for new I/M programs required under the 8-hour standard as 4 years after the effective date of designation and classification under the 8-hour ozone standard; and (6) revise § 51.373 (implementation deadlines) to clarify that the deadline for beginning OBD testing for areas newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard is "coincident with program start up."

III. Authority

Authority for the rule changes being made as a result of today's action is granted to EPA by sections 182, 184, 187, and 118 of the Clean Air Act as amended (42 U.S.C. 7401, et seq.).

IV. Public Participation

Written comments on the January 6, 2005 Notice of Proposed Rulemaking (NPRM) were received from three sources prior to the close of the public comment period on February 7, 2005. The commenters included two state environmental agencies and one I/M testing contractor. Several of the comments received fell well outside the scope of the January 6, 2005 proposal and often requested additional flexibility for existing I/M programs which EPA does not have the legal authority to grant under the Clean Air Act as it is currently written. These comments, while noted, will not be addressed in today's action. No comments were received on the proposed amendments to the basic I/M waiver requirements or implementation deadlines, and these amendments will therefore be finalized as proposed. (For more information on these amendments, please see the January 6, 2005 proposal, section IV(C), "Amendments to the Basic I/M Waiver Requirements," and section IV(E), "Amendments to Update Implementation Deadlines.") The remaining comments are summarized and responded to below, under the proposed revision(s) to which they apply.

A. Amendments to the I/M Performance Standards

1. Summary of Proposal

EPA proposed to revise the basic I/M performance standard for areas newly required to implement a basic I/M program as a result of being designated and classified under the 8-hour ozone NAAQS as follows: (1) Start date: Four years after the effective date of designation and classification under the 8-hour ozone standard; [1] (2) emission test types: Model Year (MY) 1968–2000—idle, MY 2001 and newer—onboard diagnostic (OBD) check; (3) evaluation date: six years after the effective date of designation and classification under the 8-hour ozone standard rounded to the nearest July. All other basic I/M performance design elements remain the same as previously promulgated for 1-hour ozone non-attainment areas (see 40 CFR 51.352). For areas newly required to implement an enhanced I/M program as a result of being designated and classified under the 8-hour ozone NAAQS, EPA proposed establishing an 8-hour ozone enhanced I/M performance standard which assumes the same program design elements as the current low enhanced I/M performance standard defined at 40 CFR 51.351(g) but with the following exceptions: (1) Start date: four years after the effective date of designation and classification under the 8-hour ozone standard; (2) emission test types: MY 1968–2000—idle, MY 2001 and newer—onboard diagnostic (OBD) check; (3) evaluation dates: six years after the effective date of designation and classification under the 8-hour ozone standard rounded to the nearest July and the applicable attainment date (as defined under 40 CFR 51.903), also rounded to the nearest July.

Per the proposal, a state's program would be considered in compliance with the relevant 8-hour ozone I/M performance standard if it can

[1] For those 8-hour ozone nonattainment areas required to implement I/M for the first time as a result of being designated and classified on April 30, 2004 (with an effective date of June 15, 2004) this translates into a start date of no later than June 15, 2008.

demonstrate through modeling that the proposed program will achieve the same (or better) percent reduction in HC (and, for enhanced programs, NO_X) as achieved by the performance standard model program based upon an evaluation date set to the six year anniversary of the effective date of the area's designation and classification under the 8-hour ozone standard, rounded to the nearest July. Areas required to implement enhanced I/M as a result of being designated and classified under the 8-hour ozone standard also must demonstrate through modeling that the same (or better) percent reduction as achieved under the six-year anniversary milestone above is still being achieved as of the first July following the area's applicable attainment date under the 8-hour ozone standard. The intent of these proposed amendments was to tie the performance standard deadlines to the date of an area's designation and classification under the 8-hour ozone standard and to provide areas newly required to implement I/M under that standard a level of flexibility comparable to that currently available to areas required to do I/M under the 1-hour ozone standard.

2. Summary of Comments

Both state commenters supported those elements of the proposal aimed at providing I/M areas flexibility to adopt I/M programs that rely primarily or wholly upon OBD-only testing of the OBD-equipped in-use fleet. One I/M contractor objected to the proposed revisions to the I/M rule's performance standard requirements. In their comments, the contractor claimed that EPA's proposed revisions would essentially eliminate the difference between basic and enhanced I/M. According to this commenter, as a result of EPA's proposal, the primary difference between the basic and enhanced performance standards would be that the basic performance standard would actually be more rigorous with regard to compliance and waiver rates—a difference which seemingly contradicts the clear meaning of the words "basic" and "enhanced," and runs contrary to Congressional intent. According to this commenter, the enhanced performance standard (as proposed) would include only two enhancements relative to the basic performance standard: (1) The inclusion of on-road testing, as required by the CAA, and (2) the inclusion of visual inspections that are largely redundant for OBD-equipped vehicles. According to this commenter, the CAA requires all I/M programs (and, by implication, all I/M performance standards) to include OBD testing of OBD-equipped vehicles from MY 1996 and newer. Therefore, EPA's proposal to limit OBD testing coverage in the basic and enhanced performance standards to MY 2001 and newer vehicles is in direct contradiction of the clear language of the Act. The commenter concluded that EPA's proposed changes would artificially and unreasonably lower existing I/M performance standards.

3. Response to Comments

EPA does not agree with the characterization that it's proposal essentially eliminates the difference between basic and enhanced I/M. Omitted from the differences cited in the comments provided is perhaps the most significant statutory difference between basic and enhanced I/M: The fact that enhanced I/M programs are required to include the testing of light-duty trucks while basic I/M programs are not. This is an important difference, especially in light of the significant growth in the light-duty truck and Sport Utility Vehicle (SUV) markets since passage of the Clean Air Act Amendments of 1990. It is because of this difference that the proposed enhanced I/M performance standard for 8-hour ozone non-attainment areas is and will continue to be significantly more stringent than the proposed basic I/M performance standard, even as the inclusion of OBD testing narrows the previous gap between I/M tailpipe test types.

EPA also does not agree with the claim that the CAA requires all I/M programs (and, by implication, all I/M performance standards) to include OBD testing of MY 1996 and newer, OBD-equipped vehicles. While the CAA does require all I/M programs to include OBD testing and the repair of vehicles that fail the OBD test, it does not specify model year coverage, nor does it suggest that I/M programs test all such vehicles without exception. Further, the statute does not explicitly require the inclusion of OBD testing as part of the performance standards. In fact, to require such comprehensive testing coverage in the performance standards would effectively bar states from exempting the newest such vehicles from testing, even though the statistical likelihood that such vehicles will fail the test and require repair is exceedingly small. Such a requirement would also all but eliminate the states' ability to otherwise tailor I/M programs to meet local needs. Lastly, suggesting that the CAA requires EPA to adopt the most rigorous performance standards possible ignores the Act's mandate that states be allowed flexibility in designing their I/M programs and also contradicts a DC Circuit Court's ruling in which the court found "* * * it clear that the statute does not mandate that the EPA set the most stringent possible annual performance standard. With its repeated emphasis on state flexibility, echoed in the legislative history, see S. Rep. No. 101–228, 101st Cong., 2d Sess. 39, reprinted in 1990 U.S.C.C.A.N. 3425, the statute appears to place a premium on state ability to shuffle aspects of the program to meet the EPA's requirements and individual state needs * * *. Implicitly, at least, Congress thus appears to have contemplated considerable EPA discretion in standard-setting" (*Natural Resource Defense Council, Inc.* v. *EPA*, 92–1535—DC Cir. 1994).

Given EPA's conclusion that the only objections raised with regard to this portion of EPA's proposal were inaccurate in both their substance and conclusions, today's action finalizes the January 6, 2005 I/M performance standard revisions as proposed.

B. Amendments to Program Evaluation Requirements

1. Summary of Proposal

Section 182(c)(3)(C) of the 1990 CAA requires that each state subject to enhanced I/M shall "biennially prepare a report to the Administrator which assesses the emission reductions achieved by the program required under this paragraph based upon data collected during the inspection and repair of vehicles. The methods used to assess the emission reductions shall be those established by the Administrator." Section 51.353 of EPA's current I/M rule (network type and program evaluation) provides additional detail on how this requirement is to be met, including minimum sampling requirements and specific deadlines by which program evaluation testing must begin. Currently, § 51.353(c)(4) of the I/M rule specifies that the first round of program evaluation testing is to begin "no later than November 30, 1998," which EPA proposed to change to "no later than 1 year after program start-up."

2. Summary of Comments

Although EPA did not receive comment on the specific amendment proposed for this section of the I/M rule, one commenter did comment on program evaluation in general, requesting that EPA provide "* * * [c]larification of program evaluation and program evaluation sampling requirements, particularly as applied to programs utilizing test procedures

specified in applicable performance standards (i.e. IM240 and/or OBD). Illinois is currently collecting mass emissions data (full-term IM240) on 0.1% of 1981 and newer vehicles, including 1996 and newer vehicles subject to OBD. This evaluation testing (particularly on OBD-equipped vehicles) has proven to be somewhat controversial and unpopular with vehicle owners."

3. Response to Comments

Given that the comment in question does not address the proposal under consideration, today's action will finalize the amendment as proposed. Concerning the request for additional guidance and clarification with regard to the program evaluation requirements in general—and with regard to OBD-equipped vehicles in particular—EPA will take this request into consideration in its development of future I/M guidance.

C. Amendments to Update SIP Submission Deadlines

1. Summary of Proposal

EPA proposed to update § 51.372 (State Implementation Plan submissions) to clarify that areas newly required to implement I/M as a result of being designated and classified under the 8-hour ozone standard are required to submit their I/M SIPs, whether basic or enhanced, within 1 year after the effective date of today's action, i.e., May 8, 2007. For areas newly designated as non-attainment under the 8-hour ozone standard after the effective date of today's action, EPA proposed that those areas submit their I/M SIPs within 1 year of the effective date of their designation and classification.

2. Summary of Comments

One state commenter objected to the proposed SIP submission deadlines, maintaining that EPA's publication schedule and the State's own administrative procedures requirements will make it all but impossible to promulgate the necessary regulations before the summer of 2007.

3. Response to Comments

Based upon its experience with the submission of I/M SIPs in response to the 1990 Act's requirements for 1-hour I/M programs, EPA considers the proposed 1 year timeframe a reasonable amount of time in which to develop and submit an I/M SIP, given the states' need to secure legal authority, develop implementing regulations, provide notice-and-comment opportunity, etc. As noted by EPA both in it's general preamble published after the 1990 amendments to the Act and in the 1992 I/M rules (57 FR 13498, 13517 and 57 FR 52950, 52970, respectively) EPA has long believed that one year is an appropriate time period for states to obtain necessary legislative authority to adopt and submit an I/M program. EPA will therefore finalize this section of the January 6, 2005 notice as proposed.

V. Discussion of Major Issues

A. Impact on Existing I/M Programs

Today's action does not change the requirements that currently apply to existing I/M programs adopted as a result of an area being classified under the 1-hour ozone standard. Readers interested in learning the conditions under which an existing 1-hour I/M program must continue operation under the 8-hour standard should consult 40 CFR 51.905 ("Transition from the 1-hour NAAQS to the 8-hour NAAQS and anti-backsliding").[2]

B. Impact on Future I/M Programs

Today's action is intended specifically for those areas which currently do not perform I/M testing, but will be required to do so as a result of being designated and classified under the 8-hour ozone standard. Upon becoming effective, these amendments will allow future I/M program areas the flexibility necessary to design from the ground up reasonable, cost effective, motorist-friendly I/M programs that take full advantage of advances in vehicle and vehicle-testing technology, as well as fleet turnover.

VI. Economic Costs and Benefits

Today's action provides areas new to I/M under the 8-hour ozone standard the ability to adopt more cost effective and efficient programs than would otherwise be the case. This action will therefore lessen rather than increase the potential economic burden on states of implementing such programs. Furthermore, this rule does not affect existing state programs meeting the previously applicable requirements.

VII. Statutory and Executive Order Review

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866, (58 FR 51735; October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant "regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or otherwise adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this final rule is a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden because it does not change the pre-existing information collection requirements for I/M programs. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 51, subpart S) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2060–0252, EPA ICR number 1613.02. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and

[2] Additional guidance on anti-backsliding under the 8-hour standard and how it applies to certain basic I/M programs can be found in the May 12, 2004 memo signed by Tom Helms, Ozone Policy and Strategies Group, and Leila Cook, State Measures and Conformity Group, entitled "1-Hour Ozone Maintenance Plans Containing Basic I/M Programs," a copy of which is contained in the docket for this rulemaking.

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

The Regulatory Flexibility Act generally requires an Agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the Agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards. (See 13 CFR 121.); (2) a 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 rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule will not impose any requirements on small entities. This action will impact States, not small entities. Furthermore, the action will lessen rather than increase the potential economic burden on the States of implementing such programs. In addition, States are under no obligation, legal or otherwise, to modify existing plans meeting the previously applicable requirements as a result of today's action.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this action itself does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. The primary purpose of this action is to amend the existing Federal I/M regulations to provide flexibility in how the regulations cover areas newly designated non-attainment under the 8-hour ozone ambient air quality standards. Clean Air Act sections 182(b)(4) and 182(c)(3) require the applicability of I/M to such areas. Thus, although this action explains how I/M should be conducted, it merely implements already established law that imposes I/M requirements and does not itself impose requirements that may result in expenditures of $100 million or more in any year. The intention of this action is to improve the I/M regulation by implementing the rule in a more practicable manner and/or to clarify I/M requirements that already exist. None of these amendments impose any additional burdens beyond that already imposed by applicable federal law; thus, today's action is not subject to the requirements of sections 202 and 205 of the UMRA and EPA has not prepared a statement with respect to budgetary impacts.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" 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 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 Clean Air Act requires I/M to apply in certain non-attainment areas as a matter of law, and this action merely provides areas newly designated as non-attainment under the 8-hour ozone standard additional flexibility with regard to meeting their existing statutory obligations. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175: "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." The phrase "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."

Today's amendments to the I/M rule do not significantly or uniquely affect the communities of Indian tribal governments. Specifically, today's action incorporates into the I/M rule flexible provisions addressing newly designated 8-hour ozone non-attainment areas subject to I/M requirements under the Act, and these provisions do 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. Accordingly, the requirements of Executive Order 13175 are not applicable to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and 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 EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety 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 the Agency.

Today's action is not subject to Executive Order 13045 because it is not economically significant within the meaning of Executive Order 12866 and does not involve the consideration of relative environmental health or safety risks.

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

This rule is not subject to Executive Order 13211, "Action Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355; May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this action is not likely to have any significant adverse effects on energy supply.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law No. 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so 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) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's action does not involve technical standards. Therefore, the use of voluntary consensus standards does not apply to this action.

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. The EPA will submit this final 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 final rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on May 8, 2006.

K. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 2006. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review, nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such a rule or action. This action may not be challenged later in proceeding to enforce its requirements. (See section 307(b)(2) of the Administrative Procedures Act.)

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Transportation.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, part 51 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

■ 1. The authority citation for part 51 continues to read as follows:

Authority: 23 U.S.C. 101; 42 U.S.C. 7401–7671q.

■ 2. Section 51.351 is amended by revising paragraph (c) and adding a new paragraph (i) to read as follows:

§ 51.351 Enhanced I/M performance standard.

* * * * *

(c) On-board diagnostics (OBD). For those areas required to implement an enhanced I/M program prior to the effective date of designation and classifications under the 8-hour ozone standard, the performance standard shall include inspection of all model year 1996 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 2002 for such testing. For areas required to implement enhanced I/M as a result of designation and classification under the 8-hour ozone standard, the performance standard defined in paragraph (i) of this section shall include inspection of all model year 2001 and later light-duty vehicles and light-duty trucks equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(i) *Enhanced performance standard for areas designated and classified under the 8-hour ozone standard.* Areas required to implement an enhanced I/M program as a result of being designated and classified under the 8-hour ozone standard, must meet or exceed the HC and NO_X emission reductions achieved by the model program defined as follows:

(1) *Network type.* Centralized testing.

(2) *Start date.* 4 years after the effective date of designation and classification under the 8-hour ozone standard.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and newer vehicles.

(5) *Vehicle type coverage.* Light duty vehicles, and light duty trucks, rated up to 8,500 pounds GVWR.

(6) *Emission test type.* Idle testing (as described in appendix B of this subpart) for 1968–2000 vehicles; onboard diagnostic checks on 2001 and newer vehicles.

(7) *Emission standards.* Those specified in 40 CFR part 85, subpart W.

(8) *Emission control device inspections.* Visual inspection of the positive crankcase ventilation valve on all 1968 through 1971 model year vehicles, inclusive, and of the exhaust gas recirculation valve on all 1972 and newer model year vehicles.

(9) *Evaporative system function checks.* None, with the exception of those performed by the OBD system on vehicles so-equipped and only for model year 2001 and newer vehicles.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate.* A 3% waiver rate, as a percentage of failed vehicles.

(12) *Compliance rate.* A 96% compliance rate.

(13) *Evaluation date.* Enhanced I/M program areas subject to the provisions of this paragraph (i) shall be shown to obtain the same or lower emission levels for HC and NO_X as the model program described in this paragraph assuming an evaluation date set 6 years after the effective date of designation and classification under the 8-hour ozone standard (rounded to the nearest July) to within +/−0.02 gpm. Subject programs shall demonstrate through modeling the ability to maintain this percent level of emission reduction (or better) through their applicable attainment date for the 8-hour ozone standard, also rounded to the nearest July.

■ 3. Section 51.352 is amended by revising paragraph (c) and adding a new paragraph (e) to read as follows:

§ 51.352 Basic I/M performance standard.

* * * * *

(c) On-board diagnostics (OBD). For those areas required to implement a basic I/M program prior to the effective date of designation and classification under the 8-hour ozone standard, the performance standard shall include inspection of all model year 1996 and later light-duty vehicles equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 2002 for such testing. For areas required to implement basic I/M as a result of designation and classification under the 8-hour ozone standard, the performance standard defined in paragraph (e) of this section shall include inspection of all model year 2001 and later light-duty vehicles equipped with certified on-board diagnostic systems, and repair of malfunctions or system deterioration identified by or affecting OBD systems as specified in § 51.357, and assuming a start date of 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(e) *Basic performance standard for areas designated non-attainment for the 8-hour ozone standard.* Areas required to implement a basic I/M program as a result of being designated and classified under the 8-hour ozone standard, must meet or exceed the emission reductions achieved by the model program defined for the applicable ozone precursor(s):

(1) *Network type.* Centralized testing.

(2) *Start date.* 4 years after the effective date of designation and classification under the 8-hour ozone standard.

(3) *Test frequency.* Annual testing.

(4) *Model year coverage.* Testing of 1968 and newer vehicles.

(5) *Vehicle type coverage.* Light duty vehicles.

(6) *Emission test type.* Idle testing (as described in appendix B of this subpart) for 1968–2000 vehicles; onboard diagnostic checks on 2001 and newer vehicles.

(7) *Emission standards.* Those specified in 40 CFR part 85, subpart W.

(8) *Emission control device inspections.* None.

(9) *Evaporative system function checks.* None, with the exception of those performed by the OBD system on vehicles so-equipped and only for model year 2001 and newer vehicles.

(10) *Stringency.* A 20% emission test failure rate among pre-1981 model year vehicles.

(11) *Waiver rate.* A 0% waiver rate, as a percentage of failed vehicles.

(12) *Compliance rate.* A 100% compliance rate.

(13) *Evaluation date.* Basic I/M program areas subject to the provisions of this paragraph (e) shall be shown to obtain the same or lower emission levels as the model program described in this paragraph by an evaluation date set 6 years after the effective date of designation and classification under the 8-hour ozone standard (rounded to the nearest July) for the applicable ozone precursor(s).

■ 4. Section 51.353 is amended by revising paragraph (c)(4) to read as follows:

§ 51.353 Network type and program evaluation.

* * * * *

(c) * * *

(4) The program evaluation test data shall be submitted to EPA and shall be capable of providing accurate information about the overall effectiveness of an I/M program, such evaluation to begin no later than 1 year after program start-up.

* * * * *

■ 5. Section 51.360 is amended by revising paragraph (a)(6) to read as follows:

§ 51.360 Waivers and compliance via diagnostic inspection.

* * * * *

(a) * * *

(6) In basic programs, a minimum of $75 for pre-81 vehicles and $200 for 1981 and newer vehicles shall be spent in order to qualify for a waiver. These model year cutoffs and the associated dollar limits shall be in full effect by January 1, 1998, or coincident with program start-up, whichever is later. Prior to January 1, 1998, States may adopt any minimum expenditure commensurate with the waiver rate committed to for the purposes of modeling compliance with the basic I/M performance standard.

* * * * *

■ 6. Section 51.372 is amended by removing and reserving paragraphs (b)(1) and (b)(3) and by revising paragraph (b)(2) to read as follows:

§ 51.372 State implementation plan submissions.

* * * * *

(b) * * *

(1) [Reserved]

(2) A SIP revision required as a result of designation for a National Ambient Air Quality Standard in place prior to implementation of the 8-hour ozone standard and including all necessary legal authority and the items specified in paragraphs (a)(1) through (a)(8) of this section, shall be submitted no later than November 15, 1993. For non-attainment areas designated and classified under the 8-hour ozone standard, a SIP revision including all necessary legal authority and the items specified in paragraphs (a)(1) through (a)(8) of this section, shall be submitted by May 8, 2007 or 1 year after the effective date of designation and classification under the 8-hour ozone National Ambient Air Quality Standard, whichever is later.

(3) [Reserved]

* * * * *

■ 7. Section 51.373 is amended by revising paragraphs (b) and (d), by removing and reserving paragraph (e),

and by adding a new paragraph (h) to read as follows:

§ 51.373 Implementation deadlines.

* * * * *

(b) For areas newly required to implement basic I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.

* * * * *

(d) For areas newly required to implement enhanced I/M as a result of designation under the 8-hour ozone standard, the required program shall be fully implemented no later than 4 years after the effective date of designation and classification under the 8-hour ozone standard.

(e) [Reserved]

* * * * *

(h) For areas newly required to implement either a basic or enhanced I/M program as a result of being designated and classified under the 8-hour ozone standard, such programs shall begin OBD testing on subject OBD-equipped vehicles coincident with program start-up.

* * * * *

[FR Doc. 06–3317 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0197, FRL–8054–6]

RIN 2060–AK09

Ethylene Oxide Emissions Standards for Sterilization Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final decision.

SUMMARY: This action finalizes our decision not to revise the Ethylene Oxide Emission Standards for Sterilization Facilities, originally promulgated on December 6, 1994. Within 8 years of promulgating these standards, the Clean Air Act directs us to assess the risk and to promulgate more stringent standards if necessary to protect public health with an ample margin of safety and to prevent adverse environmental effects. Also, within 8 years of promulgating the national emission standards, the Clean Air Act requires us to review and revise the standards as necessary, taking into account developments in practices, processes, and control technologies. Today's action reflects our findings that after conducting these risk and technology reviews, no additional control requirements are warranted.

DATES: *Effective Date:* April 7, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0197. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air and Radiation Docket, EPA/DC, EPA West, Room B–102, 1301 Constitution Ave., NW., Washington, DC. The Public Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: *General and Technical Information.* Mr. David Markwordt, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Coatings and Chemicals Group (E–143–01), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–0837, facsimile number (919) 685–3195, electronic mail (e-mail) address: *markwordt.david@epa.gov.*

Residual Risk Assessment Information. Mr. Mark Morris, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539–02), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–5470, facsimile number (919) 541–0840, electronic mail (e-mail) address: *morris.mark@epa.gov.*

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated categories and entities affected by the national emission standards include:

Category	NAICS[a]	(SIC[b])	Examples of regulated entities
Industry	329112 339113 325412 311942 311423	(3841) (3842) (2834) (2099) (2034)	Operations at major and area sources that sterilize or fumigate medical supplies, pharmaceuticals, and spice.
Federal/State/ local/tribal governments.			

[a] North American Industry Classification System.
[b] Standard Industrial Classification.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the national emission standards. To determine whether your facility would be affected by the national emission standards, you should examine the applicability criteria in 40 CFR 63.360. If you have any questions regarding the applicability of the national emission standards to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's final decision will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final decision will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under Clean Air Act (CAA) section 307(b)(1), judicial review of this final decision is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 6, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final decision may not be challenged separately in civil or criminal proceedings brought to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "[i]f the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What Is the Statutory Authority for These Actions?

Section 112 of the CAA establishes a comprehensive regulatory process to address hazardous air pollutants (HAP) from stationary sources. In implementing this process, we have identified categories of sources emitting one or more of the HAP listed in the CAA, and ethylene oxide sterilization facilities are identified as both major and area source categories. Section 112(d) requires us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as major sources), as well as for certain area sources emitting less than those amounts. These technology-based national emission standards for HAP (NESHAP) must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and nonair health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. We promulgated the National Emission Standards for Ethylene Oxide Commercial Sterilization and Fumigation Operations Facilities at 59 FR 62585 on December 6, 1994 (Ethylene Oxide Sterilization NESHAP). As for area sources, we established MACT standards for certain emission points pursuant to section 112(d)(2) and generally available control technology (GACT) standards for other emission points pursuant to section 112(d)(5).

In what is referred to as the technology review, we are required under section 112(d)(6) of the CAA to review these technology-based standards no less frequently than every 8 years. Further, if we conclude that a revision is necessary, we have the authority to revise these standards, taking into account "developments in practices, processes, and control technologies."

The residual risk review is described in section 112(f) of the CAA. Section 112(f)(2) requires us to determine for each section 112(d) source category, except area source categories for which we issued a GACT standard, whether the NESHAP protects public health with an ample margin of safety (AMOS). If the NESHAP for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million," we must decide whether additional reductions are necessary to provide an ample margin of safety. As part of this decision, we may consider costs, technological feasibility, uncertainties, or other relevant factors. We must determine whether more stringent standards are necessary to prevent adverse environmental effect (defined in section 112(a)(7)) as "any significant and widespread adverse effect, which may reasonably be anticipated to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas," but in making this decision we must consider cost, energy, safety, and other relevant factors.

B. What Did We Propose?

We promulgated the Ethylene Oxide Sterilization NESHAP in 1994. On October 24, 2005 (70 FR 61406), we proposed not to revise the Ethylene Oxide Sterilization NESHAP and requested public comments on the residual risk and technology review for the Ethylene Oxide Sterilization NESHAP.

II. Risk and Technology Review Final Decision

In our proposal, we presented the analysis and conclusions on residual risk and technology review, concluding that the maximum individual cancer risk for this source category already meets the level we generally consider acceptable, and that further control requirements would achieve, at best, minimal emission and risk reductions at a very high cost from emission vents controlled with MACT at both major and area sources. Further, the analyses showed that both the chronic noncancer and acute risks from this source category are below their respective relevant health thresholds, and that there are no adverse impacts to the environment (i.e., ecological risks). As a result, we concluded that no additional control should be required because an ample margin of safety (considering cost, technical feasibility, and other factors) has been achieved by the NESHAP MACT requirements for the

ethylene oxide major and area source categories.

In the technology review, we concluded that additional controls at existing sources would achieve, at best, minimal emission and risk reductions at a very high cost. Additionally, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the original standards in 1994 which represent the best controls that can be implemented nationally. Thus, we proposed no additional controls under the technology review under CAA section 112(d)(6).

We conclude in this rulemaking, as proposed, that there is not a need to revise the Ethylene Oxide Sterilization NESHAP under the provisions of CAA section 112(f) or 112(d)(6).

III. Summary of Comments and Responses

The proposal provided a 45-day comment period ending December 8, 2005. We received comments from eight commenters. Commenters included three State agencies, one State and local agency association, three industry trade associations, and one coalition of trade associations. We have considered the public comments as discussed below and did not find that the comments changed any of our determinations.

1. Source Category Risk Approach

Comment: One commenter disagreed that EPA can utilize approaches different from that specified in the Benzene NESHAP. The commenter believes that EPA misinterpreted the CAA legislative history stating that EPA could read section 112(f)(2)(B) as directing it to use the interpretation set out in the Benzene NESHAP or use approaches affording the same level of protection. According to the commenter, EPA must use only the Benzene NESHAP approach and cannot use any other approach by relying on a Senate manager's statement that EPA should interpret the section 112(f)(2)(B) requirement to establish standards reflecting an ample margin of safety in a manner no less protective of the most exposed individual than the policy set forth in the Benzene NESHAP.

Response: In the proposed rule, EPA followed the approach set out in National Emission Standards for Hazardous Air Pollutants (NESAHP): Benzene Emissions from Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, Benzene Equipment Leaks, and Coke By-Product Recovery Plants, 54 FR 38044 (September 14, 1989). EPA used the two-step decision process of first determining a level of acceptable risk followed by finding an ample margin of safety. As the commenter concedes EPA's approach is fully consistent with the Benzene NESHAP approach and therefore acceptable. Since, in this instance, EPA did not use any other approach, the comment is not applicable to this particular rulemaking.

Comment: One commenter stated that Congress was clear in requiring EPA to evaluate only the risks from an individual source category or subcategory in establishing residual risk standards. The commenter stated EPA should not include the risk from area sources in determining whether risks from the major source category exceeds the one-in-a-million risk trigger under section 112(f)(2) or in making judgments on acceptable risk and ample margin of safety for major sources.

Response: We listed separate source categories for major and area commercial sterilization facilities under section 112(c) of the CAA, and we agree with the commenter that a separate determination of acceptable risk and ample margin of safety should be made for each source category under section 112(f) of the CAA. Our risk assessment for commercial sterilization facilities includes risk estimates for all known sources, including mostly major sources and the area sources with the highest emissions. Only two area sources have estimated cancer risk greater than 1 in 1 million (highest is 20 in 1 million), and no area sources have modeled ethylene oxide concentrations near the reference concentration. For additional information on our risk assessment of area sources see section III.2.

In the preamble to the proposed rule, we stated that risks were acceptable considering all known sources (major and area sources) and that an ample margin of safety was achieved without control requirements beyond those in the current standards. Although the preamble to the proposed rule does not discuss separate determinations of acceptability and ample margin of safety for major and areas source categories, our conclusions would not have changed whether we had considered all sources together, or separately for major sources and area sources.

Comment: One commenter stated that EPA did not comprehensively consider the plants' impacts because it did not consider all HAP emissions or all source categories at the facilities. The commenter stated that in considering only a portion of the facilities' emissions, the determination of low-risk is based on a distorted and unrealistic view of their impact. The commenter included an example of a facility that uses and emits methyl bromide from its sterilization operations.

Response: In general, there is much less co-location of commercial sterilization operations with other industrial processes than there is for the typical source category. Many facilities are contract sterilizers with no co-location. In some cases, there is co-location of commercial sterilizers with other processes, such as pharmaceuticals production. We do not have sufficiently detailed information to analyze the possibility of controls on the various specific sources within a facility but outside the commercial sterilizer source category. As a result, we could not evaluate the existing levels of control or the potential for applying additional controls at the facilities where HAP emissions from other sources contribute to the risk. Therefore, we did not consider emissions from co-located sources in our decision to require no additional controls because we did not have the control cost and feasibility data necessary to do so. Our position on the potential consideration of co-located source categories is fully discussed in the coke oven final rule (70 FR 19995–19998).

Regarding emissions of methyl bromide, we searched the 1999 National Emissions Inventory (NEI) for the 76 identified ethylene oxide sterilization facilities to determine which emit both ethylene oxide and methyl bromide. According to the NEI data base, only two of the facilities emit both HAP. One of the facilities emits so little methyl bromide that the risk estimates would not be significantly different if methyl bromide were considered. The other facility emits more methyl bromide than ethylene oxide (about 2 to 3 times as much). However, because there is no cancer unit risk estimate for methyl bromide, the emissions of methyl bromide would not affect our cancer risk estimate (3 in 1 million). Considering effects other than cancer, the reference concentration for chronic inhalation exposures to methyl bromide is approximately six times lower than that of ethylene oxide. Consequently, the methyl bromide emissions could result in an increase in our estimate of the hazard index for the facility by as much as a factor of 20 (assuming similar source release parameters like stack height, etc.). This is not a concern because our current estimate of the hazard index is 0.001, and a factor greater than 1000 would be necessary before a hazard index of 1 would be exceeded. Therefore, even considering these emissions would not change our regulatory decision.

Comment: One commenter stated EPA should not conduct a separate technology review for ethylene oxide sources under section 112(d)(6). The commenter believes that once EPA has made a residual risk determination under section 112(f), emissions from the category are "safe," and the Agency must find a revision of the MACT standard under section 112(d)(6) is unnecessary. Another commenter urges EPA to avoid expenditure of resources by conducting further analysis geared to tightening control requirements when an AMOS has already been provided by a protective standard.

Response: As discussed in the preamble to the proposed rule, we performed a separate technology review for both the area and major source categories under section 112(d)(6), but recommended no changes to the NESHAP. It is possible that future advances in control technologies for this source category could allow for meaningful emission reductions at a reasonable cost. We believe that the technology review required under section 112(d)(6) was appropriate here.

Comment: One commenter believes that there is no mechanism to revisit section 112(f) assessments and, therefore, that the risk assessment should be corrected to account for reasonably foreseeable changes that could result in increased risk, such as new residences being built closer to the facility, or increases in actual emissions within the current permit limitations.

Response: We disagree with the commenter's assertion that there is no mechanism to revisit risks from the source category, and that, therefore, the risk assessment must include consideration of foreseeable changes that may occur in the future. We have the authority to revisit (and revise, if necessary) any rulemaking if there is sufficient evidence that changes within the affected industry or significant improvements to science suggests the public is exposed to significant increases in risk as compared to the risk assessment prepared for the rulemaking (e.g., CAA section 301).

2. Area Source Category—MACT and GACT

Comment: One commenter stated that EPA has discretion to not regulate MACT or GACT area sources under section 112(f). One commenter stated that EPA has the discretion under section 112(f)(5) of the CAA to avoid residual risk analysis for area sources subject to GACT, regardless of whether such sources are subject to both MACT and GACT under section 112(d). The commenter reasoned that since the CAA does not require residual risk analysis of area sources subject to GACT only, area sources subject to more stringent requirements under both MACT and GACT should also not require analysis. Two commenters stated that EPA should not omit sources subject to GACT from the residual risk analysis because it could result in serious underestimation of the health risks from area sources. One commenter believes that both section 112(d) and 112(f) of the CAA were satisfied when area sources were addressed under section 112(d)(5); since GACT controls alone would have been sufficient for EPA to avoid a residual risk review, clearly requiring both MACT and GACT controls obviates the need for any further Agency review of these area sources under both 112(d) and 112(f).

Response: For area source ethylene oxide sterilizers, EPA issued MACT standards under section 112(d)(2) for sterilizer vents and chamber exhaust vents and GACT standards for aeration room vents. EPA undertook a section 112(f)(2) analysis for area source emissions standards that were issued as MACT standards and exercised its discretion under section 112(f)(5) to not do an 112(f)(2) analysis for those emission points for which GACT standards were established. EPA appreciates the responses to its question regarding the range of discretion that the Agency has under section 112(f)(5) and will consider the points made by commenters in developing future relevant proposals. However, for purposes of this rulemaking, EPA believes that it exercised its discretion appropriately by conducting a 112(f)(2) analysis for those emission points subject to MACT standards.

3. Risk Analysis Assumptions

Comment: Two commenters stated that EPA must use the best available science to establish a cancer unit risk estimate for ethylene oxide, and that it is scientifically indefensible for EPA to use the California Environmental Protection Agency cancer unit risk factor in risk assessments when more recent epidemiological data exist. One commenter states that the basis for the California unit risk factor (mononuclear leukemia in female rats) is not relevant to humans. One commenter states that a sound scientific estimate of the cancer unit risk for ethylene oxide has been derived by Kirman, *et al.*[1] based partly on two epidemiological studies[2,3] that include exposure estimates for more than 20,000 workers. Two commenters stated that EPA should plan to reevaluate the risks associated with this source category whenever the new cancer risk estimate is made final, regardless of whether or not the final rule has been published.

Response: In estimating potential excess cancer risk associated with ethylene oxide sterilizers, EPA has considered all available, credible, and relevant information. In 1985, the EPA health assessment for ethylene oxide[4] concluded, based on the information available at that time, that ethylene oxide is "probably carcinogenic to humans," and derived a cancer unit risk estimate. California EPA subsequently relied on the EPA assessment in developing their cancer unit risk estimate using the same rat study as basis.[5,6] The California EPA assessment received concurrence from their Scientific Review Panel.[7] In 1994, the International Agency for Research on Cancer categorized ethylene oxide in their Group 1 (Carcinogenic to Humans). In 2000, the United States Department of Health and Human Services revised its listing for ethylene oxide to "known to be a human carcinogen" in the Ninth Report on Carcinogens.[8] Support for this listing includes epidemiological evidence from studies of workers exposed to ethylene oxide and animal studies. Cancer in both human and animal studies has included multiple sites, including reported associations with leukemia.[9]

[1] Kirman, C.R., *et al.* 2004. Addressing nonlinearity in the exposure-response relationship for a genotoxic carcinogen: cancer potency estimates for ethylene oxide. *Risk Anal.* 24(5):1165–83.

[2] Steenland, K.L., *et al.* 1991. Mortality among workers exposed to ethylene oxide. *New England Journal of Medicine*, 324(20):1402–1407.

[3] Teta, M.J., *et al.* 1993. Mortality study of ethylene oxide workers in chemical manufacturing: A 10-year update. *British Journal of Industrial Medicine*, 50:704–709.

[4] USEPA. 1985. Health Assessment Document for Ethylene Oxide, EPA/600/8–84/009F. Office of Health and Environmental Assessment, Washington, DC.

[5] CARB. 1987. Staff Report: Initial Statement of Reasons For Proposed Rulemaking and Report of the Scientific Review Panel. California Air Resources Board. *http://www/oehha.ca.gov/air/toxic contaminants/pdf1/ethylene%20oxide.pdf.*

[6] CalEPA. 2005. Technical Support Document for Describing Available Cancer Potency Factors. California Environmental Protection Agency, Office of Environmental Health Hazard Assessment. Air Toxicology and Epidemiology Section. *http://www.oehha.ca.gov/air/hot_spots/pdf/May2005 Hotspots.pdf.*

[7] CARB. *op. cit.*

[8] DHHS. 2000. Report on Carcinogens, Eleventh Edition; United States Department of Health and Human Services, Public Health Service, National Toxicology Program.

[9] DHHS, *op. cit.*

EPA is currently developing an updated cancer assessment for ethylene oxide (*http://cfpub.epa.gov/iristrac/index.cfm?fuseaction=viewChemical.showChemical&iris&_sub_id=897*). EPA's updated cancer assessment for ethylene oxide will consider all relevant literature and studies including the Kirman, *et al.* paper and the epidemiological studies referred to in the comment. However, until completion of that assessment and given the peer review status of the work done by the State of California, the California EPA unit risk estimate must be considered to be the best-available science and has therefore been used in assessing cancer risk for this rulemaking.

The EPA cancer assessment will not receive external peer review until mid-2006, which is after the promulgation date of the residual risk rule for this source category. Our authority to revisit any rulemaking is addressed in Section III.1.

Comment: Several commenters stated that Acute Exposure Guideline Levels (AEGL), Emergency Response Planning Guidelines (ERPG), and Immediately Dangerous to Life or Health (IDLH) values should not be used in assessing the risk from acute exposures to ethylene oxide because these values were developed for accidental release planning and are not appropriate for assessing daily human exposure scenarios. One commenter stated that EPA's acute assessment discounted the use of the National Institute of Occupational Safety and Health (NIOSH) 10-minute ceiling value of 5 parts per million (ppm) (9 mg/m^3), and noted that EPA's maximum acute exposure estimate for this source category (23 mg/m^3) exceeds the NIOSH value. Two of the commenters stated that EPA's new acute reference concentration value for ethylene oxide should be used when it becomes available.

Response: We are continuing to evaluate the role of acute health effects in our section 112(f) analysis. In any event, we have concluded that this source category does not present acute health risks that warrant further regulation. Our authority to revisit any rulemaking is addressed in Section III.1.

Comment: Three commenters stated that EPA should consider the risks from chronic exposure at facility property boundaries instead of at the geographic centroids of census blocks. The commenters state that census blocks can be large and that the point of maximum impact can be far from the census block centroid.

Response: We believe that, in a national-scale assessment of lifetime inhalation exposures and health risks from a category of facilities, it is appropriate to identify exposure locations where an individual may reasonably be expected to spend a majority of his or her lifetime. Further, we believe that it is appropriate to use census block information on where people actually reside, rather than points on a fence-line, to locate the estimation of exposures and risks to individuals living near such facilities.

Census blocks are the finest resolution available for the nationwide population data set (as developed by the U.S. Census Bureau); each is typically comprised of approximately 40 people or about 10 households. In our risk assessments, we use the geographic centroid of each census block containing at least one person to represent the location where all the people in that census block live. The census block centroid with the highest estimated exposure then becomes the location of maximum exposure, and the entire population of that census block experiences the maximum individual risk. In some cases, since actual residence locations may be closer to or farther from facility emission points, this may result in an overestimate or underestimate of the actual chronic risks. However, given the relatively small dimensions of census blocks in densely-populated areas and the relatively large number of sources being assessed for any given source category, we believe that these uncertainties are small and do not bias our estimates of maximum individual risks for a source category.

Comment: One commenter stated that the risk assessment for ethylene oxide sterilization facilities lacks a reliable facility-specific inventory of emissions. The commenter stated that EPA did not acquire the ethylene oxide usage records and emissions data needed to perform the residual risk assessment, but instead relied on industry-supplied data from the Toxics Release Inventory (TRI) and the National Emissions Inventory (NEI). The commenter implied that EPA should have requested data from facilities under its authority under section 114 of the CAA. The commenter strongly recommend that the EPA re-conduct this residual risk assessment by requiring the sources subject to this proposed rulemaking to report five years of usage data and/or throughput data. The EPA should then select the maximum usage value to calculate emissions for each facility in the residual risk assessment based on the current percent control requirement prescribed by the NESHAP. One commenter stated that EPA's risk assessment considered only actual reported emissions instead of potential emissions. The commenter stated that since facility emissions (and associated impacts) could increase over time for a variety of reasons EPA should have considered the risks based on potential emissions. Two commenters stated residual risk assessments must be performed on allowable emissions to fully understand the potential public health implications for a source category.

Response: Our position on the use of allowable emissions is fully discussed in the final Coke Oven Batteries NESHAP (70 FR 19998–19999).

We used reported emissions (from the National Emissions Inventory database and company reports) for the ethylene oxide source category risk analysis. The reported emissions are a mix of actual, allowable, and potential emissions, but we do not have the necessary information to distinguish between the types of data reported. While we generally recognize that most facilities over comply with the MACT requirements (thus, actual emissions are lower than allowable), we do not have data to determine the degree of over compliance that facilities are achieving or reporting. For example, chamber exhaust emissions in some cases may be lower because they are controlled by some States although not by EPA because of the safety issue discussed in the proposal. The removal of chamber exhaust vent controls by the States would likely result in a significant increase in risk. However, as discussed in section III.3, we have no basis to change conclusions presented in the proposal and will not impose controls on chamber exhaust emissions for either new or existing facilities.

The commenter also recommended we use the authority under section 114 of the CAA to gather data rather than use data bases like the TRI or data submitted by the facility but not under authority of the CAA. Since the data ultimately is supplied by the facility we believe the data is comparable to data gathered under section 114. The commenter also recommended we base rule-making on 5 years of data. The commenter provided no basis which demonstrates modeled results based on the previous 5 years are any more representative of risks than those based on the most recent emission estimates.

4. Additional Issues

Comment: One commenter stated EPA concludes that "further controls would not meaningfully reduce emissions from emission vents" but indicates that the Agency is aware that the State of California's requirement for the main sterilizer vent is 99.9 percent as contrasted with the 99 percent MACT requirement. The Agency therefore requests further data from the public in the form of five questions dealing primarily with technology and costs. (70 FR 61408) EPA does not clearly set out what decision criteria will be applied to the information that the public is being asked to supply. The commenter also stated that EPA does not explicitly state the decision criteria used in making ample margin of safety decisions under the residual risk program. Specifically, the commenter stated that for ethylene oxide sterilization facilities, the EPA did not explicitly state that incremental emission control costs were compared to incremental risk reductions in making the ample margin of safety decision, as it has in past rulemakings such as the Benzene NESHAP and radionuclide standards. The commenter also stated that the public would better understand and accept EPA's ample margin of safety decisions if EPA were to better educate the public regarding its estimated risk estimates and the contribution of stationary sources to the overall risk. One commenter stated EPA indicates that the agency had considered increasing the emission reduction limit to 99.9 percent in the national emission standards but that "we do not have data to confirm that facilities are capable of achieving 99.9 percent on a continuous basis" (70 FR 61409). The commenter encouraged EPA to review state data on this source category, including information from New York and New Jersey, indicating that such levels are achievable. Another commenter stated that EPA needs to re-evaluate the control technologies and exemptions from the current NESHAP. The emissions of ethylene oxide from the largest fugitive sources evaluated in the residual risk assessment equates to over 28 tons per year. The EPA should assess the risk reductions associated with the additional control percentages on the sterilizer chamber vent and aeration room vents for sources which use between 1 and less than 10 tons and 10 tons or greater per year of ethylene oxide.

Response: EPA stated in the proposal, "we considered the estimate of health risk and other health information along with additional factors relating to the appropriate level of control, including costs and economic impacts of controls, technological feasibility, uncertainties, and other relevant factors." We used the same decision criteria today to address the data submitted in response to the proposal. The EPA does not have definitive criteria such as a specific cost effectiveness value which dictates the final outcome.

We solicited comments concerning both the control effectiveness and costs associated with increasing the performance limit to 99.9 percent. The summary test data submitted by the commenters lend support to the technical feasibility of complying with a higher limit for the main sterilizer vent. Commenters did not supply data supporting continuous compliance with a higher limit.

Many of the outlet concentrations are reported at the detection limit. This implies the measurement devices were showing zero concentration of ethylene oxide in the outlet stream. Because both the 1990s and 2000s data show no ethylene oxide in the outlet stream, we believe there isn't a measurable difference in the control efficiencies of the tested devices.

We did not receive comments addressing the safe control of emissions from the chamber exhaust vent. As we stated in the "Memorandum: Technology Review and Residual Risk Data Development for the Ethylene Oxide Commercial Sterilization NESHAP" (Docket # EPA–HQ–OAQ–2003–0197–0027): "Many, if not all, source facilities utilize a chamber exhaust fan while personnel are removing product from the sterilization chamber. This fan removes ethylene oxide off-gassing from the product. The Ethylene Oxide Commercial Sterilization and Fumigation NESHAP promulgated in 1994 (59 FR 62585) required control of the chamber exhaust vent. In 1997 there were a series of explosions associated with control of the chamber exhaust vent (62 FR 64736). We subsequently reassessed the control requirements and removed the requirement to control the chamber exhaust in November 2001 (66 FR 55577); the Agency continues to believe that the action taken in 2001 is reasonable and we have found no safe way to impose controls on the chamber exhaust vents. Approximately 1 percent of the ethylene oxide used in the process is emitted through the chamber exhaust vent."

Therefore, we have no basis to change conclusions presented in the proposal and will not impose controls on chamber exhaust emissions for either new or existing facilities.

To assess the risk reduction associated with increasing the stringency of the standard for the main sterilizer vent from 99 to 99.9 percent emission reduction, we looked at the five facilities with the highest estimated cancer risk (ETO 4, 5, 8, 18, 19, and 27). Only one commenter provided cost estimates to retrofit existing facilities to comply with a higher standard. This commenter estimated the retrofit costs to be approximately one million dollars per facility. Emissions from these five facilities range from approximately 0.3 to 4.5 tons per year and total 18 tons per year (Docket item EPA–HQ–OAR–2003–0197—0003, Table 2). Approximately 12 of the 18 tons are fugitive emissions from the chamber exhaust. Residual emissions i.e., emissions after the application of emission control devices from the main chamber and aeration vents for the five facilities with the highest estimated cancer risk (ETO 4, 5, 8, 18, 19, and 27) range from approximately 0 to 1.6 tons per year, and are 4 tons per year in total (Docket item EPA–HQ–OAR–2003–0197—0003 Table 2). Based on a $1 million capital investment per facility, a 7 percent discount rate, and a 10-year capital recovery period, the average cost per ton of emissions reduced for the five facilities is approximately $35,000. These estimates assume facilities complying with the 99 percent limit do not in practice achieve a higher efficiency than 99 percent and there are zero emissions from control devices complying with the 99.9 percent limit.

To test the commenter's assertion that more stringent controls on the main and aeration vents would reduce risk levels, we remodeled the five facilities with the highest estimated cancer risk (ETO 4, 5, 8, 18, 19, and 27) with the assumption that main vent and aeration vent emissions are essentially zero after a 99.9 percent reduction and we compared the results to the baseline risks estimates. The risks (estimated to one significant figure) changed for only one facility, for which the maximum individual risk was reduced from 90 in 1 million to 80 in 1 million. Although we did not remodel all facilities, similar results would be expected for the other facilities because of the high chamber exhaust emissions relative to the emissions from the main vent and aeration vent after 99 percent control. Therefore, for existing major sources we conclude in our ample margin of safety decision that further controls would achieve minimal emission and risk reductions at a very high cost.

For existing sources under the 8 year review, in the proposal we stated, "Because the three vents associated

with these facilities (i.e., the main sterilization, aeration room, and chamber exhaust emission vents) are the same for both major and area sources, the conclusions concerning technology apply to both source categories. We found that additional controls for emission vents controlled with either MACT or GACT would achieve at best, minimal emission and risk reductions at a very high cost. In our review, we did not identify any significant developments in practices, processes, or control technologies since promulgation of the national emission standards in 1994." The analysis presented above for the five facilities with the highest risk support the conclusion presented in the proposal.

As stated above we believe for new main sterilizer vent and aeration control, increasing the stringency of the control limit from 99 to 99.9 percent achieves only a minimal reduction in risk. Therefore, EPA does not find it necessary to increase the control limit for new facilities.

Comment: One commenter stated EPA appropriately concluded that changes to the standard are not required to satisfy section 112(f) of the CAA. However, the commenter stated EPA did not provide sufficient data in the preamble to the document on the AMOS analysis that led to this conclusion, including its cost versus risk-reduction benefit analysis for a possible increase in the EO reduction requirements from 99 percent to 99.9 percent.

Response: As we stated in the proposal, we did not find any new technology or alternative controls for any vents for commercial EO sterilizers. We also found no data to support the addition of down stream control devices to existing controls as a way of further reducing emissions. We, therefore, concluded that further controls would achieve minimal reductions at a high cost. While we were aware of more stringent control limits at the State level, we stated in the proposal that we did not have data to confirm that all facilities are capable of meeting a more stringent level and solicited both control and cost data. Based on the data received from commenters we performed a risk assessment which confirmed our earlier qualitative conclusion.

Comment: One commenter stated EPA's language suggests that the decision criterion is whether further reductions would "meaningfully reduce emissions or risks." (70 FR 61408) The commenter stated that introducing the term "meaningfully reduce" without further explaining it is potentially misleading to the public. They were further troubled by the continued insertion of the word "emissions" in this formulation of the decision criteria as reinforced by the specific questions asked in this **Federal Register** notice.

Response: EPA presented, in the proposal, its analysis and conclusions on residual risk and technology review. Under section 112(d)(6), EPA is required to review the MACT standards and revise them as necessary taking into account developments in practices, processes and control technologies, no less frequently than every 8 years. Section 112(f)(2) requires us to determine for each source category whether the NESHAP protect public health with an ample margin of safety and prevent an adverse environmental effect. After reviewing and analyzing data under both these sections, EPA concluded that further controls would not meaningfully reduce emissions or risks. EPA reached this conclusion because the maximum individual cancer risk for this source category is already at the level we generally consider acceptable and that further controls would achieve minimal risk reduction at a very high cost. In addition, our conclusion referred to both emissions and risk because EPA's analysis included both the technology review and a residual risk determination.

Comment: One commenter stated EPA's CAA section 112(d)(6) review of the source category correctly concluded that the NESHAP standards did not need to be revised. However, the commenter stated that EPA reached this conclusion after conducting an independent technology review instead of basing it on the conclusions of EPA's CAA section 112(f)(2) analysis, which showed that the source category achieves an AMOS that is not limited by cost or technological feasibility concerns. The commenter believes that EPA should have based its determination that further controls under 112(d)(6) are not required through the 112(f) AMOS determination. According to the commenter, EPA did not need to conduct a separate technology review because it considered the need for additional controls in its AMOS analysis. The commenter goes on to state that where the AMOS is based in large part on cost or technical feasibility concerns, which according to the commenter was not the case with EO sterilizer facilities, then further future review under CAA section 112(d)(6) may remain viable and additional controls may not be precluded if feasible control measures are identified. Further, the commenter states that in evaluating whether action is necessary under CAA section 112(d)(6), EPA should not apply a "bright line" 1 in 1 million standard for cancer risks, nor a similar "bright line" standard for non-cancer risks.

Response: Section 112(d)(6) of the CAA requires EPA to review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under section 112 no less often than every 8 years. We disagree, therefore, that the Agency did not need to conduct a separate technology review because it considered, among other factors, the need for additional controls under its 112(f) analysis. As we noted in the preamble to the Coke Ovens residual risk rule, the findings that underlie a section 112(f) determination should be key factors in making any subsequent section 112(d)(6) determinations. However, as the word "subsequent" indicates, we believe that we are obligated to perform the initial section 112(d)(6) analysis. Because the timing for the initial section 112(d)(6) analysis coincides with those of the residual risk analysis, it is appropriate for the Agency to conduct both analyses at the same time and for the results of the risk analysis to impact future section 112(d)(6) technology reviews. However, we agree with the commenters that a revision is not necessarily required under section 112(d)(6) even if cancer risks are greater than or equal to 1 in 1 million. For example, it may be the case that a technology review is performed, but no change in the standard results from that review. In the preamble to the residual risk rule for Coke Ovens, we have applied a similar logic to the need for subsequent technology revisions under section 112(d)(6). As we stated in the Coke Ovens rule, if the ample margin of safety analysis for a section 112(f) standard shows that the remaining risk for non-threshold pollutants falls below 1 in 1 million and for threshold pollutants falls below a similar threshold of safety, then further revision should not be needed because an ample margin of safety has already been assured.

We generally agree that where an AMOS is based on cost or technical feasibility future review under § 112(d)(6) may require additional controls if feasible control measures are identified. If the availability and/or costs of technology are part of the rationale for the ample margin of safety determination, it is reasonable to conclude that changes in those costs or in the availability of technology could alter our conclusions regarding the ample margin of safety. For this reason, we agree that revisions may be

appropriate if the ample margin of safety established by the residual risk process considers cost or technical feasibility. In the EO proposal, we noted that while some states required the facilities to meet a more stringent standard, we believed that the costs and feasibility concerns for implementing such a standard did not make adopting this standard a reasonable alternative. In addition, we noted in the preamble to the EO proposal that EPA had evaluated new technologies and alternatives during our investigation of the safety issue regarding chamber exhaust vents and concluded that controls on those vents were not technologically feasible and additional controls on these vents were limited because of the safety issues. [For a full discussion of the safety issues, see 66 FR Notice 55577.]

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulation is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified us that it considers this a "significant regulatory action" within the meaning of the Executive Order. We have submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. However, OMB has previously approved the information collection requirements for the national emissions standards under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0283, EPA ICR number 1666.06. A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

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

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

We have established a public docket for this action, which includes the ICR, under Docket ID number EPA–HQ–OAR–2003–0197, which can be found in *http://www.regulations.gov*. Today's final decision will not change the burden estimates from those developed and approved in 1994 for the national emission standards.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administrations' 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 decision on small entities, we have concluded that this action will not have a significant economic impact on a substantial number of small entities. We are taking no further action at this time to revise the national emission standards. Thus, the final decision will not impose any requirements on small entities. Today's final decision on the residual risk assessment and technology review for the national emission standards imposes no additional burden on facilities impacted by the national emission standards.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 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 by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 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 section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small

governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that today's final decision does not contain a Federal mandate that may result in expenditures of $100 million or more to State, local, and tribal governments in the aggregate, or to the private sector in any 1 year. Therefore, today's final decision is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, today's final decision does not significantly or uniquely affect small governments because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, today's final decision is not subject to section 203 of the UMRA.

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."

Today's final decision does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of the Executive Order do not apply to today's final decision.

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 us 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."

Today's final decision does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's final decision.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

Today's final decision is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because, as explained earlier, the Agency does not have reason to believe the environmental health or safety risk addressed by this action present a disproportionate risk to children.

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

Today's final decision is not an "economically significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that today's final decision is not likely to have any adverse energy impacts.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, all Federal agencies are required to use voluntary consensus standards (VCS) in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA requires Federal agencies to provide Congress, through annual reports to OMB, with explanations when the agency does not use available and applicable VCS.

Today's final decision does not involve technical standards. Therefore, the requirements of the NTTAA are not applicable.

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. We will submit a report containing this final decision 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 final decision 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). The final decision becomes effective on April 7, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–3314 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2003–0161, FRL–8054–2]

RIN 2060–AK23

National Emission Standards for Magnetic Tape Manufacturing Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: On December 15, 1994, we promulgated national emission standards for hazardous air pollutants for Magnetic Tape Manufacturing Operations. The standards limit and control emissions of hazardous air pollutants that are known or suspected to cause cancer or have other serious health or environmental effect.

Section 112(f)(2) of the Clean Air Act directs EPA to assess the risk remaining (residual risk) after the application of national emission standards for hazardous air pollutants controls and to promulgate more stringent standards, if necessary, to protect public health with an ample margin of safety and to prevent adverse environmental effects. Also, section 112(d)(6) of the Clean Air Act requires EPA to review and revise the national emission standard for hazardous air pollutants, as necessary, taking into account developments in practices, processes, and control technologies. On October 24, 2005, based on the findings from our residual risk and technology review, we proposed no further action to revise the national emission standards for hazardous air pollutants and requested public comment. Today's final action responds to public comments received on the proposed action and announces EPA's final decision not to revise the standards.

DATES: This final action is effective on April 7, 2006.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0161. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the HQ EPA Docket Center, Docket ID No. EPA–HQ–OAR–2003–0161, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the HQ EPA Docket Center is (202) 566–1742. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For questions about the final action, contact Mr. H. Lynn Dail, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Natural Resources and Commerce Group (C539–03), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–2363; fax number: (919) 541–5689; e-mail address: *dail.lynn@epa.gov*. For questions on the residual risk analysis, contact Ms. Maria Pimentel, U.S. EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C404–01), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5280; fax number: (919) 541–0840; e-mail address: *pimentel.maria@epa.gov*.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The regulated categories and entities affected by the national emission standards for hazardous air pollutants (NESHAP) include:

Category	NAICS [a] code	Examples of regulated entities
Industry	334613 322222 325992	Operations at major sources that are engaged in the surface coating of magnetic tape.
Federal government		Not affected.
State, local, tribal government		Not affected.

[a] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the Magnetic Tape NESHAP. To determine whether your facility would be affected by the Magnetic Tape NESHAP, you should examine the applicability criteria in 40 CFR part 63.701(a) of subpart EE (NESHAP for Magnetic Tape Manufacturing Operations). If you have any questions regarding the applicability of the Magnetic Tape NESHAP to a particular entity, contact Mr. Leonard Lazarus, U.S. EPA, Office of Enforcement and Compliance Assurance, Office of Compliance, Air Compliance Branch (2223A), Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–6369; fax number: (202) 564–0050; e-mail address: *lazarus.leonard@epa.gov*.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final action will also be available on the World Wide Web through the Technology Transfer Network (TTN). Following signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg*. The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this final decision is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit by June 6, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to a rule or procedure raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final decision may not be challenged separately in civil or criminal proceedings brought to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for us to convene a proceeding for reconsideration, "if the person raising an objection can demonstrate to the EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to us should submit a Petition for

Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave., NW., Washington, DC 20004.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What Is the Statutory Authority for This Action?

Section 112 of the Clean Air Act (CAA) establishes a two-stage regulatory process to address emissions of hazardous air pollutants (HAP) from stationary sources. In the first stage, after EPA has identified categories of sources emitting one or more of the HAP listed in the CAA, section 112(d) calls for us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as "major sources"), as well as for certain "area sources" emitting less than those amounts. These technology-based standards must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards. For area sources, CAA section 112(d)(5) provides that, in lieu of MACT, the Administrator may elect to promulgate standards or requirements which provide for the use of generally available control technologies or management practices, and such standards are commonly referred to as generally available control technology (GACT) standards.

The EPA is then required to review these technology-based standards and to revise them "as necessary, taking into account developments in practices, processes and control technologies," no less frequently than every 8 years.

The second stage in standard-setting is described in section 112(f) of the CAA. This provision requires that EPA prepare a Report to Congress describing, among other things, methods of estimating risks posed by sources after implementation of the MACT standards, the public health significance of those risks, the means and costs of controlling them, actual health risks to persons in proximity to emitting sources, and recommendations as to legislation regarding such remaining risk. The EPA prepared and submitted this report ("Residual Risk Report to Congress," EPA–453/R–99–001) in March 1999. The Congress did not act on any of the recommendations in the report, triggering the second stage of the standard-setting process, the residual risk stage. Section 112(f)(2) requires us to determine for each section 112(d) source category, except area source categories for which we issued a generally available control technology standard, whether the NESHAP protects public health with an ample margin of safety. If the NESHAP for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million," we must decide whether additional reductions are necessary to provide an ample margin of safety. As a part of this decision, we may consider costs, technological feasibility, uncertainties, or other relevant factors. We must determine whether more stringent standards are necessary to prevent an adverse environmental effect (defined in section 112(a)(7) as "any significant and widespread adverse effect, which may reasonably be anticipated to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas"), but in making this decision we must consider cost, energy, safety, and other relevant factors.

B. What Did the Magnetic Tape NESHAP Accomplish?

On December 15, 1994, we promulgated the NESHAP for Magnetic Tape Manufacturing Operations (59 FR 64580) and required existing sources to comply with the NESHAP by December 15, 1996.

The Magnetic Tape NESHAP covers HAP emissions from surface coatings used in the manufacture of magnetic and optical recording media used in audio, video, computer and magnetic stripe tape and disks. The emission units regulated by the Magnetic Tape NESHAP are storage tanks, mix preparation equipment, coating operations, waste handling devices, condenser vents in solvent recovery, particulate transfer operations, wash sinks for cleaning removable parts, equipment for flushing fixed lines, and wastewater treatment operations. The Magnetic Tape NESHAP regulates only those sources located at major sources. During the development of the NESHAP, we identified 25 existing magnetic recording media and magnetic stripe facilities, of which 14 were considered major and, therefore, subject to the NESHAP. Currently, there are only six magnetic tape manufacturing facilities remaining in the United States, all of which are major.

In general, the current NESHAP requires an overall HAP control efficiency of at least 95 percent for emissions from each solvent storage tank, piece of mix preparation equipment, coating operation, waste handling device, or condenser vent in solvent recovery. If an incinerator is used to control these emissions points, an outlet HAP concentration of no greater than 20 parts per million by volume by compound may be met, instead of achieving 95 percent control, as long as the efficiency of the capture system is 100 percent. If a coating with a HAP content no greater than 0.18 kilograms per liter (1.5 pounds per gallon) of coatings solids is used, that coating operation does not require further control.

Several solvents and particulate HAP are used in the magnetic tape manufacturing industry. Currently, the solvents used to the greatest extent are methyl ethyl ketone (MEK) and the HAP toluene, and the particulate HAP are

cobalt and cobalt compounds. At the time of promulgation of the NESHAP, however, the solvents in use included MEK, cyclohexanone, acetone, and isopropyl alcohol and the HAP toluene, methyl isobutyl ketone, toluene diisocyanate, ethylene glycol, methanol, xylenes, ethyl benzene, and acetaldehyde; and the particulate HAP included chromium, cobalt, and their respective compounds. Several of these compounds are no longer used in the industry. The compound MEK and the HAP toluene are used at all facilities. At the time of promulgation of the magnetic tape NESHAP, MEK was a listed HAP, and we estimated that HAP emissions, including MEK and toluene, would be reduced by 2,080 megagrams per year (Mg/yr) (2,300 tons per year (tpy)) from a baseline of 4,060 Mg/yr (4,470 tpy). Methyl ethyl ketone was later delisted by EPA in 70 FR 75047, December 19, 2005.

C. What Were the Conclusions of the Residual Risk Assessment?

As required by section 112(f)(2) of the CAA, we prepared a risk assessment to determine the residual risk posed by magnetic tape manufacturing operations after implementation of the NESHAP. We compiled a list of the six magnetic tape manufacturing facilities still in operation in the United States based on inventory information we gathered from a number of manufacturing facilities and State environmental program offices (e.g., whether these facilities were still operating and manufacturing magnetic tape).

The major compounds emitted by the magnetic tape manufacturing source category are MEK and the HAP toluene, which comprise 97 percent, by tpy, of all emissions in the source category. The six magnetic tape manufacturing facilities have MEK and HAP emissions ranging from 3.9 to 214 Mg/yr (4.3 to 236 tpy). At the time of proposal, MEK was a listed HAP, and the nationwide annual HAP emissions, including MEK and toluene, were estimated to be 468 Mg/yr (516 tpy). Methyl ethyl ketone has since been delisted.

Using these data, we modeled exposure concentrations surrounding the six facilities, calculated the risk of possible chronic cancer and noncancer health effects, evaluated whether acute exposures might exceed relevant health thresholds, and investigated human health multipathway and ecological risks.

The emissions data used in the residual risk assessment represent actual levels of emissions for the base year. We have no reason to believe that there is a substantial amount of over control compared to what is allowed under the MACT standard. Therefore, the results of the risk assessment represent our approximation of the maximum risks which would be allowed under compliance with the NESHAP.

Consistent with the tiered modeling approach described in the Residual Risk Report to Congress of March 1999 (EPA–453/R–99–001), the risk assessment for this source category started with a simple assessment, which used health-protective assumptions in lieu of site-specific data. The results demonstrated negligible risks for potential chronic cancer, chronic noncancer, and acute noncancer health endpoints. Also, no significant human health multipathway or ecological risks were identified. Had the resulting risks been determined to be non-negligible, a more refined analysis with site-specific data would have been necessary.

The assessment is described in detail in the memorandum "Residual Risk Assessment for the Magnetic Tape Manufacturing Source Category," available in the docket. Since our assessment shows that sources subject to the Magnetic Tape Manufacturing NESHAP pose maximum lifetime excess cancer risks which are significantly less than 1 in 1 million, EPA concluded that public health is protected with an ample margin of safety, and since noncancer health risks and ecological risks were also found to be insignificant for this source category, EPA is not obligated to adopt standards under section 112(f) of the CAA. Because risks contributed by MEK are a negligible part of the overall risk, the delisting of MEK has essentially no effect on the risk assessment performed for the proposed rule.

D. What Were the Conclusions of the Technology Review?

Section 112(d)(6) of the CAA requires EPA to review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under section 112 no less often than every 8 years. As we stated in the preamble to the Coke Ovens residual risk rule (70 FR 20009), and as discussed below, the facts underlying a section 112(f) determination should be key factors in making any subsequent section 112(d)(6) determinations. For this and several other source categories, we were under consent decree deadlines to complete both the section 112(d)(6) technology review and the section 112(f)(2) residual risk analysis by the same date. As a result, we conducted the two reviews concurrently and did not have the results of the section 112(f)(2) analysis before we began the section 112(d)(6) technology review.

We reviewed available information about the industry, talked with industry representatives, and contacted several facilities in the industry to investigate available emission control technologies and the potential for additional emission reductions. We did not identify any additional control technologies beyond those that are already in widespread use within the source category (e.g., carbon adsorbers, condensers). The only developments identified involve improvements in the performance of existing technologies or increased frequency of inspections and testing, which would achieve only small incremental emission reductions. However, we did discover that new product developments (optical recording media and solid state recording media) may eventually supplant magnetic tape, but these media are not considered magnetic tape and would not be covered under the Magnetic Tape NESHAP. Therefore, our investigation did not identify any significant developments in practices, processes, or control technologies in the magnetic tape manufacturing industry since promulgation of the original standards in 1994. We undertook the technology assessment for this source category consistent with our policy in the Coke Ovens residual risk rule (70 FR 20008–20009).

E. What Was the Proposed Action?

On October 24, 2005, based on the findings from our residual risk and technology review, we proposed no further action to revise the NESHAP (70 FR 61417) and requested public comment.

II. Today's Action

A. What Is Today's Final Action?

Today's final action responds to public comments received on the proposed action and announces our final decision not to revise the standards.

B. What Comments Were Received on the Proposed Action?

In the proposed action, we requested public comment on our residual risk review and our technology review and on issues of delisting the source category and conducting future technology reviews. By the end of the public comment period, comments from five entities had been received. A summary of these comments and EPA's responses are provided in the sections below.

1. Residual Risk Determination

Comment: Three commenters supported EPA's decisions for the magnetic tape source category. The commenters supported EPA's conclusion that no changes to the existing NESHAP for magnetic tape manufacturing were required to satisfy the requirements of section 112(f). The commenters noted that EPA correctly reviewed the magnetic tape sources, followed the tiered risk assessment approach described in its Residual Risk Report to Congress, and, using a conservative methodology, determined that no source in the category had a maximum individual cancer risk exceeding the 1-in-1-million level for triggering promulgation of a residual risk standard under section 112(f).

Two of the commenters stated that EPA was correct to focus its section 112(f) residual risk analysis on the sources in the magnetic tape source category subject to section 112(d) requirements, and not consider risk from outside that source category. According to the commenters, the statutory language and construction of section 112(f) shows that Congress was directing EPA to perform residual risk analyses for individual source categories.

Response: We acknowledge the commenters' support for our health-protective methodology and our conclusions in the proposed notice. However, we do not agree that our section 112(f) residual risk analyses must always focus only on the sources in the category subject to section 112(d) requirements or that Congress intended to limit all residual risk analyses to the individual source categories in question. As we stated in the preamble to the Coke Ovens residual risk rule, "EPA disagrees that section 112(f) precludes EPA from considering emissions other than those from the source category or subcategory entirely." Rather, we have concluded that, when the statutory risk trigger is exceeded, the two-step approach set forward in the Benzene NESHAP remains the approach that we should follow in determinations under section 112(f). At the first step, when determining "acceptable risk," we will consider risks that result from emissions from the source category only. However, during the second step, we must determine whether additional reductions should be required to protect public health with "an ample margin of safety." One of the factors that we can consider in this second step is environmental levels of HAP due to emissions from sources outside the source category being assessed. This could include ambient background concentrations of HAP, as well as co-location of other emission sources that augment the identified risks from the source category.

2. Delisting the Source Category

At proposal, we requested comment on whether it would be appropriate to delist the magnetic tape source category under section 112(c)(9) based on the possibility that HAP emissions from the source category would be sufficiently low even in the absence of MACT standards.

Comment: One commenter opposed delisting the magnetic tape source category, stating that if the source category was delisted, there would be nothing to prevent sources from increasing their HAP emissions substantially or changing their processes to emit new HAP, resulting in HAP levels unacceptable to public health and the environment. The commenter indicated that such an approach ignores the possibility that HAP emissions were reduced to an acceptable level because of the MACT requirements and that emissions could increase again without the MACT standard in place. Furthermore, the commenter believed that Congress did not intend for the residual risk review to result in delisting of regulated source categories; if Congress had wanted to make delistings dependent on or linked to the outcome of the residual risk process, it would have specifically mandated this in the CAA, which it did not.

Two commenters argued that delisting a source category does not affect the applicability of an existing NESHAP and cited the delisting action following the Asbestos NESHAP as support for their argument. They also noted that EPA said in its proposal that no further section 112(d)(6) reviews are required unless there is a significant change to the source category. Consequently, the commenters saw no benefit in delisting the magnetic tape source category. However, they were not opposed to such an action.

One commenter supported delisting the magnetic tape source category under the authority of section 112(c)(9) based on EPA's finding of negligible risks (0.01 in 1 million). The commenter stated that EPA's request for comment implied that it interpreted the CAA to allow delisting on the basis of low risk only before a MACT standard is issued; however, section 112(c)(9) provides EPA with the authority to delist a source category whenever the Administrator makes a determination that the risks are below the risk criteria in the CAA and does not limit this authority to sources not yet subject to a MACT or GACT standard. According to the commenter, limiting EPA's discretion to delist source categories prior to issuing MACT or GACT standards also conflicts with the required sequence of duties under section 112, which does not require EPA to conduct a risk analysis until a residual risk evaluation is required 8 years after MACT standards are issued; consequently, EPA is unlikely to have sufficient data on which to base a delisting decision until many years after MACT standards have been promulgated. Furthermore, the commenter stated it is possible that source categories found to be low-risk after MACT standards were imposed may have been low-risk before the standards were imposed, especially magnetic tape facilities, where the risk assessment showed risks two orders of magnitude below the statutory criteria for delisting under section 112(c)(9). Finally, the commenter noted that if EPA was concerned that the source category would exceed risk levels if MACT controls were not applicable, it could use section 112(c)(9) to keep in place those MACT requirements needed to sustain the low-risk determination and delisting. According to the commenter, those requirements could be established as part of the delisting decision and maintained in the title V permit, as was done in the NESHAP for Plywood and Composite Wood Products.

Response: Based on our risk assessment of the magnetic tape source category, we have concluded that these sources are low-risk and, therefore, that no further standards are required to protect public health with an ample margin of safety or to protect the environment. However, we agree with the commenter who argues that this conclusion is based, at least in part, on the fact that the MACT requirements for these sources limit HAP emissions. Further, we disagree with the comment that delisting will not affect the viability of the existing NESHAP. The commenter cited the delisting action following the Asbestos NESHAP as support for their argument, noting that the applicability of that rule was not affected by delisting. However, the Asbestos NESHAP was established under part 61, which is not directly relevant in this situation since the Magnetic Tape NESHAP is a part 63 rule. If we delist this source category, it is our conclusion that existing magnetic tape sources would no longer be subject to the NESHAP and, thus, HAP emissions would no longer be limited by this rule. If sources begin emitting

HAP at levels exceeding those allowed under the NESHAP, risks could increase, and the basis for our finding that the source category is low-risk could be compromised. We have already documented that emissions from magnetic tape manufacturing operations were substantially higher at promulgation, compared to more recent emissions estimates (after the standards were implemented). As noted in the October 24, 2005 proposal (70 FR 61419) and previously in this action, HAP emissions at promulgation were estimated to be 4,060 Mg/yr (4,470 tpy), while HAP emissions in 2000 were estimated to be 468 Mg/yr (516 tpy)—a difference of almost 90 percent, some of which is due to compliance with the MACT standard and some of which is due to 19 plant closures since 1994. These HAP emissions estimates include MEK, which has since been delisted as a HAP. More recent information suggests that the delisting of MEK may result in one plant reducing its emissions to below the major source levels. If the potential-to-emit limit for this facility is below the major source threshold due to the delisting of MEK, it would become an area source and as such would no longer be subject to the magnetic tape manufacturing NESHAP. Nonetheless, since compliance with the MACT standard is part of the basis for our low-risk determination, we believe that our policy objectives are best served if we do not delist the magnetic tape source category.

Contrary to one commenter's contention, we did not intend to imply through our request for comments that we interpret section 112(c)(9) of the CAA to apply only before a MACT standard has been promulgated. We were simply seeking comment on the use of section 112(c)(9) after the MACT standard. However, for the reasons presented above, we have decided not to use section 112(c)(9) to delist the magnetic tape source category.

The Agency would like to remove the burden of the repetitive review of Section 112 standards for low risk source categories. At the same time, we think it is appropriate to maintain the MACT controls, in this case. We plan to further investigate approaches for removing low-risk source categories from the Section 112 universe while maintaining MACT-level controls. An example of a similar approach is found in the Plywood and Composite Wood Products MACT where we allow a subcategory of facilities to reduce emissions to acceptable risk levels through Title 5 permits and remove them from the MACT universe.

3. Future Technology Reviews

At proposal, we requested comment on "the notion that, barring any unforeseeable circumstances which might substantially change this source category or its emissions, we would have no obligations to conduct future technology reviews under CAA section 112(d)(6)." We suggested this approach because of the low-risk finding for this source category under section 112(f).

Comment: One commenter disagreed that low risk from a source category at this time should absolve EPA of its obligation to conduct future technology reviews. The commenter stated that, without periodic reviews of source categories and technology in the future reviews, EPA would not be aware of any technologies that have been developed or any "unforeseeable circumstances" related to the source category to which EPA refers in the notice. Furthermore, the commenter believed that Congress did not intend for the residual risk review to result in the removal of EPA's obligation to conduct future technology reviews under section 112(d)(6); if Congress had wanted to make technology reviews dependent on or linked to the outcome of the residual risk process, it would have specifically mandated this in the CAA, which it did not.

Three commenters stated that EPA has no obligation to conduct a technology review in the case of Magnetic Tape. According to the commenters, because the residual risk provisions of the CAA were not triggered by the magnetic tape source category's remaining low risk, even an initial technology review was unnecessary. The commenters noted that EPA only used the results of the section 112(f)(2) residual risk analysis to conclude that future section 112(d)(6) technology reviews would not be required. The commenters stated that EPA's use of a formal technology review as the basis for its conclusion under section 112(d)(6) that the NESHAP did not need to be revised was inconsistent with EPA's prior stated position in the Coke Ovens residual risk rule (70 FR 20009) on determining the need for a technology review under section 112(d)(6). One commenter stated that if the Coke Ovens criteria for when a technology review is not "necessary" under the CAA are sound for subsequent technology reviews, then they are also sound for initial reviews, as in the case of Magnetic Tape. Another commenter stated that, where the ample margin of safety set in the residual risk rule is largely based on cost or technical feasibility, then further future review under section 112(d)(6) may remain viable, and additional controls may not be precluded if feasible, cost-effective control measures are identified in the future.

Response: We stated in the preamble to the Coke Ovens residual risk rule that if the ample margin of safety analysis for the section 112(f) standard is not based at all on the availability or cost of particular control technologies, then advances in air pollution control technology should not justify revising the MACT standard pursuant to section 112(d)(6) because the section 112(f) standard would continue to assure an adequate level of safety. We agree that a technology review is required every 8 years. However, if the ample margin of safety analysis for a section 112(f) standard shows that remaining risk for non-threshold pollutants falls below 1 in 1 million and for threshold pollutants falls below a similar threshold of safety, then further revision should not be needed because an ample margin of safety has already been assured. In these situations, it is difficult to conceive of a case where the development of new technology, or of inexpensive control strategies, would cause us to require additional requirements for a source category. If the availability and/or costs of technology are part of the rationale for the ample margin of safety determination, it is reasonable to conclude that changes in those costs or in the availability of technology could alter our conclusions regarding the ample margin of safety. For this reason, we agree with the comment that subsequent technology reviews would be appropriate and revisions may also be appropriate if the ample margin of safety established by the residual risk process considers cost or technical feasibility.

We disagree with the comment that we should not have conducted an initial technology review under section 112(d)(6) for the magnetic tape source category. As we noted in the preamble to the Coke Ovens residual risk rule, we believe that the findings that underlie a section 112(f) determination should be key factors in making any subsequent section 112(d)(6) determinations. As indicated by the inclusion of the word "subsequent" in this rationale, we believe that we are obligated to perform the initial section 112(d)(6) analysis. The timing requirements for the initial section 112(d)(6) analysis coincide with those for the residual risk analysis. Thus, it is appropriate for us to conduct both analyses at the same time and for the results of the risk analysis to impact future section 112(d)(6) technology reviews, even though these results do

not negate either the need to perform the initial review or the need to perform subsequent reviews under section 112(d)(6).

4. General Approach to Technology Reviews

Comment: Three commenters stated that action is not necessarily required under section 112(d)(6) even if a residual risk rule does not reduce cancer risks for all persons to a level below 1 in 1 million. Two of the commenters noted that EPA had already rejected such a "bright line" approach under section 112(f) in the Coke Ovens residual risk rule; instead, it serves as a trigger point to evaluate whether additional reductions are necessary to provide an ample margin of safety. The third commenter cited the legislative history of the 1990 amendments to the CAA as support that Congress had rejected provisions requiring sources to meet a 1-in-1-million standard. According to this commenter, EPA's proposed interpretation of section 112(d)(6) of requiring successive reviews unless sources achieve this risk level implies that sources must meet a 1-in-1-million standard to avoid future regulation, and if Congress had intended this "technology-based" downward revision of the standard, there would have been no need for section 112(f).

Noting that EPA's risk estimates are upper bound estimates that likely overstate risks, the first two commenters stated that a "bright line" approach should not be employed under section 112(d)(6) any more than it should be employed under section 112(f); instead, they stated that EPA should make determinations of whether a technology review is necessary on a case-by-case basis for each category.

The third commenter stated that section 112(d)(6) should be more appropriately viewed as a regulatory backstop authority, similar to the case-by-case "MACT hammer" provisions of section 112(j), to ensure that available advances in technology will be applied in the event EPA fails to issue residual risk standards under section 112(f). The commenter stated that once EPA has established a residual risk standard under section 112(f) that is "acceptable" or "safe" and protective with an "ample margin of safety," then it must find that a separate revision of the MACT standard under section 112(d)(6) is not necessary.

Response: We agree with the commenters who indicated that it would be sufficient not to revise MACT standards citing section 112(d)(6) even if cancer risks are greater than or equal to 1 in 1 million. For example, it may be the case that a technology review is performed, but no change in the standard results from that review. In the preamble to the residual risk rule for Coke Ovens, we have applied a similar logic to the need for subsequent technology revisions under section 112(d)(6). As we stated in the Coke Ovens rule, if the ample margin of safety analysis for a section 112(f) standard shows that the remaining risk for non-threshold pollutants falls below 1 in 1 million and for threshold pollutants falls below a similar threshold of safety, then further revision would not be needed because an ample margin of safety has already been assured.

5. Context of the Residual Risk Program

Comment: One commenter strongly recommended that EPA carefully lay out the context and framework of the residual risk program in the determination for each source category. The commenter stated that this was especially important because of the unique nature of the program compared to other EPA programs with which the public is familiar.

The commenter specifically recommended that EPA mention the two-stage regulatory process (MACT and residual risk) used to control HAP emissions from major stationary sources and to determine whether the MACT technology controls provide an ample margin of safety. The commenter noted that the residual risk program is different from other EPA programs, in that additional controls will be necessary for only some of the listed categories of sources, because in some cases, the cancer risk will be less than the 1-in-1-million trigger, or, if it is greater, EPA may determine that the current emission level provides the public with an ample margin of safety.

The commenter also recommended that EPA put into the proper context the relatively small contribution of major stationary sources to the risks from air toxics—about 11 percent in 1999 and expected to be even smaller as sources come into compliance with the latest MACT rules.

Finally, the commenter recommended that EPA present the risks from air toxics in context with the risks from ambient (criteria) air pollutants to make clear to the public how the air toxics risk estimates are much more conservative and to avoid any misperceptions by the public that the risk estimates for ambient air pollutants are comparable to the risk estimates for air toxics. Without a program of public education on this issue, the commenter indicated the public may incorrectly believe that the ample margin of safety decisions in the residual risk rules are less stringent than EPA knows them to be, resulting in public lawsuits against EPA's decisions or overregulation by EPA to compensate for the gap in public knowledge. The commenter recommended that EPA include preamble language in future EPA decisions describing the criteria it used to determine the ample margin of safety and presenting the incremental risk/incremental cost approach in the fuller context for the residual risk program.

Response: We agree that it is important to provide context for any residual risk rule. In the preamble of the current rule, we describe the MACT program and its impact on the magnetic tape source category. We also describe our statutory authority and our obligations to assess risks to human health and the environment under section 112(f) of the CAA, as well as the requirement to further regulate categories of sources if any of the estimated individual cancer risks exceed the statutory trigger level of 1 in 1 million.

We agree that our risk assessment for the magnetic tape source category appropriately contains a number of health-protective assumptions, resulting in a screening assessment that is designed to overestimate, rather than underestimate, risks. The results demonstrate negligible risks for potential chronic cancer, chronic noncancer, and acute noncancer health endpoints. Also, no significant human health multipathway or ecological risks were identified. Had the resulting risks been determined to be non-negligible, a more refined analysis with site-specific data would have been conducted. Such an assessment would be more data-intensive; however, it would also present a more accurate estimate of risks which could then be used as the basis for regulatory action. However, since the findings of the screening risk assessment for the magnetic tape source category were negative (i.e., the statutory cancer risk trigger level was not exceeded), it was not necessary to conduct a more refined risk assessment using more site-specific data. Since these activities were not relevant to this action, a complete discussion of them in the context of a full discussion of the residual risk program was not deemed necessary or appropriate. The details of our risk assessment can be found in the docket in the memo titled, "Residual Risk Assessment for the Magnetic Tape Manufacturing Source Category."

6. IRIS Data for Acrylonitrile

Comment: According to one commenter, EPA should not have relied

on the outdated unit cancer risk value for acrylonitrile contained in EPA's Integrated Risk Information System (IRIS) in conducting its residual risk assessment of the magnetic tape manufacturing industry. Although EPA concluded that there were no issues to be addressed regarding acrylonitrile because the facility emitting acrylonitrile presented a potential cancer risk of only 1 in 100 million, the commenter stated that it was inappropriate for EPA to use the acrylonitrile value in IRIS in its assessment because EPA was already aware the value was severely out-of-date. According to the commenter, the IRIS profile itself indicates that there are one or more significant new studies based on a screening-level review of the more recent toxicology literature. The commenter also noted that EPA was aware that numerous new studies had been conducted on assessing the cancer risk from acrylonitrile because its staff were briefed on an assessment of those new studies, received copies of the assessment report, and attended a peer review meeting on the report. The commenter also noted that a summary of the cancer assessment was published in October 2005.

Response: We agree that our IRIS assessment for acrylonitrile does not consider studies published after 1991, and we are currently developing an assessment that includes newer information. Our staff reviewed the assessment referenced by the commenter and determined that it has several weaknesses. First, the assessment concludes that the mode of action (MOA) is nonlinear, but does not provide evidence or analysis sufficient to demonstrate nonlinearity or to identify a nonlinear MOA. The independent peer panel that reviewed this assessment noted that the data do not allow unequivocal determination of acrylonitrile's MOA(s), and could not rule out a genotoxic MOA. Given the negligible contribution of the acrolitrile risk estimates in this assessment, we determined that it was reasonable and protective to continue to use linear low-dose extrapolation. Second, the assessment provides a supplemental linear unit risk value but bases it upon animal data rather than human data, despite the fact that adequate human data were available. Using these human data would have produced a higher inhalation unit risk estimate (i.e., closer to the current IRIS assessment value). Third, the linear unit risk value came from a reanalysis of animal data already considered in EPA's 1991 IRIS assessment for inhalation carcinogenicity, and rejected because better human data were available even then. For these reasons we concluded that the commentor's study should not be used in lieu of the current IRIS assessment.

III. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. The EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

This action does not impose any information collection burden. It will not change the burden estimates from those previously developed and approved for the existing NESHAP. However, OMB has previously approved the information collection requirements contained in the existing regulation (59 FR 64580, December 15, 1994) under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) and has assigned OMB control number 2060–0326 (EPA ICR No. 1678.05). A copy of the OMB approved Information Collection Request (ICR) may be obtained from Susan Auby, by mail at the Office of Environmental Information, Collection Strategies Division, U.S. EPA (2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. Include the ICR or OMB number in any correspondence.

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

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impact of today's final action on small entities, a small entity is defined as: (1) A small business whose parent company has fewer than 500 to 1,000 employees, depending on the size definition for the affected NAICS code (as defined by Small Business Administration size standards); (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 impact of today's final action on small entities, EPA has concluded that this final action will not have a significant economic impact on a substantial number of small entities. The final action will not impose any requirements on small entities. We are taking no further action at this time to revise the NESHAP.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law No. 104–4, establishes requirements for Federal agencies to assess the effect of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or for the private sector in any 1 year. The rule imposes no enforceable duty on State, local, or tribal governments, or the private sector. Thus, today's final action is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final action contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Therefore, the final action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Today's final action 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. None of the affected facilities are owned or operated by State or local governments. Thus, Executive Order 13132 does not apply to the final action.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final action does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's final action.

G. Executive Order 13045, Protection of Children From Environmental Health and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety 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 EPA.

The final action is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

The final action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not an economically significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, § 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when EPA does not use available and applicable VCS.

The final action does not involve technical standards. Therefore, EPA is not considering 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. The EPA will submit a report containing the final action and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final action in the **Federal Register**. The final action is not a "major rule" as defined by 5 U.S.C. 804(2). The effective date of this final action is April 7, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–3313 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2004–0004, FRL–8054–1]

RIN 2060–AK16

National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On September 8, 1994, we promulgated national emission standards for hazardous air pollutants for industrial process cooling towers. The rule prohibits the use of chromium-based water treatment chemicals that are known or suspected to cause cancer or have a serious health or environmental effect.

Section 112(f)(2) of the Clean Air Act directs us to assess the risk remaining (residual risk) after the application of national emission standards for hazardous air pollutants and to promulgate more stringent standards, if warranted, to provide an ample margin of safety to protect public health or prevent adverse environmental effect. Also, section 112(d)(6) of the Clean Air Act requires us to review and revise the standards, as necessary at least every 8 years, taking into account developments in practices, processes, and control technologies. On October 24, 2005, based on the findings from our residual risk and technology review, we proposed no further action to revise the standards and requested public comment. Today's final action amends the applicability section of the rule in response to public comments received on the proposed action. The final amendment provides that sources that are operated with chromium-based water treatment chemicals are subject to this standard; other industrial process cooling towers are not covered.

DATES: *Effective Date:* April 7, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2004–0004. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the national emission standards for hazardous air pollutants (NESHAP) for Industrial Process Cooling Towers (IPCT)Docket, EPA/DC, Docket ID No. EPA–HQ–OAR–2004–0004, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For questions about the final action, contact Mr. Phil Mulrine, U.S. EPA, Office of Air Quality Planning and Standards, Sector Policies and Programs Division, Metals and Minerals Group (D243–02), Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5289; fax number: (919) 541–5450; e-mail address: *mulrine.phil@epa.gov*. For questions on the residual risk analysis, contact Mr. Scott Jenkins, U.S. EPA, Office of Air Quality Planning and Standards, Health and Environmental Impacts Division, Sector Based Assessment Group (C539–02), Research Triangle Park, North Carolina 27711, telephone number: (919) 541–1167, fax number: (919) 541–0840, e-mail address: *jenkins.scott@epa.gov*.

SUPPLEMENTARY INFORMATION: *Regulated Entities.* The regulated categories and entities affected by the NESHAP include:

Category	NAICS	Examples of regulated code [1]
Industry	324110 325181 325120 325131 325188 325191 325311 325312 325314 325320 325520 325920 325910 325182 325998 331111 331411 331419 327211 327213 327212 312221	IPCT located at major sources, including petroleum refineries, chemical manufacturing plants, primary metals processing plants, glass manufacturing plants, tobacco products manufacturing plants, rubber products manufacturing plants, and textile finishing plants.

Category	NAICS	Examples of regulated code [1]
	312229	
	312229	
	326211	
	313311	
	313311	
	313312	
Federal Government		Not affected.
State, local, tribal government		Not affected.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by the NESHAP. To determine whether your facility would be affected by the NESHAP, you should examine the applicability criteria in 40 CFR 63.400(a) of subpart Q (IPCT NESHAP). If you have any questions regarding the applicability of the NESHAP to a particular entity, contact either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 63.13 of subpart A (General Provisions).

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of today's final action will also be available on the WWW through the Technology Transfer Network (TTN). Following the Administrator's signature, a copy of the final action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at: *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control.

Judicial Review. Under section 307(b)(1) of the Clean Air Act (CAA), judicial review of the final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit by June 6, 2006. Under section 307(d)(7)(B) of the CAA, only an objection to the final action amendment that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Moreover, under section 307(b)(2) of the CAA, the requirements established by the final action may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce the requirements.

Outline. The information presented in this preamble is organized as follows:

I. Background

A. What Is the Statutory Authority for This Action?

Section 112 of the CAA establishes a comprehensive regulatory process to address hazardous air pollutants (HAP) from stationary sources. In implementing this process, we have identified categories of sources emitting one or more of the HAP listed in the CAA, and industrial process cooling towers are identified as one such source category. Section 112(d) requires us to promulgate national technology-based emission standards for sources within those categories that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAP at a rate of 25 tons or more per year (known as major sources), as well as for certain area sources emitting less than those amounts. These technology-based NESHAP must reflect the maximum reductions of HAP achievable (after considering cost, energy requirements, and non-air health and environmental impacts) and are commonly referred to as maximum achievable control technology (MACT) standards.

In what is referred to as the technology review, we are required under section 112(d)(6) of the CAA to review these technology-based standards no less frequently than every 8 years. Further, if we conclude that a revision is necessary, we have the authority to revise these standards, taking into account "developments in practices, processes, and control technologies."

The residual risk review is described in section 112(f) of the CAA. Section 112(f)(2) requires us to determine for each section 112(d) source category, except area source categories for which we issued a generally available control technology standard, whether the NESHAP protects public health with an ample margin of safety. If the NESHAP for HAP "classified as a known, probable, or possible human carcinogen do not reduce lifetime excess cancer risks to the individual most exposed to emissions from a source in the category or subcategory to less than one in one million," we must decide whether additional reductions are necessary to provide an ample margin of safety. As part of this decision, we may consider costs, technological feasibility, uncertainties, or other relevant factors. We must determine whether more stringent standards are necessary to prevent adverse environmental effect (defined in CAA section 112(a)(7) as "any significant and widespread adverse effect, which may reasonably be anticipated to wildlife, aquatic life, or other natural resources, including adverse impacts on populations of endangered or threatened species or significant degradation of environmental quality over broad areas."), but in making this decision we must consider cost, energy, safety, and other relevant factors.

B. What Did the IPCT NESHAP Accomplish?

On September 8, 1994 (59 FR 46350), we promulgated the IPCT NESHAP and required existing sources to comply with the rule requirements by March 8, 1996.

Cooling towers are devices that are used to remove heat from a cooling fluid, typically water, by contacting the

fluid with ambient air. The IPCT source category includes cooling towers that are used to remove heat that is produced as an input or output of chemical or industrial processes. The IPCT source category also includes cooling towers that cool industrial processes in combination with heating, ventilation, and air conditioning (HVAC) systems. The IPCT NESHAP applies specifically to IPCT that use chromium-based water treatment chemicals and are located at major sources of HAP emissions. Standards to control chromium emissions from cooling towers that cool HVAC systems exclusively (comfort cooling towers) were promulgated under section 6 of the Toxic Substances Control Act (55 FR 222, January 3, 1990).

The primary industries that use IPCT include petroleum refineries, chemical manufacturing plants, primary metals processing plants, glass manufacturing plants, rubber products manufacturing plants, tobacco products manufacturing plants, and textile manufacturing plants. When the IPCT NESHAP were promulgated, we estimated that there were approximately 6,945 IPCT located at these plants nationwide, and that approximately 260 of these IPCT used chromium-based water treatment chemicals. We estimated that the IPCT NESHAP would reduce emissions of chromium compounds from these facilities by 22.7 megagrams per year (Mg/yr) (25 tons per year (tpy)) by prohibiting the use of chromium-based water treatment chemicals in IPCT. In addition, we estimated that the NESHAP would prevent emissions of 1.6 Mg/yr (1.8 tpy) of chromium compounds from the 870 new IPCT projected by the 5th year of the standards (1998).

When the NESHAP were promulgated, we had no information that indicated that HAP other than chromium compounds were emitted from IPCT. Consequently, we did not address emissions of other HAP in the IPCT NESHAP.

C. What Were the Conclusions of the Residual Risk Assessment?

As required by section 112(f)(2) of the CAA, we prepared a risk assessment to determine the residual risk posed by IPCT after implementation of the NESHAP. To evaluate the residual risk for the IPCT source category, we identified the HAP emitted from IPCT and, as a discretionary matter in this instance, estimated worst-case emission rates for each of those HAP. These worst-case emission rates were used, along with facility parameters representing an actual facility, to perform the risk assessment.

Because the IPCT NESHAP prohibits the use of chromium-based water treatment chemicals in IPCT, we believe that chromium compound emissions from IPCT have been eliminated by the NESHAP. In assessing the residual risk for the source category, however, we also considered emissions of other HAP from IPCT.

In the absence of process leaks or malfunctions, the chemical species that are emitted from IPCT consist of the naturally-occurring constituents of the cooling water and any substances that are added to the cooling water. To determine what other HAP may be emitted from IPCT, we first contacted suppliers of cooling water treatment chemicals for information on cooling water additives that either contain HAP or form HAP, which could be emitted from IPCT. Then, we conducted a literature search for information on emissions from cooling towers. The information collected from the water treatment chemical suppliers and through the literature search indicated that some biocides used to treat industrial cooling water either contain HAP or form HAP that can be emitted from IPCT. These HAP include chloroform, methanol, and ethylene thiourea.

Industrial process cooling towers typically use one and not all of the biocides that release the three listed HAP at any given time. Therefore, IPCT emit no more than one of the three listed HAP. We estimated worst-case emission rates for chloroform, methanol, and ethylene thiourea based on the range of concentrations of these constituents in cooling water and the model plants developed for the IPCT NESHAP. We used these emission rates to model exposure concentrations surrounding those sources, calculated the risk of possible chronic cancer and noncancer health effects, evaluated whether acute exposures might exceed relevant health thresholds, and investigated human health multipathway and ecological risks.

Consistent with the tiered modeling approach described in the "Residual Risk Report to Congress" (EPA–453/R–99–001), the risk assessment for this source category started with a simple assessment which used conservative assumptions in lieu of site-specific data. The results demonstrated negligible risks for potential chronic cancer, chronic noncancer, and acute noncancer health endpoints. Also, no significant human health multipathway or ecological risks were identified. Had the resulting risks been determined to be non-negligible, a more refined analysis with site-specific data would have been necessary. The assessment is described in detail in the memorandum "Residual Risk Assessment for the Industrial Process Cooling Source Category," which is available in the docket.

Since our assessment shows that sources subject to the IPCT NESHAP pose maximum lifetime excess cancer risks which are significantly less than 1 in 1 million, EPA concluded that public health is protected with an ample margin of safety, and since noncancer health risks and ecological risks were also found to be insignificant for this source category, EPA is not obligated to adopt standards under section 112(f) of the CAA.

D. What Were the Conclusions of the Technology Review?

Section 112(d)(6) of the CAA requires EPA to review, and revise as necessary (taking into account developments in practices, processes, and control technologies), emission standards promulgated under section 112 no less often than every 8 years. As we stated in the preamble to the Coke Ovens residual risk rule (70 FR 20009, April 15, 2005), and as discussed below, the facts underlying a section 112(f) determination should be key factors in making any subsequent section 112(d)(6) determinations. For this and several other source categories, we were under consent decree deadlines to complete both the section 112(d)(6) technology review and the section 112(f)(2) residual risk analysis by the same date. As a result, we conducted the two reviews concurrently and did not have the results of the section 112(f)(2) analysis before we began the section 112(d)(6) technology review.

For the IPCT source category, the emission standards imposed an absolute prohibition on the use of chromium-based water treatment chemicals in IPCT. As the emission standards imposed for this particular source are already at the most stringent level, no more stringent standards could be imposed. Nor has EPA received any evidence which would justify a downward revision of the standards. In the residual risk analysis discussed above, EPA has considered risks for HAP emissions that are not currently subject to emission standards but are attributable to the source category or subcategory. Since the risk from other HAP emitted from IPCT due to the addition of water treatment chemicals was determined to be very low and the emission standards already preclude the use of chromium-based water treatment

chemicals, we concluded that no further controls are necessary under 112(d)(6).

E. What Was the Proposed Action?

On October 24, 2005 (70 FR 61411), based on the findings from our residual risk and technology review, we proposed no further action to revise the NESHAP and requested public comment.

II. Today's Action

A. What Is Today's Final Action?

Today's final action responds to public comments received on the proposed action and announces our final decision to amend the applicability section of the rule.

B. What Comments Were Received on the Proposed Action?

In the proposed action, we requested public comment on our residual risk review and our technology review and on issues of delisting the source category and conducting future technology reviews. By the end of the public comment period, comments from nine entities had been received. A summary of the major comments and EPA's responses are provided below in sections II.B.1 through II.B.7 of this preamble.

1. Residual Risk Approach

Comment: Two commenters urged EPA to carefully lay out the context and framework of the Residual Risk Program to ensure that the public understands the program and can adequately evaluate EPA's decisions regarding residual risk. The commenters identified several specific aspects of the program, which they believe need to be conveyed to the public. Among those, they included: the success of the MACT program in controlling HAP emissions; further regulatory steps are not required if EPA determines that existing MACT standards have provided an ample margin of safety; and the public can be assured that residual risk rules will provide such a margin of safety in those cases where the standard has not achieved an ample margin of safety. The commenters also stated that it is important for EPA to put the risks associated with major stationary sources in the proper context. The commenters stated that major stationary sources account for only a small percentage of the estimated cancer risk from HAP nationwide. In addition, they urged EPA to present risk from air toxics in context with the risks from other forms of air pollution. Specifically, they pointed out that the unit risk factors assigned to air toxics are much more conservative than the factors assigned to criteria pollutants. As a result, risk estimates for criteria pollutants should not be compared to estimates of risk based on HAP emissions from stationary sources subject to NESHAP.

Response: We agree that it is important to provide context for any residual risk rule. In this preamble, we describe the MACT program and its impact on the IPCT source category. We also describe our statutory authority and our obligations to assess risks to human health and the environment under section 112(f) of the CAA, as well as the requirement to further regulate categories of sources if any of the estimated individual cancer risks exceed the statutory trigger level of 1 in 1 million.

The risks posed by any individual major stationary source depend upon a number of factors, including emission rates at the source, proximity of exposed populations to the emission source, the specific HAP emitted, local meteorological conditions, and terrain conditions surrounding the source. Therefore, the relative contribution of a particular major stationary source to individual risk levels in its vicinity will vary dramatically depending on the local conditions at and around that specific source. This variability is not captured by the national average contribution of major sources to population risk levels mentioned by the commenter, whereas the risk assessments we perform for the purposes of evaluating residual risk are designed specifically to capture localized individual risks associated with individual sources.

We agree that our screening risk assessment for the IPCT source category appropriately contains a number of health-protective assumptions and uses health-protective inhalation risk values. The overall result is a screening assessment that is designed to overestimate, rather than underestimate, risks. The commenters make the seemingly contradictory arguments that we should both present risks from air toxics in the context of those from criteria pollutants and that it is inappropriate to make direct comparisons between assessments of risk for air toxics and criteria pollutants. Given the different goals of the residual risk program and the criteria pollutant program, we agree with their second point that estimates of risk generated for air toxics are not directly comparable to those generated for criteria pollutants.

Comment: Four commenters expressed support for EPA's tiered approach to evaluating residual risk by first performing a screening assessment, followed by a refined assessment. One commenter commented that, if a screening risk assessment based on conservative assumptions showed that risks are negligible, no further assessments or actions should be taken. All four commenters stated that EPA must proceed with the refined approach unless, as was the case for IPCT, the worst-case screening assessment indicates that the risk is less than 1 in 1 million. One commenter stated that in evaluating the residual risk for IPCT, EPA correctly used the same approach used for the 1989 Benzene NESHAP (40 CFR part 61, subpart Y).

Response: We acknowledge the commenters' support of our general approach to risk assessment and agree that, had risks from the IPCT exceeded the statutory trigger of 1 in 1 million cancer risk or exceeded a similar level of protection for threshold effects, we would have conducted a more refined assessment.

Comment: Three commenters stated that, when presenting the results of the initial screening assessment, it is important for EPA to explain the conservative nature of the assumptions and the limitations of this approach to avoid any misperceptions by the public. Two of the commenters added that otherwise, the public may mistakenly believe that the contribution to risk from major stationary sources is much greater. The commenters also encouraged EPA to use the most accurate emission data and models to ensure accurate risk assessments and to avoid mischaracterizing the risk from the regulated sources. One commenter added that site-specific data should be used in residual risk assessments when possible.

Response: We agree that our risk assessment for IPCT contains a number of health-protective assumptions resulting in a screening assessment that is designed to overestimate, rather than underestimate, risks. However, the health-protective assumptions incorporated into this screening risk assessment are appropriate because we are generalizing the results from a single model facility to all cooling towers in the source category. We designed this approach to ensure that the model facility presents at least as much risk as the worst-case actual facility. Then, by demonstrating that risks from our worst-case model facility are low, we can easily conclude that risks from IPCT at any actual facility will also be low.

The details of our risk assessment can be found in the memorandum titled, "Residual Risk Assessment for the Industrial Process Cooling Towers Source Category," which is available in the docket. As indicated above, a

number of health-protective assumptions are incorporated into the assessment. For example, we based the configuration of our model facility on one of the largest and highest-emitting actual facilities in the IPCT source category. We estimated worst-case emission rates for this facility by assuming that it emitted methanol, ethylene thiourea, and chloroform from its cooling towers even though it is unlikely that any actual towers would emit more than one of these HAP. We assumed that individuals are exposed to IPCT emissions for 24 hours per day and 365 days per year for 70 years although the activity patterns of actual individuals would decrease exposure. Finally, we assumed that people lived at locations very close to the cooling towers. Often, these locations would actually be within the facility's fenceline, where no one actually resides. This combination of health-protective assumptions is appropriate for the IPCT assessment because it allows us to generalize the low-risk finding from a single model source to all sources in the category. If we had not been able to use this approach to make the low-risk finding, we would indeed have collected more refined, site-specific data to develop a more precise risk assessment, but, in this situation, that step was not necessary.

2. Co-Located Sources

Comment: Four commenters agreed with EPA's approach of considering the risk associated with the specific sources regulated by the NESHAP and not considering co-located sources. Two of the commenters noted that the risk attributed to co-located sources will be evaluated when the appropriate source category is reviewed under section 112(f) of the CAA. The commenters stated that section 112(f) clearly indicates that Congress intended the residual risk assessment for a specific source category to focus on the source category, as defined in the rulemaking under section 112(d), and not to encompass other source categories.

Response: We agree with commenters that the risks attributable to sources collocated with IPCT will be evaluated when the appropriate category is reviewed under section 112(f). We do not agree that our section 112(f) residual risk analyses must always focus only on the source category as defined in the rulemaking under section 112(d) or that Congress intended to limit all residual risk analyses to the individual source categories in question. As we stated in the preamble to the Coke Ovens residual risk rule (70 FR 19998, April 15, 2005), "EPA disagrees that section 112(f) precludes EPA from considering emissions other than those from the source category or subcategory entirely." Rather, we have concluded that, when the statutory risk trigger is exceeded, the two-step approach set forth in the preamble to the Benzene NESHAP (54 FR 38044, September 14, 1989) remains the approach that we should follow in determinations under section 112(f). At the first step, when determining "acceptable risk," we will consider risks that result from emissions from the source category only. However, during the second step, we must determine whether additional reductions should be required to protect public health with "an ample margin of safety." EPA believes that one of the "other relevant factors" that may be considered in this second step is co-location of other emission sources that augment the identified risks from the source category. In the case of coke ovens, this included the consideration of co-located source categories that are integral parts of the same industrial activity. Additional information regarding co-located sources and 112(f) requirements is provided in the preamble to the coke oven residual risk rule (70 FR 19996).

3. Approach When No Pre-Existing NESHAP Level of Control Exists

Comment: Three commenters responded to our request for comment on the approach to evaluating residual risk when no pre-existing NESHAP requirement exists for the HAP emissions. For example, in the case of IPCT, the residual risk assessment considered three HAP that were not regulated under the NESHAP. The commenters agreed with EPA's approach, stating that it is appropriate to evaluate and control emissions of other HAP if those HAP pose an unacceptable level of risk.

Response: We acknowledge the commenters' support of our approach to evaluating residual risk by considering all HAP emitted by the regulated source category. Section 112(f) requires EPA to determine if an ample margin of safety has been provided for the source category and as part of that determination we identified other HAP that are emitted from the source category.

4. Subcategorizing Source Categories to Satisfy CAA Section 112(f)(2)

Comment: Five commenters responded to our request for comment on the possibility of subcategorizing source categories for the purpose of satisfying the residual risk requirements specified in section 112(f)(2) of the CAA. All five commenters supported the concept of subcategorizing source categories characterized by a broad range of risk levels. Four of the commenters noted that section 112(c) gives EPA broad discretion in creating and modifying categories and subcategories of sources. By subcategorizing, EPA can distinguish between lower risk subcategories and those categories for which additional control is warranted. One of the commenters pointed out that emission characteristics, which vary by subcategory, define the risk of adverse health and environmental impacts. Therefore, establishing separate subcategories on the basis of risk would be consistent with, and would best achieve, the overall statutory mandate of section 112 of the CAA. The same commenter stated that Congress provided a mechanism and criteria for subcategorizing with respect to risk in sections 112(c)(9)(B)(i) and (ii) to preclude overregulating sources that can meet consistent low-risk criteria. Four of the commenters believed that subcategorizing with respect to residual risk would encourage sources to develop site-specific approaches for reducing risk in order to avoid additional regulatory control, work practices, and associated permitting costs. One commenter stated that the intent of Congress was that EPA should focus MACT standards and residual risk requirements on those sources that present a risk of concern. Two of the commenters cited the "Residual Risk Report to Congress" (EPA–453/R–99–001), which supports the concept of regulating only those sources within a source category associated with unacceptable risk. Three of the commenters commented that sources within a lower risk subcategory would still be subject to the NESHAP and would have to continue complying with the standard in order to maintain its low-risk status. The commenters further explained that, even if EPA decides not to subcategorize based on risk, residual risk standards should focus only on the subset of sources that poses unacceptable risk.

Response: We acknowledge the commenters' support for subcategorizing based on risk in order to satisfy section 112(f)(2) of the CAA. For the IPCT source category, our risk assessment indicated that all sources in the category are low-risk. Therefore, there is no need, in the present case, to subcategorize based on risk or any other criteria.

5. Emissions From IPCT

Comment: One commenter commented on our conclusion that emissions of chlorine from IPCT are unlikely under normal operating conditions. We based this conclusion on discussions with water treatment chemical suppliers and information presented in several technical publications on water treatment, all of which clearly stated that chlorine emissions occur only under acidic conditions (i.e., pH of 3.0 or less), and IPCT water treatment programs are designed to maintain alkaline conditions (i.e., pH of 7.5 to 9.0) in the cooling water. The commenter stated that IPCT that are treated with chlorine gas (Cl_2) experience significant flash-off of molecular chlorine. He noted that one facility estimated that chlorine emissions from flash-off amounted to 18 percent of the chlorine gas used to treat the cooling water in an IPCT, and that annual emissions of chlorine from the IPCT were estimated to be 18.2 tons. The commenter did not provide documentation for that estimate. However, he did cite a report prepared by the University of Texas for the Texas Natural Resource Conservation Commission (TNRCC), "Emission Inventory for Atomic Chlorine Precursors in Southeast Texas," which supports his comments regarding chlorine emissions due to flash-off from IPCT. The TNRCC Report also states that the greater the pH, the greater the flash-off rate, which may appear to contradict our conclusion regarding the relationship between pH and Cl_2 emissions from IPCT.

Response: As noted above, the commenter did not provide documentation for the estimate of 18.2 tpy of chlorine emissions from a single IPCT. We assume that the basis for that estimate was the TNRCC Report. We reviewed the TNRCC Report, as well as the primary references used as the basis for the chlorine emission estimates presented in the report. Based on our review, we maintain our conclusion that emissions of Cl_2 from IPCT are not likely to occur under normal operating conditions.

With respect to the discrepancy between our conclusions regarding emissions of chlorine from IPCT, the statement by the commenter, and the information presented in the TNRC Report, there are two issues that must be resolved: (1) Which chlorine species are emitted from IPCT, and (2) what is the relationship between those emissions and the pH of the cooling water.

When gaseous chlorine is added to cooling water, it dissociates to form hypochlorous acid (HClO), hydrogen (H^+), and chloride (Cl^-) ions. The HClO further dissociates to form hypochlorite (ClO^-) and H^+ ions. With respect to the chlorine species emitted, the TNRCC Report presents estimates assuming that chlorine emissions are entirely in the form of Cl_2. The Report does not provide the basis for this assumption, but does note that "* * * chlorine may be released as HClO, Cl_2, or in other chemical forms * * *" The Report later states that emissions "* * * may be in the form of HOCl rather than Cl_2." Apparently, because the focus of the TNRCC Report was the magnitude of the emissions rather than the form of the chlorine emitted, the researchers did not attempt to determine which chlorine species would be emitted. The primary references cited in the TNRCC Report regarding chlorine emissions from IPCT are two journal articles from 1984 by Holzwarth, *et al.* The introduction to the first of those articles explains that chlorine gas added to cooling water "* * * immediately reacts with water to form HOCl and HCl." All of the subsequent discussion and calculations in both papers regarding flash-off are in terms of HOCl and other non-Cl_2 chlorine compounds. In fact, Cl_2 is not mentioned again in either article. In other words, the Holzwarth articles support our conclusion that chlorine is not emitted from IPCT in the form of Cl_2.

With respect to the relationship between pH and emissions of chlorine species, we do not argue that emissions from flash-off may increase with increasing pH. However, our assessment concluded that these emissions would be entirely in the form of HOCl and not as Cl_2. The studies by Holzwarth, *et al.* also support this conclusion, that emissions of HOCl increase with increasing pH, while emissions of Cl_2 decrease with increasing pH.

In summary, we believe our conclusions regarding emissions of Cl_2 from IPCT are correct. Neither the commenter, nor the references cited by the commenter provide any basis for concluding otherwise.

6. Delisting the IPCT Source Category

Comment: Six commenters responded to our request for comment on the issue of delisting the IPCT source category in light of the results of the residual risk assessment. Two of the commenters opposed delisting the source category; one of the commenters supported delisting; and the other commenters, although not opposed to delisting, found no compelling reason to do so. One of the commenters who opposed delisting stated that delisting the source category would not be appropriate because such action would allow owners and operators of IPCT to revert back to using chromium water treatment chemicals. The commenter also noted that delisting the source category would require State and local agencies to amend their rules accordingly. Because there would not be a NESHAP to adopt by reference, State and local agencies would be required to develop and adopt their own regulations on IPCT. In addition, the commenter pointed out that some regulatory agencies are prevented from adopting rules that are more stringent than Federal requirements. In those cases, States and local agencies would have no legal means of preventing IPCT owners and operators from resuming the use of chromium water treatment chemicals in IPCT.

The other commenter who opposed delisting stated that, if the source category were delisted, there would be nothing to prevent sources from increasing their HAP emissions substantially or changing their processes to emit new HAP, either of which could result in HAP levels that are unacceptable to public health and the environment. He noted that such action would disregard the possibility that HAP emissions have been reduced to an acceptable level because of the NESHAP.

Three of the commenters were not opposed to delisting the IPCT source category, but remarked that there was no compelling reason to do so. The commenters noted that, even though the IPCT NESHAP does not apply to any existing sources, it is possible for the rule to apply to sources in the future. The commenters gave the example of an area source, which operated an IPCT using chromium water treatment chemicals and later became a major source. Once the facility became a major source, it would be subject to the NESHAP and would have to discontinue the use of chromium water treatment chemicals. The commenters stated that, on the other hand, delisting a source category does not affect the applicability of an existing NESHAP. The commenters explained that the applicability of the Asbestos NESHAP (40 CFR part 61, subpart M) was unchanged after the source category was delisted. Finally, the commenters pointed out that none of the applicability requirements of 40 CFR part 63 standards (*i.e.*, NESHAP) depend on source category listing.

One of the commenters supported delisting the IPCT source category. The commenter stated that our request for comment on this issue implied that we

interpreted section 112(c)(9) of the CAA to apply only before a MACT standard has been promulgated. According to the commenter, section 112(c)(9) grants EPA the authority to delist a source category whenever the Administrator determines that the risks meet the established criteria. The commenter noted that delisting source categories based on risk prior to establishing standards under section 112(d) actually would conflict with the sequence of EPA's duties under section 112, which requires EPA to evaluate residual risk 8 years after promulgation. In addition, the commenter pointed out that EPA would likely not have sufficient data to fully assess the risk until several years after a standard had been in place. Finally, if EPA were to delist the source category, section 112(c)(9) could still be used to establish requirements to ensure that the risk remains within acceptable levels if EPA were to conclude that the risk associated with the source category could become unacceptable in the future.

Response: Based on our risk assessment of the IPCT source category, we have concluded that these sources are low-risk and, therefore, that no further standards are required to protect public health with an ample margin of safety or to protect the environment. However, we agree with the commenter who argues that this conclusion is based, at least in part, on the fact that the MACT requirements for these sources prevent IPCT from using chromium-based water treatment strategies. Further, we disagree with the comment that delisting would not affect the existing NESHAP. The commenter cited the delisting action following the Asbestos NESHAP as support for their argument, noting that the applicability of that rule was not affected by delisting. However, the Asbestos NESHAP was established under 40 CFR part 61, which is not directly relevant in this situation since the IPCT NESHAP is a 40 CFR part 63 rule. If we delist this source category, it is our opinion that existing facilities with IPCT would no longer be subject to the NESHAP and would not be banned from using chromium. If any sources reverted to using chromium, risks could increase, and the basis for our finding that the source category is low-risk would be compromised. Thus, since compliance with the MACT standard is part of the basis for our low-risk determination, we believe our policy objectives are best served if we do not delist the IPCT source category. However, as long as the NESHAP exists and prohibits the use of chromium-based water treatment chemicals, we agree with the commenters who suggest that IPCT sources no longer using these chemicals should not be subject to this NESHAP. Therefore, we are amending the applicability section of the rule to clarify that sources no longer using chromium-based water treatment chemicals are not subject to this NESHAP. The NESHAP remains in effect, and any source that uses chromium-based water treatment chemicals will be subject to the rule and in violation.

Contrary to one commenter's contention, we do not interpret section 112(c)(9) of the CAA to apply only before a MACT standard has been promulgated, although that is expected to be the situation in which it is most likely exercised. We agree that section 112(c)(9) grants EPA the authority to delist a source category when the Administrator determines that risks meet the established criteria, including after promulgation of a MACT standard.

The Agency would like to remove the burden of the repetitive review of Section 112 standards for low risk source categories. At the same time, we think it is appropriate to maintain the MACT controls in this case. We plan to further investigate approaches for removing low-risk source categories from the Section 112 universe while maintaining MACT-level controls. An example of a similar approach is found in the Plywood and Composite Wood Products MACT where we allow a subcategory of facilities to reduce emissions to acceptable risk levels through Title 5 permits and remove them from the MACT universe.

7. Technology Reviews Under CAA Section 112(d)(6)

Comment: One commenter remarked that EPA should not have conducted an initial technology review of the IPCT source category. The commenter explained that once a residual risk determination indicates the risk is acceptable, EPA must find that revising the standard under CAA section 112(d)(6) is not necessary. The commenter stated that the legislative history of the CAA demonstrates that Congress rejected imposing controls beyond levels considered to be safe and protective of public health because those controls would impose regulatory costs without any public health benefit. The commenter stated that, if Congress had intended EPA to conduct technology reviews regardless of the outcome of the residual risk assessment, there would be no need for CAA section 112(f). The commenter believes that technology reviews under section 112(d)(6) were meant to be regulatory backstop authority for residual risk reviews, similar to the MACT hammer provision in section 112(j) of the CAA. That is, if EPA failed to address the residual risk for a source category, section 112(d)(6) authority could be used to ensure that advances in technology could still be applied to the source category.

Response: We disagree with the comment that we should not have conducted an initial technology review under CAA section 112(d)(6) for the IPCT source category. The timing requirements for the initial analysis under section 112(d)(6) coincide with those for the residual risk analysis. Thus, it is appropriate for us to conduct both analyses at the same time. Although the results of the risk analysis may impact future section 112(d)(6) technology reviews, these results do not negate the need to perform the initial review. Additional information regarding the relationship between residual risk standards and 112(d)(6) review requirements is provided in the preamble to the Coke Oven residual risk rule (70 FR 20008, April 15, 2005).

Comment: Seven commenters responded to our request for comment on continuing technology reviews every 8 years for source categories subject to NESHAP, as required by section 112(d)(6) of the CAA. Four commenters stated that EPA should not use a "bright line approach" in determining the need for technology reviews under section 112(d)(6) of the CAA. For example, the decision of whether or not to perform a technology review should not be based on a 1-in-1-million risk level, as is the case for residual risk. One of those commenters stated that discontinuing technology reviews would be contrary to the requirements of the CAA. The commenter noted that the phrase "* * * every 8 years" implies a continuum rather than a single action, and if Congress had intended the technology review to be a one-time requirement, it would have used other language in the CAA. As an example of a one-time requirement, the commenter cited CAA section 112(n)(1), which states that "The Administrator shall conduct, and transmit to Congress not later than 4 years after the date of enactment * * *" The other commenter who opposed discontinuing technology reviews remarked that, without future reviews, it is unlikely that EPA would know what new technologies have been developed or know of any unforeseeable circumstances that might substantially change the source category or its emissions.

Three of the commenters stated that by implementing residual risk requirements under section 112(f) or determining that residual risk requirements are not warranted, EPA completes its obligation to conduct technology reviews under section 112(d)(6) of the CAA. Thus, once the residual risk has been evaluated and the appropriate action taken, technology reviews are no longer required. However, the commenters also stated that later technology reviews may be appropriate if the ample margin of safety established by the residual risk process is based largely on cost or technical feasibility, and feasible, cost-effective controls are identified in the future. Four of the commenters stated that technology reviews under section 112(d)(6) should not provide for a continuing technology ratchet based on the availability of new technology. Instead, technology reviews should be conducted in the context of providing an ample margin of safety under section 112(f) of the CAA.

Response: We agree that a technology review is required every 8 years for emission standards under 112(d) or if new standards are issued pursuant to 112(f). However, if the ample margin of safety analysis for a section 112(f) standard shows that remaining risk for non-threshold pollutants falls below 1 in 1 million and for threshold pollutants falls below a similar threshold of safety, then further revision would not be needed because an ample margin of safety has already been assured. Additional information regarding the relationship between residual risk standards and 112(d)(6) review requirements is provided in the preamble to the Coke Oven residual risk rule (70 FR 20008, April 15, 2005).

Comment: Four commenters commented that technology reviews under section 112(d)(6) should be limited to emission standards already established under section 112(d). Three of the commenters stated that, although it is appropriate to evaluate and control emissions of other HAP not regulated by the NESHAP under section 112(f), such HAP should not be considered under the section 112(d)(6) technology review.

Response: The emission standards imposed a prohibition on the use of chromium-based water treatment chemicals in IPCT. Since the risk from other HAP emitted from IPCT due to the addition of water treatment chemicals was determined to be very low and the emission standards already preclude the use of chromium-based water treatment chemicals, we concluded that no further controls are necessary under either 112(f) or 112(d)(6). As stated previously, section 112(d)(6) requires that the emission standard be reviewed and revised as necessary no less often than every 8 years. Additional information regarding the relationship between residual risk standards and 112(d)(6) review requirements is provided in the preamble to the residual risk for coke ovens (70 FR 20008, April 15, 2005).

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether a regulatory action is "significant" and, therefore, subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that it considers this a "significant regulatory action" within the meaning of the Executive Order. EPA has submitted this action to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Paperwork Reduction Act

The final rule amendment does not impose any information collection burden. It will not change the burden estimates from those previously developed and approved for the existing NESHAP. OMB has previously approved the information collection requirements contained in the existing regulation (40 CFR part 63, subpart Q) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* (OMB control number 2060–0268). However, this information collection request has been discontinued because the information requested in the original regulation is no longer needed.

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

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR part 63 are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

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

For purposes of assessing the impacts of today's final rule amendment on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration 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 amendment on small entities, EPA has concluded that this final action will not have a significant economic impact on a substantial number of small entities. The final rule amendment does not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written

statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that the final rule amendment does not contain a Federal mandate (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector because it imposes no enforceable duty on any State, local, or tribal governments or the private sector. Thus, today's final amendment is not subject to the requirements of sections 202 and 205 of the UMRA. In addition, EPA has determined that the final amendment contains no regulatory requirements that might significantly or uniquely affect small governments, because it contains no requirements that apply to such governments or impose obligations upon them.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" 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."

Today's final amendment 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. Thus, Executive Order 13132 does not apply to the final amendment.

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

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." The final amendment does not have tribal implications as specified in Executive Order 13175. It will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to today's final amendment.

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

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866 and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety 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 EPA.

The final amendment is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866 and because EPA does not have reason to believe the environmental health or safety risks addressed by this action present a significant disproportionate risk to children.

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

The final amendment is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not an economically significant regulatory action under Executive Order 12866.

I. National Technology Transfer Advancement Act

As noted in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards (VCS) in its regulatory activities, unless to do so would be inconsistent with applicable law or otherwise impractical. The VCS are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by VCS bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency does not use available and applicable VCS. The final amendment does not involve technical standards. Therefore, EPA is not considering the use of any VCS.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement 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 the final rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the final 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). The final amendment is effective on April 7, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart Q—[Amended]

■ 2. Section 63.400 is amended by revising paragraph (a) to read as follows:

§ 63.400 Applicability.

(a) The provisions of this subpart apply to all new and existing industrial process cooling towers that are operated with chromium-based water treatment chemicals and are either major sources or are integral parts of facilities that are major sources as defined in § 63.401.

* * * * *

[FR Doc. 06–3316 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[EPA–HQ–OAR–2002–0057; FRL–8055–6]

RIN 2060–AM25

National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes amendments to national emission standards for hazardous air pollutants (NESHAP) for hydrochloric acid (HCl) production facilities, including HCl production at fume silica facilities. The amendments to the final rule clarify certain applicability provisions, emission standards, and testing, maintenance, and reporting requirements. The amendments also correct several omissions and typographical errors in the final rule. We are finalizing the amendments to facilitate compliance and improve understanding of the final rule requirements.

DATES: The final rule is effective April 7, 2006.

ADDRESSES: *Docket.* EPA has established a docket for this action including Docket ID No. EPA–HQ–OAR–2002–0057, legacy EDOCKET ID No. OAR–2002–0057, and legacy Docket ID No. A–99–41. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the following address: Air and Radiation Docket and Information Center (Air Docket), EPA/DC, EPA West, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20004. 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) 566–1744. The Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: For information concerning applicability and rule determinations; contact your State or local regulatory agency representative or the appropriate EPA Regional Office representative. For information concerning analyses performed in developing the final amendments, contact Mr. Randy McDonald, Coatings and Chemicals Group, Sectors Policies and Programs Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5402; fax number (919) 541–3470; electronic mail address: *mcdonald.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	SIC [a]	NAICS [b]	Regulated entities
Industry	2819 2821 2869	325188 325211 325199	Hydrochloric Acid Production.

[a] Standard Industrial Classification.
[b] North American Information Classification System.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in section 63.8985 of the final rule. If you have questions regarding the applicability of this action to a particular entity, consult your State or local agency (or EPA Regional Office) described in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of today's action is available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the final amendments will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.*

Judicial Review. Under section 307(b) of the Clean Air Act (CAA), judicial review of the final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before June 6, 2006. Only those objections to the final rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by today's final action may not be challenged separately in any civil or criminal proceeding we bring to enforce these requirements.

Section 307(d)(7)(B) of the CAA further provides that "only an objection

to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review." This section also provides a mechanism for EPA to convene a proceeding for reconsideration, "if the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule." Any person seeking to make such a demonstration to EPA should submit a Petition for Reconsideration to the Office of the Administrator, U.S. EPA, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, with a copy to both the person(s) listed in the **FOR FURTHER INFORMATION CONTACT** section, and the Director of the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), U.S. EPA, 1200 Pennsylvania Ave, NW., Washington, DC 20004.

Outline. The information in this preamble is organized as follows:

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires EPA to list categories and subcategories of major sources and area sources of hazardous air pollutants (HAP) and to establish NESHAP for the listed source categories and subcategories. Hydrochloric acid production and fume silica production were listed as source categories under the production of inorganic chemicals group on EPA's initial list of major source categories published in the **Federal Register** on July 16, 1992 (57 FR 31576).[1] On September 18, 2001, we combined these two source categories for regulatory purposes under the production of inorganic chemicals group and renamed the source category as HCl production (66 FR 48174). Major sources of HAP are those that have the potential to emit greater than 9.07 megagrams per year (Mg/yr) (10 tons per year (tpy)) of any one HAP or 22.68 Mg/yr (25 tpy) of any combination of HAP.

B. How Did the Public Participate in Developing the Amendments to the Final Rule?

The final rule was published in the **Federal Register** on April 17, 2003 (68 FR 19076). The final rule contains emission limitations and standards applicable to HCl and chlorine (Cl_2). These limits apply to each new or existing HCl process vent, HCl storage tank, HCl transfer operation, and leaks from equipment in HCl service located at a major source of HAP. Following promulgation of the final rule, EPA became aware of certain aspects of the applicability provisions, emission standards, and testing, maintenance, and reporting requirements that required clarification along with several omissions and typographical errors in the final rule that required correction. On August 24, 2005, we published proposed amendments (70 FR 49530) to address these issues and sought public comment on the proposed amendments. Today's action finalizes those clarifications and corrections. The preamble to the proposed amendments discussed the availability of technical support documents, which described in detail the information gathered during the standards development process.

We received four public comment letters on the proposed amendments. The commenters represent HCl producers and industrial trade associations. All of the comments have been carefully considered, and, where appropriate, changes have been made for the amendments to the final rule.

[1] Later listing notices (e.g., 66 FR 8220) refer to the source category as "fumed" silica.

II. Summary of the Final Amendments

We are finalizing amendments to 40 CFR part 63, subpart NNNNN, to change the applicability provisions, to clarify testing, monitoring, and reporting requirements, and to correct inadvertent omissions and typographical errors. A summary of each of the amendments to 40 CFR part 63, subpart NNNNN, and the rationale for each is presented below.

A. Applicability

In order to avoid regulatory overlap, the HCl Production NESHAP exempt certain HCl production facilities that are part of other source categories and subject to other Federal standards. We intended the HCl Production NESHAP to cover only those HCl production facilities that were not subject to any other NESHAP and not to cover those HCl production facilities that were subject to other NESHAP. Today's final amendments adjust the applicability provisions to rectify three situations that came to our attention after promulgation of the HCl Production NESHAP in which this intent was not satisfied.

First, the final amendments will address the HCl Production NESHAP's exemptions for HCl production facilities that are subject to certain other regulations, including 40 CFR part 63, subpart EEE (the Hazardous Waste Combustors NESHAP), and 40 CFR 266.107, subpart H (regulations issued under the Resource Conservation and Recovery Act governing the Burning of Hazardous Wastes in Boilers and Industrial Furnaces). As worded in the final rule, the exemptions were overly broad, because neither of the above final rules covers emissions of HCl from HCl storage tanks, HCl transfer operations, or leaks from equipment in HCl service at these facilities. This leaves these emission points not subject to any Federal standards, which was not our intent. Therefore, we are amending subpart NNNNN of 40 CFR part 63 to exempt facilities that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the applicability requirements of subpart NNNNN from only the HCl process vent provisions of subpart NNNNN, rather than from all of the requirements of subpart NNNNN. Because the purpose of 40 CFR 63.8985(b) and (c) is to provide exemptions from all of the requirements

of subpart NNNNN for entire HCl production facilities subject to certain other rules, we are removing 40 CFR 63.8985(b)(4) and (c)(3) to eliminate the overly broad exemptions and instead are adding new paragraphs to 40 CFR 63.9000(c) to accomplish the exemptions. The purpose of 40 CFR 63.9000(c) is to exempt certain emission streams from subpart NNNNN. Under 40 CFR 63.9000(c), plants that are subject to subpart EEE of 40 CFR part 63 or subpart H of 40 CFR part 266 and that meet the other applicability provisions of subpart NNNNN would be affected sources under subpart NNNNN but would be exempt from the process vents provisions of subpart NNNNN.

Second, the amendments revise the HCl Production NESHAP's exemptions for specific emission streams to eliminate duplicative regulation. Some emission points that are not themselves subject to subpart EEE of 40 CFR part 63 have their emissions controlled under subpart EEE because their emissions are routed directly through equipment that is subject to subpart EEE (*e.g.*, an HCl process vent emission stream routed to a hazardous waste combustor (HWC) for use as supplemental combustion air). Currently, these emissions (*e.g.*, from the combustor) are regulated by both subpart EEE and subpart NNNNN of 40 CFR part 63. To rectify this situation, we are adding a new paragraph to 40 CFR 63.9000(c) to include an emission stream-specific exemption for HCl process vents, HCl storage tanks, and HCl transfer operations that are routed directly to HWC units subject to subpart EEE. This means that HCl production facility emission streams that are routed to subpart EEE HWC units are exempt from the requirements of subpart NNNNN.

Finally, the amendments remove the HCl Production NESHAP's exemption for HCl production facilities subject to 40 CFR 264.343(b), subpart O (Incinerators), which will no longer be necessary. A combustor that burns hazardous waste and meets the subpart NNNNN of 40 CFR part 63 definition of an HCl production facility would be defined as a halogen acid furnace (currently subject to 40 CFR 266.107, subpart H, and that will be subject to 40 CFR part 63, subpart EEE, on the compliance date (October 14, 2008) of EPA's final rule promulgated on October 12, 2005 (70 FR 59402)), not an incinerator (subject to 40 CFR 264.343(b), subpart O). As discussed above, we are amending the applicability provisions of the HCl Production NESHAP to properly address HCl production facilities that are subject to 40 CFR part 266, subpart H. Therefore, the exemption for 40 CFR part 264, subpart O, is no longer necessary, and we are removing 40 CFR 63.8985(c)(2), which provided this exemption. Consequently, we are incorporating the exemption provided in 40 CFR 63.8985(c)(1) into 40 CFR 63.8985(c), and, thus, removing 40 CFR 63.8985(c)(1).

B. Definitions

We are clarifying the meaning of "equipment in HCl service," which is defined in the HCl Production NESHAP as "each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time" (40 CFR 63.9075). This definition could be interpreted to include equipment that is located at the same plant site as an "HCl production facility" (40 CFR 63.8985(a)(1)) but is not part of the HCl production facility. We intended to include only equipment that meets the above definition and is located within an HCl production facility. Therefore, we are amending the definition of "equipment in HCl service" in 40 CFR 63.9075 to clarify that the definition applies only to equipment within an HCl production facility.

C. Emission Standards

The HCl Production NESHAP specify the emission limits for existing and new HCl process vents, HCl storage tanks, and HCl transfer operations in two forms—a percent reduction and an outlet concentration—and allows HCl production facilities to comply with either one. However, the wording of the emission limits could be construed to require the use of an add-on control device even when an emission point meets the outlet concentration emission limit without an add-on control device. It was not our intent to require add-on control devices when they are unnecessary for compliance. Although a percent reduction emission limit would need to be achieved through the use of an add-on control device, we recognize that an outlet concentration emission limit could be achieved through other means (*e.g.*, process changes, pollution prevention). Therefore, we are amending table 1 to subpart NNNNN of 40 CFR part 63 to clarify that it is not necessary to use an add-on control device in order to meet the outlet concentration form of the emission limits. In addition, we are amending tables 3 and 5 to subpart NNNNN to specify the sampling port location and continuous compliance requirements, respectively, for sources that are not equipped with an add-on control device. Also, we are amending 40 CFR 63.9015(a) to require that emission points meeting the outlet concentration limits without the use of a control device conduct subsequent performance tests when process changes are made that could reasonably be expected to change the outlet concentration. Finally, we are amending 40 CFR 63.9050 by adding paragraph (c)(9), which specifies that compliance reports must include verification that no process changes that could reasonably be expected to change the outlet concentration have been made since the last performance test.

D. Storage Tank Maintenance

The HCl Production NESHAP are silent on the issue of how maintenance is to be conducted on HCl storage tank control devices. This could lead to uncertainty over whether an HCl storage tank would need to be emptied before the associated control device could be disconnected for maintenance purposes. It was not our intent that an HCl storage tank would need to be emptied prior to maintenance because the standing losses associated with a full or partially-full HCl storage tank are low, when compared to the emissions that occur from filling and emptying the tank. To clarify our intent, we are amending 40 CFR 63.9000, by adding paragraph (d), to allow HCl production facilities to perform planned routine maintenance on each HCl storage tank control device for up to 240 hours per year without emptying the contents of the tank. During this time, the storage tank emission limitations would not apply. Also, we are amending 40 CFR 63.9050, by adding paragraph (c)(10), and 40 CFR 63.9055, by adding paragraph (b)(6), to specify the reporting and recordkeeping requirements for planned routine maintenance events. These provisions are consistent with other NESHAP to which plant sites containing HCl production facilities may be subject.

E. Notification and Reporting Requirements

1. Notification of Compliance Status

The HCl Production NESHAP require the submission of a Notification of Compliance Status (NOCS) to the Administrator when a performance test is conducted (40 CFR 63.9045(a), table 7 to subpart NNNNN of 40 CFR part 63, and 40 CFR 63.9(h)). It could be interpreted that 40 CFR 63.9045(e) and (f) require the submission of a separate NOCS for each performance test that is conducted (*e.g.*, on each emission

point). It is more efficient and no less effective for HCl production facilities to submit one NOCS for the entire affected source, rather than one NOCS for each emission point tested, and it was not our intent to require unnecessary paperwork. Therefore, we are amending 40 CFR 63.9045 to change the submission procedures for NOCS. We will allow NOCS to be submitted within 240 calendar days of the compliance dates for subpart NNNNN of 40 CFR part 63. The final amendments allow for the submission of only one NOCS per affected source because the notification is due 60 days after all performance tests are required to be conducted. We are also amending table 7 to subpart NNNNN to reflect this change to the NOCS submission procedures.

2. Monitoring and Leak Detection and Repair (LDAR) Plans

The HCl Production NESHAP require submission of the initial site-specific monitoring (40 CFR 63.9005(d)) and LDAR (LDAR; table 1 to subpart NNNNN of 40 CFR part 63) plans to the Administrator with a source's NOCS. The final rule does not, however, specify when or how revisions to these plans should be submitted, only that they should be submitted (40 CFR 63.9055(b)(5)). Submission of revisions to these plans is most efficiently done in conjunction with the semi-annual compliance report required by 40 CFR 63.9050. Therefore, we are amending 40 CFR 63.9050(c) by adding paragraph (c)(8) to require submission of revisions to site-specific monitoring plans and LDAR plans with semi-annual compliance reports, if revisions have been made during the reporting period.

F. Omissions and Typographical Corrections

We are adding an exemption which was inadvertently omitted from the HCl Production NESHAP. In the preamble to the final rule (68 FR 19082), we indicated that we would include an exemption for HCl production facilities subject to 40 CFR 63.994, subpart SS. Because this exemption was not included in the final rule text, we are amending the rule to include it. Because we are removing 40 CFR 63.8985(b)(4), we are replacing it with the exemption for 40 CFR 63.994, subpart SS.

We are removing the phrase "/Cl_2" from 40 CFR 63.8990(b)(4) to reflect a change made between the proposed rule and the final rule which was retained incorrectly in the final rule. The proposed rule used the term "in HCl/Cl_2 service," but we wrote this term as "equipment in HCl service" in the final rule. We are making the same change in the first column of table 1, item 4, to subpart NNNNN of 40 CFR part 63.

We are correcting an inaccurate reference in 40 CFR 63.9025(a) regarding operating parameters. The reference should be to 40 CFR 63.9020(e), which requires operating parameters to be established, rather than to 40 CFR 63.9020(d). This was a typographical error in the final rule.

We are correcting an inaccurate reference in the definition of "HCl production facility" in 40 CFR 63.9075. The reference to 40 CFR 63.8985(a)(i) should be to 40 CFR 63.8985(a)(1) because 40 CFR 63.8985(a)(i) does not exist. This was a typographical error in the final rule.

III. Significant Comments and Changes Since Proposal

This section includes discussion of the significant comments received on the proposed amendments, particularly where we made changes to address those comments in the amendments to the final rule. For a complete summary of all the comments received on the proposed rule and our responses to them, refer to the "RESPONSE TO SIGNIFICANT PUBLIC COMMENTS Received in response to Proposed amendments to National Emission Standards for Hazardous Air Pollutants: Hydrochloric Acid Production" in Docket ID No. EPA–HQ–OAR–2002–0057. The docket also contains the actual comment letters and supporting documentation developed for the final amendments.

A. Applicability

Comment: One commenter recommends that EPA need not include proposed 40 CFR 63.9000(c)(4) as proposed 40 CFR 63.9000(c)(5) is more inclusive and includes the conditions addressed in 40 CFR 63.9000(c)(4).

Response: EPA agrees with the concept put forward by the commenter and has reworded paragraph (c)(4) to encompass the language proposed in paragraphs (c)(4), (c)(5), and (c)(6).

B. Retesting Requirements

Comment: Two commenters request that EPA clarify the change provisions in proposed 40 CFR 63.9015(a) to explain that the provisions to retest process vent emissions should be tied to a change that could cause an increase in emissions rather than, as currently worded, "whenever process changes are made that could reasonably be expected to change the outlet concentration." A similar change was requested to the language in 40 CFR 63.9050(c)(9).

Response: EPA agrees with the commenters and has made the suggested changes. This language is consistent with other rulemaking actions.

Comment: One commenter requests that EPA define "temporary process changes," in proposed 40 CFR 63.9015(a) to be changes of less than 1 year in duration where the owner/operator believes that the source will continue to demonstrate compliance without changing the compliance demonstration method.

Response: EPA disagrees with the commenter. As mentioned in the previous response, without emissions test data, no one can determine the effect of a change—temporary or not—on an existing facility. Moreover, the commenter errs by excluding the term "unintentional" in discussing "temporary process changes." As written, the final rule identifies "*unintentional*, temporary process changes" (emphasis added) as not being process changes. Surely a process change lasting up to 1 year could not be considered unintentional. Absent any information as to the length of time "unintentional temporary" process changes should or could last, we have not revised the final rule.

C. Monitoring of pH

Comment: One commenter believes that the requirement to measure the pH of the scrubber water as provided in 40 CFR 63.9020(e)(1) and Table 5 to subpart NNNNN is an inappropriate operational parameter and should be removed from the final rule. The commenter believes that monitoring the water flow of the scrubber is a sufficient measurement of scrubber performance, as seen during performance testing. The Pesticide Active Ingredient Production NESHAP (40 CFR 63.1366(b)(ii)) allows for either minimum liquid flow rate or pressure drop to be chosen as operating parameters during the period in which the scrubber is controlling HAP from an emission stream and only requires the measurement of pH if a caustic scrubber is being used. The commenter believes that a rule change is more efficient than going through the alternative monitoring request process.

Response: EPA disagrees with the commenter's suggestion to replace monitoring of the scrubber water effluent pH with monitoring of the minimum liquid flow rate or pressure drop only. Apart from directly measuring HCl emissions, monitoring of the outlet pH of the scrubber water, as well as the water flow rate into the scrubber, provides the most complete depiction of parametric monitoring and best measure for process control. Parametric monitoring that provides a less certain depiction, and

corresponding level of process control, would include scrubber water outlet pH monitoring and flow monitoring. The least-certain depiction, and corresponding level of process control, would arise from monitoring only the scrubber water flow. Although such least-certain monitoring may be appropriate under certain circumstances, sources subject to the HCl production NESHAP may rely on techniques other than once-through scrubber water use. In order not to prescribe any control technique, source owners or operators are able to choose an approach that works best for them. The Pesticide NESHAP cited by the commenter differs from the HCl NESHAP and what is applicable for sources subject to the Pesticide NESHAP may not be relevant for sources subject to the HCl Production NESHAP. Further, the commenter fails to note that other standards that regulate HCl emissions require the monitoring of effluent pH. A more comparable example is that of 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors. In this NESHAP, where the HCl production process is very similar to that of the HCl Production NESHAP, monitoring of effluent pH is required whenever a wet scrubber, water or caustic, is used (40 CFR 63.1209(o)(3)(iv)).

EPA is unaware of any difficulty faced by source owners or operators subject to the HCl Production NESHAP in getting approval for alternative monitoring as suggested by the commenter. In fact, at least two HCl Production NESHAP source owners/operators have demonstrated a need for an alternative monitoring technique, requested approval for such technique, and received approval for that technique by the Regional offices.

D. Engineering Evaluations

Comment: Two commenters request that the provision allowing the use of engineering evaluations in lieu of emission testing, as proposed in 40 CFR 9020(e)(3), be amended to include process vents as well as the currently proposed allowance for storage tanks and transfer operations. The commenters note that EPA has historically allowed such assessments for process vents in other NESHAP (*e.g.*, 40 CFR 63.1258(b)(3)(i); 40 CFR 63.1365(c)(3)(i)(A); 40 CFR 63.1426(f)) and continues to support the use of design evaluations (40 CFR 63.2450(h)).

Response: EPA disagrees with the commenters' suggestion. The standards cited by the commenters all deal primarily with organic HAP, with HCl occurring in more limited quantities, as opposed to the primacy of HCl emissions encountered in the HCl Production NESHAP. The commenters provide no data to support their contention about use of engineering evaluations in lieu of emissions testing for HCl and Cl_2 for the process vents. Design values as supplied by such engineering evaluations may be appropriate for small emitters (*i.e.*, those below the NESHAP applicability level) as was done for at least some of the cited NESHAP, but substantial, uncontrolled emissions " such as those that could come from process vents—should be measured.

Again, EPA feels that a more comparable example is the Hazardous Waste Combustor NESHAP (40 CFR part 63, subpart EEE). In this standard (40 CFR 63.1207(m)), conservative engineering evaluations are allowed in lieu of emissions testing for sources that can comply with the emission standards assuming all chlorine in the feed is emitted as total chlorine ($HCl + Cl_2$)—if the maximum theoretical emission concentration does not (cannot) exceed the emission standards, emissions testing is waived. However, HCl production furnaces could not comply with this waiver of the emission test because they rely on wet scrubbers/absorbers to produce HCl product and control emissions of HCl/Cl_2. We believe this situation is analogous to that encountered in the HCl Production NESHAP where we have allowed engineering evaluations to be utilized for those emission sources that could possibly emit below the emission standard (*i.e.*, the storage tanks and transfer operations) but have required emission testing for the emission sources that are not likely to emit below the standard without the use of a control device (*i.e.*, the process vents).

E. Compliance Date

Comment: Two commenters request that EPA clarify the deadline for compliance with the final rule and the dates when the initial reports are due in 40 CFR 63.9050(b)(1) and (2), believing that there could be confusion among the various entities affected by the rule concerning the submittal date for the first compliance report. They suggest that the rule language specifically state that January 31, 2007, is the date on which the first compliance report is due.

Response: EPA agrees that the wording could be confusing and has added clarification to the language of the regulation to indicate that, for sources in existence on April 17, 2006, the initial compliance period ends June 30, 2006, and the initial compliance report is due on July 31, 2006.

F. Planned Maintenance

Comment: Two commenters expressed concern about the planned maintenance advance notification requirements in proposed 40 CFR 63.9050(c)(10)(ii) in that planned maintenance schedules are subject to change with little or no notice. One of the commenters believes that a facility could, in good faith, report advance plans of maintenance to the permit authority and EPA but then, due to an unforeseen change of plans, not conduct the planned maintenance on the proposed schedule or identify additional, required work that was not in the maintenance plan. The commenter believes that EPA should not establish a regulation where a decision is required to respond to plant-specific conditions that have no impact on emissions becomes a regulatory enforcement matter. The commenter believes that EPA already has sufficient authority through the existing startup, malfunction, and shutdown (SSM) provisions to review such maintenance activities without requiring the additional reporting required by 40 CFR 63.9050(c)(10)(ii). The other commenter requests that tracking of compliance with any needed notification requirements only be included in the required periodic reports (as proposed in 40 CFR 63.9050(c)(10)(i)) or that such reporting not be required unless a deviation of a monitoring condition or an exceedances of an emission limit occurs during the periodic reporting period. One commenter believes that the proposed requirement is overly burdensome and unnecessary. Further, the commenter states that it is not aware of any other NESHAP that requires advance reporting of anticipated planned routine maintenance activities on emission control devices.

Response: EPA disagrees with the commenters. In adding this requirement, EPA was responding to concerns that the rule language was unclear on whether an HCl storage tank would need to be emptied before the associated control device could be disconnected for maintenance purposes. In the proposed amendments to the final rule, EPA provided language that allowed owners/operators to perform maintenance on each HCl storage tank for up to 240 hours per year without emptying the storage tank. During this period, the storage tank emissions would not apply. The notification requirement was included to ensure that the recipient of the periodic reports is

aware of planned maintenance activities related to the HCl storage tanks, including the type of maintenance to be performed and the duration of the maintenance (which would be the length of time during which the emission standards would not apply). Further, EPA does not believe that an out-of-compliance period should suddenly become a "maintenance period." EPA does not see the dilemma the commenters believe themselves subject to. If a planned maintenance period does not occur, EPA sees no harm or liability for having reported it. EPA recognizes that planned maintenance activities may, on occasion, not occur as scheduled. In cases where an owner/operator had included planned maintenance in a periodic report but the maintenance did not occur, EPA would expect that the owner/operator would merely explain the situation in the next periodic report. EPA understands that occasionally additional unplanned maintenance needs are discovered in the course of a planned maintenance and believes that the regulations are sufficiently flexible to accommodate such circumstances. EPA believes that 240 hours is sufficient time to effect maintenance on HCl storage tank control devices. However, should planned maintenance on such devices require 240 or greater hours per year, the owner/operator would be required to drain the HCl storage tank or comply with the emission limits without the control device in-place.

G. Work Practice Standards

Comment: One commenter expressed concern about changes made to item 4 in table 1 to subpart NNNNN where the term "and new" sources was added to the existing language. The commenter believes that this change was not discussed in the preamble to the proposed amendments and that this addition significantly broadens the impact of the rule and should be justified.

Response: Item 4 in table 1 to subpart NNNNN only addressed leaking equipment at existing sources. EPA acknowledges that it was an oversight in the regulatory language in the final rule to omit leaking equipment at new sources and, so as a technical correction, added "and new" to the language of item 4 in the proposed amendments. The text of the final rule preamble related to the emission limitations and work practice standards (68 FR 19079) provides discussion for process vents, storage tanks, and transfer operations at both new and existing sources. However, for leaking equipment, the text only states "[f]or leaking equipment, the final rule includes a work practice standard." EPA believes that the lack of distinction between leaking equipment at new and existing sources is indication that the final rule applies to both situations. EPA sees no reason to omit new sources from having to address leaking equipment and does not agree with the commenter's concern about this adjustment "significantly" broadening the impact of the final rule.

IV. Impacts of the Final Rule

The changes incorporated as a result of the final rule amendments do not change any of the impacts presented in the preamble to the final rule which was published at 68 FR 19076 (April 17, 2003).

V. Statutory and Executive Order (EO) Reviews

A. EO 12866: Regulatory Planning and Review

Under EO 12866 (58 FR 51735; October 4, 1993), EPA must determine whether the regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the EO. The EO defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the EO.

It has been determined that today's action is not a "significant regulatory action" under the terms of EO 12866 and is, therefore, not subject to OMB review.

B. Paperwork Reduction Act

OMB has approved the information collection requirements in the 2003 NESHAP for HCl production under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0529. At proposal, EPA prepared a revision to the currently approved information collection request (ICR), and made it available for public comment. Most of the final rule amendments are not expected to have an impact on the ICR burden. However, the ICR was revised because two of the final rule amendments are expected to change the burden slightly. The exemption for individual emission streams that are routed to 40 CFR part 63, subpart EEE, hazardous waste combustors is expected to decrease the reporting and recordkeeping burden for some sources. The routine maintenance allowance is expected to increase the reporting and recordkeeping burden for all sources. Overall, the total annual reporting and recordkeeping burden is expected to be 733 hours (1 percent) lower than for the final rule. No comments were received on the revised ICR or burden estimates.

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 are listed in 40 CFR part 9 and 40 CFR chapter 15.

C. Regulatory Flexibility Act

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with today's action.

For purposes of assessing the impacts of today's amendments on small entities, small entity is defined as (1) a small business as defined by the Small Business Administration's regulations at 13 CFR 121.202; (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. The small

business size standard for the affected industries (NAICS 325181, Alkalies and Chlorine Manufacturing; and NAICS 325188, All Other Basic Inorganic Chemical Manufacturing) is a maximum of 1,000 employees for an entity.

After considering the economic impacts of today's final rule amendments on small entities, EPA has concluded that today's action will not have a significant economic impact on a substantial number of small entities. The final rule amendments will not impose any requirements on small entities.

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 UMRA section 202, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, UMRA section 205 generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of UMRA section 205 do not apply when they are inconsistent with applicable law. Moreover, UMRA section 205 allows EPA to adopt an alternative other than the least-costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under UMRA section 203 a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final amendments contain no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, or Tribal governments. EPA has determined that the final amendments do not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any 1 year. Thus, today's final amendments are not subject to the requirements of UMRA sections 202 and 205.

E. EO 13132: Federalism

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

The final rule amendments do not have federalism implications. They 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 EO 13132. None of the affected facilities are owned or operated by State governments. Thus, EO 13132 does not apply to the final amendments.

F. EO 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (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." The final rule amendments do not have Tribal implications, as specified in EO 13175. They will not have substantial direct effects on Tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. No Tribal governments own facilities subject to the HCl Production NESHAP. Thus, EO 13175 does not apply to the final amendments.

G. EO 13045: Protection of Children From Environmental Health and Safety Risks

EO 13045 (62 FR 19885; April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under EO 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety 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 the Agency. EPA interprets EO 13045 as applying only to regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. The final rule amendments are not subject to EO 13045 because they are based on technology performance and not on health or safety risks.

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

Today's action is not subject to EO 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 EO 12866.

I. National Technology Transfer and Advancement Act

As stated in the proposed rule, section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C 272 note), directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (such as material specifications, test methods, sampling procedures, or business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. The final rule amendments do not involve changes to the technical standards in the final rule. Therefore, EPA is not considering the use of any voluntary consensus standards in the final amendments.

J. Congressional Review Act

The Congressional Review Act (CRA), 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 my 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 the final rule amendments 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 final rule amendments in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The final rule amendments are not a "major rule" as defined by 5 U.S.C. 804(2). The final rule amendments will be effective April 7, 2006.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Recordkeeping and reporting requirements.

Dated: March 31, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set forth in the preamble, title 40, chapter I, part 63 of the Code of Federal Regulations is amended as follows:

PART 63—[AMENDED]

■ 1. The authority citation for part 63 continues to read as follows:

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

Subpart NNNNN—[Amended]

■ 2. Section 63.8985 is amended by revising paragraphs (b)(4) and (c) to read as follows:

§ 63.8985 Am I subject to this subpart?

* * * * *

(b) * * *

(4) 40 CFR part 63, section 63.994, subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process.

* * * * *

(c) An HCl production facility is not subject to this subpart if it is located following the incineration of chlorinated waste gas streams, waste liquids, or solid wastes, and the emissions from the HCl production facility are subject to section 63.113(c), subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

* * * * *

■ 3. Section 63.8990 is amended by revising paragraph (b)(4) to read as follows:

§ 63.8990 What parts of my plant does this subpart cover?

* * * * *

(b) * * *

(4) Each emission stream resulting from leaks from equipment in HCl service.

* * * * *

■ 4. Section 63.9000 is amended by:
■ a. Revising paragraph (a);
■ b. Revising the introductory text of paragraph (c);
■ c. Adding paragraph (c)(4); and
■ d. Adding paragraph (d).

§ 63.9000 What emission limitations and work practice standards must I meet?

(a) With the exceptions noted in paragraphs (c) and (d) of this section, you must meet the applicable emission limit and work practice standard in table 1 to this subpart for each emission stream listed under § 63.8990(b)(1) through (4) that is part of your affected source.

* * * * *

(c) The emission streams listed in paragraphs (c)(1) through (4) of this section are exempt from the emission limitations, work practice standards, and all other requirements of this subpart.

* * * * *

(4) Emission streams from HCl process vents, HCl storage tanks, and HCl transfer operations that are also subject to 40 CFR part 63, subpart EEE, National Emission Standards for Hazardous Air Pollutants for Hazardous Waste Combustors, or 40 CFR 266.107, subpart H, Burning of Hazardous Waste in Boilers and Industrial Furnaces.

(d) The emission limits for HCl storage tanks in table 1 to this subpart do not apply during periods of planned routine maintenance of HCl storage tank control devices. Periods of planned routine maintenance of each HCl storage tank control device, during which the control device does not meet the emission limits specified in table 1 to this subpart, shall not exceed 240 hours per year.

■ 5. Section 63.9015 is amended by revising paragraph (a) to read as follows:

§ 63.9015 When must I conduct subsequent performance tests?

(a) You must conduct all applicable performance tests according to the procedures in § 63.9020 on the earlier of your title V operating permit renewal or within 5 years of issuance of your title V permit. For emission points meeting the outlet concentration limits in table 1 to this subpart without the use of a control device, all applicable performance tests must also be conducted whenever process changes are made that could reasonably be expected to increase the outlet concentration. Examples of process changes include, but are not limited to, changes in production capacity, production rate, feedstock type, or catalyst type, or whenever there is replacement, removal, or addition of recovery equipment. For purposes of this paragraph, process changes do not include: process upsets and unintentional, temporary process changes.

* * * * *

■ 6. Section 63.9025 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 63.9025 What are my monitoring installation, operation, and maintenance requirements?

(a) For each operating parameter that you are required by § 63.9020(e) to monitor, you must install, operate, and maintain each CMS according to the requirements in paragraphs (a)(1) through (6) of this section.

* * * * *

■ 7. Section 63.9045 is amended by:
■ a. Removing and reserving paragraph (e); and
■ b. Revising paragraph (f).

§ 63.9045 What notifications must I submit and when?

* * * * *

(e) [Reserved]

(f) You must submit the Notification of Compliance Status, including the performance test results, within 240 calendar days after the applicable compliance dates specified in § 63.8995.

* * * * *

■ 8. Section 63.9050 is amended by:
■ a. Revising paragraphs (b)(1) and (2);
■ b. Revising the introductory text of paragraph (c); and
■ c. Adding paragraphs (c)(8) through (c)(10).

§ 63.9050 What reports must I submit and when?

* * * * *

(b) * * *

(1) The first compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.8995 and ending on June 30 or December 31, whichever date is the first date

following the end of the first calendar half after the compliance date that is specified for your source in § 63.8995 (i.e., June 30, 2006, for sources existing on April 17, 2006).

(2) The first compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified for your affected source in § 63.8995 (i.e., July 31, 2006, for sources existing on April 17, 2006).

* * * * *

(c) The compliance report must contain the following information in paragraphs (c)(1) through (10) of this section.

* * * * *

(8) If you did not make revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period, a statement that you did not make any revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period. If you made revisions to your site-specific monitoring plan and/or LDAR plan during the reporting period, a copy of the revised plan.

(9) If you meet the outlet concentration limit in table 1 to this subpart without the use of a control device for any emission point, verification that you have not made any process changes that could reasonably be expected to increase the outlet concentration since your most recent performance test for that emission point.

(10) The information specified in paragraphs (c)(10)(i) and (ii) of this section for those planned routine maintenance operations that caused or may cause an HCl storage tank control device not to meet the emission limits in table 1 to this subpart, as applicable.

(i) A description of the planned routine maintenance that was performed for each HCl storage tank control device during the reporting period. This description shall include the type of maintenance performed and the total number of hours during the reporting period that the HCl storage tank control device did not meet the emission limits in table 1 to this subpart, as applicable, due to planned routine maintenance.

(ii) A description of the planned routine maintenance that is anticipated to be performed for each HCl storage tank control device during the next reporting period. This description shall include the type of maintenance necessary, planned frequency of maintenance, and lengths of maintenance periods.

* * * * *

■ 9. Section 63.9055 is amended by adding paragraph (b)(6) to read as follows:

§ 63.9055 What records must I keep?

* * * * *

(b) * * *

(6) Records of the planned routine maintenance performed on each HCl storage tank control device including the duration of each time the control device does not meet the emission limits in table 1 to this subpart, as applicable, due to planned routine maintenance. Such a record shall include the information specified in paragraphs (b)(6)(i) and (ii) of this section.

(i) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were not met at the beginning of the planned routine maintenance, and

(ii) The first time of day and date the emission limits in table 1 to this subpart, as applicable, were met at the conclusion of the planned routine maintenance.

■ 10. Section 63.9075 is amended by revising the definitions of "Equipment in HCl service" and "HCl production facility" to read as follows:

§ 63.9075 What definitions apply to this subpart?

* * * * *

Equipment in HCl service means each pump, compressor, agitator, pressure relief device, sampling connection system, open-ended valve or line, valve, connector, and instrumentation system in an HCl production facility that contains 30 weight percent or greater of liquid HCl or 5 weight percent or greater of gaseous HCl at any time.

* * * * *

HCl production facility is defined in § 63.8985(a)(1).

* * * * *

■ 11. Table 1 in subpart NNNNN is revised to read as follows:

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS

[As stated in § 63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source]

For each . . .	You must meet the following emission limit and work practice standard
1. Emission stream from an HCl process vent at an existing source	a. Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 20 ppm by volume or less; and b. Reduce Cl_2 emissions by 99 percent or greater or achieve an outlet concentration of 100 ppm by volume or less.
2. Emission stream from an HCl storge tank at an existing source	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
3. Emission stream from an HCl transfer operation at an existing source.	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.
4. Emission stream from leaking equipment in HCl service at existing and new sources.	a. Prepare and operate at all times according to an equipment LDAR plan that describes in detail the measures that will be put in place to detect leaks and repair them in a timely fashion; and b. Submit the plan to the Administrator for comment only with your Notification of Compliance Status; and c. You may incorporate by reference in such plan existing manuals that describe the measures in place to control leaking equipment emissions required as part of other federally enforceable requirements, provided that all manuals that are incorporated by reference are submitted to the Administrator.
5. Emission stream from an HCl process vent at a new source	a. Reduce HCl emissions by 99.4 percent or greater or achieve an outlet concentration of 12 ppm by volume or less; and b. Reduce Cl_2 emissions by 99.8 percent or greater or achieve an outlet concentration of 20 ppm by volume or less.
6. Emission stream from an HCl storage tank at a new source	Reduce HCl emissions by 99.9 percent or greater or achieve an outlet concentration of 12 ppm by volume or less.

TABLE 1 TO SUBPART NNNNN OF PART 63.—EMISSION LIMITS AND WORK PRACTICE STANDARDS—Continued

[As stated in § 63.9000(a), you must comply with the following emission limits and work practice standards for each emission stream that is part of an affected source]

For each . . .	You must meet the following emission limit and work practice standard
7. Emission stream from an HCl transfer operation at a new source	Reduce HCl emissions by 99 percent or greater or achieve an outlet concentration of 120 ppm by volume or less.

■ 12. Table 3 in subpart NNNNN is revised to read as follows:

TABLE 3 TO SUBPART NNNNN OF PART 63.—PERFORMANCE TEST REQUIREMENTS FOR HCL PRODUCTION AFFECTED SOURCES

[As stated in § 63.9020, you must comply with the following requirements for performance tests for HCl production for each affected source]

For each HCl process vent and each HCl storage tank and HCl transfer operation for which you are conducting a performance test, you must . . .	Using . . .	Additional Information . . .
1. Select sampling port location(s) and the number of traverse points.	a. Method 1 or 1A in appendix A to 40 CFR part 60 of this chapter.	i. If complying with a percent reduction emission limitation, sampling sites must located at the inlet and outlet of the control device prior to any releases to the atmosphere (or, if a series of control devices are used, at the inlet of the first control device and at the outlet of the final control device prior to any releases to the atmosphere); or ii. If complying with an outlet concentration emission limitation, the sampling site must be located at the outlet of the final control device and prior to any releases to the atmosphere or, if no control device is used, prior to any releases to the atmosphere.
2. Determine velocity and volumetric flow rate	Method 2, 2A, 2C, 2D, 2F, or 2G in appendix A to 40 CFR part 60 of this chapter.	
3. Determine gas molecular weight	a. Not applicable	i. Assume a molecular weight of 29 (after moisture correction) for calculation purposes.
4. Measure moisture content of the stack gas	Method 4 in appendix A to 40 CFR part 60 of this chapter.	
5. Measure HCl concentration and Cl_2 concentration from HCl process vents.	a. Method 26A in appendix A to 40 CFR part 60 of this chapter.	i. An owner or operator may be exempted from measuring the Cl_2 concentration from an HCl process vent provided that a demonstration that Cl_2 is not likely to be present in the stream is submitted as part of the site-specific test plan required by § 63.9020(a)(2). This demonstration may be based on process knowledge, engineering judgment, or previous test results.
6. Establish operating limits with which you will demonstrate continuous compliance with the emission limits in Table 1 to this subpart, in accordance with § 63.9020(e)(1) or (2).		

■ 13. Table 5 in subpart NNNNN is revised to read as follows:

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS

[As stated in § 63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source and each work practice standard]

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
1. Affected source using a caustic scrubber or water scrubber/adsorber.	a. In Tables 1 and 2 to this subpart.	i. Collecting the scrubber inlet liquid or recirculating liquid flow rate, as appropriate, and effluent pH monitoring data according to § 63.9025, consistent with your monitoring plan; and ii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and

TABLE 5 TO SUBPART NNNNN OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS AND WORK PRACTICE STANDARDS—Continued

[As stated in § 63.9040, you must comply with the following requirements to demonstrate continuous compliance with the applicable emission limitations for each affected source and each work practice standard]

For each . . .	For the following emission limitation and work practice standard . . .	You must demonstrate continuous compliance by . . .
		iii. Maintaining the daily average scrubber inlet liquid or recirculating liquid flow rate, as appropriate, above the operating limit; and iv. Maintaining the daily average scrubber effluent pH within the operating limits.
2. Affected source using any other control device	a. In Tables 1 and 2 to this subpart.	i. Conducting monitoring according to your monitoring plan established under § 63.8(f) in accordance with § 63.9025(c); and ii. Collecting the parameter data according to your monitoring plan established under § 63.8(f); and iii. Reducing the data to 1-hour and daily block averages according to the requirements in § 63.9025; and iv. Maintaining the daily average parameter values within the operating limits established according to your monitoring plan established under § 63.8(f).
3. Affected source using no control device	a. In Tables 1 and 2 to this subpart..	i. Verifying that you have not made any process changes that could reasonably be expected to change the outlet concentration since your most recent performance test for an emission point.
4. Leaking equipment affected source	a. In Table 1 to this subpart	i. Verifying that you continue to use a LDAR plan; and ii. Reporting any instances where you deviated from the plan and the corrective actions taken.

■ 14. Table 7 in subpart NNNNN is revised to read as follows:

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN

[As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation
§ 63.1	Initial applicability determination; applicability after standard established; permit requirements; extensions; notifications.	Yes.	
§ 63.2	Definitions	Yes	Additional definitions are found in § 63.9075.
§ 63.3	Units and abbreviations	Yes.	
§ 63.4	Prohibited activities; compliance date; circumvention, severability.	Yes.	
§ 63.5	Construction/reconstruction applicability; applications; approvals.	Yes.	
§ 63.6(a)	Compliance with standards and maintenance requirements-applicability.	Yes.	
§ 63.6(b)(1)–(4)	Compliance dates for new or reconstructed sources.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(b)(5)	Notification if commenced construction or reconstruction after proposal.	Yes.	
§ 63.6(b)(6)	[Reserved]	Yes.	
§ 63.6(b)(7)	Compliance dates for new or reconstructed area sources that become major.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(c)(3)–(4)	[Reserved]	Yes.	
§ 63.6(c)(5)	Compliance dates for existing area sources that become major.	Yes	§ 63.8995 specifies compliance dates.
§ 63.6(d)	[Reserved]	Yes.	
§ 63.6(e)(1)–(2)	Operation and maintenance requirements	Yes.	
§ 63.6(e)(3)	SSM plans	Yes.	
§ 63.6(f)(1)	Compliance except during SSM	Yes.	
§ 63.6(f)(2)–(3)	Methods for determining compliance	Yes.	
§ 63.6(g)	Use of an alternative non-opacity emission standard.	Yes.	
§ 63.6(h)	Compliance with opacity/visible emission standards.	No	Subpart NNNNN does not specify opacity or visible emission standards.

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

[As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation
§ 63.6(i)	Extension of compliance with emission standards	Yes.	
§ 63.6(j)	Presidential compliance exemption	Yes.	
§ 63.7(a)(1)–(2)	Performance test dates	Yes	Except for existing affected sources as specified in § 63.9010(b).
§ 63.7(a)(3)	Administrator's Clean Air Act section 114 authority to require a performance test.	Yes.	
§ 63.7(b)	Notification of performance test and rescheduling	Yes.	
§ 63.7(c)	Quality assurance program and site-specific test plans.	Yes.	
§ 63.7(d)	Performance testing facilities	Yes.	
§ 63.7(e)(1)	Conditions for conducting performance tests	Yes.	
§ 63.7(f)	Use of an alternative test method	Yes.	
§ 63.7(g)	Performance test data analysis, recordkeeping, and reporting.	Yes.	
§ 63.7(h)	Waiver of performance tests	Yes.	
§ 63.8(a)(1)–(3)	Applicability of monitoring requirements	Yes	Additional monitoring requirements are found in § 63.9005(d) and 63.9035.
63.8(a)(4)	Monitoring with flares	No	Subpart NNNNN does not refer directly or indirectly to § 63.11.
§ 63.8(b)	Conduct of monitoring and procedures when there are multiple effluents and multiple monitoring systems.	Yes.	
§ 63.8(c)(1)–(3)	Continuous monitoring system O&M	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(4)	Continuous monitoring system requirements during breakdown, out-of-control, repair, maintenance, and high-level calibration drifts.	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(5)	Continuous opacity monitoring system (COMS) minimum procedures.	No	Subpart NNNNN does not have opacity or visible emission standards.
§ 63.8(c)(6)	Zero and high level calibration checks	Yes	Applies as modified by § 63.9005(d).
§ 63.8(c)(7)–(8)	Out-of-control periods, including reporting	Yes.	
§ 63.8(d)–(e)	Quality control program and CMS performance evaluation.	No	Applies as modified by § 63.9005(d).
§ 63.8(f)(1)–(5)	Use of an alternative monitoring method	Yes.	
§ 63.8(f)(6)	Alternative to relative accuracy test	No	Only applies to sources that use continuous emissions monitoring systems (CEMS).
§ 63.8(g)	Data reduction	Yes	Applies as modified by § 63.9005(d).
§ 63.9(a)	Notification requirements—applicability	Yes.	
§ 63.9(b)	Initial notifications	Yes	Except § 63.9045(c) requires new or reconstructed affected sources to submit the application for construction or reconstruction required by § 63.9(b)(1)(iii) in lieu of the initial notification.
§ 63.9(c)	Request for compliance extension	Yes.	
§ 63.9(d)	Notification that a new source is subject to special compliance requirements.	Yes.	
§ 63.9(e)	Notification of performance test	Yes.	
§ 63.9(f)	Notification of visible emissions/opacity test	No	Subpart NNNNN does not have opacity or visible emission standards.
§ 63.9(g)(1)	Additional CMS notifications—date of CMS performance evaluation.	Yes.	
§ 63.9(g)(2)	Use of COMS data	No	Subpart NNNNN does not require the use of COMS.
§ 63.9(g)(3)	Alternative to relative accuracy testing	No	Applies only to sources with CEMS.
§ 63.9(h)	Notification of compliance status	Yes	Except the submission date specified in § 63.9(h)(2)(ii) is superseded by the date specified in § 63.9045(f).
§ 63.9(i)	Adjustment of submittal deadlines	Yes.	
§ 63.9(j)	Change in previous information	Yes.	
§ 63.10(a)	Recordkeeping/reporting applicability	Yes.	
§ 63.10(b)(1)	General recordkeeping requirements	Yes	§§ 63.9055 and 63.9060 specify additional recordkeeping requirements.
§ 63.10(b)(2)(i)–(xi)	Records related to SSM periods and CMS	Yes.	
§ 63.10(b)(2)(xii)	Records when under waiver	Yes.	
§ 63.10(b)(2)(xiii)	Records when using alternative to relative accuracy test.	No	Applies only to sources with CEMS.
§ 63.10(b)(2)(xiv)	All documentation supporting initial notification and notification of compliance status.	Yes.	
§ 63.10(b)(3)	Recordkeeping requirements for applicability determinations.	Yes.	

TABLE 7 TO SUBPART NNNNN OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART NNNNN—Continued

[As stated in § 63.9065, you must comply with the applicable General Provisions requirements according to the following]

Citation	Requirement	Applies to subpart NNNNN	Explanation
§ 63.10(c)	Additional recordkeeping requirements for sources with CMS.	Yes	Applies as modified by § 63.9005 (d).
§ 63.10(d)(1)	General reporting requirements	Yes	§ 63.9050 specifies additional reporting requirements.
§ 63.10(d)(2)	Performance test results	Yes	§ 63.9045(f) specifies submission date.
§ 63.10(d)(3)	Opacity or visible emissions observations	No	Subpart NNNNN does not specify opacity or visible emission standards.
§ 63.10(d)(4)	Progress reports for sources with compliance extensions.	Yes.	
§ 63.10(d)(5)	SSM reports	Yes.	
§ 63.10(e)(1)	Additional CMS reports—general	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)(i)	Results of CMS performance evaluations	Yes	Applies as modified by § 63.9005(d).
§ 63.10(e)(2)	Results of COMS performance evaluations	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(e)(3)	Excess emissions/CMS performance reports	Yes.	
§ 63.10(e)(4)	Continuous opacity monitoring system data reports	No	Subpart NNNNN does not require the use of COMS.
§ 63.10(f)	Recordkeeping/reporting waiver	Yes.	
§ 63.11	Control device requirements—applicability	No	Facilities subject to subpart NNNNN do not use flares as control devices.
§ 63.12	State authority and delegations	Yes	§ 63.9070 lists those sections of subparts NNNNN and A that are not delegated.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by reference	Yes	Subpart NNNNN does not incorporate any material by reference.
§ 63.15	Availability of information/confidentiality	Yes.	

[FR Doc. 06–3309 Filed 4–6–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[PA209–4302; FRL–8055–8]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation of the Hazelwood SO_2 Nonattainment and the Monongahela River Valley Unclassifiable Areas to Attainment and Approval of the Maintenance Plan; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: On July 21, 2004 (69 FR 43522) EPA published a **Federal Register** notice redesignating the Hazelwood SO_2 Nonattainment Area and the Monongahela River Valley Unclassifiable Area to attainment of the sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). In the July 21, 2004 final rulemaking document, two areas were inadvertently omitted from the revised designated area listing. This document corrects that error.

DATES: *Effective Date:* April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," or "our" are used we mean EPA. On July 21, 2004 (69 FR 43522), we published a final rulemaking announcing our approval of the redesignation of the Hazelwood SO_2 Nonattainment Area and the Monongahela River Valley Unclassifiable Area, located in the Allegheny Air Basin in Allegheny County to attainment of the NAAQS for SO_2 and approved a combined maintenance plan for both areas as a State Implementation Plan (SIP) revision. This action pertained to the redesignation of the Hazelwood and Monongahela River Valley areas (V.(B)(1) and V.(B)(2), respectively, of part 81, section 81.339, to attainment. This action was not intended to affect the area within a two-mile radius of the Bellevue monitor (V.(B)(3), or the remaining portions of the Allegheny County Air Basin (V.(B)(4). In the July 21, 2004 rulemaking document, these areas were inadvertently removed in the Pennsylvania SO_2 Table in part 81, section 81.339. Therefore, this correction action restores the entries which were inadvertently removed.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)). Because the agency has made a "good cause" finding that this action

is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the **SUPPLEMENTARY INFORMATION** section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; thus the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of April 7, 2006. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.**

This correction to 40 CFR 81.339 for Pennsylvania is not a "major rule" as defined by 5 U.S.C. 804(2).

Dated: March 30, 2006.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 81 is amended as follows:

PART 81—[AMENDED]

■ 1. The authority citation for part 81 continues to read as follows:

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

Subpart C—Section 107 Attainment Status Designations

■ 2. In § 81.339, the table for "Pennsylvania—SO_2," is amended by revising the entry for the Allegheny County Air Basin to read as follows:

§ 81.339 Pennsylvania.

* * * * *

PENNSYLVANIA.—SO_2

Designated area	Does not meet primary standards	Does not meet secondary standards	Cannot be classified	Better than national standards
* * * *	*	*	*	*
V. Southwest Pennsylvania Intrastate AQCR:				
* * * *	*	*	*	*
(B) Allegheny County Air Basin:				
(1) The areas within a two-mile radius of the Hazelwood monitor				X
(2) That portion of Allegheny County within an eight-mile radius of the Duquesne Golf Association Club House in West Mifflin excluding the nonattainment area (#1)				X
(3) The area within a two-mile radius of the Bellevue monitor			X	
(4) The remaining portions of the Allegheny County Air Basin				X
* * * *	*	*	*	*

* * * * *

[FR Doc. 06–3355 Filed 4–6–06; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–2005–22093]

RIN 2127–AJ31

Federal Motor Vehicle Safety Standards; Theft Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: Our safety standard on theft protection specifies vehicle performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles. As a result of technological advances in the area of theft protection, the terminology used in the regulatory text of the Standard has become outdated and confusing with respect to key-locking systems that employ electronic codes to lock and unlock the vehicle, and to enable engine activation. This final rule amends and reorganizes the regulatory text of the Standard so that it better correlates to modern theft protection technology and reflects the agency's interpretation of the existing requirements. The new language does not impose any new substantive requirements on vehicle manufacturers.

DATES: This rule becomes effective September 1, 2007. Early voluntary compliance is permitted.

Petitions: Petitions for reconsideration of the final rule must be received not later than May 22, 2006, and should refer to this docket and the notice number of this document and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW., Room 5220, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For technical issues: Ms. Gayle Dalrymple, Office of Crash Avoidance Standards, NVS–123, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–5559. E-Mail: *Gayle.Dalrymple@nhtsa.dot.gov*.

For legal issues: Mr. George Feygin, Office of the Chief Counsel, NCC–112, NHTSA, 400 7th Street, SW., Washington, DC 20590. Telephone: (202) 366–5834. E-Mail: *George.Feygin@nhtsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

FMVSS No. 114, Theft protection, specifies vehicle performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles. The standard applies to all passenger cars, and to trucks and multipurpose passenger vehicles with a GVWR of 4536 kilograms (10,000 pounds) or less. The standard first became effective on January 1, 1970.[1] The purpose of the standard was to prevent crashes caused by unauthorized use of unattended motor vehicles. Thus, the standard sought to ensure that the vehicle could not be easily operated without the key, and that the vehicle operator would not forget to remove the key from the ignition system upon exiting the vehicle.

In response to the problem of accidental rollaway crashes resulting from children inadvertently moving the automatic transmission lever to a neutral position when a stationary vehicle is parked on a slope, NHTSA later amended FMVSS No. 114 to require that the automatic transmission lever be locked in the "park" position before the key can be removed from the ignition system.[2] Subsequently, NHTSA amended these new requirements to permit an override device that would enable the vehicle operator to remove the key without the transmission being locked in "park," and to move the transmission lever without using the key, under certain circumstances. The purpose of these override provisions was to address certain situations when it may be necessary to remove the key without shifting the transmission lever because the vehicle has become disabled.[3]

While FMVSS No. 114 evolved to address not only theft protection, but also accidental rollaway prevention, the terminology used in the regulatory text has remained unchanged since its introduction more than 35 years ago. However, theft protection technology has advanced considerably during that time. As a result, certain provisions of the Standard have become increasingly ambiguous when applied to modern theft protection technology not contemplated by the Standard when it first went into effect.

For example, a number of vehicles now feature electronic systems. Typically, this involves a card or a similar device that is carried in an occupant's pocket or purse. The card carries an electronic code that acts as the key when it is transmitted to the vehicle's onboard locking system. The vehicle has a sensor that automatically unlocks the door and allows the vehicle operator to activate the engine, when it receives the code. The code-carrying device (i.e., card or otherwise) never has to leave the vehicle operator's pocket or purse and is not inserted into the ignition module.

In response to manufacturers' requests, NHTSA issued a series of interpretation letters explaining how the Standard applied to various key-locking systems that did not utilize conventional keys, but instead relied on electronic codes to lock and unlock the vehicle, and to enable engine activation.

II. Recent Letters of Interpretation Regarding FMVSS No. 114

As noted above, the agency has received several requests for legal interpretation of the requirements of FMVSS No. 114, as they apply to key-locking systems using various remote access devices. In response, the agency has stated that the electronic code transmitted from a remote device to the vehicle can be considered a "key" for the purposes of FMVSS No. 114.[4] We have also elaborated on how other provisions of the standard apply to electronic codes. For example, the agency stated that the narrow provisions related to electrical failure do not apply to electronically coded cards or other means used to enter an electronic key code into the locking system because those provisions were specifically crafted in the context of traditional

[1] See 33 FR 6471 (April 24, 1968).

[2] See 55 FR 21868, (May 30, 1990).

[3] See 56 FR 12464 (March 26, 1991).

[4] See *http://www.nhtsa.dot.gov/cars/rules/interps/files/GF001689.html* and *http://www.nhtsa.dot.gov/cars/rules/interps/files/7044.html*.

keys.[5] We also explained that systems using an electronic code instead of conventional key would satisfy the rollaway prevention provisions if the code remained in the vehicle until the transmission gear is locked in the "park" position.

We have followed our interpretation of the definition of "key" in addressing other issues related to FMVSS No. 114. However, instead of continuing to rely on interpretations, and possibly facing additional questions in the future, the agency believes that it is appropriate to amend the regulatory text of FMVSS No. 114 so that it better correlates to modern antitheft technology and better reflects the agency's interpretation of the existing requirements.

III. VW Petition for Rulemaking

In order to prevent accidental rollaways, the Standard currently requires that, for vehicles with automatic transmission, the transmission lever must be locked in "park" before the vehicle operator could remove the key.[6] However, the Standard also allows an optional "override device" which permits removal of the key without the automatic transmission being locked in "park." The standard currently specifies that this override device "* * * must be covered by a non-transparent surface which, when installed, prevents sight of and activation of the device * * *" and that "* * * The covering surface shall be removable only by use of a screwdriver or other tool."

On October 29, 2002, NHTSA received a petition from VW asking the agency to amend S4.2.2(a) by removing provisions related to the override device covering. VW argued that these provisions are unnecessarily design-restrictive. VW indicated that there are other ways to ensure that the override device is not engaged inadvertently. Specifically, VW suggested that the agency allow an override device that requires using a tool to activate the override device while simultaneously removing the key.

The agency decided to grant the petitioner's request because we tentatively agreed that regulatory text related to the override device cover was unnecessarily design-restrictive. However, instead of addressing only the limited issues raised by VW, our NPRM took a broader approach and proposed to amend and reorganize the regulatory text of FMVSS No. 114 so that it better correlates to modern antitheft technology and reflects the agency's interpretation of the existing requirements. That proposal was published on August 17, 2005 and is discussed in further detail below.[7]

IV. Summary of the NPRM

In the NPRM, the agency proposed to reorganize the regulatory text of the Standard. For clarity, the requirements related to theft protection would be separated from the requirements intended to prevent accidental rollaway. We also sought to clarify the regulatory text in order to avoid terminology that was unnecessarily design-restrictive. The specifics of the proposal were as follows:

1. We proposed to revise the paragraphs explaining the Standard's scope and purpose to better reflect its goal of reducing the incidence of crashes resulting from theft and also accidental rollaway of motor vehicles. This change has no substantive significance because the Standard already addresses both safety concerns, and should not be viewed as broadening the scope of the current requirements.

2. We proposed to revise the definition of "key" such that it makes it appropriate not only for conventional keys but also electronic codes and other potential means of unlocking and operating the vehicle. We believe that the new definition is broad enough to include not only electronic codes but also other technologies, including, for example, fingerprint recognition.

3. We proposed to substitute the term "gear selection control" for the term "transmission shift lever."

4. We proposed to amend the requirement that the override device required by S4.2.1 of the current Standard be covered by a non-transparent surface. We proposed allowing an override device that requires using a tool to activate the override device while simultaneously removing the key, as an alternative to covering the device. We believe that requiring the use of a tool in order to activate this type of override device would involve sufficient complexity to prevent possible inadvertent activation by a child.[8]

5. We proposed to amend the override provisions of the current S4.2.2 to allow manufacturers greater flexibility in designing their override devices and to allow manufacturers the choice to use electronic theft prevention devices, such as immobilizers, instead of using steering locks, if they desire. The current Standard allows only override systems that prevent steering before the key can be released or the transmission lever can be shifted. The agency previously indicated that this requirement ensured that the theft protection aspects of the standard remained intact even in certain situations where the vehicle was disabled.[9] After further evaluating this aspect of our requirements, we concluded that an override device that would prevent forward self-mobility (such as an immobilizer) instead of steering would be just as effective. As explained in our September 24, 2004 interpretation letter to a party who requested confidentiality:

> We note that in promulgating FMVSS No. 114, the agency expressed concern about car thieves who could bypass the ignition lock. In response to this concern, the agency decided to require a device, which would prevent either self-mobility or steering even if the ignition lock were bypassed (see 33 FR 4471, April 27, 1968).
>
> The engine control module immobilizer described in your letter satisfies the requirements of S4.2(b) because it locks out the engine control module if an attempt is made to start the vehicle without the correct key or to bypass the electronic ignition system. When the engine control module is locked, the vehicle is not capable of forward self-mobility because it is incapable of moving forward under its own power.[10]

Further, as explained in our May 27, 2003 interpretation letter to Jaguar, preventing steering after a moving vehicle has experienced a complete loss of electrical power would not be appropriate before a vehicle could be safely stopped.[11]

V. Comments on the NPRM and the Agency's Response

We received two comments in response to the NPRM, from VW and the Alliance of Automobile Manufacturers (Alliance). VW generally supported the proposal and urged the agency to "* * * publish a Final Rule enacting the amendments as soon as possible

[5] See *http://www.nhtsa.dot.gov/cars/rules/interps/files/GF001689.html*.

[6] See S4.2.2(a) of FMVSS No. 114.

[7] See 70 FR 48362 (August 17, 2005).

[8] S4.2.1 of the current Standard specifies that a key cannot be removed from the ignition until the transmission shift lever is locked in "park." However, the Standard provides for an optional override device designed to allow (a) removal of the key when the transmission is not in the "park," and (b) moving the transmission out of "park" when the key is not in the ignition. The Standard requires that the means for activating this device must be covered by a non-transparent surface which, when installed, prevents sight of and activation of the device. This covering surface can only be removable by use of a tool. The purpose of this requirement was to ensure that children could not easily gain access to the override device (see 56 FR 12464 at 12466).

[9] See id at 12467.

[10] *http://www.nhtsa.dot.gov/cars/rules/interps/files/GF005229-2.html*.

[11] *http://www.nhtsa.dot.gov/cars/rules/interps/files/GF001689.html*.

with an effective date 60 days following publication of the Final Rule as proposed in the preamble." Alliance strongly supported the NPRM, and agreed with NHTSA that the Standard had become outdated as a result of technological advances in theft protection. However, Alliance identified one proposed change that, it believed, was inconsistent with the agency's intent not to propose changes that would impose new substantive requirements on vehicle manufacturers.

By way of background, S4.5 of FMVSS 114 currently reads, in relevant part, as follows:

"A warning to the driver shall be activated whenever the key required by S4.2 has been left in the locking system and the driver's door is opened * * *" [emphasis added]

As the regulatory text indicates, the agency does not specify the type of warning that must be activated when the key is in the ignition, and the driver's door is open. By contrast, the proposed S5.1.3 specifies that a warning must be audible. Alliance argued that specifically requiring an audible warning will prohibit compliance via possible future technologies such as haptic feedback, unique visuals, etc." The Alliance requested that the requirement for an audible warning be deleted in the final rule.

After carefully considering the comments, we decline to make the change requested by Alliance for the following reasons. First, the agency is not aware of any vehicles complying with the requirement of S4.5 in any manner except for an audible warning. Alliance did not indicate that any of their members have vehicles currently in production that would not comply with the requirements of the proposed regulatory text. Therefore, adopting the proposed change in the regulatory text would not require any changes in the current fleet. Second, we believe that with respect to S4.5, the current regulatory text is unnecessarily broad. This is because a warning must be sufficient to catch a driver's attention before he or she exits the vehicle without the keys. For example, a visual dashboard telltale might be insufficient to accomplish this goal. We believe that it is necessary to carefully examine the alternatives to audible warnings in order to make sure that they are effective in reducing likelihood of drivers leaving their keys in the vehicle. Finally, there is nothing in the regulation to prevent a manufacturer from using another type of warning in addition to the required audible warning.

VI. Rulemaking Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule was not reviewed under Executive Order 12866, "Regulatory Planning and Review." The agency has considered the impact of this proposal under the Department of Transportation's regulatory policies and procedures, and has determined that it is not significant.

This final rule amends and reorganizes the regulatory text of 49 CFR 571.114 so that it better correlates to modern theft protection technology and better reflects the agency's interpretation of the existing requirements. Additionally, this document makes certain provisions of 49 CFR 571.114 less restrictive. Vehicle manufacturers will not have to make any changes to their vehicles as a result of this rule. The impacts of this rule are so minor that we determined that a separate regulatory evaluation is not needed.

B. Executive Order 13132 (Federalism)

The agency has analyzed this final rule in accordance with the principles and criteria set forth in Executive Order 13132. This rule would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

C. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not subject to the Executive Order 13045 because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, safety or health risks having a disproportionate impact on children.

D. Civil Justice Reform

This final rule does not have any retroactive effect. Under 49 U.S.C. 21403, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 21461 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires agencies to evaluate the potential effects of their final rule on small businesses, small organizations and small governmental jurisdictions. I have considered the possible effects of this rulemaking action under the Regulatory Flexibility Act and certify that it will not have a significant economic impact on a substantial number of small entities.

This final rule amends and reorganizes the regulatory text of 49 CFR 571.114 so that it better correlates to modern theft protection technology and better reflects the agency's interpretation of the existing requirements. Vehicle manufacturers, or any other small businesses, will not have to make any changes to their products as a result of this rule.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This final rule does not include any new information collection requirements.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in our regulatory activities unless doing so 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) that are 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.

There are no available voluntary consensus standards that are equivalent to FMVSS No. 114.

H. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year ($120.7 million as adjusted annually for inflation with base year of 1995).

The requirements of this final rule will 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.

I. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

J. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or you may visit *http://dms.dot.gov*.

K. National Environmental Policy Act

NHTSA has analyzed this final rule for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

L. Vehicle Safety Act

Under 49 U.S.C. Chapter 301, *Motor Vehicle Safety* (49 U.S.C. 30101 et seq.), the Secretary of Transportation is responsible for prescribing motor vehicle safety standards that are practicable, meet the need for motor vehicle safety, and are stated in objective terms.[12] "Motor vehicle safety standard" means a minimum performance standard for motor vehicles or motor vehicle equipment.[13] When prescribing such standards, the Secretary must consider all relevant, available motor vehicle safety information.[14] The Secretary must also consider whether a proposed standard is reasonable, practicable, and appropriate for the types of motor vehicles or motor vehicle equipment for which it is prescribed and the extent to which the standard will further the statutory purpose of reducing traffic accidents and associated deaths.[15] The responsibility for promulgation of Federal motor vehicle safety standards is delegated to NHTSA.[16]

In this final rule, the agency carefully considered these statutory requirements.

First, this final rule reflects the agency's careful consideration and analysis of all existing regulatory provisions in FMVSS No. 114, as well as relevant letters of interpretation related to that standard. In developing the substantive provisions of the standard over the years, the agency considered all relevant, available motor vehicle safety information, including available research, testing results, and other information related to various technologies. This final rule amends and reorganizes the regulatory text of FMVSS No. 114 so that it better correlates to modern theft protection technology and reflects the agency's interpretation of the existing requirements. The new language does not impose any new substantive requirements on vehicle manufacturers.

Second, to ensure that the requirements of FMVSS No. 114 are practicable (as well as consistent with our safety objectives), the agency evaluated the cost, availability, and suitability of the standard's provisions, both when initially adopted and during subsequent amendments. As noted above, the changes resulting from this final rule are administrative in nature and would not impact the costs and benefits of the standard. In sum, we believe that this final rule is practicable and would maintain the benefits of Standard No. 114.

Third, the regulatory text following this preamble is stated in objective terms in order to specify precisely what performance is required and how performance will be tested to ensure compliance with the standard. The language of the standard has been modified to improve clarity or to incorporate existing interpretations, again without changing the substance of the existing requirements.

Fourth, we believe that this final rule would meet the need for motor vehicle safety by clarifying the safety standard, thereby making it easier for regulated parties to comply with all applicable requirements.

Finally, we believe that this final rule is reasonable and appropriate for motor vehicles subject to the applicable requirements. As discussed elsewhere in this notice, the modifications to the standard are administrative in nature. They do not affect the substance of the requirements or the bases for those requirements, as articulated in earlier rulemakings. Accordingly, we believe that this final rule is appropriate for vehicles that are subject to FMVSS No. 114 because it furthers the agency's objective to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles.

List of Subjects in 49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, Tires.

■ In consideration of the foregoing, part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

■ 1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 2011, 30115, 30166 and 30177; delegation of authority at 49 CFR 1.50.

■ 2. Section 571.114 is revised to read as follows:

§ 571.114 Standard No. 114; Theft protection and rollaway prevention.

S1. *Scope.* This standard specifies vehicle performance requirements intended to reduce the incidence of crashes resulting from theft and accidental rollaway of motor vehicles.

S2. *Purpose.* The purpose of this standard is to decrease the likelihood that a vehicle is stolen, or accidentally set in motion.

S3. *Application.* This standard applies to all passenger cars, and to trucks and multipurpose passenger vehicles with a GVWR of 4,536 kilograms (10,000 pounds) or less. However, it does not apply to walk-in van-type vehicles.

S4. *Definitions.*

Combination means a variation of the key that permits the starting system of a particular vehicle to be operated.

[12] 49 U.S.C. 30111(a).

[13] 49 U.S.C. 30111(a)(9).

[14] 49 U.S.C. 30111(b).

[15] Id.

[16] 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

Key means a physical device or an electronic code which, when inserted into the starting system (by physical or electronic means), enables the vehicle operator to activate the engine or motor.

Open-body type vehicle means a vehicle having no occupant compartment doors or vehicle having readily detachable occupant compartment doors.

Starting system means the vehicle system used in conjunction with the key to activate the engine or motor.

Vehicle type, as used in S5.1.2, refers to passenger car, truck, or multipurpose passenger vehicle, as those terms are defined in 49 CFR 571.3.

S5. *Requirements.* Each vehicle subject to this standard must meet the requirements of S5.1 and S5.2. Open-body type vehicles are not required to comply with S5.1.3.

S5.1 *Theft protection.*

S5.1.1 Each vehicle must have a starting system which, whenever the key is removed from the starting system prevents:

(a) The normal activation of the vehicle's engine or motor; and

(b) Either steering, or forward self-mobility, of the vehicle, or both.

S5.1.2 For each vehicle type manufactured by a manufacturer, the manufacturer must provide at least 1,000 unique key combinations, or a number equal to the total number of the vehicles of that type manufactured by the manufacturer, whichever is less. The same combinations may be used for more than one vehicle type.

S5.1.3 Except as specified below, an audible warning to the vehicle operator must be activated whenever the key is in the starting system and the door located closest to the driver's designated seating position is opened. An audible warning to the vehicle operator need not activate:

(a) After the key has been inserted into the starting system, and before the driver takes further action; or

(b) If the key is in the starting system in a manner or position that allows the engine or motor to be started or to continue operating; or

(c) For mechanical keys and starting systems, after the key has been withdrawn to a position from which it may not be turned.

S5.1.4 If a vehicle is equipped with a transmission with a "park" position, the means for deactivating the vehicle's engine or motor must not activate any device installed pursuant to S5.1.1(b), unless the transmission is locked in the "park" position.

S5.2 Rollaway prevention in vehicles equipped with transmissions with a "park" position.

S5.2.1 Except as specified in S5.2.3, the starting system required by S5.1 must prevent key removal when tested according to the procedures in S6, unless the transmission or gear selection control is locked in "park" or becomes locked in "park" as a direct result of key removal.

S5.2.2 Except as specified in S5.2.4, the vehicle must be designed such that the transmission or gear selection control cannot move from the "park" position, unless the key is in the starting system.

S5.2.3 *Key removal override option.* At the option of the manufacturer, the key may be removed from the starting system without the transmission or gear selection control in the "park" position under one of the following conditions:

(a) In the event of electrical failure, including battery discharge, the vehicle may permit key removal from the starting system without the transmission or gear selection control locked in the "park" position; or

(b) Provided that steering or self-mobility is prevented, the vehicle may have a device by which the user can remove the key from the starting system without the transmission or gear selection control locked in "park." This device must require:

(i) The use of a tool, and

(ii) Simultaneous activation of the device and removal of the key; or

(c) Provided that steering or self-mobility is prevented, the vehicle may have a device by which the user can remove the key from the starting system without the transmission or gear selection control locked in "park." This device must be covered by an opaque surface which, when installed:

(i) Prevents sight of and use of the device, and

(ii) Can be removed only by using a screwdriver or other tool.

S5.2.4 *Gear selection control override option.* The vehicle may have a device by which the user can move the gear selection control from "park" after the key has been removed from the starting system. This device must be operable by one of the three options below:

(a) By use of the key; or

(b) By a means other than the key, provided steering or forward self-mobility is prevented when the key is removed from the starting system. Such a means must require:

(i) The use of a tool, and

(ii) Simultaneous activation of this means and movement of the gear selection control from "park;" or

(c) By a means other than the key, provided steering or forward self-mobility is prevented when the key is removed from the starting system. This device must be covered by an opaque surface which, when installed:

(i) Prevents sight of and use of the device, and

(ii) Can be removed only by using a screwdriver or other tool.

S5.2.5 When tested in accordance with S6.2.2, each vehicle must not move more than 150 mm on a 10 percent grade when the gear selection control is locked in "park."

S6. Compliance test procedure for vehicles with transmissions with a "park" position.

S6.1 Test conditions.

S6.1.1 The vehicle shall be tested at curb weight plus 91 kg (including the driver).

S6.1.2 Except where specified otherwise, the test surface shall be level.

S6.2 Test procedure.

S6.2.1

(a) Activate the starting system using the key.

(b) Move the gear selection control to any gear selection position or any other position where it will remain without assistance, including a position between any detent positions, except for the "park" position.

(c) Attempt to remove the key in each gear selection position.

S6.2.2

(a) Drive the vehicle forward up a 10 percent grade and stop it with the service brakes.

(b) Apply the parking brake (if present).

(c) Move the gear selection control to "park."

(d) Note the vehicle position.

(e) Release the parking brake. Release the service brakes.

(f) Remove the key.

(g) Verify that the gear selection control or transmission is locked in "park."

(h) Verify that the vehicle, at rest, has moved no more than 150 mm from the position noted prior to release of the brakes.

S6.2.3

(a) Drive the vehicle forward down a 10 percent grade and stop it with the service brakes.

(b) Apply the parking brake (if present).

(c) Move the gear selection control to "park."

(d) Note the vehicle position.

(e) Release the parking brake. Release the service brakes.

(f) Remove the key.

(g) Verify that the gear selection control or transmission is locked in "park."

(h) Verify that the vehicle, at rest, has moved no more than 150 mm from the

position noted prior to release of the brakes.

Issued: April 4, 2006.

Jacqueline Glassman,

Deputy Administrator.

[FR Doc. 06–3358 Filed 4–6–06; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 050323081–6079–02; I.D. 031505C]

RIN 0648–AT02

Endangered and Threatened Wildlife and Plants: Threatened Status for Southern Distinct Population Segment of North American Green Sturgeon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Following completion of a comprehensive Endangered Species Act (ESA) Status Review and Update for the North American green sturgeon (Acipenser medirostris; hereafter, "green sturgeon"), we, NOAA's National Marine Fisheries Service (NMFS), published a Proposed Rule to list the Southern distinct population segment (DPS) of green sturgeon as threatened on April 6, 2005. After considering public comments on the Proposed Rule, we are issuing a Final Rule to list the Southern DPS as a threatened species. NMFS is currently considering issuance of protective regulations that may be necessary and advisable to provide for the conservation of the species. With this document we are also soliciting information that may be relevant to our analysis of protective regulations and to the designation of critical habitat for the Southern DPS of green sturgeon. Details of our analyses, their outcome, and a request for public comment on our proposals will be published in subsequent **Federal Register** notices.

DATES: This final rule is effective June 6, 2006. Replies to the request for information regarding a subsequent ESA section 4(d) Rule and critical habitat designation must be received by July 5, 2006.

ADDRESSES: You may submit information by any of the following methods:

- E-Mail: *GreenSturgeon.Information@noaa.gov.*
- Webform at the Federal Rulemaking Portal: *www.regulations.gov.* Follow the instructions at that site for submitting comments.
- Fax: 1–562–980–4027, Attention: Melissa Neuman.
- Mail: Submit written information to Chief, Protected Resources Division, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802 4213.

Reference materials regarding this determination can be obtained via the Internet at: *http://www.nmfs.noaa.gov* or by submitting a request to the Assistant Regional Administrator, Protected Resources Division, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Melissa Neuman, NMFS, Southwest Region (562) 980–4115 or Lisa Manning, NMFS, Office of Protected Resources (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On June 12, 2001, we received a petition from the Environmental Protection and Information Center (EPIC), Center for Biological Diversity, and WaterKeepers Northern California requesting that we list the green sturgeon as threatened or endangered under the ESA and that critical habitat be designated for the species concurrently with any listing determination. On December 14, 2001, we provided notice of our 90–day finding that the petition presented substantial scientific information indicating that the petitioned action may be warranted and requested information to assist with a Status Review to determine if green sturgeon warranted listing under the ESA (66 FR 64793). To assist in the Status Review, we formed a Biological Review Team (BRT) comprised of scientists from our Northwest and Southwest Fisheries Science Centers and from the United States Geological Survey (USGS). We also requested technical information and comments from state and tribal co-managers in California, Oregon, and Washington, as well as from scientists and individuals having research or management expertise pertaining to green sturgeon from California and the Pacific Northwest. The BRT considered the best available scientific and commercial information, including information presented in the petition and in response to our request for information concerning the status of and efforts being made to protect the species (66 FR 64793; December 14, 2001). After completion of the Status Review (Adams *et al.*, 2002), we determined on January 23, 2003 (68 FR 4433), that green sturgeon is comprised of two DPSs that qualify as species under the ESA: (1) a northern DPS consisting of populations in coastal watersheds northward of and including the Eel River.("Northern DPS"); and (2) a southern DPS consisting of coastal and Central Valley populations south of the Eel River, with the only known spawning population in the Sacramento River ("Southern DPS"). After consideration of a variety of information to assess risk factors, including abundance, fishing impacts, and habitat modification, destruction, and loss, we determined that neither DPS warranted listing as threatened or endangered (68 FR 4433). Uncertainties in the structure and status of both DPSs led us to add them to the Species of Concern List (formerly the candidate species list; 69 FR 19975; April 15, 2004).

On April 7, 2003, EPIC (and others) challenged our "not warranted" finding for green sturgeon. The U.S. District Court for the Northern District of California issued an order on March 2, 2004, which set aside our "not warranted" finding and remanded the matter to us for redetermination of whether green sturgeon is in danger of extinction throughout all or a significant portion of its range, or is likely to become so within the foreseeable future, because the Court was not satisfied with our examination of whether purported lost spawning habitat constituted a significant portion of either DPS' range. We reestablished the BRT and asked the BRT to consider recent scientific and commercial information available regarding the biological status of green sturgeon and to assist us in assessing the viability of the species throughout all or a significant portion of its range. We published a notice on June 18, 2004, soliciting new information beyond that considered in the previous Status Review and listing determination (69 FR 34135). Following the close of this public comment period on August 17, 2004, we convened the BRT to draft an updated Status Review and distribute the updated Status Review to co-managers (i.e., States of Washington, Oregon and California, Yurok and Hoopa Tribes, U.S. Fish and Wildlife Service (FWS), and the California Bay-Delta Program) for their review and comment. This updated Status Review was finalized on February 22, 2005.

In a **Federal Register** notice published on April 6, 2005 (70 FR 17386), we reaffirmed our earlier determination that the northern green sturgeon DPS does not warrant an ESA listing, but that this

DPS should remain on the Species of Concern List due to remaining uncertainty in the status of, and threats faced by, the Northern DPS. We, however, revised our previous "not warranted" finding for the Southern DPS and proposed to list it as threatened under the ESA based on: (1) New information showing that the majority of spawning adults are concentrated into one spawning river (i.e., Sacramento River), thus increasing the risk of extirpation due to catastrophic events; (2) information that threats have remained severe since the first Status Review and have not been adequately addressed by conservation measures currently in place; (3) new information showing evidence of lost spawning habitat in the upper Sacramento and Feather Rivers; and (4) fishery-independent data exhibiting a negative trend in juvenile green sturgeon abundance. We also solicited comments and new or additional information regarding the status of, and critical habitat for, the Southern DPS to help develop a final listing determination and possible designation of critical habitat and ESA Section 4(d) regulations in subsequent rule-making.

Biology and Life History of Green Sturgeon

A thorough account of green sturgeon biology and life history may be found in the previous determination (68 FR 4433; January 23, 2003), in the Status Review and Update (Adams *et al.*, 2002, 2005), and in the Proposed Rule to list the Southern DPS of green sturgeon as threatened under the ESA (70 FR 17386; April 6, 2005).

Statutory Framework for ESA Listing Determinations

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth the procedures for adding species to the Federal list of threatened and endangered species. Section 4 requires that listing determinations be based solely on the best scientific and commercial data available, without consideration of possible economic or other impacts of such determinations, after having conducted a status review of the species and considering conservation efforts being made to protect the species. After assessing a species's level of extinction risk and identifying factors that have led to its decline, we then assess existing efforts being made to protect the species to determine if those measures ameliorate the risks faced by the species. In judging the efficacy of existing protective efforts, we rely on the joint NMFS-FWS "Policy for Evaluation of Conservation Efforts When Making Listing Decisions" ("PECE;" 68 FR 15100; March 28, 2003).

Summary of Comments Received

A public hearing was held on July 6, 2005, and the public comment period closed on July 27, 2005. We received 32 comments by fax, standard mail and e-mail. Thirteen of the commenters urged us to withdraw its proposal to list the Southern DPS as threatened. Ten of the commenters urged us to list the Southern DPS as endangered, not threatened, under the ESA, to revise our previous "not warranted" finding for the Northern DPS, and to invoke ESA Section 9 take prohibitions and designate critical habitat for listed entities immediately. One commenter expressed mixed views of our proposal to list the Southern DPS as threatened. Eight commenters provided no opinion on our listing determinations, but requested that we exempt certain captive populations of green sturgeon from threatened status and forthcoming ESA protections.

Comment 1: Several commenters felt that we did not have enough information to proceed with a listing and thus our proposal was arbitrary and capricious.

Response: The ESA requires that listing decisions be based solely on the best scientific and commercial data available and, therefore, does not specify a minimum level of proof required to proceed. The question as to whether there is sufficient information is an issue addressed as part of the listing decision, and the BRT makes scientific recommendations to NMFS through its Status Review and Updates that inform the listing decision. In our December 14, 2001, 90–day finding (66 FR 64793), we solicited information from the state and tribal co-managers, as well as from scientists and individuals with research or management expertise pertaining to green sturgeon from California and the Pacific Northwest, to assist with the green sturgeon Status Review. We also solicited any new information from the public since the 2001 solicitation (69 FR 34135; June 18, 2004) to assist us in updating our Status Review. On January 27, 2005, we distributed the Status Review Update to our co-managers for review. All of the information obtained during these solicitations was considered and used in developing our proposed and final listing determinations.

The BRT reiterated its recommendation that the Southern green sturgeon DPS is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. This recommendation was made after considering the best available information on the loss of historical habitat, the concentration of the spawning population into a single location, the trend in the salvage data, and the cumulative risk from a number of different threats in the Sacramento River and Delta system.

We concluded that the blockage of green sturgeon by dams from their original spawning grounds substantially increased extinction risk. Green sturgeon historically spawned in higher-elevation, diverse habitats in multiple rivers within the range of the Southern DPS. Construction of dams and associated impoundments, which have altered temperature and hydrologic regimes and simplified instream habitats compared to their natural spawning grounds, are believed to have substantially decreased spawning success.

The concentration of spawning into a single remaining habitat greatly increases the potential for catastrophic extinction of green sturgeon within the Southern DPS, even if green sturgeon populations were sustainable in this habitat in the long-term. The possibility of extirpation due to a catastrophic event was dramatically demonstrated by the 1991 Cantara herbicide spill. Nineteen thousand gallons of the herbicide metam sodium were released from a derailed train compartment into the Sacramento River killing nearly all aquatic life within a 45–mile segment of the river (*http://www.cantaratrustees.org/spill.htm*).

The green sturgeon salvage data imply a substantial decline in population numbers (see response to Comment 3 below). We remain concerned about the cumulative amount of risk to green sturgeon from a number of threats in the Sacramento River and Delta system. These threats were reviewed in the green sturgeon Status Review and Update. We are also concerned about how these different threats interact in their influence on green sturgeon. A number of ecological indicators, such as the recent collapse of the pelagic food web in the Delta, suggest that there are serious problems within the ecosystem upon which green sturgeon depend for an important portion of their life cycle. Recent unpublished reports, public presentations, and press releases by the California Department of Fish and Game (CDFG) indicate that many of the Delta's fish species have declined to the lowest levels ever recorded (*http://science.calwater.ca.gov/pdf/workshops/IEP_POD_2005WorkSynthesis-draft_111405.pdf*)

Toxins, invasive species, and water project operations, all identified as threats to the Southern DPS of green sturgeon, may be acting in concert or individually to lower pelagic productivity in the Delta. In addition, CDFG estimates that the population of legal-sized (117 to 183cm total length (TL)) white sturgeon has experienced a six-fold decline since 1998 (M. Gingras, CDFG, pers. comm.).

We considered both the BRT's conclusions, information received via the review process and solicitations for information, and conservation efforts currently being made to protect the Southern DPS (see Response to Comment 8 below) in reaching our listing decision. The best available scientific and commercial information was sufficient to conclude that the Southern DPS is likely to become endangered within the foreseeable future.

Comment 2: Several commenters felt that the rationale we used for determining whether Southern DPS spawning habitat has been lost over time was flawed because a surrogate species was used to determine habitat suitability and because lost habitat was not quantified.

Response: Chinook habitat modeling, the only such habitat assessment currently available to describe loss of riverine habitat in the Central Valley, is appropriate for use in determining habitat availability trends for green sturgeon for several reasons. Both green sturgeon and spring-run Chinook are anadromous species that evolved in the pre-dam Central Valley environment where they had access to higher elevation, cooler water habitats. Both species are affected by the limited amount of cool water spawning and rearing habitat. Cool water habitat can best be approximated by mean annual discharge or the amount of high elevation habitat (Lindley et al., 2004). It is generally accepted that green sturgeon (FWS, 1994) and spring-run Chinook (Moyle, 2002) historically used spawning grounds in the area above Shasta Dam. White sturgeon were observed in the Pitt River to the vicinity of Lake Britton (FWS, 2005) above Shasta Dam, and presumably green sturgeon occurred at these elevations as well. Green sturgeon and Chinook spawning temperature tolerances are similar. Green sturgeon spawn in water temperatures ranging from 8° to 14° C (FERC, 2004a), although eggs have been artificially incubated at temperatures as high as 15.8° C (Deng, 2000). Chinook temperature spawning tolerances are in the range of 5.6° to 12.8° C (FERC, 2004b). The similarities in spawning temperature ranges suggest that spawning in the pre-dam period may have occurred at similar water temperatures and, therefore, at similar discharges and elevations. The similarity of spawning requirements for these two species allows for the use of a surrogate species for habitat analysis. In summary, Chinook habitat modeling has shown that pre-dam, diverse, natural, higher-elevation spawning and rearing habitats were replaced with a smaller, concentrated, simpler spawning habitat. The BRT concluded that a similar replacement has occurred for green sturgeon as well and considered this habitat replacement to greatly increase extinction risk for green sturgeon. A direct green sturgeon habitat analysis is preferable to using a surrogate, and that analysis is currently underway at the Southwest Fisheries Science Center, but results are currently not available.

The BRT discussed the possibility of quantifying lost spawning habitat in terms of the number of linear miles of river habitat lost due to dam construction in the Sacramento and Feather Rivers. It was decided that this type of quantification should wait until the green sturgeon habitat analysis is complete so that this information can be used to inform decisions made in subsequent rule-making.

Comment 3: Several commenters stated that habitat availability should not be compared before and after construction of dams in the Central Valley because their construction occurred too long ago. Instead, it was suggested that the evaluation of habitat loss be based on more recent times.

Response: We disagree with the commenters' views that we have inappropriately evaluated habitat loss over time for the Southern DPS. ESA section 7(a)(2) implementing regulations define environmental baseline as including the effects of past and present Federal, state, or private actions and other human activities which have led to the current status of the species and its habitat (50 CFR 402.02). We have adopted this definition here to examine changes in freshwater habitat availability for green sturgeon from a time when very few Federal, state, or private activities curtailed habitat within the boundaries of the Southern DPS to a time when many actions have irreparably altered habitat. This definition includes no temporal limit when considering changes in habitat availability to inform ESA decisions. In addition, in previous listing decisions for salmon and steelhead, we have used pre- and post-dam construction information in considering habitat loss and declines in abundance.

Comment 4: Several commenters questioned whether we used new data to inform the revision of our previous "not warranted" finding to a threatened listing for the Southern DPS.

Response: We did use new information, collected since the publication of the first Status Review in 2002, to revise the previous "not warranted" finding for the Southern DPS. Several recent sources of data (Hancock, 2002; CDFG, 2003) have suggested that riparian habitat in the Central Valley continues to decline in quantity and quality and that the threats causing these declines are steadily getting worse over time rather than better. The Chinook Habitat Assessment (Lindley *et al.*, 2004) used as a surrogate to infer loss of green sturgeon habitat was not available at the time of the 2002 Status Review. Tagging studies conducted throughout the range of green sturgeon have provided new information on movement patterns and use of freshwater, estuarine, and marine habitats by juveniles and adults (S. Lindley, SWFSC and M. Moser, NWFSC, pers. comm.). These studies suggest that green sturgeon return to spawning rivers on a more frequent basis (2–3 years) than previously thought (S. Lindley, SWFSC, pers. comm.). Thus, the proportion of a given individual's time spent in freshwater spawning habitat may be larger than previously thought, highlighting the importance of freshwater habitat quality and quantity to overall population viability.

Additional sightings and observation of behaviors of green and white sturgeon have been reported in the Sacramento, Feather, and San Joaquin rivers, including sturgeon remains being identified in middens in the San Joaquin River (southernmost documented location to date; Gobalet *et al.*, 2004). Much of these data are from personal communications (Beamesderfer *et al.*, 2004) and as such are not comprehensive, but they are useful for establishing presence and for informing our conclusions regarding habitat use. This new information has led us to conclude that: (1) the Sacramento River is the only spawning population remaining in the Southern DPS; (2) the Feather River likely supported a spawning population in the past, but does not currently; and (3) the San Joaquin River may have supported a spawning population in the past based on recent (2003) white sturgeon spawning and past presence in the system.

Comment 5: A few commenters felt that the importance of the Feather River as historical green sturgeon habitat was overstated, as was the possibility that the Thermalito Afterbay has caused a thermal barrier to fish passage and successful spawning and subsequent recruitments.

Response: We reiterate our conclusion that the Feather River once supported a green sturgeon spawning population, and the loss of this population resulted in a substantial increase in extinction risk for the Southern DPS, regardless of the size of the population. The conclusion that there had been a Feather River population was based on sightings of individual green sturgeon, statements by experts, and use of the habitat by surrogate species. A number of experts have expressed the opinion that the Feather River once supported a viable green sturgeon population. CDFG (2002) stated "the most likely loss of spawning habitat is in the Feather River, as Oroville Dam blocks access to potential spawning habitat", and CDFG shows the Feather River as green sturgeon habitat on its online distribution map (*http://www.calfish.org*). Moyle (2002) stated, "In the Sacramento drainage capture of larval green sturgeon in salmon outmigrant traps indicates that the lower Feather River may be a principal spawning area." Finally, the conclusion that the Feather River contained a green sturgeon population is also supported by habitat use patterns of surrogate species: (1) the historic presence of white sturgeon in the Feather River (Painter, 1977); and (2) the Chinook habitat analysis, which suggests that Chinook used the North, Middle, and South forks of the Feather River as well as the Yuba River (Lindley *et al.*, 2004) as spawning habitat.

Although adult green sturgeon occurrence in the Feather River and its tributary, Bear River, has been documented from the past (USFWS, 1995; Moyle, 2002) to the present (Beamesderfer *et al.*, 2004; CDWR, 2005), larval and juvenile green sturgeon have not been collected during recent efforts (2000–2001 and 2003). These efforts included attempts to collect larval and juvenile sturgeon during early spring through summer using rotary screw traps, artificial substrates, and larval nets deployed at multiple locations (Schaffter and Kohlhorst, 2001; A. Seesholtz, 2003, 2005). These results support our conclusion that an effective population of spawning green sturgeon does not exist in the Feather River at the present time.

The BRT's concern about the Thermalito Afterbay creating a thermal barrier was based on a comment that warm water releases from the Afterbay may increase temperatures to levels that are undesirable for green sturgeon spawning and incubation especially during low flow years (CDFG, 2002). Given that other data suggest that high water temperatures have posed a threat to successful green sturgeon spawning and recruitment in the Feather River (FWS, 1995) and historically in the Sacramento River (prior to installation of the Shasta Dam temperature control device in 1997), we do not believe we have overstated its importance.

Comment 6: One commenter stated that a large portion of the green sturgeon population is at sea at any given time and that the marine-inhabiting portion of the green sturgeon population would serve as a buffer against extinction.

Response: We do not believe that green sturgeon are significantly buffered against extinction by the marine portion of their populations. Green sturgeon have the most extensive marine distribution of all sturgeon. The buffering argument is that only a small fraction of the total population is in freshwater at any given time, and the marine portion provides a sanctuary against extinction risk. While this is true of a one-time catastrophic event, other persistent risk factors will continue to have impacts on green sturgeon spawning and recruitment success, the most important factors for determining population viability. While there may be a relatively large number of green sturgeon in the ocean compared to freshwater at any given point in time, it is the freshwater component of an individual's life history that determines whether that individual will spawn successfully and produce offspring that survive to maturity. In addition, green sturgeon, as with most other fish species, are most vulnerable and likely experience their highest natural mortality rates during the portion of their lives spent in freshwater as larvae and juveniles (Houde, 1987). Thus, additional risks faced during the freshwater portion of green sturgeon's life history are likely most critical in determining long-term viability of the Southern DPS. In addition, it appears that green sturgeon may return to spawn on a shorter cycle than previously thought. Green sturgeon have been found to return to spawn on a 2- or 3–year cycle (S. Lindley, NMFS, per. comm.). Also, subadult green sturgeon have been observed in spawning areas (S. Lindley, NMFS, per. comm.). The cumulative risk experienced by the Southern DPS while in freshwater habitat is likely higher than previously thought because the proportion of time that any individuals spends in the marine environment may be much smaller than previously thought.

Comment 7: Many commenters believed that we overstated the importance and utility of salvage data to ascertain trends in green sturgeon numbers.

Response: Our proposed determination that the Southern DPS of green sturgeon face extinction in the foreseeable future was based on multiple lines of data and was not solely dependent on the salvage data. The BRT reconsidered the salvage data in greater depth and concluded that the numbers of green sturgeon were higher in the salvage facilities data prior to 1986 compared to after. However, it appears that expansions were larger in this period as many commentators suggested. The State facility numbers provided the longest time series, thus the BRT focused on these data for the analysis. The BRT concluded that not only were the estimated numbers of green sturgeon 14 times higher in the pre–1986 period than after, but the number of actual green sturgeon observed was 3 1/2 times higher in the pre–1986 period. There is further support for high juvenile sturgeon abundance during the 1974–75 period from the white sturgeon trammel net sampling. The green sturgeon to white sturgeon ratio of fish less than 102 cm was 1.661 in 1974. This is more than twice the next highest year and six times higher than the average. Independent evidence from two different sampling sources is strong justification for assuming that the 1974–75 period was one of high juvenile green sturgeon abundance, and this type of recruitment success has not been observed since.

The BRT also found support for the many comments suggesting that salvage estimate expansions were higher in the pre–1986 period. A General Linear Model analysis of the green sturgeon estimates compared to observed fish in the pre–1986 period showed that one observed fish was converted to 48 estimated fish (coefficient = 47.9, $F = 303$ with 16 df, p=0.001). The same analysis for the period from 1986 to 2001 showed that one observed fish was converted into 9.7 estimated fish (coefficient = 9.7, F = 12.4 with df =14, p =0.003). Therefore, we acknowledge that expansion rates were higher prior to 1986. However, even after accounting for the higher expansion rates, there were more green sturgeon present in salvage operations prior to 1986. Other caveats about the use of the salvage data are reviewed in the Status Review and Update.

Comment 8: Several commenters stated that we did not consider or that we inappropriately discounted other data sources that would have been valuable for determining trends in abundance.

Response: The BRT reviewed other data sources suggested by the commenters and determined that they had been considered previously and in some cases were deemed not useful, usually due to the lack of green sturgeon occurring in the data series. The CDFG San Pablo Bay sturgeon trammel net sampling, the Klamath Tribal Catch time series, and the Glenn-Colusa Irrigation District (GCID) screw trap data were all analyzed in the original Status Review, and detailed discussions of these data sets may be found there (Adams *et al.*, 2002). Briefly, the CDFG San Pablo Bay trammel net sampling provided the only non-harvest based population estimates of abundance over time from 1954–2001. The data exhibited no significant trend over time, and it suffers from a number of biases: (1) The data depend on tag recoveries from the sport fishery and, therefore, reflect varying levels of effort; (2) sampling prior to 1990 was irregular; and (3) the estimates for green sturgeon are calculated incidentally based on tag returns from white sturgeon and assume that the temporal, spatial and gear vulnerabilities of both species are equal: The GCID sampling began in 1987, underwent a gear change in 1991, and has occurred each year since that time except for 1998. The total number of juvenile green sturgeon has fluctuated by over an order of magnitude between some years, but no clear temporal trends could be discerned despite a steady decline in numbers since 1997. We hope these data will be a useful indicator of green sturgeon juvenile abundance trends in the future as the temporal coverage of the sampling increases. The Klamath Tribal Catch time series refers to the Northern DPS and therefore will not be addressed here.

Examination of other data sets was conducted in preparation for the original Status Review, but the BRT concluded that: (1) the spatial/temporal scale of sampling or the gear type was not appropriate for ascertaining trends in the Southern DPS abundance; and/or (2) too few green sturgeon were captured during the time series to make conclusions about trends over time. For example, after 21 years (1980–2001) of conducting the San Francisco Bay otter trawl survey (CDFG, 2002), only 61 green sturgeon were collected from four locations between 1980 and 2001. However, in earlier sampling during an 11–month period between September 1963 and August 1964, 28 green sturgeon were captured with similar gear while 138 were captured with gill nets (CDFG, 2002), again indicating higher previous abundances. The UC Davis Suisun Marsh otter trawl sampling data set was also considered in preparation for the original Status Review, but was not found useful since fewer than 12 individuals were taken in 25 years of sampling (P. Moyle, UC Davis, per. comm.). The gear is suitable for taking small sturgeon, but few were found in the sampling area during the entire course of the sampling, and, thus, an analysis of trends could not be conducted. Indian midden data were not found useful for establishing historical range during preparation of the original Status Review (Gobalet et al., 2004) since midden data did not record sturgeon presence throughout the area of known historical occurrence. Further investigation (K. Gobalet, CSU Bakersfield, per. comm.) reveals that sturgeon bones were found at Lake Tulare, in the San Joaquin Valley system, the southernmost location recorded for sturgeon presence. Unfortunately, investigators are not able to distinguish between green and white sturgeon bones.

Two data sets had not been considered previously. The Chipps Island midwater trawl program only captured 15 green sturgeon in over 33,000 trawls conducted from 1976 to 2004 (P. Cadrett, USFWS, per. comm.). The BRT's conclusion was that this information was not useful in determining green sturgeon status or trends. The striped bass summer townet survey, designed to collect 38 mm larvae, only collected a "handful of sturgeon" during the time series beginning in 1959 (P. Coulston, CDFG, per. comm.). The BRT did not find this ancillary catch information to be reliable for determining green sturgeon status or trends.

Comment 9: Several commenters felt that recent state, local and Federal conservation efforts will help ensure the long-term viability of the Southern DPS to the point that a listing is not necessary.

Response: To consider that a formalized conservation effort contributes to forming a basis for not listing a species, we must find that the conservation effort is sufficiently certain to be implemented and effective so as to have contributed to the elimination or adequate reduction of one or more threats to the species identified through the ESA section 4(a)(1) analysis (pursuant to PECE, 68 FR 15100). In the proposed listing determination, we noted promising efforts to improve the quality of habitat and reduce threats to species that exhibit some degree of spatial and/or temporal overlap in spawning requirements with the Southern DPS in the Central Valley. However, NMFS does not believe that these efforts will reduce the risks to the Southern DPS enough to negate a threatened listing for the Southern DPS. When considering protective efforts, we need to weigh the certainty of their implementation and effectiveness against the threats causing risk to the Southern DPS. The actions proposed or being carried out by the California Bay-Delta Program (CALFED), the Central Valley Project Improvement Act (CVPIA), and CDFG include: (1) improving flow conditions in the Central Valley; (2) installing additional fish screens and improving fish passage; and (3) implementing stricter fishing regulations. These actions represent important contributions to addressing limiting factors for the Southern DPS; however, at this time these efforts alone do not substantially ameliorate risks to the Southern DPS such that protections afforded under the ESA are no longer necessary. As noted in the proposed listing determination (70 FR 17386; April 6, 2005) and summarized above, we feel that continued and additional conservation efforts are necessary beyond those addressed by commenters.

Comment 10: Several commenters opposed our proposal to list the Southern DPS as threatened and believed that an endangered listing was warranted. They disagreed that the habitat restoration efforts associated with CALFED, the CVPIA, and newly proposed CDFG fishing regulations provide sufficient certainty of implementation and effectiveness (pursuant to PECE) to conclude that the Southern DPS should be listed as threatened rather than endangered.

Response: We believe that the Southern DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range, but is not currently in danger of extinction for the following reasons. There is evidence that the Southern DPS continues to spawn in the Sacramento River and that spawning habitat of suitable quality still exists there. The best available data suggest that Southern DPS adults and juveniles have been present consistently within the Sacramento River system over a relatively long time period, despite the suggestion of decreasing abundance over the last decade. Thus, the continued presence of a viable green sturgeon population in the Sacramento River supports our conclusion that the Southern DPS is not at imminent risk of

extinction, but that risk of extinction in the foreseeable future is possible over the longer-term if the threats to the species are not ameliorated.

While we are encouraged by the recent proposals by: (1) CALFED and the CVPIA to specifically include green sturgeon monitoring and research activities in their habitat improvement and planning efforts in the Central Valley; and by (2) CDFG's proposal to implement more protective sturgeon fishing regulations and a directed monitoring program for green sturgeon, we agree that these measures do not provide sufficient certainty of implementation and effectiveness to negate a threatened listing (pursuant to the PECE Policy), as explained above . We do believe, however, that the proposals toimplement additional conservation measures over the short- and long-term offer additional assurance that extinction of the Southern DPS is unlikely to occur imminently.

Comment 11: Several commenters supported the exclusion of captive-bred green sturgeon from the Southern DPS and thought that take, transport, delivery, shipment and sale of captive-bred green sturgeon and the progeny thereof for domestic and international commerce should be allowed. The commenters thought that maintenance of a non-listed, captive-bred population of green sturgeon, originating from broodstock taken from the Klamath and Sacramento Rivers would: (1) further research goals and inform future management decisions; (2) take pressure off over-exploited wild stocks of beluga sturgeon through production of alternative sources of caviar; and (3) serve as a safeguard population for the Sacramento River in the event that the wild population experiences additional declines and requires supplementation through enhancement.

Response: While the ESA authorizes the listing, delisting, or reclassification of a species, subspecies, or DPS of a vertebrate species, it does not authorize the exclusion of a subset or portion of a listed species, subspecies, or DPS from a listing decision. In 2001, the U.S. District Court in Eugene, Oregon (*Alsea Valley Alliance* v. *Evans*, 161 F. Supp. 2d 1154 (D. Or. 2001)) (Alsea), ruled that once we had delineated a DPS (for Oregon Coast coho), the ESA did not allow listing only a subset (that which excluded 10 hatchery stocks) of that DPS. We have reviewed no data to suggest that captive-bred green sturgeon are more than moderately diverged from local, native populations in the Klamath and Sacramento River.

We believe that many of the benefits derived from captive-bred populations of green sturgeon, outlined by the commenters above, are valid and important to the overall conservation and recovery of the Southern DPS. In an effort to ensure that the native populations are not adversely affected, we will consider carefully the exemptions requested as we develop an ESA section 4(d) Rule in subsequent rule-making.

Status of the Southern DPS of Green Sturgeon

We have reviewed the petition, the reports of the BRT (NMFS, 2002, 2004), co-manager comments, public comments, and other available published and unpublished information, and we have consulted with species experts and other individuals familiar with green sturgeon. We conclude that the Southern DPS is likely to become endangered in the foreseeable future throughout all of its range because: (1) the Sacramento River contains the only known green sturgeon spawning population in this DPS, and the concentration of spawning adults in one river places this DPS at risk; (2) there was a substantial loss of spawning habitat in the upper Sacramento and Feather Rivers (FWS, 1995b, historical habitat data summarized in Lindley et al., 2004 for salmonids) for reasons cited in the first Status Review, Update, and the Proposed Rule (see those documents for a full discussion) and the loss of this spawning habitat contributed to the overall decline of the Southern DPS; (3) recent studies (since 2002) have indicated that the Sacramento River and Delta System face mounting threats with regard to maintenance of habitat quality and quantity and the Southern DPS is directly dependent upon this ecosystem for its long-term viability; and (4) fishery-independent data collected at the State and Federal salvage facilities indicate a decrease in observed numbers of juvenile green sturgeon collected from 1968 to 2001.

We conclude that the Southern DPS of green sturgeon is not presently in danger of extinction throughout all or a significant portion of its range. The continued persistence of green sturgeon adults and juveniles in the Sacramento River indicates that this population is viable and is not at imminent risk of extinction. We believe that spawning habitat has been lost in the Sacramento and Feather Rivers, and possibly in the San Joaquin River, but due to a paucity of data, we are unable to determine the geographic extent and demographic consequences of this loss.

Summary of Factors Affecting the Southern DPS of Green Sturgeon

Section 4(a)(1) of the ESA and NMFS's implementing regulations (50 CFR part 424) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) inadequacy of existing regulatory mechanisms; or (5) other natural or man-made factors affecting its continued existence. We have previously detailed the impacts of various factors contributing to the decline of the Southern DPS in our Proposed Rule (70 FR 17386, April 6, 2005), as well as in the Status Review and Update (e.g., Adams *et al.*, 2002, 2005). The primary factors responsible for the decline of the Southern DPS are the destruction, modification or curtailment of habitat and inadequacy of existing regulatory mechanisms. The following discussion briefly summarizes findings regarding threats to the Southern DPS.

The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The principal factor for decline of the Southern DPS is the reduction of the spawning area to a limited area of the Sacramento River. Keswick Dam provides an impassible barrier blocking green sturgeon access to what were likely historic spawning grounds upstream (FWS, 1995). A substantial amount of habitat in the Feather River above Oroville Dam also was lost, and threats to green sturgeon in the Feather River are similar to those faced by green sturgeon in the Sacramento River (NMFS, 2004). The BRT concluded that an effective population of spawning green sturgeon (i.e., a population that is contributing offspring to the next generation) no longer exists in the Feather River and was likely lost due to habitat blockage caused by the construction of Oroville Dam and from thermal barriers associated with the Thermalito Afterbay Facility.

Potential adult migration barriers to green sturgeon include the Red Bluff Diversion Dam (RBDD), Sacramento Deep Water Ship Channel locks, Fremont Weir, Sutter Bypass, and the Delta Cross Channel Gates on the Sacramento River, and Shanghai Bench and Sunset Pumps on the Feather River. The threat of screened and unscreened

agricultural, municipal, and industrial water diversions in the Sacramento River and Delta to green sturgeon is largely unknown as juvenile sturgeon are often not identified and current CDFG and NMFS screen criteria do not address sturgeon. Based on the temporal occurrence of juvenile green sturgeon and the high density of water diversion structures along rearing and migration routes, we find the potential threat of these diversions to be serious and in need of study (NMFS, 2005).

CDFG (1992) and FWS (1995) found a strong correlation between mean daily freshwater outflow (April to July) and white sturgeon year class strength in the Sacramento-San Joaquin Estuary (these studies primarily involve the more abundant white sturgeon; however, the threats to green sturgeon are thought to be similar), indicating that insufficient flow rates are likely to pose a significant threat to green sturgeon.

High water temperatures may pose a problem on the Feather River downstream of the Thermalito Afterbay outlet (FWS, 1995), and it is not expected that water temperatures in the system will become more favorable in the near future (CDFG, 2002). Elevated water temperature is likely no longer a problem in the Sacramento River with the installation of the Shasta Dam temperature control device in 1997. However, the possible long-term adverse affects on the overall population size and age-structure from elevated water temperature and the limited storage capacity and cold water reserves of the Shasta Dam in the past are still cause for concern.

Contamination of the Sacramento River increased substantially in the mid–1970s when application of rice pesticides increased (FWS, 1995). Estimated toxic concentrations for the Sacramento River during 1970–1988 may have deleteriously affected the larvae of another anadromous species (e.g., striped bass) that occupies similar habitat as green sturgeon larvae (Bailey, 1994), and a recent report indicates that toxins may be at least partially responsible for the pelagic organism decline in the Delta. (*http://science.calwater.ca.gov/pdf/workshops/IEP_POD_2005WorkSynthesis-draft_111405.pdf*)White sturgeon may also accumulate PCBs and selenium (White et al., 1989). While green sturgeon spend more time in the marine environment than white sturgeon and, therefore, may have less exposure, we conclude that some degree of risk from contaminants probably occurs for green sturgeon.

Overutilization for Commercial, Recreational, Scientific or Educational Purposes

While this factor was not considered the primary factor causing the decline of the Southern DPS, it is believed that past and present commercial and recreational fishing is likely to pose a threat to the Southern DPS. Ocean and estuarine bycatch of green sturgeon in the Oregon and Washington white sturgeon and salmonid fisheries (which may take some Southern DPS fish) has been reduced to 6 percent of its 1986 high value of 9,065 fish. The recent reduction is due to newly imposed fishing regulations in Oregon and Washington. Commercial fisheries targeting sturgeon have not been allowed in the Columbia River or Willapa Bay since 2001, and recreational fishing remains negligible (WDFW, 2004). CDFG (2002) estimated an average fishing mortality of 2.2 percent for green sturgeon based on tag return data in the Sacramento-San Joaquin Estuary. The impact of this fishing mortality rate is unknown. Potential new regulatory measures being considered by the State of California (M. Gingras, CDFG, pers. comm.) may confer reduced risk to the Southern green sturgeon DPS because regulatory measures recently implemented within the Northern DPS (see Proposed Rule, 70 FR 17386, April 6, 2005) seem to have had a positive effect on that DPS. However, we remain concerned about the risks associated with fishing pressure and poaching within the Southern DPS.

CDFG has stated that sturgeon are highly vulnerable to fisheries, and the trophy status of large white sturgeon makes sturgeon a high priority for enforcement to protect against poaching (CDFG, 2002). In fact, a number of sturgeon poaching operations have been discovered in recent years (e.g., *http://www.dfg.ca.gov/news/news04/04040.html*), and we expect poaching pressure to remain high because of the increasing demand for caviar, coupled with the decline of other sturgeon species around the world, primarily the beluga sturgeon. So while we are uncertain how poaching may affect the Southern DPS, we believe that it does pose a real risk and that future efforts by the agencies should be made to estimate annual mortality rates due to poaching.

Disease or Predation

Although a number of viral and bacterial infections have been reported in hatcheries (*http://aquanic.org/publicat/usda_rac/efs/srac/7200fs.pdf*), and habitat conditions such as low water flows and high temperatures can exacerbate susceptibility to infectious diseases, we do not believe there is sufficient information to suggest that disease has played an important role in the decline of the Southern DPS. Non-native species are an ongoing problem in the Sacramento-San Joaquin River and Delta systems through introductions and modification of habitat (CDFG, 2002). However, at present we are not able to estimate mortality rates imposed by non-native predators (i.e. striped bass) on green sturgeon. We do know that striped bass may affect the population viability of Chinook salmon (Lindley and Mohr, 2003) and may impose significant predation rates on other anadromous species (Blackwell and Juanes, 1998). Therefore, we maintain that, while predation risk imposed by striped bass on the Southern DPS is uncertain, it likely exists, and additional studies are needed to determine the importance of this threat to the long-term survival of the Southern DPS.

The Inadequacy of Existing Regulatory Mechanisms

We reviewed existing regulatory mechanisms in the Proposed Rule as part of our evaluation of efforts being made to protect green sturgeon (70 FR 17386; April 6, 2005). We noted several Federal, State, and local regulatory programs that have been implemented to help reduce historical risks to green sturgeon. In particular, changes in regulations governing fisheries in Washington and Oregon have potentially reduced the risks for the Southern DPS, though regulations in California have not changed since the previous Status Review and Update. In addition, although there have been efforts to improve habitat conditions across the range of the Southern DPS, less has been accomplished through regulatory mechanisms to reduce threats posed by blocked passage to spawning habitat and water diversions. Thus, we conclude that inadequacy of existing regulatory mechanisms has contributed significantly to the decline of the Southern DPS and to the severity of threats that the Southern DPS currently faces.

Other Natural or Manmade Factors Affecting Its Continued Existence

This factor was not considered a primary factor in the decline of the Southern DPS. Non-native species are an ongoing problem in the Sacramento-San Joaquin River and Delta systems (CDFG, 2002). One risk for green sturgeon associated with the introduction of non-native species

involves the replacement of relatively uncontaminated food items with those that may be contaminated (70 FR 17386; April 6, 2005).

The previous Status Review (Adams et al., 2002) summarized juvenile entrainment data and change in annual mean number over time. Juvenile entrainment is considered a type of threat imposed by water diversions, but the degree to which it is affecting the continued existence of the Southern DPS remains uncertain.

Efforts Being Made to Protect the Southern DPS of Green Sturgeon

The PECE policy (68 FR 15100; March 28, 2003) provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, State and local governments, Tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The evaluation of the certainty of an effort's effectiveness is made on the basis of whether the effort or plan: establishes specific conservation objectives; identifies the necessary steps to reduce threats or factors for decline; includes quantifiable performance measures for the monitoring of compliance and effectiveness; incorporates the principles of adaptive management; and is likely to improve the species' viability at the time of the listing determination.

Conservation measures that may apply to listed species include those implemented by tribes, states, foreign nations, local governments, and private organizations. Also, Federal, tribal, state, and foreign nations' recovery actions (16 U.S.C. 1533(f)), Federal consultation requirements (16 U.S.C. 1536), and prohibitions on taking (16 U.S.C. 1538) constitute conservation measures. In addition, recognition through Federal government or state listing promotes public awareness and conservation actions by Federal, state, tribal governments, foreign nations, private organizations, and individuals.

Fishing Regulations

Recent management strategies affecting the Northern and Southern DPS are outlined in the Proposed Rule (70 FR 17386; April 6, 2005). Here we summarize fishery management efforts that affect only the Southern DPS. Recent implementation of sturgeon fishing restrictions in Oregon and Washington and protective efforts put in place on the Klamath, Trinity, and Eel Rivers in the 1970s, 1980s, and 1990s may offer protection to the Southern DPS.

General CDFG angling regulations apply to sturgeon angling from Mendocino County south (one fish per day between 117 and 183 cm TL). Both white and green sturgeon are protected by the same fishing regulations in the Sacramento-San Joaquin system and a closure in central San Francisco Bay occurs between January 1 and March 15, coinciding with the herring spawning season to protect sturgeon feeding on herring eggs (CDFG, 2002). No commercial take is permitted. Active sturgeon enforcement is often employed in areas where sturgeon are concentrated and particularly vulnerable to the fishery.

Recently, CDFG recognized that "extant California fishing regulations permit a greater degree of risk to green sturgeon than is necessary to allow the popular sturgeon fishery" (CDFG, 2005). Through outreach efforts, it has found strong support for more protective sturgeon fishing regulations among the sturgeon fishing community. The Fish and Game Commission (Commission) passed an Emergency Regulation proposed by CDFG on March 3, 2006, that outlines the following new regulations for the recreational sturgeon fishery in California: (1) a zero bag limit for green sturgeon throughout California; and (2) a 117–142 cm fork length (FL) slot limit for white sturgeon throughout California. This Emergency Regulation was prompted by the most recent (2005) abundance estimate for white sturgeon (117–183 cm FL) in San Pablo Bay exhibiting approximately an order of magnitude decline from the estimate made in 1998. In addition, the Commission was concerned because: (1) other sources of data suggested a large decline in abundance of white sturgeon (117–183 cm FL); (2) substantial gaps in the existing data regarding abundance of white sturgeon outside the 117–183 cm FL range; (3) there is substantial and effective fishing pressure; and (4) there is interest by the public to implement more protective regulations for sturgeon in California. Currently, the CDFG and the Commission are working together towards implementing a long-term set of regulations for the recreational sturgeon fishery that would be put in place by 2007.

Habitat Protection Efforts

A summary of protective habitat efforts is provided in our response to Comment 10 above. For a more detailed description, see the Proposed Rule (70 FR 17386; April 6, 2005). We review our consideration of how these efforts will affect the Southern DPS in our response to Comment 9 above, and a more detailed examination is provided in the Proposed Rule (70 FR 17386; April 6, 2005). Our main conclusions are that: (1) green sturgeon focused research will be used to enhance our understanding of the risk factors affecting recovery, thereby improving our ability to develop effective management measures; however, at present they do not directly help to alleviate threats that this species faces in the wild; and (2) all ongoing fish screen and passage studies are designed primarily to meet the minimum qualifications outlined by the NMFS and CDFG fish screen criteria, and though these improvements will likely benefit salmonids, there is no evidence showing that these measures will decrease the likelihood of green sturgeon mortality.

As evaluated pursuant to PECE, the above described protective efforts do not as yet, individually or collectively, provide sufficient certainty of implementation and effectiveness to counter the conclusion that the Southern DPS is likely to become an endangered species in the foreseeable future throughout its range.

Final Listing Determination

Based on our evaluation of the best available scientific information and the ongoing state and Federal conservation efforts, the Southern DPS is likely to become endangered in the foreseeable future throughout all of its range and should be listed as threatened. This threatened determination is based on the reduction of potential spawning habitat, the severe threats to the single remaining spawning population, the inability to alleviate these threats with the conservation measures currently in place, and the decrease in observed numbers of juvenile green sturgeon collected in the past two decades compared to those collected historically.

Take Prohibitions and Protective Regulations

Section 9 of the ESA prohibits the take of endangered species. The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). In the case of threatened species, ESA section 4(d) leaves it to the Secretary's discretion whether to, and to what extent to, extend the section 9(a) "take" prohibitions to the species, and authorizes the NMFS to issue regulations it considers necessary and advisable for the conservation of the species. Thus, we have flexibility under section 4(d) to tailor protective

regulations, taking into account the effectiveness of available conservation measures. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. These 9(a) prohibitions and 4(d) regulations apply to all individuals, organizations, and agencies subject to U.S. jurisdiction. We will evaluate protective regulations pursuant to section 4(d) for the Southern green sturgeon DPS and issue proposed regulations in forthcoming rules that will be published in the **Federal Register**.

Other Protective Measures

Section 7(a)(2) of the ESA requires Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing or result in the destruction or adverse modification of proposed critical habitat. If a Federal action is likely to adversely affect a listed species or destroy or adversely modify its critical habitat, the responsible Federal agency must initiate formal consultation. Examples of Federal actions that may affect the Southern green sturgeon DPS include: water diversion for human use; point and non-point source discharge of persistent contaminants; contaminated waste disposal; water quality standards; and fishery management practices.

Sections 10(a)(1)(A) and (B) of the ESA provide us with authority to grant exceptions to the ESA's Section 9 "take" prohibitions. Section 10(a)(1)(A) scientific research and enhancement permits may be issued to entities (Federal and non-Federal) for scientific purposes or to enhance the propagation or survival of a listed species. The type of activities potentially requiring a section 10(a)(1)(A) research/enhancement permit include scientific research that targets green sturgeon.

Section 10(a)(1)(B) incidental take permits may be issued to non-Federal entities performing activities that may incidentally take listed species, as long as the taking is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity.

Service Policies on Endangered and Threatened Fish and Wildlife

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Public Law 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential scientific information disseminated on or after June 16, 2005.

Pursuant to our 1994 policy on peer review (59 FR 34270; July 1, 1994), we have solicited the expert opinions of at least three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing. We conclude that these expert reviews satisfy the requirements for "adequate [prior] peer review" contained in the Bulletin (sec. II.2.).

Critical Habitat

Critical habitat is defined in section 3 of the ESA as: (i) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species (16 U.S.C. 1532(5)(A). Section 4(b) of the ESA states that designation of critical habitat should occur at the same time as the final ruling, unless the Secretary deems that critical habitat is not then determinable, in which case the time to critical habitat designation may be extended by 1 year. In a previous **Federal Register** notice (66 FR 64793; December 14, 2001) we requested specific information on critical habitat; however, because no substantial information was received, we are again seeking public input and information to assist in gathering and analyzing the best available scientific data to support a critical habitat designation.

The Secretary has determined that critical habitat designation for the Southern DPS is not yet determinable. We will continue to meet with co-managers and other stakeholders to review information that will be used in the overall designation process. We will then initiate rulemaking with the publication in the **Federal Register** of a proposed designation of critical habitat, followed by a period for public comment and the opportunity for public hearings. In the coming year we will evaluate the physical and biological features of specific areas (e.g., spawning or feeding site quality or quantity, water quality or quantity, geological formation, vegetation type) that are essential to the conservation of the Southern DPS. Features that may be considered essential could include, but are not limited to: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and generally; (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Information Solicited

To ensure that subsequent rule-making resulting from this Final Rule will be as accurate and effective as possible, we are soliciting information from the public, other governmental agencies, the Government of Canada, the scientific community, industry, and any other interested parties. Specifically, we are interested in information that will inform the ESA section 4(d) rule making and the designation of critical habitat for the Southern DPS, including: (1) green sturgeon spawning habitat within the range of the Southern DPS that was present in the past, but may have been lost over time; (2) biological or other relevant data concerning any threats to the Southern green sturgeon DPS; (3) current or planned activities within the range of the Southern DPS and their possible impact on the Southern DPS; (4) efforts being made to protect the Southern DPS; (5) necessary prohibitions on take to promote the conservation of the green sturgeon Southern DPS; (6) quantitative evaluations describing the quality and extent of freshwater and marine habitats (occupied currently or occupied in the past, but no longer occupied) for juvenile and adult green sturgeon as well as information on areas that may qualify as critical habitat in California for the proposed Southern DPS; (7) activities that could be affected by an ESA section 4(d) rule and/or critical habitat designation; and (8) the economic costs and benefits of additional requirements of management measures likely to result from protective regulations and designation of critical habitat (see **DATES** and **ADDRESSES**).

References

A complete list of all references cited herein is available upon request (see **ADDRESSES** section).

Classification

National Environmental Policy Act (NEPA)

The 1982 amendments to the ESA, in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in Pacific Legal Foundation v. Andrus, 675 F. 2d 825 (6th Cir. 1981), we have concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA. (See NOAA Administrative Order 216 6.)

Executive Order (E.O.) 12866, Regulatory Flexibility Act and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This Final Rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Federalism

E.O. 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this final listing determination.

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, the Proposed Rule was given to the relevant state agencies in each state in which the species is believed to occur. We have conferred with the States of Washington, Oregon, and California in the course of assessing the status of the Southern DPS, and considered, among other things, Federal, state and local conservation measures. We intend to continue engaging in informal and formal contacts with the states and other affected local or regional entities, giving careful consideration to any information received.

List of Subjects in 50 CFR Part 223

Enumeration of threatened marine and anadromous species.

Dated: April 3, 2004.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 223 is amended as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531 1543; subpart B, § 223.12 also issued under 16 U.S.C. 1361 *et seq.*

■ 2. In § 223.102, revise paragraph (a) by adding paragraph (23) to the end of the List of Threatened Marine and Anadromous Species:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(a) Marine and anadromous fish.

Species[1]		Where Listed	Citation (s) for Listing Determinations	Citations (s) for Critical Habitat Designations
Common name	Scientific name			
* * *	* * *	* * * *		
(23) North American Green Sturgeon-Southern DPS	*Acipenser medirostris*	USA, CA. The southern DPS includes all spawning populations of green sturgeon south of the Eel River (exclusive), principally including the Sacramento River green sturgeon spawning population.		N/A
* * *	* * *	* * * *		

[FR Doc. 06–3326 Filed 4–6–06; 8:45 am]
BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 71, No. 67
Friday, April 7, 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 AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1496

RIN 0560–AH39

Procurement of Commodities for Foreign Donation

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule; supplemental.

SUMMARY: This proposed rule proposes additional changes related to a proposed rule published by the Commodity Credit Corporation (CCC) on December 16, 2005, entitled "Procurement of Commodities for Foreign Donation," to specifically recognize CCC's obligations under the cargo preference legislation of the Merchant Marine Act, 1936 and to clarify the "extenuating circumstances" that may preclude awards on the basis of lowest-landed cost. CCC is also re-opening and extending the comment period on the proposed rule to accord interested persons an opportunity to comment thereon.

DATES: Comments on this proposed rule and the proposed rule published December 16, 2005 (70 FR 74717–74721) must be received on or before May 8, 2006 in order to be assured consideration.

ADDRESSES: Comments may be submitted by any of the following methods:

- *E-Mail:* Send comments to *Richard.Chavez@USDA.gov.*
- *Fax:* Submit comments by facsimile transmission to: (202) 690–2221.
- *Mail:* Send comments to: Director, Commodity Procurement Policy & Analysis Division, Farm Service Agency, United States Department of Agriculture (USDA), Rm. 5755–S, 1400 Independence Avenue, SW., Washington, DC 20250–0551.
- *Hand Delivery or Courier:* Deliver comments to the above address.
- *Federal Rulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT: Richard Chavez, phone: (202) 690–0194; E-Mail: *Richard.Chavez@USDA.gov.*

SUPPLEMENTARY INFORMATION:

Background

CCC procures agricultural commodities for donation overseas under various food aid authorities. These authorities include Title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480), which is administered by the U.S. Agency for International Development (USAID), and the Food for Progress and the McGovern-Dole International Food for Education and Child Nutrition Programs, which are administered by the Foreign Agricultural Service within USDA. On December 16, 2005, CCC published a proposed rule proposing to change the bid evaluation process used in connection with the purchase of commodities for these programs. *See* 70 FR 74717–74721. Generally, as discussed in the preamble to that proposed rule, CCC proposed a one-step bid evaluation process for these procurements that would analyze actual freight offers together with commodity offers to arrive at an overall lowest-landed cost. The comment period for the proposed rule ended March 9, 2006. *See* 71 FR 3442.

In reviewing the proposed rule after interagency discussions, CCC believes it would be helpful to clarify two points regarding the proposed procurement process. First, CCC should state that it will administer any new procurement system in a manner consistent with its obligations under the cargo preference legislation of the Merchant Marine Act, 1936. Secondly, CCC should clarify the "extenuating circumstances" that may preclude awards on the basis of lowest-landed cost.

CCC will, of course, comply with cargo preference requirements. The existing regulations at 7 CFR 1496.5(a)(1), which were unchanged by the proposed rule, specify that lowest-landed cost will be calculated on the basis of U.S. flag rates and service for that portion of the commodities being purchased that CCC determines is necessary and practicable to meet cargo preference requirements * * *. It is deemed advisable to more closely relate this point to the bid award. Therefore, CCC is revising proposed § 1496.7(b) to include specific acknowledgments of cargo preference requirements in regard to awarding bids.

The proposed rule also included an exception to the lowest-landed cost principle when "extenuating circumstance" justified using vessel services other than single voyage contracts or f.o.b. and f.a.s. vessel delivery terms. In such cases there would be no separate vessel offers to match with commodity offers. Under the earlier proposed rule, examples of such extenuating circumstances "may include, but are not limited to, internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination." It was CCC's intent that such extenuating circumstances would always be of the nature of the examples cited and CCC is revising § 1496.7(b) of the proposed rule to clarify this point.

In order to obtain full public input on this proposed rule, CCC encourages respondents to provide information and data on the economic effects of the proposed adoption of a one-step procurement system on their business operations. CCC would welcome comments on these effects from all participants in international food aid transactions such as ocean carriers, commodity suppliers, ports, railroads, and private relief agencies. These comments should include data appropriate for economic analysis.

CCC will continue to be engaged in providing outreach and assistance efforts in association with transition to a one-step procurement process. In this regard, we are interested in learning what types of information would be of interest to the public to help in understanding the new system, as well as a means for providing that information

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

The environmental impacts of this rule have been considered consistent with the provisions of the National Environmental Policy Act of 1969

(NEPA), 42 U.S.C. 4321 *et seq.*, the regulations of the Council on Environmental Quality (40 CFR parts 1500–1508), and the FSA regulations for compliance with NEPA, 7 CFR part 799. FSA concluded that the rule requires no further environmental review because it is categorically excluded. No extraordinary circumstances or other unforeseeable factors exist which would require preparation of an environmental assessment or environmental impact statement.

Executive Order 12988

This proposed rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this proposed rule.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act

This supplemental proposed rule does not affect the information collection described in the December 16, 2005 proposed rule. The proposed rule invited public comment on the information collection and the comments have been summarized and included in the request for OMB approval under the Paperwork Reduction Act of 1995.

Government Paperwork Elimination Act

FSA is committed to compliance with the Government Paperwork Elimination Act, which requires Federal Government agencies to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. The KCCO is now in the process of updating its computer bid-evaluation systems that would accommodate a more unified one step bid evaluation. Freight invitations would call for bids to be submitted through a web-based entry system.

Most of the information collections required by this rule are fully implemented for the public to conduct business with FSA electronically. However, a few may be completed and saved on a computer, but must be printed, signed and submitted to FSA in paper form.

Executive Order 12612

This rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 7 CFR Part 1496

Agricultural commodities, Exports, Foreign aid.

Accordingly, CCC proposes to amend 7 CFR 1496.7 as set forth in the proposed rule published December 16, 2005 (70 FR 74717–74721) as follows:

PART 1496—PROCUREMENT OF PROCESSED AGRICULTURAL COMMODITIES FOR DONATION UNDER TITLE II, PUB. L. 480

1. The authority citation for part 1496 is revised to read as follows:

Authority: 7 U.S.C. 1431(b); 1721–1726a; 1731–1736g–2; 1736o; 1736o–1; 15 U.S.C. 714b and 714c; 46 U.S.C. App. 1241(b), and 1241(f).

2. In § 1496.7, paragraph (b) is revised to read as follows:

§ 1496.7 Final contract determinations.

* * * * *

(b) *Combination of bids.* CCC will determine which combination of commodity bids and bids for ocean freight rates result in the lowest-landed cost of delivery of the commodity to the foreign destination. CCC will award the contract for the purchase of the commodity that results in the lowest-landed cost and would be transported in compliance with cargo preference requirements. The Contracting Officer may determine that extenuating circumstances preclude awards on the basis of lowest-landed cost, or efficiency and cost-savings justify the use of types of ocean service that would not involve an analysis of freight bids for each of CCC's commodity purchases; however, in all such cases, commodities would be transported in compliance with cargo preference requirements. Examples of extenuating circumstances are events such as internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination. Other types of services may include, but are not limited to, multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery Cost and Freight (C & F), delivery Cost Insurance and Freight (CIF), and indexed ocean freight costs. Before contracts are awarded for other than a lowest-landed cost, the Contracting Officer shall consult with the applicable program agencies, and set forth, in writing, the reasons the contracts should be awarded on other than a lowest-landed cost.

* * * * *

Signed at Washington, DC, on March 31, 2006.

Thomas B. Hofeller,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. E6–5089 Filed 4–6–06; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF STATE

22 CFR Part 62

RIN: 1400–AC15

[Public Notice 5356]

Rule Title: Exchange Visitor Program—Training and Internship Programs

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to revise its training program regulations. These revisions will, among other things, eliminate the distinction between "non-specialty occupations" and "specialty occupations". Also, a new 12-month "intern" program is proposed to permit recent foreign graduates of degree-granting post-secondary accredited educational institutions to come to the United States to pursue work-based learning experiences in the fields in which they received their degrees.

A requirement that sponsors complete an individualized Form DS–7002 Training/Internship Placement Plan for each trainee and intern prior to issuing a Form DS–2019 to the trainee or intern is also proposed. The Department will publish a Notice regarding the design of the proposed Form DS–7002, soliciting public comment regarding all recordkeeping, reporting, and data collection units. Sponsors should note that Forms DS–7002 contain a provision prohibiting the making of materially false, fictitious, or fraudulent statements or misrepresentations in connection

with Training/Internship Placement Plans (18 U.S.C. 1001).

DATES: The Department will accept comments on the proposed regulation from the public up to June 6, 2006.

ADDRESSES: You may submit comments identified by any of the following methods:

- E-mail: *jexchanges@state.gov*. You must include the RIN (1400–AC15) in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): U.S. Department of State, Office of Exchange Coordination and Designation, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547.
- Fax: 202–203–5087.

Persons with access to the Internet may also view this notice and provide comments by going to the regulations.gov Web site at: *http://www.regulations.gov/index.cfm*.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at *jexchanges@state.gov*.

SUPPLEMENTARY INFORMATION: The Department of State (Department) designates U.S. government, academic and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended ("Fulbright-Hays Act"). Under this authority, designated program sponsors facilitate the entry into the United States of more than 275,000 exchange participants each year.

The former United States Information Agency (USIA) and, as of October 1, 1999, its successor, the Department, have promulgated regulations governing the Exchange Visitor Program that are set forth at 22 CFR part 62. Regulations specifically governing designated training programs appear at 22 CFR 62.22. These regulations largely have remained unchanged since 1993, when the USIA undertook a major regulatory reform of the Exchange Visitor Program. Approximately 27,000 trainees enter the United States annually as participants in designated training programs. Although the regulations have not been altered in any major way since 1993, the Department's Office of Exchange Coordination and Designation (the Office) and the Government Accountability Office (GAO) have reviewed their implementation. While training programs overall have been highly successful in meeting the goals of the Fulbright-Hays Act, both the Office and the GAO found that there have been occasions where some sponsors were misusing training programs (*i.e.*, trainees were not receiving any training and were actually being used as "employees," and visitors were using J visas in lieu of H visas or as stepping stones for other longer-term non-immigrant or immigrant classifications that may have been unavailable at the time of application). The proposed regulations will permit the Office to monitor more closely training and internship programs and ensure that they are not subject to abuses similar to those the GAO and the Office found with respect to certain training programs. ("Stronger Action Needed to Improve Oversight and Assess Risks of the Summer Work Travel and Trainee Categories of the Exchange Visitor Program," Report GAO–06–106, October 2005.)

The 1993 regulatory overhaul of the Exchange Visitor Program regulations included a provision in the regulations governing training programs that distinguished among training in "specialized," "non-specialized," and "unskilled" occupations. Experience has shown that the distinctions between and among these occupational categories are conceptually artificial and do not adequately describe the types of training that the Department desires to promote in the national interest. In that regard, the Department has concluded that it is more *the amount* of prior experience that trainees acquire, rather than some artificial categorization of *the type* of training, that should determine whether trainees should be permitted to enter the United States for further training. Accordingly, these proposed regulations will require that trainees have a minimum of three years of prior related work experience in their occupational fields before being eligible to participate in the Exchange Visitor Program. Further, in order that trainees be sufficiently fluent in English to comprehend fully the training they undertake, the regulations will require that trainees have a minimum TOEFL® (Test of English as a Foreign Language) score of 550, or its equivalent.

The Department will continue to designate training programs in the following occupational categories: Arts and culture; information media and communications; education, social sciences, and library science; management, business, commerce, and finance; health related occupations; aviation; the sciences, engineering, architecture, mathematics, and industrial occupations; construction and building trades; agriculture, forestry, and fishing; public administration and law; hospitality and tourism; and such other occupational categories that the Department may from time to time include in the program. The Department directs the attention of sponsors to two Statements of Policy that it has recently promulgated and which will have an impact on certain training programs. The first Statement of Policy notified the public that the Department will not designate any new flight training programs; nor will it permit currently-designated flight training programs to expand, pending a determination as to which Federal agency ultimately will be tasked with administering and monitoring flight training programs. (See 71 FR 3913, January 24, 2006.) The Department also recently issued a Statement of Policy notifying the public that it will not designate any new J visa agricultural training programs; nor will it permit currently-designated programs offering agricultural training to expand the agricultural training component of their programs, pending the Department's determination whether such programs are subject to, and if so, whether they are in compliance with, certain Federal statutes covering agricultural workers. (See 71 FR 3914, January 24, 2006.) The regulations proposed herein do not revoke or otherwise affect those two Statements of Policy. They remain in effect.

The regulations the USIA adopted in 1993 contain provisions for the preparation of training plans for trainees (22 CFR 62.22(f) and (g)). The Office's experience since 1993 has shown that the regulations regarding the content and use of such training plans have not been effective, and they do not adequately assist the Office in determining whether trainees receive real training, for example, or whether "boilerplate" structured training plans accurately describe actual trainee activities. The Department proposes to replace the existing training plan regulations with new regulations that appear below under the heading "Training/Internship Placement Plan." The Department will provide an opportunity for comment on this proposed form by separate **Federal Register** announcement.

The Department also recognizes that recent college and university level graduates (*i.e.*, those who graduated no more than 12 months prior to the begin dates of their individual internship programs) and who have not yet had the opportunity to acquire work experience in their chosen fields of study, may also be interested in pursuing training in the United States in their prospective occupational fields. The Department has concluded that it is in furtherance of the

goals of the Fulbright-Hays Act that such graduates should be permitted and, indeed, encouraged to enter the United States for post-graduate practical training in structured and guided training programs. Accordingly, these proposed regulations will create a new intern sub-category within the regulations governing trainees.

It is imperative that the new internship programs provide learning experiences for recent graduates that are an integral part of their continuing education and that are consistent with the Congressional intentions underlying enactment of the Fulbright-Hays Act. To that end, the proposed regulations include provisions that: (1) Limit internship program participation to only recent graduates from degree-granting accredited post-secondary academic institutions; (2) require that interns have a minimum TOEFL® score of 550, or its equivalent; and (3) require the completion of individualized Training/Internship Placement Plans prior to interns' departures from their home countries. Interns may remain in the United States as participants in designated internship programs for a maximum of 12 months.

The proposed regulations also provide that trainees and interns may return to the United States for repeat training opportunities only after they have been absent from the United States for at least two years following completion of their initial training or internship programs.

With respect to flight training, the proposed regulations link the duration of on-the-job or practical training to the amount of time flight trainees spend in full-time classroom study. Flight trainees will be permitted to engage in one month of on-the-job or practical training for each four months of full-time classroom study they successfully complete. This mirrors the practical training provision in the regulations governing the M visa, 8 CFR 214.2(m). With respect to flight training programs, the duration of the total training period, like that under the M visa, will be directly related to the amount of classroom training that trainees successfully complete, but will not exceed 18 months for the combined classroom and on-the-job practical training.

Training programs in the agricultural, hospitality, and tourism categories will be limited to 12 months' duration. The GAO, the Department's Office of Inspector General, and the Inspector General of the USIA have consistently singled out these three categories of training for review and criticism. Concerns about these training programs often focus on reviewing officers' inability to distinguish on-the-job training from employment. The Department does not embrace these criticisms in their entirety, as the simple fact that exchange visitors are working does not mean they are not engaged in training. Recognizing the value of training in these fields, but mindful of the need to prevent abuse—or the appearance thereof—the Department maintains that 12 months of training in these fields will address the underlying employment concerns while permitting opportunities for legitimate training. In addition, sponsors of agricultural programs must certify that they meet all requirements of the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) and the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801 *et seq.*).

Regulatory Analysis

Administrative Procedure Act

The Department is publishing this rule as a proposed rule, with a 60-day provision for public comments.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These proposed changes to the regulations are hereby certified as not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, section 3(b).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation 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. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*; PRA), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulation. The Department has determined that this proposed rule contains collection of information requirements for the purposes of the PRA. The Department will submit to OMB its request for review of new information collection as part of the proposal. The submission will include a Form DS–7002 Training/Internship Placement Plan, which will be the subject of a separate **Federal Register** notice and request for public comment. The new collection of information will replace the training

plans currently required under 22 CFR 62.22.

List of Subjects in 22 CFR Part 62

Cultural exchange programs, Reporting and recordkeeping requirements.

Accordingly, 22 CFR part 62 is proposed to be amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

1. The authority citation for part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Public Law 105–277, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp., p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp., p. 168.

2. Section 62.2 is amended by removing the paragraphs defining "Non-specialty occupation" and "Specialty occupation" and by adding the following terms to read as follows:

§ 62.2 Definitions.

* * * * *

Clerical—means routine administrative work generally performed in an office or office-like setting, such as recordkeeping, filing, typing, mail sorting and distribution, and other general office tasks.

* * * * *

Intern—means a foreign college or university level graduate who, within 12 months following graduation, enters the United States to participate in a structured and guided period of work-based learning related to the specific field in which he or she earned a degree.

Internship—means a structured and guided work-based program that reinforces a recent graduate's academic study and provides on-the-job exposure to American techniques, methodologies, and technology, and enhances the intern's knowledge of American culture and society.

* * * * *

Trainee—means a foreign individual who has at least three years of prior related work experience in his or her occupational field and who enters the United States to participate in a structured and guided work-based training program in his or her specific occupational field.

Training—means a structured and guided work-based learning program set forth in an individualized Trainee/Internship Placement Plan that enhances both a trainee's skills in his or her occupational specialty through exposure to American techniques, methodologies, and technology, and a trainee's understanding of American culture and society.

3. Section 62.22 is revised to read as follows:

§ 62.22 Trainees and Interns.

(a) *Introduction.* These regulations govern Exchange Visitor Programs under which foreign nationals have the opportunity to receive training in the United States. These regulations also establish a new internship program under which recent foreign post-secondary school graduates who graduated not more than 12 months prior to their Exchange Visitor Programs' begin dates may enter the United States to obtain work-based learning in the fields in which they received their degrees. Regulations dealing with training opportunities for certain foreign students who are studying at post-secondary accredited educational institutions in the United States are found at § 62.23 ("College and University Students"). Regulations governing foreign medical trainees are found at § 62.27 ("Alien Physicians").

(b) *Purpose.* (1) The primary objectives of the programs offered under these regulations are to enhance the skills and expertise of exchange visitors in their occupational or educational fields through participation in structured and guided training and internship programs and to improve participants' knowledge of American techniques, methodologies and technology. Such training and internship programs are also intended to increase participants' understanding of American culture and society and to enhance Americans' knowledge of foreign cultures and skills through an open interchange of ideas between participants and their American associates. A key goal of the Fulbright-Hays Act, which authorizes these programs, is that participants will return to their home countries and share their experiences with their countrymen. Exchange Visitor Program training and internship programs are not to be used as substitutes for ordinary employment or work purposes; nor may they be used under any circumstances to displace American workers. These regulations are designed to distinguish between *bona fide* training, which is permitted, and merely gaining additional work experience, which is not permitted.

(2) In addition, a specific objective of the new internship program is to provide recent foreign post-secondary school graduates a period of work-based learning in the fields in which they earned their degrees. Bridging the gap between formal education and practical work experience and gaining substantive cross-cultural experience in graduates' fields of study are major goals in educational institutions around the world. By providing opportunities for recent foreign graduates at formative stages of their development, the United States Government will build partnerships, create mutual understanding, and develop platforms for relationships that will last through generations as these graduates move into leadership roles in a broad range of professional fields in their own societies. These values are closely tied to the goals, themes, and spirit of the Fulbright-Hays Act.

(c) *Designation.* (1) The Department may, in its sole discretion, designate as sponsors entities meeting the eligibility requirements set forth in subpart A of 22 CFR part 62 and satisfying the Department that they have the organizational capacity successfully to administer and facilitate training or internship programs.

(2) Sponsors shall provide training and internship programs only in the category or categories for which the Department has designated them as sponsors. The Department will designate training and internship programs in any of the following occupational categories:

(i) Arts and Culture;

(ii) Information Media and Communications;

(iii) Education, Social Sciences, and Library Science;

(iv) Management, Business, Commerce and Finance;

(v) Health Related Occupations;

(vi) Aviation (subject to the Statement of Policy set forth at 71 FR 3913, January 24, 2006);

(vii) The Sciences, Engineering, Architecture, Mathematics, and Industrial Occupations;

(viii) Construction and Building Trades;

(ix) Agriculture (subject to the Statement of Policy set forth at 71 FR 3914, January 24, 2006), Forestry, and Fishing;

(x) Public Administration and Law; and

(xi) Hospitality and Tourism.

(d) *Selection Criteria.* In addition to satisfying the general requirements set forth in subpart A above, sponsors of trainees must verify that all potential participants in their training programs have at least three years' prior related work experience in the occupational fields related to the specific training categories of their programs and have a minimum TOEFL® (Test of English as a Foreign Language) score of 550, or its equivalent. Sponsors of interns must

verify that all potential participants in their internship programs:

(1) Are recent graduates of accredited foreign degree-granting colleges or universities who have earned degrees in fields of study related to the specific categories in which they are seeking internships;

(2) Have not graduated more than 12 months prior to their proposed Exchange Visitor Programs' begin dates; and

(3) Have a minimum TOEFL® score of 550, or its equivalent.

(e) *Issuance of Forms DS–2019.* In addition to the requirements set forth in Subpart A, sponsors must ensure that:

(1) Sponsors do not issue Forms DS–2019 to potential participants in training or internship programs until the sponsors secure placements for the trainees or interns and sponsors provide them with completed Training/Internship Placement Plans;

(2) Trainees or interns have sufficient finances to support themselves for their entire stay in the United States, including housing and living expenses; and

(3) The training or internship programs are not duplicative of any experience that participants already obtained in their home countries.

(f) *Obligations of Training and Internship Program Sponsors.* (1) In addition to the requirements set forth in subpart A, sponsors designated by the Department to administer training or internship programs must:

(i) Ensure that trainees and interns are appropriately placed and supervise and evaluate trainees and interns on an on-going basis;

(ii) Provide guidance to trainees and interns during the placement process;

(iii) Stay in communication with trainees and interns throughout the training or internship programs;

(iv) Be available to trainees and interns to assist as facilitators, counselors, and information resources;

(v) Ensure that training or internship programs provide a balance between the trainees and interns' learning opportunities and their trainees' orinterns' contributions to the organizations in which they are placed;

(vi) Ensure that sufficient plant, equipment, and trained personnel are available to provide the specified training;

(vii) Ensure that they or third parties follow the agendas set forth in the individualized Training/Internship Placement Plans so that trainees and interns obtain skills, knowledge, and competences through structured and guided activities such as classroom training, seminars, rotation through several departments, on-the-job training, attendance at conferences, and similar learning activities, as appropriate in specific circumstances;

(viii) Ensure that trainees and interns do not displace American workers. The positions that trainees and interns fill shall exist solely to assist trainees and interns in achieving the objectives of their participation in training or internship programs; and

(ix) Certify that training and internship programs in the field of agriculture meet all requirements of the Fair Labor Standards Act, as amended (29 U.S.C. 201 *et seq.*) and the Migrant and Seasonal Agricultural Worker Protection Act, as amended (29 U.S.C. 1801 *et seq.*).

(2) Sponsors must conduct in-person interviews with potential trainees or interns in their home countries and, further, must ensure that:

(i) Suitably trained and experienced staff is designated to provide supervision and mentoring for all trainees and interns at all training sites;

(ii) They conduct periodic evaluations, as outlined below;

(iii) All employees, officers, agents, or third parties (foreign or domestic) used to conduct any aspect of training or internship programs (*e.g.*, orientation) must be fully trained and supervised by an officer of the designated sponsors in the performance of these functions, and that they adhere to all regulatory provisions set forth in this Part as well as all additional terms and conditions governing exchange program administration that the Department may from time to time impose;

(iv) The training or internship programs are full-time (minimum of 32 hours a week); and

(v) Potential trainees (but not potential interns) have at least three years of prior related work experience in the occupational fields related to the specific training categories of their training programs.

(3) Sponsors, trainees or interns, and third-party placement organizations, if applicable, must jointly develop individualized Training/Internship Placement Plans on Forms DS–7002 before issuing Forms DS–2019 to trainees or interns.

(4) Sponsors must retain all documents referred to in this paragraph (f) for at least three years following the completion of all trainees' or interns' training or internship programs.

(g) *Use of Third Parties.* Sponsors may utilize the services of domestic or foreign third party organizations in the conduct of their designated training or internship programs. If sponsors use third parties, they must enter into written agreements meeting the requirements of paragraph (g)(3) of this section, before placement of trainees or interns. Sponsors' use of third parties does not relieve sponsors of their obligations to comply with, and to ensure third party compliance with, all Exchange Visitor Program regulations. Any failures on the parts of the third parties to comply with these regulations will be imputed to sponsors. If trainees or interns are placed at locations other than their sponsors' business premises, sponsors must:

(1) Conduct on-site visits to all third-party organizations to ensure that the organizations providing the training or internship programs possess and maintain the ability to provide structured and guided practical experience according to the individualized Training/Internship Placement Plans and ensure that third party organizations understand their obligations under the Exchange Visitor Program regulations.

(2) Ensure that all third party organizations providing training or internship programs have been in business for a minimum of three years.

(3) Ensure the existence of written and executed agreements between sponsors and third party organizations to administer training or internship programs prior to the placement of trainees or interns in such programs. These agreements must delineate the respective obligations and duties of the parties and identify the parties' obligations to act in accordance with these regulations to ensure that skills, knowledge, and competences are imparted to trainees or interns through structured and guided programs set forth in individualized Training/Internship Placement Plans. Such plans must be appropriate to trainees' or interns' levels of experience and skill and be consistent with all requirements of the Exchange Visitor Program. These agreements must also include third party organizations' business license numbers, Employment Identification Codes (EIDs), D–U–N–S Numbers, and points of contact. Sponsors must maintain copies of all such agreements in their files for at least three years following the completion of each training or internship program.

(4) Ensure that within 48 hours of placement, the trainees' or interns' supervisors or managers conduct entry interviews and orientations of their organizations. Such orientations must include the history, missions, goals, organizational structures, objectives, policies, and procedures of the organizations, and must provide training on the use of equipment and

other relevant technology at training sites.

(h) *Third Party Organization Obligations.* (1) Third party organizations must verify in writing that all placements are appropriate and consistent with the objectives of trainees or interns as outlined in their individualized Training/Internship Placement Plans. All parties involved in internship programs should recognize that interns are seeking basic training and experience in the fields in which they earned their degrees. Accordingly, many, if not all of the placements for interns will be entry level in nature.

(2) Third party organizations must execute written agreements with designated sponsors as set forth in paragraph (g)(3) of this section.

(3) Third party organizations must notify sponsors of any concerns about, changes in, or deviations from Training/Internship Placement Plans during training or internship programs.

(4) Third party organizations must not use trainees or interns to displace American workers. The positions that trainees and interns fill must exist solely to assist trainees and interns to achieve the objectives of their participation in training and internship programs.

(i) *Training/Internship Placement Plan.* (1) Prior to issuing Forms DS–2019, sponsors must provide trainees or interns with individualized Training/Internship Placement Plans on Forms DS–7002.

(2) Training/Internship Placement Plans must be on the Department's Form DS–7002 and must state the trainees' or interns' names and relevant contact information (telephone numbers, addresses, e-mail addresses, and fax numbers), the number of years of experience the trainees have had in their occupational fields, the beginning and ending dates of the training or internship programs, the address of the sponsors and locations of the training or internship programs and the name and relevant contact information (telephone numbers, addresses, e-mail addresses, and fax numbers) of the supervisors or managers who will evaluate and monitor the trainees or interns.

(3) Training/Internship Placement Plans must also state the purposes of the training or internship programs, the skills the trainees or interns seek, whether the trainees or interns will receive any remuneration for housing and living expenses (and if so, the amount), and estimates of the living expenses and other costs the trainees or interns are likely to incur while in the United States.

(4) Training/Internship Placement Plans must be produced in triplicate and the trainees or interns, sponsors, and the third party placement organizations (if a third party organization is used in the conduct of the training) must each sign each copy.

(5) All signatories to Training/Internship Placement Plans shall receive and retain individual versions of the Training/Internship Placement Plans that contain original signatures of each of the foregoing individuals.

(6) Upon request, trainees or interns must present fully executed Training/Internship Placement Plans on Forms DS–7002 to any Consular Official interviewing them in connection with the issuance of J–1 visas.

(j) *Program Exclusions.* Sponsors designated by the Department to administer training or internship programs must not:

(1) Sponsor trainees or interns in unskilled or casual labor positions, in positions that require or involve child care or elder care, or in clinical or any other kind of work that involves patient care or contact, including any work that would require trainees or interns to provide therapy, medication, or other clinical or medical care (*e.g.*, sports or physical therapy, psychological counseling, nursing, dentistry, social work, speech therapy, or early childhood education);

(2) Sponsor trainees or interns in occupations or businesses that could bring the Exchange Visitor Program or the Department into notoriety or disrepute; or

(3) Engage staffing or employment agencies to recruit, screen, orient, or place trainees or interns.

(4) Designated sponsors must ensure that the duties of trainees or interns will not involve more than 20% clerical work, and that all tasks assigned to trainees or interns are necessary for the completion of training or internship program assignments.

(k) *Duration.* The duration of trainees' or interns' participation in training or internship programs must be established before sponsors issue Forms DS–2019. Except as noted below, the maximum duration of training programs is 18 months, and the maximum duration of internship programs is 12 months. For trainees in agricultural training programs and hospitality and tourism training programs, the maximum duration of training programs is 12 months. No program extensions are permitted after sponsors issue Forms DS–2019.

(l) *Evaluation.* In order to ensure the quality of training or internship programs, sponsors must develop procedures for evaluation of all trainees or interns. For programs exceeding six months in duration, at a minimum, midpoint and concluding evaluations are required from the trainees' or interns' immediate supervisors, and both parties (supervisors and trainees or interns) must sign them prior to the completion of the training or internship programs. For programs of six months or less, at least one evaluation is required at the conclusion of the training or internship program, and it must be signed by both parties (supervisors and trainees or interns) prior to the completion of the training or internship programs. Sponsors are required to retain trainee or intern evaluations for a period of at least three years following the completion of each training or internship program.

(m) *Issuance of Certificate of Eligibility for Exchange Visitor (J–1) Status.* Sponsors must not deliver or cause to be delivered any Certificate of Eligibility for Exchange Visitor (J–1) Status (Form DS–2019) to potential trainees or interns unless the individualized Training/Internship Placement Plans required by paragraph (i) of this section have been completed on Form DS–7002, and all other requirements set forth in these regulations have been met.

(n) *Repeat Participation.* Individuals who enter the United States under the Exchange Visitor Program to participate in training or internship programs are not eligible for repeat participation unless they have resided outside the United States for a period of at least two years after the completion of their initial training or internship programs.

(o) *Flight Training.* (1) The Department will consider the application for designation of flight training programs if such programs comply with the above regulations and the General Provisions set forth in Subpart A of this part, and, in addition, such programs are at the time of making said application:

(i) Federal Aviation Administration (FAA) pilot schools certificated pursuant to Title 14, CFR part 141; and

(ii) Flight training programs accredited by an agency that is listed in the current edition of the United States Department of Education's "Nationally Recognized Accrediting Agencies and Associations," or are accredited as flight training program by a member of the Council on Postsecondary Accreditation.

(2) Notwithstanding the provisions of paragraph (k) of this section, the maximum period of duration for participation in designated flight training programs is directly related to

the amount of time that flight trainees spend in full-time classroom study. Flight trainees are allowed to engage in one month of on-the-job or practical training for each four months of full-time classroom study they complete successfully, not to exceed 18 months for the combined classroom study and on-the-job or practical training.

(3) For purposes of meeting the evaluation requirements set forth in paragraph (l) of this section, sponsors and/or third parties conducting flight training programs may utilize the same training records as the FAA requires to be maintained pursuant to 14 CFR 141.101.

Dated: March 30, 2006.

Stanley S. Colvin,

Director, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. E6–4946 Filed 4–6–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 205

RIN 1010–AC29

Reporting and Paying Royalties on Federal Leases on Takes or Entitlements Basis

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Advance notice of proposed rulemaking and announcement of public meeting.

SUMMARY: The MMS requests comments and suggestions to assist us in proposing regulations regarding so-called "takes versus entitlements" reporting and payment of royalties when oil and gas production is commingled upstream of the point of royalty measurement.

DATES: You must submit your comments by June 6, 2006. A public meeting to solicit further comments will be held in Lakewood, Colorado, on Wednesday, May 10, 2006.

ADDRESSES: Please use the regulation identifier number (RIN), RIN 1010–AC29, in all your correspondence. Submit your comments, suggestions, or objections regarding the advanced notice of the proposed rulemaking by any of the following methods:

By e-mail. mrm.comments@mms.gov. Please include "Attn: RIN 1010–AC29" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, call the contact person listed below;

By regular U.S. mail. Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225–0165; or

By overnight mail, courier, or hand-delivery. Minerals Management Service, Minerals Revenue Management, Building 85, Room A–614, Denver Federal Center, West 6th Ave. and Kipling Blvd., Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Sharron L. Gebhardt, Lead Regulatory Specialist, Minerals Management Service, Minerals Revenue Management, P.O. Box 25165, MS 302B2, Denver, Colorado 80225–0165, telephone (303) 231–3211, FAX (303) 231–3781, or e-mail *Sharron.Gebhardt@mms.gov.*

SUPPLEMENTARY INFORMATION:

I. Public Meeting Information

The MMS previously published a notice in the **Federal Register** on November 29, 2005 (70 FR 228), announcing a public meeting in Houston, Texas, on December 14, 2005. That meeting was attended primarily by offshore producers. The MMS wants to provide additional opportunity for onshore producers to participate in a public meeting. This public meeting will be held in Lakewood, Colorado. See IV, Description of Information Requested, for details.

This second meeting will be held on Wednesday, May 10, 2006, from 9 a.m. to 1 p.m. central time, in the Main Auditorium, Rooms B and C, located in Building 85 on the Denver Federal Center located at West 6th Ave. and Kipling Blvd. in Lakewood, Colorado. For further information, please contact Roman A. Geissel at (303) 231–3226.

II. Public Comment and Meeting Procedures

The MMS may not necessarily consider or include in the Administrative Record, for any proposed rule, comments that MMS receives after the close of the comment period or comments delivered to an address other than those listed in the **ADDRESSES** section of this document.

A. Written Comment Procedures

We are particularly interested in receiving comments and suggestions about the topics identified in IV, Description of Information Requested. Your written comments should: (1) Be specific; (2) explain the reason for your comments and suggestions; (3) address the issues outlined in this notice; and (4) where possible, refer to the specific provision, section, or paragraph of statutory law, case law, lease term, or existing regulations that you are addressing.

The comments and recommendations that are most useful and have greater likelihood of influencing decisions on the content of a possible future proposed rule are: (1) Comments and recommendations supported by quantitative information or studies; and/or (2) comments that include citations to, and analyses of, the applicable laws, lease terms, and regulations.

B. Public Meeting Procedures

At the public meeting, those attending will be able to comment on the scope, proposed action, and possible alternatives MMS should consider. The purpose of the meeting is to gather comments and input from a variety of stakeholders and the public.

If you do not wish to speak at the meeting but you have views, questions, or concerns with regard to MMS's implementation of section 6(d) of the Federal Oil and Gas Royalty Simplification and Fairness Act (RSFA), Public Law 104–185, Aug. 13, 1996, 110 Stat 1700, 1713–1714, as corrected by Public Law 104–200, Sept. 22, 1996, codified at 30 U.S.C. 1721(k), entitled "Volume Allocations of Oil and Gas Production," you may submit written statements at the meeting for inclusion in the public record. You may also submit written comments and suggestions regardless of whether you attend or speak at the public meeting. See the **ADDRESSES** section of this document for instructions on submitting written comments.

Due to Denver Federal Center security requirements, attendees at the meeting will need a picture ID in order to be admitted onto the Denver Federal Center and into Building 85.

The site for the public meeting is accessible to individuals with physical impairments. If you need a special accommodation to participate in the meeting (e.g., interpretive service, assistive listening device, or materials in alternative format), please notify Mr. Geissel no later than 2 weeks prior to the scheduled meeting. Although we will make every effort to accommodate requests received, it may not be possible to satisfy every request.

C. Public Comment Policy

Our practice is to make comments, including names and home addresses of respondents, available for public review at our Denver office during regular business hours and on our website at *http://www.mrm.mms.gov/Laws_R_D/FRNotices/FRHome.htm,* or on request to Sharron Gebhardt at (303) 231–3211.

Individual respondents may request that we withhold their individual home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. 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.

III. Description of Information Requested

On August 13, 1996, the President signed RSFA into law. Section 6(d) of RSFA, entitled "Volume Allocations of Oil and Gas Production," amended section 111 of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), Public Law 97–451–Jan. 12, 1983 (30 U.S.C. 1721), by adding new paragraphs (k)(1)–(5). The proposed rulemaking would implement RSFA amendments to FOGRMA § 111(k)(1)–(4).

Congress enacted these amendments to clarify and resolve the long-standing issues regarding so-called "takes versus entitlements." Those issues arose primarily where the amount of natural gas taken ("takes") and sold by a lessee from Federal leases subject to a unit or communitization agreement was not equal to the lessee's entitled share ("entitlements"), based on its ownership interest in leases in the unit or communitization agreement. These imbalances led to numerous questions about who should report and pay on what volumes and for what leases.

To obtain input from parties affected by RSFA amendments to FOGRMA section 111(k)(1)–(4), MMS formed a consultation team comprised of representatives from interested states, oil and gas trade associations, and MMS. The consultation team held meetings on October 30, November 19, and December 6, 1996. The meetings resulted in general agreement on definitions, the reporting requirements for 100-percent Federal units and communitization agreements, the definition of a "marginal property," and how a marginal property reporting exception would be determined.

Subsequent to those meetings, in the process of trying to develop a proposed rule implementing RSFA amendments to FOGRMA section 111 (k)(1)–(4), an issue arose regarding the commingling of oil and gas production from multiple properties upstream of the point of royalty measurement. For purposes of this discussion:

- A "property" is defined as a lease, unit, or communitization agreement.
- A "100-percent Federal unit or communitization agreement" means any unit or communitization agreement that contains only Federal leases having the same fixed royalty rate and funds distribution.
- A "unit" means a unit participating area, enhanced recovery unit, or field-wide unit.
- A "mixed unit or communitization agreement" means any unit or communitization agreement other than a 100-percent Federal unit or communitization agreement. These are unit or communitization agreements that contain any mixture of Federal, Indian, state or private mineral estates, or that contain all Federal leases with different royalty rates (fixed or variable) or different funds distribution.
- A "stand-alone lease" means a lease or a portion of a lease that is not in a unit or communitization agreement.

The RSFA clearly identifies when it is appropriate to initially report and pay on a "takes" or "entitlements" basis for production from leases, units, or communitization agreements that is not commingled with production from other properties before the royalty measurement point. For instance:

- When taking production from a 100-percent Federal unit or communitization agreement, the lessee(s) must pay on actual takes (30 U.S.C. 1721(k)(1)(A)), or
- When taking production from a mixed Federal unit or communitization agreement, the Federal lessee(s) must pay on entitlements (30 U.S.C. 1721(k)(1)(B)), or
- When taking production from a stand-alone Federal lease, the lessee(s) must pay on takes (30 U.S.C. 1721(k)(1)(C)).

It is important to note that, while RSFA section 6(d) amended FOGRMA by adding section 111(k)(1), which addressed the reporting and payment requirements, the addition of section 111(k)(2) went on to clarify that the requirements outlined in section 111(k)(1) "apply only to requirements for reporting and paying royalties. Nothing in this subsection is intended to alter a lessee's liability for royalties on oil or gas production allocated to the lease, in accordance with the terms of the lease, a unit or communitization agreement, or any other agreement." Thus, the lessee's ultimate liability to pay royalties on its entitled share of production is not changed.

Commingling adds additional complications to the issue of how to report and pay royalties. Commingling is the combining of production from multiple properties before measurement for royalty purposes. Not only do imbalances between operating rights owners within a property occur, but imbalances between properties also are commonplace. The RSFA provisions added to FOGRMA at 30 U.S.C. 1721(k)(1)–(5) do not address the effect of commingling or commingling imbalances. Thus, that issue must be addressed by rulemaking.

Commingling requires approval of the MMS Offshore Minerals Management program for offshore leases or the Bureau of Land Management for onshore leases. The commingling approval identifies where the volume is measured for royalty purposes and how that volume must be allocated to each property that is subject to the commingling approval. It does not affect how volume is allocated to leases within a unit or communitization agreement. Commingling can be, and often is, approved between properties with the same royalty rate and funds distribution and between properties with different royalty rates or different funds distributions.

Commingling complicates reporting requirements because there is an impact on royalty payments when there are properties with mixed royalty rates or funds distribution upstream of the approved commingling point. For example, assume that production from two stand-alone Federal leases that are not unitized or communitized, each with a different royalty rate, is commingled before the royalty measurement point. Assume that each lease receives a 50 percent allocation of the total measured production (1,000 Mcf) under the commingling approval. The lessee of the lease with a 16⅔ percent royalty rate actually sells (takes) 750 Mcf of gas, and the lessee of the lease with the 12½ percent royalty rate actually sells (takes) 250 Mcf of gas. Based on the commingling approval, the leases are out of balance. The commingling approval determines the volume deemed to have been removed or sold from each lease upon which the lessees ultimately must pay royalty. Should each lessee pay royalties on its actual sales (takes), the Federal Government initially would be paid more than the royalty ultimately owed. If the sales were reversed, the Federal Government initially would be paid on less than the royalty ultimately owed.

The RSFA prescribes how lessees should initially report and pay royalty on production removed or sold from a lease or unit or communitization agreement. The commingling approval determines the volume removed or sold from the leases or unit or communitization agreements subject to the commingling approval. The RSFA was silent on the effect of commingling approvals. We are asking for your input on several questions regarding RSFA's application to production subject to a commingling approval before the royalty measurement point. Those questions include the following:

(1) Should lessees of a lease or a 100-percent Federal unit or communitization agreement report and pay initially on their takes in a situation where production from that lease or unit or communitization agreement is commingled with other production upstream of the royalty measurement point?

(2) RSFA requires that Federal lessees in mixed unit or communitization agreements report royalties on an entitlements basis, regardless of whether the unit or communitization agreement is subject to a commingling approval. When should MMS treat a commingling approval as the equivalent of a unit or communitization agreement and apply the RSFA reporting and payment provisions on that basis? For example, if all properties measured at the commingling point are 100 percent Federal leases or units or communitization agreements with the same fixed royalty rate and funds distribution, then payments could be made on takes. If one or more of the properties measured at or after the commingling point have different royalty rates (fixed or variable), different funds distribution, or are not 100 percent Federal, all lessees would pay on entitlements.

The three examples presented below illustrate some alternative methodologies to apply the (k)(1)–(4) provisions of RSFA to situations where production is commingled before royalty measurement. For each example, assume there is a stand-alone Federal lease with two lessees (lessee A and lessee B, each of whom owns 50 percent of the working interest), a 100-percent Federal unit or communitization agreement with two lessees (with lessee C owning 75 percent of the combined working interest in the two leases, and lessee D owning the remaining 25 percent), and a state lease, all of which are subject to a commingling approval. (For simplicity, assume that all of the Federal leases have the same royalty rate.) Additionally, assume that for each example, the total commingled production allocated to the properties is 100,000 Mcf of gas. Further assume that, for the month shown in the examples, the stand-alone Federal lease and the state lease are each allocated 25 percent of the commingled production under the commingling approval, and that the Federal unit or communitization agreement is allocated 50 percent. Further, assume that lessee A takes and sells 20,000 Mcf of gas. Assume that lessee B has no takes. Assume that lessee C takes and sells 30,000 Mcf of gas while lessee D takes and sells 23,000 Mcf of gas. Assume that the lessee of the state lease takes and sells 27,000 Mcf of gas. In each example, lessee ownership percentages and liability remain the same, but the volume on which royalty initially must be paid varies, depending on the methodology used. (The numbers used in the following examples are rounded to the nearest whole number.)

EXAMPLE 1.—"PURE TAKES"—REPORTING AND PAYING

Property	Allocated volume per commingling approval (Mcf)	Lessee	Ownership percentage	Entitled share of allocated volume (Mcf)	Sales by lessee (Mcf)	Volume on which royalty paid to MMS (takes) (Mcf)
Federal Lease (2 lessees)	25,000	A	50	12,500	20,000	20,000
		B	50	12,500	0	0
100-percent Federal Unit or Communitization Agreement (2 lessees).	50,000	C	75	37,500	30,000	30,000
		D	25	12,500	23,000	23,000
State Lease	25,000			25,000	27,000	0
Totals	100,000			100,000	100,000	73,000

By using a pure takes methodology, the volume deemed sold and removed from each lease and the unit or communitization agreement as determined under the commingling approval is not properly accounted for. Under this methodology, MMS could be paid on a volume either greater than or less than that on which the lessees ultimately owe royalty because the takes on which the Federal lessees reported and paid royalty would not always equal the volume on which royalty is due under the commingling approval. In this example, the MMS would be paid royalty on 2,000 Mcf less than the volume on which the Federal lessees ultimately owe royalty because, under the commingling approval, the Federal lessees owe royalty on 75,000 Mcf and, on a pure takes basis, the Federal lessees paid only on 73,000 Mcf. Therefore, adopting this methodology presumably would require each royalty reporter to adjust royalty payments (at least on an annual basis) to its entitled volume (equal to its ownership percentage times the volume allocated to its lease or unit or communitization agreement under the commingling approval).

EXAMPLE 2.—"PURE ENTITLEMENTS" REPORTING AND PAYING

Property	Allocated volume per commingling approval (Mcf)	Lessee	Ownership percentage	Entitled share of allocated volume (Mcf)	Sales by lessee (Mcf)	Volume on which royalty paid to MMS (entitlements) (Mcf)
Federal Lease (2 lessees)	25,000	A	50	12,500	20,000	12,500
		B	50	12,500	0	12,500

EXAMPLE 2.—"PURE ENTITLEMENTS" REPORTING AND PAYING—Continued

Property	Allocated volume per commingling approval (Mcf)	Lessee	Ownership percentage	Entitled share of allocated volume (Mcf)	Sales by lessee (Mcf)	Volume on which royalty paid to MMS (entitlements) (Mcf)
100-percent Federal Unit or Communitization Agreement (2 lessees).	50,000	C	75	37,500	30,000	37,500
		D	25	12,500	23,000	12,500
State Lease	25,000			25,000	27,000	0
Totals	100,000			100,000	100,000	75,000

Reporting on a "pure entitlements" basis ensures that the Federal Government is made whole with respect to royalties but would not allow for initial reporting and payment based on takes if production is commingled before the royalty measurement point. Under this methodology, MMS would be made whole each month because lessees would report and pay on their entitled volume each month, even if a particular lessee (lessee B in this example) took no production. Therefore, an adjustment to the entitled volume, as discussed above for Example 1, would not be necessary.

EXAMPLE 3.—"PROPORTIONATE TAKES" REPORTING AND PAYING

Property	Allocated volume per commingling approval (Mcf)	Lessee	Ownership percentage	Entitled share of allocated volume (Mcf)	Sales by lessee (Mcf)	Volume on which royalty paid to MMS (proportionate takes) (Mcf)
Federal Lease (2 lessees)	25,000	A	50	12,500	20,000	25,000
		B	50	12,500	0	0
100-percent Federal Unit or Communitization Agreement (2 lessees).	50,000	C	75	37,500	30,000	28,302
		D	25	12,500	23,000	21,698
State Lease	25,000			25,000	27,000	0
Totals	100,000			100,000	100,000	75,000

This methodology would combine takes and entitlements by requiring lessees to report and pay on volumes equal to the sales by the lessee divided by the total sales for the property times the allocated volume under the commingling approval for the property. Consider lessees C and D: In this example, lessee C would report and pay on 28,302 Mcf, even though it actually took 30,000 Mcf, and its entitled volume is 37,500 Mcf. The 28,302 Mcf is computed as follows:

(30,000 Mcf/53,000 Mcf) × 50,000 Mcf = 28,302 Mcf for lessee C, where 53,000 Mcf (total sales for the property) is the sum of 30,000 Mcf (lessee C's total sales) and 23,000 Mcf (lessee D's total sales), and 50,000 Mcf is the allocated volume under the commingling approval for the property. Lessee D's initial reporting and payment would be computed similarly.

Considering lessees A and B: If a lessee took no production (lessee B in this example), it would not have to pay any royalty. However, a lessee (lessee A in this example) could pay royalty on a volume greater than either its actual takes or its entitled share. Under this methodology, MMS would be made whole each month because it would receive royalty based on the total Federal production subject to the commingling approval each month. Therefore, an adjustment to the entitled volume, as discussed above for Example 1, would not be necessary. In Example 3, lessees would have to adjust their payments among themselves.

As explained above, in instances where a lessee pays on "Pure Entitlements" such as Example 2, or "Proportionate Takes" such as Example 3, the lessee may take production that is more or less than its entitled share. In that case, a lessee would need to value its entitled share. The MMS believes that the best means of valuing the entitled share is to apply a volume weighted average of the royalty values to the volumes actually taken to the entitled share volumes undertaken. The MMS requests comments on any other alternatives for valuing such volumes.

In addition, MMS is interested in receiving comments on these three examples describing alternative methodologies. The MMS is also interested in receiving comments on any other alternative methodologies. If you propose a methodology different from those discussed above, please use our example criteria and explain why you believe your methodology is the best alternative. In addition, MMS would like your input on how the various methodologies would affect your business practices, bookkeeping, etc.

Dated: March 22, 2006.

R.M. "Johnnie" Burton,

Acting Assistant Secretary for Land and Minerals Management.

[FR Doc. E6–5073 Filed 4–6–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD45

Dry Tortugas National Park-Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed Rule.

SUMMARY: The proposed rulemaking establishes special regulations for Dry Tortugas National Park. The proposed rule implements the act which established Dry Tortugas National Park and abolished Fort Jefferson National

Monument. This proposed rule also implements provisions for visitor use and resource protection identified in the 2000 Final General Management Plan Amendment/Environmental Impact Statement for Dry Tortugas National Park, and the July 27, 2001 Record of Decision. This rulemaking complies with legislative mandates for protection of park resources in a unique and predominantly pristine ecosystem, and provides consistency with State fishing rules. This proposed rule would: (1) Remove obsolete regulations established for Fort Jefferson National Monument; (2) protect, monitor, and study the region's recognized importance to fisheries habitats by limiting the area, extent, and methods of recreational fishing within portions of the park's boundaries by implementing a Research Natural Area (RNA); (3) clarify the authority of the superintendent to regulate fishing, boating, and permitted activities, specifically in established management zones including the RNA; and establish a permit system for research and recreational users; (4) strengthen protection of nationally significant coral reef and other marine resources by regulating vessel operation, anchoring and human activity; (5) provide enhanced protection for shipwrecks consistent with state and federal law; and (6) provide for greater protection of water quality by restricting discharges into the water of the park. Definitions have also been added to clarify terminology.

DATES: Comments must be received by June 6, 2006.

ADDRESSES: You may submit comments, identified by the number RIN 1024–AD45, by any of the following methods:

—Federal rulemaking portal: *http://www.regulations.gov* Follow the instructions for submitting comments.
—E-mail NPS at *ever_superintendent@nps.gov*. Use RIN 1024–AD45 in the subject line.
—Mail or hand delivery to: Superintendent, Everglades National Park, 40001 State Route 9336, Homestead, FL 33034–6733.
—Fax to: (305) 242–7711.
—For additional information see "Public Participation" under **SUPPLEMENTARY INFORMATION** below.
—Written or oral comments will also be accepted during a public meeting to be held during the 60 day comment period. Date and location of the meeting will be determined at a later date and will be announced through local press releases and the park's Web site at *http://www.nps.gov/drto*.

FOR FURTHER INFORMATION CONTACT: Jerry Case, Regulations Program Manager, National Park Service, 1849 C Street, NW., Room 7241, Washington, DC 20240. Phone: (202) 208–4206. E-mail: *jerry_case@nps.gov*.

SUPPLEMENTARY INFORMATION:

Background

The National Park Service (NPS) is proposing to establish special regulations for Dry Tortugas National Park. The current regulations at 36 CFR 7.27 were established for Fort Jefferson National Monument, the predecessor to Dry Tortugas National Park. Fort Jefferson National Monument was established by Presidential Proclamation No. 2112 in 1935 for the purpose of preserving the Dry Tortugas group of islands within the original 1845 Federal military reservation of islands, keys and banks. In 1980, Congress legislatively affirmed the Fort Jefferson National Monument.

In 1992, Congress enacted Public Law 102–525 (16 U.S.C. 410xx *et seq.*) abolishing the Fort Jefferson National Monument and establishing Dry Tortugas National Park in its place. Congress established the park "to preserve and protect for the education, inspiration and enjoyment of present and future generations nationally significant natural, historic, scenic, marine, and scientific values in South Florida." In addition, Congress directed the Secretary of the Interior to manage the park for the following specific purposes, among others:

(1) To protect and interpret a pristine subtropical marine ecosystem, including an intact coral reef community.

(2) To protect populations of fish and wildlife, including (but not limited to) loggerhead and green sea turtles, sooty terns, frigate birds, and numerous migratory bird species.

(3) To protect the pristine natural environment of the Dry Tortugas group of islands.

(4) To protect, stabilize, restore and interpret Fort Jefferson, an outstanding example of nineteenth century masonry fortification.

(5) To preserve and protect submerged cultural resources.

(6) In a manner consistent with paragraphs (1) through (5) to provide opportunities for scientific research. 16 U.S.C. 410xx–1(b).

The NPS developed the FGMPA/EIS, approved through a Record of Decision in July 2001, to comply with its statutory mandate to manage and protect Dry Tortugas National Park, and to respond to pressures from increased visitation and over-utilization of park resources.

As described more fully in the FGMPA/EIS, despite the park's remote location approximately 70 miles west of Key West, Florida, there are indications that rapidly increasing visitor use is negatively impacting the resources and values that make Dry Tortugas National Park unique. Visitation to Dry Tortugas National Park increased 400% from 1994 through 2000, from 23,000 to 95,000 annual visitors. The resources and infrastructure at the park cannot sustain an uncontrolled growth rate of this magnitude while ensuring protection of park resources consistent with the park's legislative mandate.

Scientific studies have documented significant declines in the size and abundance of commercially and recreationally important species of fish, particularly snapper, grouper, and grunts in Dry Tortugas National Park. These declines threaten the sustainability of reef fish communities both within the park and throughout the Florida Keys. Studies demonstrate that both the size and abundance of fish in the Tortugas area, including Dry Tortugas National Park, are essential to spawning and recruitment for regional fish stocks and the multi-billion dollar fishing and tourism industry in the Florida Keys.

The population of south Florida is projected to increase from its current level of 6.3 million people to more than 12 million by 2050. With continued technological innovations such as global positioning systems and bigger, faster vessels, the increase in population and recreational tourism will likely result in more pressure on the resources in the Dry Tortugas. In recent years, interest has grown in the commercial sector to provide increased transportation to the park and to conduct additional activities in the park, which would bring many more visitors and greater impacts to the park.

To address these issues, planning was started in 1998 to update the 1983 Fort Jefferson National Monument General Management Plan. Concerned that park resources would suffer as a result of increased use, park managers placed a moratorium on the authorization of new commercial activity in the park until a FGMPA/EIS could be completed and implemented.

The FGMPA/EIS addressed specific issues including (1) The protection of near-pristine resources such as coral reefs and sea grasses (2) the conservation of fisheries and the protection of submerged cultural resources (3) the management direction of commercial services; and (4) the determination of appropriate levels and types of visitor use.

After extensive public involvement and collaboration with State and

Federal agencies, the NPS selected a management alternative that will afford a high level of protection to park resources as well as provide for appropriate types and levels of high quality visitor experiences. This will be accomplished by establishing management zones and visitor carrying capacity limits for specific locations in the park, using commercial services to direct and structure visitor use, and instituting a permit system for private as well as commercial boats in the RNA. A range of recreational and educational opportunities will be available for visitors as long as appropriate resource conditions are maintained. The quality of visitor experiences will be enhanced by maintaining the quality of resources while expanding visitor access throughout the park.

The selected management action establishes zones that provide guidance for managing specific areas for desired resource conditions and visitor experiences. These zones are set forth in the FGMPA/EIS and Record of Decision approved on July 27, 2001. Most of the provisions in this proposed rulemaking are not associated with specific management zones but are applicable throughout the park. The exceptions are the provisions pertaining specifically to the RNA and Special Protection Zones. A brief description of these zones will follow.

Natural/Cultural Zone

This zone will provide visitors opportunities to experience the remoteness and natural character of the area. Opportunities for challenge and adventure will be high, compared to other zones. Facilities will generally not be appropriate. Boaters will need to be self-reliant. Appropriate activities will include snorkeling, scuba diving, swimming, boating, wildlife viewing, and recreational fishing. Anchoring will be permitted, however the use of mooring buoys may be required in certain areas if protection of sensitive resources warrants restricting anchors.

Historic Preservation/Adaptive Use Zone

This zone will provide interpretive, educational and recreational opportunities in order to convey to visitors the rich architectural and cultural history and natural resources of Garden Key and Fort Jefferson. Appropriate visitor activities will include tours, bird-watching, photography, swimming, snorkeling, scuba diving, camping, boating and recreational fishing. The management focus in this zone will be on maintaining and protecting historic and natural resources, mitigating impacts of human use, maintaining visitor facilities and providing for quality visitor experiences.

Special Protection Zone

This management zone will provide added protection for certain sensitive and exceptional resources. It will be used at times and in places throughout the park where sensitive wildlife or cultural resources are vulnerable to human disturbance, such as areas where sea turtles and seabirds are nesting or hatching. The superintendent will establish these zones when necessary to avoid unacceptable human impacts to these important resources. In such cases, only research activities will be allowed so long as such research activities do not impact these important resources. The public will be notified of any restrictions through one or more of the methods listed in § 1.7 of this chapter.

Research Natural Area

The RNA contains prime examples of natural resources, processes, and ecosystems including significant genetic resources, which have particular value for long-term observational studies. The RNA is managed to provide the greatest possible protection of resources. Recreational fishing and consumptive activities will not be allowed. Boaters will be required to use mooring buoys, and anchoring will be prohibited. Research activities in RNAs generally are restricted to non-manipulative research. Education and other activities that will not detract from an area's research values will be allowed. The RNA complements the adjacent 151 square nautical mile Tortugas Ecological Reserve in the waters of the Florida Keys National Marine Sanctuary, which has goals and regulations consistent with those of the RNA, including similar constraints on fishing.

Scientific studies have found that Dry Tortugas National Park and the Tortugas region play a critical role in the function and dynamics of the larger Florida Keys coral reef ecosystem. The Tortugas includes spawning and nursery grounds for numerous fish. Larvae spawned from adult populations are spread by a persistent system of currents and eddies throughout the Florida Keys and up the Southeast coast which should help replenish depleted fish populations.

Recent scientific studies of reef fisheries in Dry Tortugas National Park have also documented significant declines in the size and abundance of fish. As such, additional fishery management practices should be considered to enable the National Park Service to meet its statutory obligations under the National Park Service Organic Act (16 U.S.C. 1–4) and the requirement under Public Law 102–525 (16 U.S.C. 410xx *et seq.*) to "protect and interpret a pristine subtropical marine ecosystem, including an intact coral reef community."

The RNA is a useful management tool to protect this pristine area as well as provide sanctuaries for species that have been substantially impacted by harvesting or habitat reduction, and to provide time for altered systems to recover. The RNA complements the adjacent Tortugas Ecological Reserve in the waters of the Florida Keys National Marine Sanctuary, with consistent goals and constraints on fishing. In order for the RNA and the Ecological Reserve to be biologically effective, the full range of land and marine habitats and their associated communities must be included in these areas. The National Marine Sanctuary's Tortugas Ecological Reserve, with its deep reefs and habitats, provides spawning areas for recreationally and commercially important fish while the National Park's RNA, with its shallow reefs and sea grass beds, provides nurseries and food for these fish and a multitude of other marine species. The rationale and benefits from establishment of the RNA are explained in greater detail in the ROD for the FGMPA/EIS.

The proposed regulations pertaining to the RNA are intended to protect, restore, and enhance the living resources of the Park; contribute to the maintenance of natural assemblages of living resources for future generations; provide places for species dependent on such living resources to survive and propagate; achieve the objective of resource protection while facilitating uses not prohibited by other authorities; reduce conflicts between such compatible uses; and achieve the purposes of Public Law 102–525 (16 U.S.C. 410xx *et seq.*) and the National Park Service Organic Act (16 U.S.C. 1–4) of 1916.

The RNA also responds to the National Park Service's statutory authority (16 U.S.C. 5935) to provide opportunities for scientific research. The RNA and the larger Tortugas Ecological Reserve constitute a rare opportunity to cooperatively advance the science of marine ecology and marine resource management through direct observation of how resources within these areas respond to protection. Application of the research results in Park management programs will implement statutory direction to assure that resource management is enhanced by utilization of a broad

program of the highest quality science and information (16 U.S.C. 5932).

By designating the Research Natural Area, the National Park Service hopes to realize the area's full potential and offer outstanding opportunities for scientific research, visitor education and appreciation of an intact marine ecosystem. These goals are consistent with the objectives of Executive Order 13089 on Coral Reef Protection, Executive Order 13151 on Marine Protected Areas, the U.S. Coral Reef Task Force's March 2000 National Action Plan To Conserve Coral Reefs, and the 2004 U.S. Ocean Action Plan.

Section-by-Section Analysis

(a) What terms do I need to know?

In order to provide clarity and reduce possible confusion, fifteen definitions have been included in this paragraph. They include: Baitfish, cast net, designated anchorage, dip net, finfish, flat wake, guide fishing, live rock, lobster, marine life, not available for immediate use, ornamental tropical fish, permits, research natural area, and shrimp. Common fish names referred to in the regulations are further clarified by including scientific names.

(b) Are there recreational fishing restrictions that I need to know?

Section 2.3(a) of this chapter adopts non-conflicting state fishing laws as part of the general NPS regulations applicable to all units of the National Park System unless regulations for particular park areas specify otherwise. For Dry Tortugas National Park, we are proposing additional requirements relating to fishing to achieve the park's purposes and implement planning decisions. Recreational fishing activities must comply with the state regulations unless those activities are otherwise restricted or prohibited in this section. Any reference to fishing in § 7.27 refers to recreational fishing, which is the taking, attempting to take, or possessing of fish for personal use. This is the same definition used by the State of Florida. All references to commercial fishing have been removed since this activity is already prohibited by 36 CFR 2.3(d)(4).

The intent of paragraph (b)(1) is to allow the superintendent to impose restrictions or closures to protect a fish species within the park. In emergency situations, after consulting with the Florida Fish and Wildlife Conservation Commission, the superintendent may impose closures and establish conditions or restrictions necessary pertaining to fishing, including but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, bag and possession limits. In emergency situations where consultation in advance is not possible, the superintendent will consult within 24-hours of the initiation of closures or restrictions. Such emergency closures or restrictions are temporary in nature and may be for up to a 30-day period which may be extended once for up to an additional 30-day period by the superintendent. In other situations pertaining to fishing (i.e., non-emergency situations or the extension of emergency closures or restrictions beyond these two emergency periods), the superintendent shall consult with and obtain the concurrence of the Florida Fish and Wildlife Conservation Commission prior to acting. This provision of such closures and restrictions is in furtherance of the park's enabling legislation, which identifies protection of fish and wildlife as a purpose of its establishment.

Paragraph (b)(2) identifies which fish can be taken and the legal methods for taking these fish. Fishing is limited to fin fish caught by a closely attended hook-and-line, bait fish caught by hook-and-line, cast nets or dip nets, and shrimp caught by dip nets or cast nets. These restrictions are not new. For the last 10 years, they have been enforced through the Superintendent's Compendium, which serves as a local management guide authorized by 36 CFR 1.5. Including these restrictions in this proposed regulation increases public awareness of their applicability. The previous restriction in 36 CFR 7.27(a)(5)(i), that limits cast nets to 12 feet in diameter, has been removed. There appears to be no compelling ecological or environmental reason to restrict the size of the cast nets. This proposed change would bring the park's regulations into conformity with state regulations.

Paragraph (b)(3) identifies areas that are closed to fishing, including the RNA set forth in the 2001 ROD. Note, however, that paragraph (b)(3)(i) includes provisions that allow vessels to transit the RNA with legally harvested fish and fishing gear onboard. The provisions of paragraph (b)(3) are similar to the regulations applicable to the adjacent Tortugas Ecological Reserve within the Florida Keys National Marine Sanctuary (19 CFR 922.164; Florida Administrative Code 68B–6.003). The other closed areas are the waters inside the Garden Key moat and those within the designated swimming and snorkeling area. Fishing in these areas has been found to be incompatible with the identified visitor activities of boating, swimming and snorkeling, and for safety reasons in the helicopter-landing zone.

Paragraph (b)(4) identifies specific prohibitions on fishing within the park. This paragraph lists certain fishing practices that differ from state of Florida regulations because they are incompatible with the goals and management direction of the Park.

Paragraph (b)(4)(i) provides for complete protection of lobster within the park. All existing regulations found in 36 CFR 7.27 (a)(2) related to recreational fishing catch limits for lobster have been deleted. Prohibiting individuals from being in the water, when they have lobster onboard their vessel will further enhance the protection of park resources. This "prima facie" (at first view) evidence of violation is similar to the state of Florida regulations for the Biscayne Bay/Card Sound Spiny Lobster Sanctuary (FAC 68B–11.004), and for John Pennecamp Coral Reef State Park (FAC 68B–24.005). In Dry Tortugas National Park, the harvesting of lobster has been previously prohibited through the use of the superintendent's authority to regulate public use under 36 CFR 1.5. This prohibition was based on data collected by NPS biologists in a 1975 study, which indicated that legal harvesting was removing almost 90% of the lobster within the park. The Gulf of Mexico Fishery Management Council concurred with this finding and recommended that the park be established as a sanctuary for lobster to assist in maintaining a population for dispersal to areas outside the park.

The proposed regulations in paragraph (b)(4)(ii), concerning possession and use of spearguns and other weapons are similar to regulations for the ecological reserves and sanctuary preservation areas found within the Florida Keys National Marine Sanctuary (15 CFR 922.164). The state of Florida has similar regulations restricting spearfishing activities found in FS 370.172. This proposed regulation expands on the current regulation, 36 CFR 7.27(a)(7), to include guns, bows and other similarly powered weapons. Paragraph (b)(4)(iii) recognizes that a gaff is a common fishing device used to retrieve legally taken fish from the water, while identifying other prohibited fishing devices.

Although all natural resources within a national park area are protected from removal, disturbance, injury, or destruction by the general regulations found in 36 CFR 2.1, the provision at paragraph (b)(4)(iv) clarifies that ornamental tropical fish as well as all other forms of marine life within Dry Tortugas National Park are specifically

protected. This additional level of protection will help achieve the congressional direction to protect a pristine subtropical marine ecosystem, including an intact coral reef community.

The intent of (b)(4)(v) is to protect coral and other submerged resources from damage or injury by prohibiting the dragging or trawling of nets that are otherwise allowed to be used in the park.

Paragraph (b)(4)(vi) prohibits the use of nets, other than dip or cast nets. The state of Florida general recreational fishing regulations allow other nets (bully nets, frame and push nets, beach or haul seines) which are inappropriate and harmful to various submerged resources in the park.

Current regulations pertaining to sea turtles and conch found in 36 CFR 7.27(a)(1) and (3) have been removed as unnecessary. The state of Florida has prohibited the taking of conch since 1985 and the general NPS regulations already adopt all non-conflicting state laws. Also, 36 CFR 7.27 (b)(4)(iv) will prohibit the taking of any ornamental tropical fish or other marine life. Because all sea turtles are currently listed as endangered or threatened species under the Endangered Species Act (16 U.S.C. 1538), it is unnecessary to duplicate prohibitions on their taking in these proposed regulations.

Consistent with 36 CFR 5.3, paragraph (b)(5) requires that all fee-for-service guides (including guides for fishing and diving) obtain a permit or other NPS approved commercial use authorization. This permit system allows the park to better manage the fisheries and other park resources. The superintendent may limit the number of permitted guides within the park in order to conserve park resources and enhance the visitor experience.

(c) Are there any areas of the park closed to the public?

Yes. Paragraph (c) identifies areas that will be closed to public access. The Long/Bush Keys coral patch has been identified by biologists as "fused" staghorn (Acropora prolifera), a very rare hybrid of staghorn and elkhorn corals. This coral patch is threatened by a disease that is devastating staghorn and elkhorn coral in Biscayne National Park and the Florida Keys National Marine Sanctuary. Hospital and Long Keys have been closed for the last 10 years pursuant to the Superintendent's Compendium authority under 36 CFR 1.5. The largest remaining breeding colony of frigate birds in the United States lives on Long Key. The threatened masked booby and other sea birds live and breed on Hospital Key. Seasonal closures of Bush Key, East Key, and portions of Loggerhead Key for turtle and bird nesting will continue to be designated through the Superintendent's Compendium. See 36 CFR 1.5, 1.7.

(d) Is Loggerhead Key open to the public?

Loggerhead Key will be open to the public subject to closures in certain areas and restrictions on certain activities. Loggerhead Key is the largest key in the park and contains an operating 150-foot lighthouse and other structures. Most of the island falls within the RNA; however, the center portion, containing the lighthouse and the other structures, falls within a historic preservation/adaptive use zone. Paragraph (d) is consistent with the GMPA's decision to manage access and recreational activities on Loggerhead Key. To protect the natural and cultural resources of the island, as well as providing appropriate visitor experiences, the superintendent may impose terms and conditions on activities as necessary. The public will be notified of any such requirements through one or more of the methods listed in § 1.7 of this chapter. Such terms and conditions include, but are not limited to: docking, hiking restrictions, beach and swimming access, and other restrictions or closures necessary to conserve the natural and cultural resources of the island.

(e) Are there restrictions that apply to anchoring a vessel in the park?

Paragraph (e) addresses anchoring locations in general and anchoring prohibitions in the RNA. In the past, boaters have commonly anchored in sea grass beds and rubble bottom, which has resulted in unacceptable impacts to park resources. By restricting anchoring to authorized locations and prohibiting anchoring in all other areas, except in emergencies, degradation to coral reefs and seagrass meadows will be significantly reduced. Paragraph (e)(1) requires vessels to use mooring buoys. The RNA requires a higher level of protection of the marine ecosystem; thus the use of anchors in this area is prohibited.

Paragraph (e)(2) specifies where vessels can anchor. The "designated anchorage" identified in the existing 36 CFR 7.27(b) is also revised to reflect the GMPA's management zone which calls for limiting anchorage of vessels from sunset to sunrise to the historic preservation/adaptive use zone around Garden Key. This "designated anchorage" is any sand or rubble bottom within one nautical mile of the Fort Jefferson Harbor Light. This area has been identified as the designated anchorage through the use of the Superintendent's Compendium for the previous 10 years.

Paragraph (e)(4) imposes restrictions on anchoring by commercial fishing and shrimping vessels consistent with U.S. Coast Guard regulations found in 33 CFR 110.190.

(f) What vessel operations are prohibited?

This paragraph addresses several issues of unsafe or otherwise prohibited vessel operations. The Fort Jefferson moat is closed to vessels to preserve and protect the historic scene and prevent damage to the structures. Vessel use in the moat could damage the walls of the fort and the integrity of the moat wall. Because of the large volume of vessel traffic in and around the Garden Key and Bird Key harbors, vessels are required to operate at a flat wake speed to prevent injury and damage resulting from boat wakes.

(g) What are the regulations regarding the discharge of materials in park waters?

Paragraph (g) provides for greater protection of the water quality within the park by generally prohibiting the discharge or deposit of any material or substance in park waters. The NPS wishes to maintain the highest possible water quality, free of bacterial and chemical contamination, for health and safety reasons as well as to maintain the park's environment. The NPS recognizes that certain discharges from vessels, such as bilge water, gray water and engine exhaust cannot be contained and some natural substances, such as fish parts, would have minimal impact on the water quality and therefore, would be allowed. These proposed regulations are similar to the regulations found in the Florida Keys National Marine Sanctuary (15 CFR 922.163). To address future issues regarding the discharge of materials or substances in park waters, the superintendent may impose further restrictions as necessary to protect park resources, visitors, or employees. The public will be notified of any changes through one or more methods listed in § 1.7 of this chapter.

(h) What are the permit requirements in the park?

Paragraph (h) requires that individuals obtain a permit from the superintendent in order to take part in any recreational activity occurring from a vessel within the park. By definition, permits may be issued in writing or be

provided by oral (radio or telephone) authorization. Permitted activities may include anchoring, fishing, snorkeling, diving, wildlife viewing, photography, and the use of mooring buoys. In the RNA, no permits will be issued for anchoring or fishing as these are prohibited activities. Transiting the park by vessel without stopping to engage in research or recreational activities in the park shall not require a permit. All research conducted in the park also requires a permit. In the RNA, permits will only be issued for non-manipulative research (i.e., that which does not alter the existing condition).

(i) How are coral and other underwater features protected in the park?

The coral formations within the park are internationally recognized as unique and significant. Public Law 102–525 establishing the park requires protection of the "pristine subtropical marine ecosystems, including an intact coral reef community." Accordingly, this rule proposes new provisions for the protection of corals. Significant damage to coral can be caused by divers or snorkelers handling or standing on coral, especially in areas of heavy use. The NPS hopes to mitigate this damage by specifically prohibiting these actions, thereby resulting in persons being responsible for any damage that occurs to the coral through contact with their body or their equipment, such as fins, SCUBA tanks, gauges, or cameras. Language is also included to prohibit taking or removing corals and live rock. These provisions are similar to special regulations in the adjacent Florida Keys National Marine Sanctuary (15 CFR 922.163). Coral damage caused by vessels is often attributed to carelessness of vessel operators but can be avoided through more careful vessel operation. This proposed rule would make vessel operators responsible for preventing damage to corals by their vessels. This provision is similar to regulations in the adjacent Florida Keys National Marine Sanctuary (15 CFR 922.163).

Paragraph (i)(3) would result in vessel operator responsibility for any damage to coral, seagrass, or any other underwater feature caused by their anchors or anchor parts. This is to prevent damage to fragile resources and assure the highest level of resource protection.

(j) What restrictions do I need to know when on or near shipwrecks found in the park?

Paragraph (j) provides specific protection for wrecked or abandoned craft and their cargo. Dry Tortugas National Park possesses one of the greatest concentrations of historically significant shipwrecks in North America, with some dating back to the 1600's. Within the park boundary, there have been more than 275 historically documented maritime casualties (shipwrecks, groundings, strandings), and human activity has left a significant material record. Protection of submerged cultural resources is a park priority, as well as a management purpose identified in Public Law 102–525 (16 U.S.C. 410xx *et seq.*). Consistent with the park's statutory mandate, these regulations would provide specific protection for these cultural resources in addition to protections provided by regulations in 36 CFR 2.1, the Antiquities Act (16 U.S.C. 431–433) and its implementing regulations (43 CFR part 3), the Archeological Resources Protection Act (16 U.S.C. 470aa–mm) and its implementing regulations (43 CFR part 7), the Florida Historical Resources Act of 1997 (F.S. chap 267 rev 1993) and its implementing regulations (Florida Administrative Code 1A–31).

(k) Can aircraft land in the park?

Paragraph (k) allows the superintendent to manage aircraft operations by requiring users to obtain a permit to land seaplanes in the park. Seaplanes provide transportation for a significant number of park visitors. The NPS's general regulation at 36 part CFR 2.17 authorizes the superintendent to designate, through a special regulation, operating/landing locations within the park. It also prohibits aircraft from operating under power within 500 feet of swimming beaches, boat docks or piers unless designated through a special regulation. In order to reach the designated ramp for discharging passengers, seaplanes must taxi within 500 feet of dock areas. This paragraph will specify that a landing or takeoff may not be made within 500 feet of Garden Key or 500 feet of Bush Key (when it is closed for wildlife nesting), but taxiing is allowed when seaplane use is permitted. The existing regulations use a 300-yard limit for approaches, landings and takeoffs. The new limit of 500 feet will also bring these regulations in line with the general aircraft regulations provision of 500 feet.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

(1) This rule will not have an effect of $100 million or more on the economy. It 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 NPS has completed the report "Cost-Benefit Analysis: Proposed Regulations Implementing the Final General Management Plan Amendment/ Environmental Impact Statement for Dry Tortugas National Park." (August 15, 2005.) This document may be viewed on the park's Web site at: *http://www.nps.gov/drto/pphtml/documents.html.*

This conclusion is based on the fact that the proposed regulations would not impose significant impacts on any business. The regulations are based on the FGMPA/EIS or are restatements, clarifications, and definitions of previously established policies and regulations resulting in no change or effects on the economy.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Actions taken under this rule will not interfere with other agencies or local government plans, policies or controls. This rule is an agency specific rule.

(3) This rule will not materially affect budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department of the Interior certifies that this rulemaking will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on a report entitled "Regulatory Flexibility Threshold Analysis: Proposed Regulations Implementing the Final General Management Plan Amendment/Environmental Impact Statement for Dry Tortugas National Park." (January 27, 2005). This document may be viewed on the park's website at: *http://www.nps.gov/drto/pphtml/documents.html.*

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This proposed rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule will not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and does not impose any other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A taking implication assessment is not required. No taking of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only applies to the use of NPS administered lands and waters. Both the State of Florida and the United States claim title to submerged lands located within the boundaries of the park established by Congress. Rather than addressing this issue through potentially protracted litigation, the State and the Department have entered into the "Management Agreement for Certain Submerged Lands in Monroe County, Florida, Located within Dry Tortugas National Park" approved by the Florida Governor and Cabinet on August 9, 2005 and by the Secretary of the Interior on December 20, 2005. This document may be viewed on the park's Web site at *http://nps.gov/drto/pphtml/documents.html*. The proposed regulations are consistent with the requirements of the Management Agreement. Once final, the regulations shall be reviewed at least every five years, and as appropriate, revised, and reissued, based upon the results of the research program conducted pursuant to the Management Agreement as well as the information contained in the management plan status report prepared by the National Park Service detailing the status and activities of the implementation of the FGMPA/EIS. Information and data collected regarding the effectiveness and performance of the RNA will also be reviewed and evaluated. Under adaptive management, NPS may consider changes in the RNA, including boundary adjustments and modifications to the protection and conservation management strategies applicable to the RNA.

Consistent with the Management Agreement, the National Park Service will obtain the concurrence of the Board of Trustees of the Internal Improvement Trust Fund regarding that portion of the regulations pertaining to the management of submerged lands within the park. Further, consistent with the Management Agreement, the National Park Service shall submit for review to the Florida Fish and Wildlife Conservation Commission proposed regulations as well as any proposed revisions or amendments thereto.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required. An OMB Form 83–I is not required.

National Environmental Policy Act

The Department of the Interior, National Park Service (NPS) has prepared a Final General Management Plan Amendment/Environmental Impact Statement (FGMPA/EIS) for Dry Tortugas National Park, Monroe County, Florida. Five alternatives were evaluated for guiding the management of the park over the next 15 to 20 years. The alternatives incorporate various zoning applications and other management provisions to ensure resource protection and quality visitor experience conditions. The environmental consequences anticipated from implementation of each alternative are addressed in the FGMPA/EIS. Impacts to natural and cultural resources, visitor experience, socioeconomic environment, and park operations/facilities are analyzed. The FGMPA/EIS was prepared in conjunction with planning by the Florida Keys National Marine Sanctuary (FKNMS or sanctuary), the Florida Fish and Wildlife Conservation Commission (FFWCC) and the Gulf of Mexico Fishery Management Council (GMFMC) to establish a Tortugas Ecological Reserve (TER) in State and Federal waters adjacent to Dry Tortugas National Park. State and Federal approvals for the TER are complete and implementation of the ecological reserve is underway.

After careful consideration of legislative mandates, visitation trends, environmental impacts, relevant scientific studies, and comments from the public and agencies, the National Park Service will implement Alternative C as described in the Final GMPA/EIS issued in January 2001 (with some minor clarifications, as listed in Appendix A, Errata). This alternative best accomplishes the legislated purposes of Dry Tortugas National Park and the statutory mission of the National Park Service to provide long-term protection of park resources and values while allowing for visitor use and enjoyment. It also furthers the objectives of Executive Order 13089, Coral Reef Protection.

The goal of the selected action is to afford a high level of protection to park resources and provide for appropriate types and levels of high quality visitor experiences. This will be accomplished through management zoning, establishing visitor carrying capacity for specific locations in the park, using commercial services to direct and structure visitor use, and instituting a permit system for private boaters. A wide range of recreational and educational opportunities will be available to visitors provided that appropriate resource conditions are maintained. Visitor experiences will be enhanced due to expanded access throughout the park and higher quality resources to enjoy.

Several consultations took place with government agencies during the EIS process, including the Florida Keys National Marine Sanctuary, the Florida Fish and Wildlife Conservation Commission, and the Gulf of Mexico Fishery Management Council. Pursuant to section 7 requirements of the Endangered Species Act, the NPS is consulting with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service regarding potential effects of the proposed regulations on federally listed species.

The NPS Southeast Regional Director signed the Record of Decision (ROD) on July 27, 2001. In reaching a decision, NPS carefully considered the comments and concerns expressed by the public throughout the EIS process. The EIS and

ROD are available online at: *http://www.nps.gov/drto/pphtml/documents.html* or at Everglades National Park, as indicated above under the heading **FOR FURTHER INFORMATION CONTACT.**

The National Park Service has also carefully reviewed available information regarding current environmental conditions at Dry Tortugas National Park and environmental effects of the selected action. Based on this review, the National Park Service has found no significant new circumstances or information relevant to environmental concerns and bearing on the selected action or its impacts. Therefore, the National Park Service has concluded that supplementation of the 2001 Environmental Impact Statement is unnecessary.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 7.27, Dry Tortugas National Park.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

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

Drafting Information

The primary authors of this regulation are: Bonnie Foist, Lynda Lancaster, Bob Howard, Bill Wright, Brien Culhane, and Elaine Hall of Everglades National Park, Don Jodrey, Department of the Interior Office of the Solicitor, and Cliff McCreedy, National Park Service, Natural Resource Stewardship and Science and Jerry Case, Regulations Program Manager, NPS, Washington, DC.

Public Participation

If you wish to comment, you may submit your comments by any one of several methods. You may mail or hand deliver comments to Superintendent, Everglades National Park, 40001 State Route 9336, Homestead, FL 33034–6733 or fax to (305) 242–7711. Comments may also be submitted on the Federal rulemaking portal: *http://www.regulations.gov* Follow the instructions for submitting comments. Please identify comments by: RIN 1024–AD45 or sent by e-mail to *ever_superintendent@nps.gov.* Use RIN 1024–AD45 in the subject line.

Written or oral comments will also be accepted during a public meeting to be held during the 60-day comment period. Date and location of the meeting will be determined at a later date and will be announced through local press releases and the park's Web site at *http://www.nps.gov/drto.*

Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

District of Columbia, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority for part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137 (1981) and D.C. Code 40–721 (1981).

2. § 7.27 is revised to read as follows:

§ 7.27 Dry Tortugas National Park

(a) *What terms do I need to know?* The following terms apply to this section only:

Baitfish means: ballyhoo (family Exocoetidae and genus Hemiramphus), other genus may be included in this family; minnow (families Cyprinodontidae, Peciliidae, or Aherinidae); mojarra (family Gerreidae); mullet (family Mugilidae); pilchard (family Clupeidae); pinfish (family Sparidae, genus Lagodon).

Cast net means a type of circular falling net, weighted on its periphery, which is thrown and retrieved by hand, measuring 14 feet or less stretched length (stretched length is defined as the distance from the horn at the center of the net with the net gathered and pulled taut, to the lead line).

Designated anchorage means any area of sand or rubble bottom within one nautical mile of the Fort Jefferson Harbor Light.

Dip net means a hand held device for obtaining bait, the netting of which is fastened in a frame. A dip net may not exceed three (3) feet at its widest point.

Finfish means a member of subclasses Agnatha, Chondrichthyes, or Osteichthyes.

Flat wake speed means the minimum required speed to leave a flat wave disturbance close astern a moving vessel yet maintain steerageway, but in no case in excess of 5 statute miles per hour.

Guide operations means the activity, of a person, partnership, firm, corporation, or other entity to provide services for hire to visitors of the park. This includes but is not limited to fishing, diving, snorkeling, and wildlife viewing.

Live rock means any living marine organism or assemblage thereof attached to a hard substrate,including dead coral or rock but not individual mollusk shells.

Lobster means Shovelnosed or Spanish Lobster (Scyllarides aequinoactialis), Slipper lobster (Parribacus antarcticus), Caribbean spiny lobster (Panulirus argus), or spotted spiny lobster (Panulirus guttatus).

Marine life means sponges, sea anenomes, corals, jellyfish, sea

cucumbers, starfish, sea urchins, octopus, crabs, shrimp, barnacles, worms, conch, and other animals belonging to the Phyla Porifera, Cnidaria, Echinodermata, Mollusca, Bryozoa, Brachiopoda, rthropoda, Platyhilmenthes, and Annelida.

Not available for immediate use means not readily accessible for immediate use, e.g., by being stowed unbaited in a cabin, locker or similar storage area, or being securely covered and lashed to a deck or bulkhead, or in a rod holder with hooks and lures removed.

Ornamental tropical fish usually means a brightly colored fish, often used for aquarium purposes and which lives in close relationship to coral communities, belonging to the families Syngathidae, Apogonidae, Pomacentridae, Scaridae, Blennidae, Callionymidae, Gobiidae, Ostraciidae, or Diodontidae.

Permit, in the case of 36 CFR Part 7.27, means an authorization in writing or orally (e.g., via radio or telephonically).

Research Natural Area (RNA) at Dry Tortugas means the 46-square-statute-mile area in the northwest portion of the park enclosed by connecting with straight lines the adjacent points of 82°51′ W and 24°36′ N, and 82°58′ W and 24°36′ N west to the park boundary, but excluding: (1) The approximately 3-square nautical mile adaptive use zone designated by the superintendent with notice to the public through one or more methods listed in § 1.7 of this chapter; (2) the designated anchorage; (3) Garden Key, Bush Key and Long Key; or (4) the central portion of Loggerhead key including the lighthouse and associated buildings.

Shrimp means a member of the genus Farfantepenaeus, Penaeus sp.

(b) *Are there recreational fishing restrictions that I need to know?* (1) After consulting with and obtaining the concurrence of the Florida Fish and Wildlife Conservation Commission, based on management objectives and the park fisheries research, the superintendent may impose closures and establish conditions or restrictions necessary pertaining to fishing, including but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, bag and possession limits. The public will be notified of any changes through one or more methods listed in § 1.7 of this chapter. In emergency situations, after consulting with the Florida Fish and Wildlife Conservation Commission, the superintendent may impose temporary closures and establish conditions or restrictions necessary, but not exceeding 30 days in duration which may be extended for one additional 30 day period, pertaining to fishing, including but not limited to species of fish that may be taken, seasons and hours during which fishing may take place, methods of taking, and size, bag and possession limits. In emergency situations where consultation in advance is not possible, the superintendent will consult with the Florida Fish and Wildlife Conservation Commission within 24-hours of the initiation of the temporary closure or restriction.

(2) Only the following may be legally taken from Dry Tortugas National Park:

(i) Fin fish by closely attended hook-and-line;

(ii) Baitfish by closely attended hook and line, dip net, or cast net and limited to 5 gallons per vessel per day;

(iii) Shrimp may be taken by dip net or cast net.

(3) The following waters and areas are closed to fishing:

(i) The Research Natural Area (RNA). Fish and fishing gear may be possessed aboard a vessel in the RNA, provided such fish can be shown not to have been harvested from within, removed from, or taken within, the RNA as applicable, by being stowed in a cabin, locker, or similar storage area prior to entering and during transit through the RNA, provided further that such vessel is in continuous transit through the RNA. Gear capable of harvesting fish may be aboard a vessel in the RNA, provided such gear is not available for immediate use when entering and during transit through the RNA and no presumption of fishing activity shall be drawn therefrom.

(ii) Garden Key moat;

(iii) Within any swimming and snorkeling areas designated by buoys;

(iv) Within 50 feet of the historic coaling docks;

(v) Helipad areas, including the gasoline refueling dock.

(4) The following are prohibited:

(i) The possession of lobster within the boundaries of the park; unless the individual took the lobster outside park waters and has the proper State/Federal licenses and permits. Vessels with legally taken lobster aboard which was taken outside the park may not have persons overboard in park waters. The presence of lobster aboard a vessel in park waters, while one or more persons from such vessel are overboard, shall constitute prima facie evidence that such lobsters were harvested from park waters in violation of this chapter.

(ii) The taking of fish by pole spear, Hawaiian sling, rubber powered, pneumatic, or spring loaded gun or similar device known as a speargun, air rifles, bows and arrows, powerheads, or explosive powered guns. Operators of vessels within the park must break down and store all described weapons so such gear is not available for immediate use.

(iii) The use of a hand held hook, gig, gaff, or snare is prohibited, except that a gaff may be used for landing a fish lawfully caught by hook and line when consistent with all requirements provided herein including size and species restrictions.

(iv) The taking, possession or touching of any ornamental tropical fish or marine life except as expressly provided in this section.

(v) Dragging or trawling a dip net or cast net.

(vi) The use of nets except as provided in (b)(2)(ii) and (iii).

(5) Engaging in guide operations (fee for service), including but not limited to fishing and diving, except in accordance with the provisions of a permit, contract, or other commercial use authorization, or other written agreement with the United States and administered under this chapter is prohibited.

(c) *Are there any areas of the park closed to the public?* Yes. The following areas are closed to the public:

(1) The elkhorn (Acropora palmata) and staghorn (Acropora prolifera) patches adjacent to and including the tidal channel southeast of Long and Bush Keys and extending to 100 yards from the exterior edge of either patch.

(2) Hospital and Long Keys.

(3) Areas designated by the superintendent in accordance with § 1.5 and noticed to the public through one or more of the methods listed in § 1.7 of this chapter.

(d) *Is Loggerhead Key open to the public?* The superintendent shall designate areas on Loggerhead Key as closed for public use, establish closures or restrictions on and around the waters of Loggerhead Key, and establish conditions for docking, swimming or wading, and hiking as necessary to protect park resources, visitors, or employees. The public will be notified of any such designations, closures or restrictions through one or more methods listed in § 1.7 of this chapter.

(e) *Are there restrictions that apply to anchoring a vessel in the park?* (1) Anchoring in the Research Natural Area (RNA) is prohibited.

(2) All vessels in the RNA must use designated mooring buoys.

(3) Anchoring between sunset and sunrise is limited to the designated anchorage area at Garden Key.

(4) Except in cases of emergency involving danger to life or property, no vessel engaged in commercial fishing or shrimping shall anchor in any of the channels, harbors or lagoons in the vicinity of Garden Key, Bush Key, or the surrounding shoals outside of Bird Key Harbor. Emergencies may include, but are not limited to, adverse weather conditions, mechanical failure, medical emergencies or other public safety situations.

(f) *What vessel operations are prohibited?* The following vessel operations are prohibited:

(1) Operating a vessel in the Fort Jefferson Moat;

(2) Operating a vessel above a flat wake speed in the Garden Key and Bird Key Harbor areas.

(g) *What are the regulations regarding the discharge of materials in park waters?* (1) The discharge or deposit of materials or substances of any kind within the boundaries of the park is prohibited, except for the following:

(i) Fish, fish parts, chumming material, or bait used or produced incidental to and while conducting recreational fishing activities;

(ii) Graywater from sinks, consisting of only water and food particles;

(iii) Vessel cooling water, engine exhaust, or bilge water when not contaminated by oil or other substances.

(2) The superintendent may impose further restrictions as necessary to protect park resources, visitors, or employees. The public will be notified of any such requirements through one or more methods listed in § 1.7 of this chapter.

(h) *What are the permit requirements in the park?* (1) A permit, issued by the superintendent, is required for all non-commercial vessels for which occupants are engaged in recreational activities, including all activities in the RNA. Permitted recreational activities include but are not limited to use of mooring buoys, snorkeling, diving, wildlife viewing, and photography.

(2) A permit, issued by the superintendent, is required for a person, group, institution, or organization conducting research activities in the park.

(3) Vessels transiting the park without interruption shall not require a permit.

(i) *How are corals and other underwater natural features protected in the park?* (1) Taking, possessing, removing, damaging, touching, handling, harvesting, disturbing, standing on, or otherwise injuring coral, coral formation, seagrass or other living or dead organisms, including marine invertebrates, live rock, and shells, is prohibited.

(2) Vessel operators are prohibited from allowing their vessel to strike, injure, or damage coral, seagrass, or any other immobile organism attached to the seabed.

(3) Vessel operators are prohibited from allowing an anchor, chain, rope or other mooring device to be cast, dragged, or placed so as to strike, break, abrade, or otherwise cause damage to coral formations, sea grass, or submerged cultural resources.

(j) *What restrictions do I need to know when on or near shipwrecks found in the park?* No person may destroy, molest, remove, deface, displace, or tamper with wrecked or abandoned vessels of any type or condition, or any cargo pertaining thereto; and, the survey, inventory, dismantling, or recovery of any such wreck or cargo within the boundaries of the park is prohibited unless permitted in writing by the superintendent.

(k) *How are aircraft operations restricted in the park?* (1) Landing an aircraft in Dry Tortugas National Park may occur only in accordance with a permit issued by the superintendent pursuant to § 1.6 of this chapter.

(2) When landing is authorized by permit, the following requirements also apply:

(i) Aircraft may be landed on the waters within a radius of 1 mile of Garden Key, but a landing or takeoff may not be made within 500 feet of Garden Key, or within 500 feet of Bush Key when Bush Key is closed to the public to protect nesting wildlife. The operation of aircraft is also subject to § 2.17, except that seaplanes may be taxied closer than 500 feet to the Garden Dock while enroute to or from the designated ramp, north of the dock.

(ii) Seaplanes may be moored or brought up on land only on the designated beach, north of the Garden Key dock.

Matthew J. Hogan,

Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 06–3295 Filed 4–6–06; 8:45 am]

BILLING CODE 4310–70–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 96–86; FCC 06–34]

Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In the *Eighth Notice of Proposed Rulemaking (Eighth NPRM)*, the FCC seeks comment on proposals to create broadband channels in the 700 MHz public safety band. Specifically, the *Eighth NPRM* seeks comment on proposals to accommodate broadband and/or wideband operations on the current wideband spectrum (twelve megahertz) of the current 700 MHz public safety spectrum allocation. This *Eighth NPRM* is another step in the FCC's ongoing efforts to develop a regulatory framework in which to meet current and future public safety communications needs.

DATES: Written comments are due on or before June 6, 2006, and reply comments are due on or before July 6, 2006.

ADDRESSES: You may submit comments, identified by WT Docket 96–86 and FCC 06–34, by any of the identified methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Federal Communications Commission Web Site: *http://www.fcc.gov/cgb/ecfs*. Follow the instructions for submitting comments.
- E-mail: *ecfs@fcc.gov*. Include WT Docket No. 96–86 in the subject line of the message.
- Mail: Paper submissions.
- (Hand or Messenger Delivered accepted between 8 a.m. to 7 p.m. only) Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, c/o Natek, Inc., Inc., 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002.
- (Commercial overnight mail, EXCEPT United States Postal Service) Marlene H. Dortch, Secretary, Federal Communications Commission, Office of the Secretary, 9300 East Hampton Drive, Capitol Heights, MD 20743,
- (All other mail, including United States Postal Service Express Mail, Priority Mail, and First Class Mail) Marlene H. Dortch, Secretary, Federal Communications Commission, Office of

the Secretary, 445 12th Street, SW., Washington, DC 20554.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fcc.gov/cgb/ecfs*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fcc.gov/cgb/ecfs* or in the FCC Reference Information Center, Federal Communications Commission, 445 12th Street, SW., Room CY–A257, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Legal Information: John Evanoff, Esq., *John.Evanoff@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau (202) 418–0680, or TTY (202) 418–7233. Technical Information: Tim Maguire, *Tim.Maguire@FCC.gov*, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Eighth Notice of Proposed Rulemaking* (*Eighth NPRM*), FCC 06–34, adopted March 17, 2006 and released on March 21, 2006. In the *Eighth NPRM* the FCC seeks comment on proposals to create broadband channels in the 700 MHz public safety band. Specifically, the *Eighth NPRM* seeks comment on proposals to accommodate broadband and/or wideband operations on the current wideband spectrum (twelve megahertz) of the current 700 MHz public safety spectrum allocation. The *Eighth NPRM* also seeks to update the record on wideband interoperability matters raised in the *Seventh Notice of Proposed Rulemaking* in this proceeding (70 FR 21726, April 27, 2005).

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

2. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed pursuant to the Commission's Rules.

B. Comment Dates

3. Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before June 6, 2006, and reply comments on or before July 6, 2006. Comments may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/* or the Federal eRulemaking Portal: *http://www.regulations.gov*. Filers should follow the instructions provided on the website for submitting comments. For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response. Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW., Washington DC 20554. People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Paperwork Reduction Act

4. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4).

II. Initial Regulatory Flexibility Analysis

5. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Eighth Notice of Proposed Rule Making (Eighth NPRM)*. Written public comments are requested regarding this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Eighth Notice* provided in the first page of the document. The Commission will send a copy of the *Eighth Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Proposed Rules

6. The *Eighth NPRM* seeks to promote effective public safety communications and innovation in wireless services in support of public safety and homeland security. Pursuant to Congressional directive, the Commission reallocated twenty-four megahertz of spectrum in the Upper 700 MHz Band to meet the communications needs of public safety. In many areas of the United States this public safety spectrum is encumbered by incumbent television stations. In January 1999 the Commission chartered a federal advisory committee, the Public Safety National Coordination Committee (NCC), to advise the Commission on service rules for the 700 MHz Public Safety Band, which the Commission had divided into narrowband voice and data channels and wideband data channels,

with designated interoperability channels in each of these band segments. Pursuant to the NCC's recommendations, the Commission adopted the ANSI 102 (Project 25 Phase I) suite of standards for the narrowband interoperability channels. In July 2003, the NCC concluded its work with a final set of recommendations, including the ANSI 102 Scalable Adaptive Modulation (SAM) wideband data interoperability standard. On January 5, 2005, the Commission adopted a *Seventh Notice of Proposed Rulemaking* (70 FR 21726, April 27, 2005) in this proceeding which sought comment on the NCC's recommendation of the SAM standard and inquired whether all wideband radios should be capable of using the SAM standard on the wideband interoperability channels, independent of the technical standards used by such radios on the non-interoperability wideband data channels.

7. *The Eighth NPRM* seeks comment on advanced data transmission technologies which may not have been fully developed and commercially viable at the time that the NCC made its final recommendations, and which may prove more suitable to public safety's data transmission requirements. The potential benefits of these broadband technologies were raised in a November 18, 2005 filing by the National Public Safety Telecommunications Council (NPSTC) which urged "the Commission to review through a notice of proposed rulemaking, how [the 700 MHz wideband and reserve channels] could be used to promote broadband access." The use of broadband applications in the 700 MHz Public Safety Band was subsequently addressed by the Chairman of the FCC in a December 19, 2005 Report to Congress pursuant to Section 7502 of the Intelligence Reform Act. Therein, it was stated that "the Commission will expeditiously examine and analyze whether certain channels within the current allocation of twenty-four megahertz of public safety spectrum in the 700 MHz band could be modified to accommodate broadband communications."

8. Consistent with national priorities focusing on homeland security and broadband, and the Commission's commitment to ensure that emergency first responders have access to reliable and interoperable communications, the *Eighth NPRM* will allow the Commission to compile a record with up-to-date information regarding the state of today's broadband technologies in an effort to determine whether there is a need for changes to the current 700 MHz public safety band plan. The *Eighth NPRM* is intended to explore opportunities to promote spectrum access for a variety of new broadband applications while ensuring reliable, interference-free, and interoperable communications. The *Eighth Notice* also seeks to promote flexibility by seeking comment on providing a regulatory framework in which public safety entities can pursue broadband and/or wideband options in support of homeland security and protection of life and property. Further, the *Eighth Notice* seeks to refresh the record developed in response to the *Seventh Notice of Proposed Rulemaking* in this proceeding, which addressed the issue of whether there is a continuing need for wideband data interoperability. Finally, the Commission seeks comment on whether to adopt the SAM wideband data interoperability standard.

9. The first option is to modify the band plan to combine the wideband general use, interoperability and reserve channels, channelize these channels at 50 kHz, allow Regional Planning Committees (RPCs) to combine these channels to provide wideband or broadband operations in order to meet regional needs, and establish guard bands to protect narrowband operations from interference. Under this proposal, Motorola suggests that a total of 3.1 MHz of spectrum could be deployed for broadband operations and that a total of two megahertz (1 MHz paired) be dedicated as guard bands while maintaining eighteen 50 kHz wideband interoperability channels. Motorola recommends that all wideband interoperability and broadband radios support the SAM standard.

10. Under the second option, NPSTC suggests that RPCs should have the flexibility of combining 50 kHz channels to create one to three 1.25 MHz broadband channels (3.75 MHz total). NPSTC also suggests a smaller guard band allocation of 1.95 megahertz (two .950 MHz guard bands paired) and that RPCs have flexibility in managing wideband interoperability channels.

11. The third option, offered by Lucent, involves combining the wideband general use, interoperability and reserve channels to create three 1.25 MHz broadband channels (3.75 MHz total) and two 1.125 MHz guard bands (2.25 MHz total). Lucent suggests the Commission abandon the concept of wideband interoperability.

B. Legal Basis for Proposed Rules

12. The potential actions on which comment is sought in this Notice would be authorized under Sections 1, 4(i), 7, 301, 302, 303, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 301, 302, 303, 337.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

13. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations.

D. Governmental Entities

14. The term "small governmental jurisdiction" is defined as "governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

E. Public Safety Radio Licensees

15. As a general matter, Public Safety Radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services. The SBA rules contain a definition for cellular and other wireless telecommunications companies which encompass business entities engaged in radiotelephone communications employing no more that 1,500 persons. There is a total of approximately 127,540 licensees within these services. With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public

safety services the number of government entities affected.

F. Wireless Communications Equipment Manufacturers

16. The SBA has established a small business size standard for radio and television broadcasting and wireless communications equipment manufacturing. Under the standard, firms are considered small if they have 750 or fewer employees. Census Bureau data for 1997 indicates that, for that year, there were a total of 1,215 establishments in this category. Of those, there were 1,150 that had employment under 500, and an additional 37 that had employment of 500 to 999. The Commission estimates that the majority of wireless communications equipment manufacturers are small businesses.

G. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

17. The *Eighth NPRM* does not propose a rule that will entail reporting, recordkeeping, and/or third-party consultation.

H. Steps Taken To Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

18. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

19. To assist the Commission in its analysis, commenters are requested to provide information regarding which public safety entities and manufacturers would be affected by the proposed changes to the 700 MHz public safety band plan as described in the *Eighth NPRM*. In particular, we seek estimates of how many small entities might be affected and whether any of the proposals under consideration would be too burdensome to public safety.

20. In the *Eighth NPRM*, we seek data demonstrating the costs and benefits of modifying the 700 MHz band to accommodate public safety broadband operations. We have received three proposals for modifying the 700 MHz wideband segment to accommodate broadband. Under our current rules, wideband general use and interoperability channels may be aggregated to 150 kHz channels and conform to a data rate of 384 kilo bits per second (kbps). Public safety entities wish to explore aggregation above 150 kHz in order to achieve applications requiring higher data rates. Pursuant to the proposed band plans, the wideband channels would be combined to permit aggregation up to 1.25 MHz. Some proponents of broadband advocate allowing public safety Regional Planning Committees increased flexibility to administer the wideband spectrum to meet communications needs on a regional basis. Increasing bandwidth, however, decreases the number of channels that can be used and may also impact public safety communications coverage, reliability and infrastructure costs as well as increase the risk of interference to narrowband voice operations. Accordingly, we seek comment on the costs and benefits of modifying the existing wideband plan to accommodate broadband communications and ask commenters to identify public safety broadband applications that can be deployed in a modified 700 MHz wideband band plan.

21. Commenters are asked to address to what extent the proposed SAM wideband data interoperability standard would affect the ability of small entities to acquire wideband and/or broadband radios, as well as serve the objectives of interoperability in a broadband environment. Under the current rules, the wideband interoperability channels are not available for licensing, and wideband general use radios are not required to operate on the wideband interoperability channels. In the *Seventh Notice of Proposed Rulemaking*, the Commission sought comment on adopting a wideband data interoperability standard known as "SAM" (TIA–902, Scalable Adaptive Modulation), and requiring wideband general use radios have the capability of operating on the wideband interoperability channels using SAM. The possible adoption of a wideband data interoperability standard would potentially require all public safety 700 MHz wideband and broadband radios to incorporate the SAM standard for use on the wideband data interoperability channels. Thus we seek comment on the technical, operational and cost factors associated with such a requirement. However if we decline to adopt the SAM standard, manufacturers would be free to implement other technologies, incompatible with the SAM standard, which arguably would be a lesser regulatory burden on governmental entities and manufacturers, but which may impact data interoperability. One commenter suggests we abandon the concept of wideband interoperability, while another suggests adopting the SAM standard on a permissive basis. Accordingly, we ask commenters to address the objectives of interoperability in a modified band plan and what measures, if any, should be taken to promote interoperability in a broadband environment, as well as refresh the record regarding the SAM standard.

22. We have also sought comment on proposals to minimize the burdens of interference management on public safety entities while promoting efficient use of the spectrum. Under the proposed broadband plans, approximately two megahertz of wideband spectrum would be dedicated to guard bands in an effort to protect public safety narrowband voice operations. We seek comment on this proposal and ask commenters to identify alternative means to protect narrowband voice operations while making efficient use of the proposed guard band spectrum. We also ask commeters to address whether the SAM standard could be modified to permit efficient use of the proposed guard band spectrum.

23. We also seek comment on our tentative conclusion not to modify the 700 MHz narrowband voice segment in light of the significant efforts made by public safety in planning for use of this spectrum. We will continue to examine alternatives in the future with the objectives of eliminating unnecessary regulations and minimizing any significant economic impact on small entities. We seek comment on significant alternatives commenters believe we should adopt.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

24. None.

III. Ordering Clauses

25. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this *Eighth Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. E6–5108 Filed 4–6–06; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 060314068–6068–01; I.D. 030905A]

RIN 0648–AT79

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Explosive Removal of Offshore Structures in the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS has received a request from the Minerals Management Service (MMS), for authorization to "take" by harassment small numbers of marine mammals incidental to explosive severance activities at offshore oil and gas structures in the Gulf of Mexico (GOM) outer continental shelf (OCS). By this document, NMFS is proposing regulations to govern that take. In order to issue Letters of Authorization (LOAs) and final regulations governing the take, NMFS must determine that the total taking will have a negligible impact on the affected species and stocks of marine mammals, will be at the lowest level practicable, and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. NMFS invites comment on the application and the proposed rule.

DATES: Comments and information must be postmarked no later than May 22, 2006.

ADDRESSES: You may submit comments on the application and proposed rule, using the identifier 030905A, by any of the following methods:

- E-mail: *PR1.030905A@noaa.gov*. Please include the identifier 030905A in the subject line of the message. Comments sent via e-mail, including all attachments, must not exceed a 10–megabyte file size.
- Federal e-Rulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Hand-delivery or mailing of paper, disk, or CD-ROM comments should be addressed to: Stephen L. Leathery, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

A copy of the MMS application, under section 101(a)(5)(A) of the Marine Mammal Protection Act (MMPA), containing a list of references used in this document may be obtained by writing to this address, by telephoning the contact listed under **FOR FURTHER INFORMATION CONTACT**, or at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#iha*. A copy of MMS' Programmatic Environmental Assessment (PEA) is available on-line at: *http://www.gomr.mms.gov/homepg/regulate/environ/nepa/2005–013.pdf*. Documents cited in this proposed rule, that are not available through standard public library access, may be viewed, by appointment, during regular business hours at the mailing address previously specified. To help us process and review comments more efficiently, please use only one method for commenting.

Comments regarding the burden-hour estimate or any other aspect of the collection of information requirement contained in this proposed rule should be sent to NMFS via the means stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: NOAA Desk Officer, Washington, DC 20503, *David_Rostker@eap.omb.gov*.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, at 301–713–2055, ext 128 or *Ken.Hollingshead@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and 101(a)(5)(D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued.

An authorization will be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as "...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Summary of Request

On February 28, 2005, NMFS received an application from MMS (MMS, 2005a) requesting, on behalf of the offshore oil and gas industry, authorization under section 101(a)(5)(A) of the MMPA to take marine mammals by harassment incidental to explosive severance activities at offshore oil and gas structures in the GOM OCS. Except for certain categories of activities not pertinent here, the MMPA defines "harassment" as: any act of pursuit, torment, or annoyance which

(i) has the potential to injure a marine mammal or marine mammal stock in the wild [Level A harassment]; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering [Level B harassment].

Description of the Activity

During exploration, development, and production operations for mineral extraction in the GOM OCS, the seafloor around activity areas becomes the repository of temporary and permanent equipment and structures. In compliance with OCS Lands Act (OCSLA) regulations and MMS guidelines, operators are required to remove or "decommission" seafloor obstructions from their leases within one year of lease termination or after a structure has been deemed obsolete or unusable. To accomplish these removals, a host of activities is required to (1) mobilize necessary equipment and service vessels, (2) prepare the decommissioning targets (e.g., piles, jackets, conductors, bracings, wells, pipelines, etc.), (3) sever the target from the seabed and/or sever it into manageable components, (4) salvage the severed portion(s), and (5) conduct final site-clearance verification work.

There are two primary methodologies used in the GOM for cutting decommissioning targets; nonexplosive and explosive severance. Nonexplosive methods include abrasive cutters (sand and abrasive-water jets), mechanical cutters (e.g., carbide or rotary), diamond wire cutting devices, and cutting facilitated by commercial divers using arc/gas torches. Though relatively time-consuming and potentially harmful to

human health and safety (primarily for diver severances), nonexplosive-severance activities have little or no impact on the marine environment and would not result in an incidental take of marine mammals (MMS, 2005b (PEA)). A description of non-explosive severing tools and methods can be found in MMS, 2005a and MMS, 2005b (section 1.4.7.1)(see **ADDRESSES**).

Explosive-severance activities use specialized charges to achieve target severance. Severance charges can be deployed on multiple targets and detonated nearly-simultaneously (i.e., staggered at an interval of 900 msec) effecting rapid severances. Coupled with safe-handling practices, the reduced "exposure time" and omission of diver cutting also makes explosive severance safer for offshore workers. However, since the underwater detonation of cutting charges generates damaging pressure waves and acoustic energy, explosive-severance activities have the potential to result in an incidental take of nearby marine mammals. For this reason, MMS has requested an incidental take authorization governing explosive-severance activities that could be conducted under OCSLA structure decommissionings.

Decommissioning operations conducted under OCSLA authority can occur on any day of a given year. Operators often schedule most of their decommissionings from June to December (approximately 80 percent) to take advantage of the often calm seas and good weather and the time period when structure installations tend to decrease since both commissioning and decommissioning operations compete for the same management groups, equipment, vessels, and labor force (TSB/CES/LSU, 2004).

Depending upon the target, a complete decommissioning operation may span several days or weeks; however, the explosive-severance activity or "detonation event" for most removal targets (even those with multiple severances) last for only several seconds because of charge staggering. For complex targets or in instances where the initial explosive-severance attempts are unsuccessful, more than one detonation event may be necessary per decommissioning operation. Even though hours or days may pass to allow for necessary mitigation measures and redeployment of new charges, each detonation event would similarly last only for a few seconds.

During the 10 year period from 1994–2003, there were an average of 156 platform decommissionings per year, with over 60 percent involving explosive-severance activities (see Table 4 in MMS, 2005a). In addition to historical activity averages, many of the older, nominally-producing structures in the mature GOM oil fields are nearing decommissioning age; this will result in an increase in removal operations in future years. Despite advancements in nonexplosive-severance methods and the additional requisite marine protected species mitigations, MMS expects explosive-severance activities to continue in at least 63 percent of all platform removals for the foreseeable future. (See Appendix A of MMS, 2005b) for additional forecasting information).

In addition to platform removals, based upon a review of the historical trends, industry projections, and recent forecast modeling, MMS estimates that between 170 and 273 explosive well-severance activities would occur annually over the next 5 years (see Table 7 in MMS, 2005a).

Comments and Responses

On August 24, 2005 (70 FR 49568), NMFS published a notice of receipt of MMS' application for LOAs and requested comments, information and suggestions concerning the request and the structure and content of regulations to govern the take. During the 30–day public comment period, NMFS received one set of comments.

The Marine Mammal Commission recommended that NMFS initiate the proposed rulemaking provided it is satisfied that the planned marine mammal and related monitoring programs will be adequate to verify how and over what distances marine mammals may be affected, that only small numbers of marine mammals will be taken, and that the cumulative impacts on the affected species and stocks will be negligible.

As described in detail in this document, all detonations are monitored by trained biological observers in aircraft and watercraft with mitigation and monitoring established commensurate with the type of detonation and the charge weight. Similar extensive monitoring programs, conducted by trained biological observers, including post-blast monitoring, have not indicated that any marine mammals have been seriously injured or killed by explosive severance activities.

Description of Habitat and Marine Mammals Affected by the Activity

The proposed explosive severance activities could occur in all water depths of the offshore areas designated by MMS as the GOM Central and Western Planning Areas (CPA and WPA) and a portion of the Eastern Planning Area (EPA) offered under Lease Sale 181/189 (see Figure 2 or 3 in MMS, 2005a). Water depths in the areas of the proposed action range from 4 to 3,400 m (13–11,155 ft), with the majority of existing facilities and wells found within the CPA, concentrated on the upper shelf waters (less than 200 m (656 ft) water depth) off of Louisiana. A detailed description of the northern GOM area and its associated marine mammals can be found in the MMS application and PEA and in a number of documents referenced in the application. Detailed information on the marine mammals in the GOM can also be found in the NMFS status of stocks reports (Waring et al., 2004) which are available for downloading or reading at: *http://www.nefsc.noaa.gov/nefsc/publications/tm/tm182/*.

A total of 28 cetacean species and one species of sirenian (West Indian manatee) are known to occur in the GOM. These species are the sperm whale, pygmy sperm whale, dwarf sperm whale, Cuvier's beaked whale, Sowerby's beaked whale (extralimital), Gervais' beaked whale, Blainville's beaked whale, rough-toothed dolphin, bottlenose dolphin, pantropical spotted dolphin, Atlantic spotted dolphin, spinner dolphin, Clymene dolphin, striped dolphin, Fraser's dolphin, Risso's dolphin, melon-headed whale, pygmy killer whale, false killer whale, killer whale, short-finned pilot whale, North Atlantic right whale (extralimital), humpback whale (rare), minke whale (rare), Bryde's whale, sei whale (rare), fin whale (rare), and the blue whale (extralimital).

A description of the status, distribution, and seasonal distribution of the affected species and stocks of marine mammals that might be affected by explosive severance activities is provided in MMS, 2005a.

Potential Impacts to Marine Mammals

Underwater explosions are the strongest manmade point sources of sound in the sea (Richardson *et al.*, 1995). The underwater pressure signature of a detonating explosion is composed of an initial shock wave, followed by a succession of oscillating bubble pulses (if the explosion is deep enough not to vent through the surface) (Richardson *et al.*, 1995). The shock wave is a compression wave that expands radially out from the detonation point of an explosion. Although the wave is initially supersonic, it is quickly reduced to a normal acoustic wave. The broadband

source levels of charges weighing 0.5–20 kg (1.1–44 lb) are in the range of 267–280 dB re 1 microPa (at a nominal 1–m distance), with dominant frequencies below 50 Hz (Richardson *et al.*, 1995; CSA, 2004). The following sections discuss the potential impacts of underwater explosions on marine mammals, including mortality, injury, hearing effects, and behavioral effects.

Mortality or Injury

It has been demonstrated that nearby underwater blasts can injure or kill marine mammals (Richardson *et al.*, 1995). Injuries from high-velocity underwater explosions result from two factors: (1) the very rapid rise time of the shock wave; and (2) the negative pressure wave generated by the collapsing bubble, which is followed by a series of decreasing positive and negative pressure pulses (CSA, 2004). The extent of injury largely depends on the intensity of the shock wave at the receiver (marine mammal) and the size and depth of the animal (Yelverton *et al.*, 1973; Craig, 2001).

The greatest damage occurs at boundaries between tissues of different densities because different velocities are imparted that can lead to their physical disruption; effects are generally greatest at the gas-liquid interface (Landsberg, 2000; CSA, 2004). Gas-containing organs, especially the lungs and gastrointestinal tract, are the most susceptible to this type of damage. Lung injuries (including lacerations and the rupture of the alveoli and blood vessels) can lead to hemorrhage, air embolisms, and breathing difficulties. The lungs and other gas-containing organs (nasal sacs, larynx, pharynx, and trachea) may also be damaged by compression/expansion caused by oscillations of the blast gas bubble (Reidenberg and Laitman, 2003). Intestinal walls can bruise or rupture, which may lead to hemorrhage and the release of gut contents. Less severe injuries include contusions, slight hemorrhaging, and petechia (Yelverton *et al.*, 1973; CSA, 2004). Ears are the organs most sensitive to pressure and, therefore, to injury (Ketten, 2000; CSA, 2004). Severe damage to the ears can include rupture of the tympanic membrane, fracture of the ossicles, cochlear damage, hemorrhage, and cerebrospinal fluid leakage into the middle ear. By themselves, tympanic membrane rupture and blood in the middle ear can result in partial, permanent hearing loss. Permanent hearing loss can also occur when the hair cells are damaged by loud noises (ranging from single, very loud events to chronic exposure).

Hearing Effects

Mammalian hearing functions over a wide range of sound intensities, or loudness. The sensation of loudness increases approximately as the logarithm of sound intensity (Richardson and Malme, 1993). Sound intensity is usually expressed in decibels (dB), units for expressing the relative intensity of sounds on a logarithmic scale. Because sound pressure is easier to measure than intensity and intensity is proportional to the square of sound pressure, sound pressure level is usually reported in units of decibels relative to a standard reference pressure. Based on the information presented in Richardson *et al.* (1995), the possible behavioral effects of noise from underwater explosions on marine mammals may be categorized as follows:

1. The noise may be too weak to be heard at the location of the animal (i.e., below the local ambient noise level, below the hearing threshold of the animal at the relevant frequencies, or both);

2. The noise may be audible, but not loud enough to elicit an overt behavioral reaction;

3. The noise may elicit behavioral reactions, which may vary from subtle effects on respiration or other behaviors (detectable only statistically) to active avoidance behavior;

4. With repeated exposure, habituation (diminishing responsiveness) to the noise may occur. Continued disturbance effects are most likely with sounds that are highly variable in their characteristics, unpredictable in occurrence, and associated with situations perceived by the animal as threatening;

5. Any anthropogenic noise that is strong enough to be heard has the potential to reduce (mask) the ability of a marine mammal to hear natural sounds at similar frequencies, including calls from conspecifics, and underwater environmental sounds such as surf noise.

6. If mammals remain in an area because it is important for feeding, breeding or some other biologically important purpose even though there is chronic exposure to noise, it is possible that there could be noise-induced physiological stress; this might in turn have negative effects on the well-being or reproduction of the animals involved; and

7. Very strong sounds have the potential to cause temporary or permanent reduction in hearing sensitivity. In terrestrial mammals, and presumably marine mammals, received sound levels must far exceed the animal's hearing threshold for there to be any temporary threshold shift (TTS) in its hearing ability. For transient sounds, the sound level necessary to cause TTS is inversely related to the duration of the sound exposure. Received sound levels must be even higher for there to be risk of permanent hearing impairment. In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

TTS

The mildest form of hearing damage, TTS, is defined as the temporary elevation of the minimum hearing sensitivity threshold at particular frequency(s) (Kryter, 1985; CSA, 2004). TTS may last from minutes to days. Although few data exist on the effects of underwater sound on marine mammal hearing, in terrestrial mammals, and presumably in marine mammals, received levels must exceed an animal's hearing threshold (i.e., maximum sensitivity) for TTS to occur (Richardson *et al.*, 1995; Kastak *et al.*, 1999; Wartzok and Ketten, 1999).

Most studies involving marine mammals have measured exposure to noise in terms of sound pressure level (SPL), measured in dBrms or dBpeak pressure re 1 microPa. Exposure to underwater sound can also be expressed in terms of energy, also called sound exposure level (SEL), or acoustic energy (measured in dB re 1 microPa^2–s), which, unlike SPL measurements, considers both intensity and duration of the sound. If TTS is defined as a measurable threshold shift of 6 dB or more (Finneran *et al.*, 2000, 2002), then based on experiments with white whales and bottlenose dolphins, the onset of TTS was associated with an energy level of about 184 dB re 1 microPa^2–s (CSA, 2004). However, the data are very limited, and Finneran (2003) has noted that they should be interpreted with caution.

Permanent Threshold Shift (PTS)

PTS is a permanent decrease in the functional sensitivity of an animal's hearing system at some or all frequencies (CSA, 2004). The principal factors involved in determining whether PTS will occur include sound impulse duration, peak amplitude, and rise time. The criteria are location and species-specific (Ketten, 1995) and are also influenced by the health of the receiver's ear.

At least in terrestrial animals, it has been demonstrated that the received level from a single exposure must be far above the TTS threshold for there to be a risk of PTS (Kryter, 1985, Richardson *et al.*, 1995; CSA, 2004). Sound signals with sharp rise times (e.g., from explosions) produce PTS at lower intensities than do other types of sound (Gisiner, 1998; CSA, 2004).

For explosives, Ketten (1995) estimated that greater than 50–percent PTS would occur at peak pressures of 237–248 dB re 1 microPa and that TTS would occur at peak pressures of 211–220 dB re 1 microPa. The "safe" peak pressure level to avoid physical injury recommended by Ketten (1995) is 100 psi (237 dB re 1 microPa, or about 212 dB re 1 microPa2–s). PTS is assumed to occur at received levels 30 dB above TTS-inducing levels. Studies have shown that injuries at this level involve the loss of sensory hair cells (Ahroon *et al.*, 1996; CSA, 2004).

Behavioral Effects

Behavioral reactions of marine mammals to sounds such as those produced by underwater explosives are difficult to predict. Whether and how an animal reacts to a given sound depends on factors such as the species, hearing acuity, state of maturity, experience, current activity, reproductive state, time of day, and weather.

Richardson *et al.* (1995) summarized available information on the reported behavioral reactions of marine mammals to underwater explosions. Observations following the use of seal bombs as scare charges indicate that pinnipeds rapidly habituate to and, in general, appear quite tolerant of, noise pulses from explosives. Klima *et al.* (1988) reported that small charges were not consistently effective in moving bottlenose dolphins away from blast sites in the GOM. Since dolphins may be attracted to the fish killed by such a charge, rather than repelled, scare charges are not used in the GOM platform removal program (G. Gitschlag, personal communication, in Richardson *et al.*, 1995).

There are few data on the reactions of baleen whales to underwater explosions. Gray whales were apparently unaffected by 9- to 36–kg (20– to 97–lb) charges used for seismic exploration (Fitch and Young, 1948). However, Gilmore (1978) felt that similar underwater blasts within a few kilometers of the gray whale migration corridor did "sometimes" interrupt migration.

Humpback whales have generally not been observed to exhibit behavioral reactions (including vocal ones) to explosions, even when close enough to suffer injury (hearing or other) (Payne and McVay, 1971; Ketten *et al.*, 1993; Lien *et al.*, 1993; Ketten, 1995; Todd *et al.*, 1996). In Newfoundland, humpbacks displayed no overt reactions within about 2 km of 200- to 2,000–kg explosions. Whether habituation and/or hearing damage occurred was unknown, but at least two whales were injured (and probably killed) (Ketten *et al.*, 1993). Other humpback whales in Newfoundland, foraging in an area of explosive activity, showed little behavioral reaction to the detonations in terms of decreased residency, overall movements, or general behavior, although orientation ability appeared to be affected (Todd *et al.*, 1996). Todd *et al.* (1996) suggested caution in interpretation of the lack of visible reactions as indication that whales are not affected or harmed by an intense acoustic stimulus; both long- and short-term behavior as well as anatomical evidence should be examined. The researchers interpreted increased entrapment rate of humpback whales in nets as the whales being influenced by the long-term effects of exposure to deleterious levels of sound.

As mentioned previously, Finneran *et al.* (2000) exposed captive bottlenose dolphins and belugas to single, simulated sounds of distant explosions. The broad-band received levels were 155–206 dB; pulse durations were 5.4–13 ms. This was equivalent to a maximum spectral density of 102–142 dB re 1 μPa^2/Hz at a 6.1 Hz bandwidth. Although pulse durations differed, the source levels required to induce a behavioral response to the introduced sounds were similar to those found by Ridgway *et al.* (1997) and Schlundt *et al.* (2000).

Estimates of Take by Harassment During Explosive Severance Activities in the GOM

The MMS has requested NMFS to issue authorizations, under section 101(a)(5)(A) of the MMPA, to cover any potential take by Level A or Level B harassment for the 28 species of cetaceans listed previously in this document, incidental to the oil and gas industry conducting explosive-severance operations regulated by the MMS. Explosive severance operations have the potential to take marine mammals by contact with shock wave and acoustic energy released from underwater detonations and the resultant injury, hearing damage, and behavioral effects. For this activity, MMS has adopted, without modification, NMFS' take thresholds and criteria for explosives used in the incidental take authorization for shock trials for the U.S. Navy's Winston *Churchill* (Navy, 2001). While these criteria remain a subject for future discussion and revision (see 69 FR 21816, April 22, 2004, and 70 FR 48675, August 19, 2005), the *Winston Churchill* criteria (*i.e.*, 12 pounds/in^2 (psi) peak-pressure and 182 dB (re 1 $microPa^2$–sec)) have been used by MMS for this activity because these criteria remain conservative. For example, Finneran et al. (2003) did not find masked TTS in the single bottlenose dolphin tested at the highest exposure conditions: peak pressure of 207 kPa (30 psi), 228 dB re 1 microPa pk-pk pressure, and 188 dB re 1 $microPa^2$–s total energy flux.

The criteria for nonlethal, injurious impacts (Level A harassment) are currently defined as the incidence of 50–percent tympanic-membrane (TM) rupture and the onset of slight lung hemorrhage for a 12.2–kg (27 lb) dolphin calf. Level A harassment take is assumed to occur:

1. At an energy flux density value of 1.17 in–lb/in^2 (which is about 205 dB re 1 μPa^2–s); and
2. If the peak pressure exceeds 100 psi for an explosive source; *i.e.*, the "safe" peak pressure level to avoid physical injury recommended by Ketten (1995).

The horizontal distance from the explosive to each threshold is determined and the maximum distance at which either is exceeded is considered to be the distance at which Level A harassment would occur (U.S. Dept. Navy, 2001).

NMFS recognizes two levels of noninjurious acoustic impacts (Level B harassment). One criterion for Level B harassment is defined by the onset of TTS. Two thresholds are applied. TTS is assumed to be induced:

1. At received energies greater than 182 dB re 1 $microPa^2$–s within any 1/3–octave band; and
2. If, for an explosive source, the peak pressure at the animal exceeds 12 psi.

As with Level A harassment, the horizontal distance to each threshold has been determined and the maximum distance at which either is exceeded is considered the distance at which Level B harassment (TTS) would occur (Navy, 1998 and 2001; CSA, 2004). These distances have been used for estimating conservative zones of impact.

"Sub-TTS" behavioral effects may also be considered to constitute a take by Level B harassment if a marine mammal reacts to an activity in a manner that would affect some behavioral pattern in a biologically significant way. Single, minor reactions (such as startle or "heads-up" alert displays, short-term changes in breathing rates, or modified single dive

sequences) that have no biological context would not qualify as takes (66 FR 22450, May 4, 2001). This would include minor or momentary strictly behavioral responses to single events such as underwater explosions. Since explosive severance activities result in single, almost instantaneous detonations, with no repetitive detonations, NMFS does not believe that marine mammals would be subject to behavioral harassment other than behavioral modifications potentially incurred as a result of TTS.

In order to obtain potential incidental take numbers for explosive severance activities, fundamental modeling components require: (1) predictive modeling of detonation pressure/energy propagation, (2) propagation model verification and utilization, (3) predictive modeling of marine mammal take estimates, and (4) take-estimate calculation. These models and the calculations resulting from those models are explained in detail in MMS, 2005a and MMS, 2005b.

Based on MMS calculations for all explosive-severance monitoring scenarios, Level A harassment takes would be limited to less than one bottlenose dolphin annually and between three and five bottlenose dolphins, one Atlantic spotted, and one pantropical spotted dolphin over the five-year period of these proposed regulations.

Based on MMS calculations for all explosive-severance scenarios, annual Level B harassment takes would be limited to 148–227 bottlenose dolphins, 35–65 Atlantic spotted dolphins, 33–77 pantropical spotted dolphins, 11–27 Clymene dolphins, 8–12 rough-toothed dolphins, 6–14 striped dolphins, 6–15 melon-headed whales, 4–10 pilot whales, 2–5 spinner dolphins, 1–3 Risso's dolphins, and 1–2 sperm whales. It should be noted that Level A and Level B harassment estimates are made without consideration of the implementation of mitigation measures to protect marine mammals, so actual harassment numbers would likely be lower. Post-activity monitoring conducted by trained biological observers since about 1989 has not produced any sightings of distressed marine mammals.

Mitigation and Monitoring

Based upon the analysis found in the Structure-Removal PEA (MMS, 2005b), MMS believes that implementation of the mitigation measures listed in this section will prevent the occurrence of any mortality or serious injury to marine mammals.

Charge Criteria

The charge criteria discussed here (e.g., charge size, detonation staggering, and explosive material) are applicable for all of the explosive-severance scenarios conducted under the proposed action.

Charge Size

The options available under the multiple explosive-severance scenarios allow for the utilization of any size charge between 0 and 500 lb (226.8 kg). Most often determined in the early planning stages, the final/actual charge weight establishes the specific monitoring scenario that must be adhered to as a condition of an MMPA authorization. Increasing the charge size results in increasing levels of mitigation/monitoring. Using explosives greater than 500 lb (226.8 kg) are not proposed to be authorized for taking marine mammals under the MMPA. Use of explosives greater than 500 lb (226.8 kg) would require additional National Environmental Policy Act (NEPA) analyses, Endangered Species Act (ESA) consultations and an MMPA authorization prior to usage. As a result, no marine mammal takings are proposed to be authorized for charge weights greater than 500 lbs (226.8 kg) under this proposed rule.

Detonation Staggering

Multiple-charge detonations are proposed to be staggered at an interval of 0.9 sec (900 msec) between blasts to prevent an additive pressure event. For decommissioning purposes, a "multiple-charge detonation" refers to any configuration where more than one charge is required in a single detonation "event."

Explosive Material

There are many important properties (i.e., velocity, brisance, specific-energy, etc.) related to the explosive material(s) used in developing severance charges. Material needs vary widely depending upon target characteristics, marine conditions, and charge placement. Since specific material and personnel safety requirements must be established and followed, MMS believes that all decisions on explosive composition, configuration, and usage should be made by the qualified (i.e., licensed and permitted) explosive contractors in accordance with the applicable explosive-related laws and regulations. NMFS concurs, noting that limiting charge size or material may result in incomplete severing possibly requiring even larger charge weight to complete the severing.

Specific Mitigation/Monitoring Requirements

Explosive severance activities, as described in the MMS application and PEA, have been grouped into five blasting categories (very small, small, standard, large, and specialty). Since the level of detonation pressure and energy is primarily related to the amount of the explosives used, these categories were developed cooperatively by MMS, NMFS and industry explosives experts based upon the specific range of charge weights needed to conduct current and future GOM OCS decommissionings. Depending on the design of the target and other variable marine conditions, the severance charges developed under each of these categories could be designed for use in either a below-mudline (BML) or above mudline (AML) configuration. These factors, combined with an activity location within either the shelf (less than 200 m (656 ft)) or slope (greater than 200 m (656 ft)) species-delineation zone, result in 20 separate explosive-severance monitoring scenarios, as shown in Table 1.

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Table 1. Blasting Category Parameters and Associated Severance Scenario Numbers (MMS, 2005b)

Blasting Category	Charge Range	Configuration	Species-Delineation Zone	Scenario
Very-Small	0-10 lb	BML	Shelf (<200 m)	A1
		BML	Slope (>200 m)	A2
	0-5 lb	AML	Shelf (<200 m)	A3
		AML	Slope (>200 m)	A4
Small	>10-20 lb	BML	Shelf (<200 m)	B1
		BML	Slope (>200 m)	B2
	>5-10 lb	AML	Shelf (<200 m)	B3
		AML	Slope (>200 m)	B4
Standard	>20-80 lb	BML	Shelf (<200 m)	C1
		BML	Slope (>200 m)	C2
	>20-80 lb	AML	Shelf (<200 m)	C3
		AML	Slope (>200 m)	C4
Large	>80-200 lb	BML	Shelf (<200 m)	D1
		BML	Slope (>200 m)	D2
	>80-200 lb	AML	Shelf (<200 m)	D3
		AML	Slope (>200 m)	D4
Specialty	>200-500 lb	BML	Shelf (<200 m)	E1
		BML	Slope (>200 m)	E2
	>200-500 lb	AML	Shelf (<200 m)	E3
		AML	Slope (>200 m)	E4

The charge criteria previously listed are proposed to be standard for all decommissionings employing explosive-severance activities. However, depending upon the severance scenario, there are six different types of marine mammal/sea turtle monitoring surveys that must be conducted before and after all detonation events (sea turtles are included in these proposed mitigation and monitoring activities because NMFS and MMS anticipate that such measures will also minimize impacts to ESA-listed sea turtles). The specific monitoring requirements, survey times, and impact zone radii for all explosive-severance monitoring scenarios are summarized in Table 2.

Table 2
Survey and Time Requisite Summary for All Explosive-Severance Scenarios

Blasting Category	Impact Zone Radius	Scenario	Pre-Det Surface Survey (min)	Pre-Det Aerial Survey (min)	Pre-Det Acoustic Survey (min)	Post-Det Surface Survey (min)	Post-Det Aerial Survey (min)	Post-Post-Det Aerial Survey (Yes/No)
Very Small	261 m (856 ft)	A1	60	N/A	N/A	30	N/A	No
		A2	90	N/A	N/A	30	N/A	No
	293 m (961 ft)	A3	60	N/A	N/A	30	N/A	No
		A4	90	N/A	N/A	30	N/A	No
Small	373 m (1,224 ft)	B1	90	30	N/A	N/A	30	No
		B2	90	30	N/A	N/A	30	No
	522 m (1,714 ft)	B3	90	30	N/A	N/A	30	No
		B4	90	30	N/A	N/A	30	No
Standard	631 m (2,069 ft)	C1	90	30	N/A	N/A	30	No
		C2	90	30	120	N/A	30	No
	829 m (2721 ft)	C3	90	45	N/A	N/A	30	No
		C4	90	60	150	N/A	30	Yes
Large	941 m (3,086 ft)	D1	120	45	N/A	N/A	30	No
		D2	120	60	180	N/A	30	Yes
	1,126m (3,693 ft)	D3	120	60	N/A	N/A	30	No
		D4	150	60	210	N/A	30	Yes
Specialty	1,500 m (4,916 ft)	E1	150	90	N/A	N/A	45	No
		E2	180	90	270	N/A	45	Yes
	1,528 m (5,012 ft)	E3	150	90	N/A	N/A	45	No
		E4	180	90	270	N/A	45	Yes

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Accounting for similar pre- and post-detonation surveys, the 20 explosive-severance monitoring scenarios correspond roughly with 8 basic mitigation processes that vary only in differences in impact zone ranges and survey times. As noted in Appendix E of MMS, 2005b, these impact zone radii were derived using the "Under-Water Calculator," a verified model that predicts the detonation pressure/energy propagation resulting from underwater detonations. Time requisites were established by NMFS and MMS scientists, taking into consideration likely marine mammals/sea turtles and their surfacing/diving rates. Because of its complexity, the proposed mitigation/monitoring processes for each of the 20 explosive-severance scenarios is found in MMS, 2005a and is not repeated here. Instead, the proposed mitigation and monitoring summarized in Table 2 can be illustrated by using the Standard Blasting Category for shelf and slope waters as examples:

Shelf Waters (<200 m): Scenarios C1 and C3

An operator proposing shelf-based, explosive-severance activities conducted under the standard blasting category will be limited to 80–lb charge sizes (BML or AML) and will be required to conduct all requisite monitoring during daylight hours out to

the associated impact-zone radii listed here:

C1 — 631 m (2,069 ft)
C3 — 829 m (2,721 ft)

Required Observers

Generally, two observers who are trained and approved by an instructor with experience as an NMFS Platform Removal Observer Program (PROP) trainer (trained observer) are required to perform marine mammal/sea turtle detection surveys for standard-blasting under shelf water scenarios C1 and C3. If necessary, the site coordinator will determine if additional observers are required to compensate for the complexity of severance activities and/or structure configuration. In addition to meeting all reporting requirements, the trained observers will:

1. Brief affected crew and severance contractors on the monitoring requirements and instruct topsides personnel to immediately report any sighted marine mammal/sea turtles to an observer or designated company representative;
2. Establish an active line of communication (i.e., 2–way radio, visual signals, etc.) with company and blasting personnel; and
3. Devote the entire, uninterrupted survey time to marine mammal/sea turtle monitoring.

Pre-Detonation Monitoring

Before severance-charge detonation, the trained observers will conduct a 90–min surface monitoring survey of the impact zone. The monitoring will be conducted from the highest vantage points and other locations which will provide comprehensive surveys of the surrounding area. Once the surface monitoring is complete (i.e., the impact zone determined to be clear of marine mammal/sea turtles), the trained observer(s) will transfer to a helicopter to conduct a 30–min (Scenario C1) or 45–min (Scenario C3) aerial monitoring survey. As per approved guidelines, the helicopter will transverse the impact zone at low speed/altitude in a specified grid pattern. If during the aerial survey a marine mammal/sea turtle is:

1. Not sighted, proceed with the detonation;
2. Sighted outbound and continuously tracked clearing the impact zone, proceed with the detonation after the monitoring time is complete to ensure no reentry;
3. Sighted outbound and the marine mammal/sea turtle track is lost (e.g., the animal dives below the surface),
   - Halt the detonation,
   - Wait 30 min, and
   - Reconduct the 30 min (C1) or 45 min (C3) aerial monitoring survey; or
4. Sighted inbound,
   - Halt the detonation,
   - Wait 30 minutes, and
   - Reconduct the 30–min (C1) or 45–min (C3) aerial monitoring survey.

In the third and fourth scenarios, detonations will not proceed until they satisfy the first or second scenarios after the required aerial resurvey.

Post-Detonation Monitoring

After severance charge detonation, the trained observer(s) will conduct a 30–min aerial monitoring survey of the impact zone to look for affected marine mammal/sea turtles. If a marine mammal/sea turtle is found shocked, seriously injured, or dead, the operations will cease and the observer will contact MMS and NMFS' Southeast Regional Office, attempts will be made, under the direction of the trained observer, to collect/resuscitate the animal, and the Southeast Region, NMFS will be contacted for additional instruction. If the animal does not revive, efforts should be made to recover it for necropsy in consultation with the appropriate NMFS' Stranding Coordinator. If no marine mammal/sea turtles are observed to be impacted by the detonation, the trained observer(s) will record all of the necessary information as required in MMS's permit approval letter and guidelines for the preparation of a trip report.

A flowchart of the monitoring process and associated survey times for standard severance-scenarios C1 and C3 is provided in Figure 6 in MMS, 2005a.

Slope Waters (>200 m): Scenarios C2 and C4

An operator proposing slope-based, explosive-severance activities conducted under the standard blasting category will be limited to 80–lb charge sizes (BML or AML) and conduct all requisite monitoring during daylight hours out to the associated impact-zone radii listed below:

C2 — 631 m (2,069 ft)
C4 — 829 m (2,721 ft)

Required Observers

Slope water scenarios propose to require a minimum of three trained observers for the coordinated surface, aerial, and acoustic monitoring surveys, therefore, at least two "teams" of observers will be required. The PROP manager or his designee will determine each "team" size depending upon the complexity of severance activities and/or structure configuration. In addition to meeting all reporting requirements, the trained observers would perform the same functions as the observers in the shelf water scenarios C1 and C3.

Pre-Detonation Monitoring

Before severance charge detonation, trained observers will begin a 90–min surface monitoring survey and a 120–min (scenario C2) or 150–min (scenario C4) passive-acoustic monitoring survey of the impact zone. The surface monitoring will be conducted in the same manner as the C1 and C3 scenarios. Once the surface monitoring is complete (i.e., the impact zone cleared of marine mammal/sea turtles), the acoustic survey will continue while the trained observer(s) transfer(s) to a helicopter to conduct a 30–min (scenario C2) or 60–min (scenario C4) aerial monitoring survey. As per approved guidelines, the helicopter will transverse the impact zone at low speed/altitude in a specified grid pattern.

The proposed requirements on marine mammal and sea turtle sighting for the C1 and C3 scenarios would apply here except that the wait times and aerial survey times differ (see Table 2).

Post-Detonation Monitoring

Scenarios C2 and C4 both would require the same post-detonation monitoring explained for the C1 and C3 scenarios.

Scenario C4 also requires a post-post-detonation aerial monitoring survey to be conducted within 2–7 days after detonation activities conclude. Conducted by helicopter or fixed-wing aircraft, when applicable, observations are to start at the removal site and proceed leeward and outward of wind and current movement. If a marine mammal/sea turtle is found shocked, injured, or dead, the operations will cease and the observer will contact MMS and NMFS' Southeast Regional Office, attempts will be made, under the direction of the trained observer, to collect/resuscitate the animal, and the Southeast Region, NMFS will be contacted for additional instruction. If the animal does not revive, efforts should be made to recover it for necropsy in consultation with the appropriate NMFS' Stranding Coordinator. Any injured or dead marine mammal/sea turtle must be recorded, and if possible, tracked after notifying NMFS. If no marine mammal/sea turtles are observed to be dead, injured, distressed, or shocked during either aerial survey, the trained observers will record all of the necessary information as detailed in MMS's permit approval letter and guidelines for the preparation of a trip report.

A flowchart of the monitoring process and associated survey times for standard

explosive-severance monitoring scenarios C2 and C4 is provided in Figure 7 in MMS, 2005a.

Reporting Requirements

All explosive-severance activities in the GOM would be mandated to abide by the reporting requirements listed in this section. The information collected will be used by MMS and NMFS to continually assess mitigation effectiveness and the level of marine mammal/sea turtle impacts.

The reporting responsibilities will be undertaken by the NMFS' marine mammal/sea turtle observer for scenarios B1–E4 (Table 2) and the collected data will be prepared and routed in accordance with previously established guidelines for filing times and distribution.

For very-small blasting scenarios A1–A4, the company observer will be responsible for recording the data and preparing a trip report for submittal within 30 days of completion of the severance activities. Trip reports for scenarios A1–A4 will be sent to MMS and NMFS Gulf/Southeast regional offices.

In addition to basic operational data (*i.e.*, area and block, water depth, company/platform information, etc.), the observer reports must contain the following information: (1) Monitoring, (a) Survey Type, (i) pre-detonation), (ii) post-detonation, (iii) surface survey, (iv) aerial survey; (b) Time(s) (initiated/terminated), (c) Marine Conditions (sea state etc.), (2) Observed Marine Protected Species (mammals/sea turtles), (a) Type/number (basic description or species identification (if possible)), (b) Location/orientation, (i) inside/outside impact zone, (ii) inbound/outbound, etc., (c) Any "halted-detonation" details (i.e., waiting periods, re-surveys, etc.), and (d) any "Take-Event" details - actual injury/mortality to marine protected species.

In the event that a marine mammal or sea turtle is shocked, injured, or killed during the severance activities, the observer will report the incident to MMS and NMFS' Southeast Regional Office at the earliest opportunity.

Research

To help determine the impact zones for the proposed blasting categories, MMS contracted for development of a model that would estimate shock wave and acoustic energy propagation caused by underwater explosive-severance tools (Dzwilewski and Fenton, 2003). As with most "theoretical" models developed to consider a wide range of parameters under multiple conditions, the contractor suggested that their modeling results be compared with *in-situ* data from actual explosive-severance activities. Previous *in-situ* research had been performed by the Naval Surface Warfare Center (NSWC) for MMS (Conner, 1990), but uncertainties concerning transducer ranging devalued the sediment-attenuation conclusions. Considering the uncertainties, NMFS provided guidance suggesting that additional *in-situ* data comparison must be conducted.

In November 2002, MMS's Technology Assessment and Research (TAR) Program began working with MMS's GOM Region to modify an existing project designed to develop and test the efficiency of linear shaped charges (Saint-Arnaud *et al.*, 2004; see *http://www.mms.gov/tarprojects/429.htm*). The modifications made it possible to allow BML, *in situ* data measurements to be taken during the final testing on actual OCS targets. While developing the measurement phase of the project, MMS again coordinated with NMFS to address the concerns expressed over the NSWC's range uncertainties, ultimately modifying field procedures to include the use of a sector-scanning sonar in conjunction with reflectors attached to each transducer array string. The testing was conducted, and Annex B of the project's final report (Appendix C of the Structure-Removal Operations PEA; USDOI, MMS, 2004) compares the peak overpressure (psi), impulse (psi-s), and energy flux density (EFD; psi-in) measurements collected from the testing with calculated results from both the UWC and the applicable NSWC similitude equations.

Since the number of targets, charge sizes, and marine conditions were limited, MMS is currently working with both industry and acoustic measurement groups to conduct additional research on targets offering a wider range of parameters. Similar to the TAR project, the research program under development will focus on in-situ "targets-of-opportunity" offered by industry. As with previous work, the program will use transducer array assemblies to measure, record, and calculate the peak pressure, impulse, and acoustic energy released into the water column from severance charges. With a greater knowledge of the actual impacts, additional protective and mitigative measures may be possible in the future to address specific concerns of northern GOM marine mammals. In addition, the potential new information on impact-reducing factors (i.e., lower charge weights, increased BML cut depths, experimental mitigation techniques, etc.) will encourage industry to push research and development of less harmful and more efficient charges.

As a result, NMFS is proposing to request continued research on the actual impacts of explosive severance activities, which includes, but is not limited to, additional in-situ acoustic measurement testing on decommissioning targets prior to any additional reauthorization for this activity under section 101(a)(5)(A) of the MMPA.

Preliminary Determinations

NMFS has preliminarily determined that impacts to marine mammals from explosive-severance activities conducted under the proposed action will result in the taking (by Level B harassment) of small numbers of marine mammals, and have no more than a negligible impact on affected marine mammal stocks. Projected Level A harassment takes are very unlikely and would be limited to 3 species. No deaths or serious injuries to marine mammals or sea turtles are projected. If any marine mammals are displaced from preferred grounds, it will be for a short period of time (extending no greater than the structure removal activity itself). No critical habitat is involved in structure removal operations. Activities may disrupt behavioral patterns in a few individuals of a few species, but no effect is projected on annual recruitment or survival. With proposed mitigation measures in place, the potential impacts on marine mammals are expected to be negligible and at the lowest level practicable.

ESA

Under section 7 of the ESA, MMS has begun consultation on the proposed explosive severance activtiy. NMFS will also consult on the issuance of regulations and LOAs under section 101(a)(5)(A) of the MMPA for this activity. Consultation will be concluded prior to a determination on the issuance of regulations.

NEPA

MMS completed and released its PEA to the public for review on February 28, 2005. That document is available (see **ADDRESSES**) to the public. NMFS is reviewing the PEA and will either adopt it or prepare its own NEPA document before making a determination on the issuance of regulations and LOAs for this activity.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning MMS'

application and this proposed rule. NMFS requests commenters also read the MMS application and PEA on this action prior to submitting comments.

Classification

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

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. If implemented, this rule would authorize takings of marine mammals, otherwise prohibited by the MMPA, incidental to the explosive removal of offshore oil and gas structures in the GOM. Most offshore structures are owned by large- and medium-sized oil and gas companies and by definition, are not small businesses. However, this rule may affect a number of contractors providing services related to the demolition of these structures and monitoring marine mammal takes. Some of the affected contractors may be small businesses, but the number involved are very small. Further, since the authorization to incidentally take marine mammals by this activity facilitates structure removal, implementation of this rulemaking action would lead to the need for their services. As a result, the economic impact on them would be beneficial. Because of this certification, a regulatory flexibility analysis is not required and none has been prepared.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number. This proposed rule contains collection-of-information requirements subject to the provisions of the PRA. These requirements have been approved by OMB under control number 0648–0151, and include applications for LOAs, and reports.

The reporting burden for the approved collections-of-information is estimated to be approximately 3 hours for each company applying for an annual LOA. As in previous years, NMFS expects that approximately 20–30 companies to apply for LOAs annually. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection-of-information. Send comments regarding these burden estimates, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Indians, Labeling, Marine mammals, Penalties, Reporting and recordkeeping requirements, Seafood, Transportation.

Dated: March 31, 2006.

James W. Balsiger,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Subpart R is added and reserved.

3. Subpart S is added consisting of §§ 216.210 through 216.218 to read as follows:

Subpart S—Taking of Marine Mammals Incidental to Explosive Severance Activities Conducted During Structure Removal Operations on the Outer Continental Shelf in the U.S. Gulf of Mexico

Sec.

Subpart S—Taking of Marine Mammals Incidental to Explosive Severance Activities Conducted During Structure Removal Operations on the Outer Continental Shelf in the U.S. Gulf of Mexico

§ 216.210 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the incidental taking of those marine mammal species specified in paragraph (b) of this section by U.S. citizens engaged in explosive severance activities conducted during offshore oil and gas structure removal activities in areas within state and/or Federal waters in the U.S. Gulf of Mexico adjacent to the coasts of Texas, Mississippi, Louisiana, Alabama, and Florida. The incidental, but not intentional, taking of marine mammals by U.S. citizens holding a Letter of Authorization issued under §§ 216.106 and 216.217 is permitted during the course of severing pilings, well conductors, and related supporting structures, and other activities related to the removal of the oil and gas structure.

(b) The incidental take of marine mammals under the activity identified in paragraph (a) of this section is limited annually to a total of 1 bottlenose dolphin by Level A harassment and 457 marine mammals by Level B harassment, limited to the following species: sperm whale, pygmy sperm whale, dwarf sperm whale, Cuvier's beaked whale, Sowerby's beaked whale, Gervais' beaked whale, Blainville's beaked whale, rough-toothed dolphin, bottlenose dolphin, pantropical spotted dolphin, Atlantic spotted dolphin, spinner dolphin, Clymene dolphin, striped dolphin, Fraser's dolphin, Risso's dolphin, melon-headed whale, pygmy killer whale, false killer whale, killer whale, short-finned pilot whale, North Atlantic right whale, humpback whale, minke whale, Bryde's whale, sei whale, fin whale, and blue whale.

§ 216.211 Effective dates.

Regulations in this subpart are effective from July 15, 2006 through July 14, 2011.

§ 216.212 Permissible methods of taking.

The Holder of a Letter of Authorization issued pursuant to §§ 216.106 and 216.217, may incidentally, but not intentionally, take marine mammals by harassment within the area described in § 216.210(a), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

§ 216.213 Prohibitions.

Notwithstanding takings authorized by a Letter of Authorization issued under §§ 216.106 and 216.217, no person in connection with the activities described in § 216.210(a) shall:

(a) Take any marine mammal not specified in § 216.210(b);

(b) Take any marine mammal specified in § 216.210(b) in a manner or amount greater than described therein;

(c) Take a marine mammal specified in § 216.210(b) if such taking results in more than a negligible impact on the

species or stocks of such marine mammal;

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under § 216.217;

(e) Take a marine mammal in violation of these regulations by using a charge with a weight greater than 500 lbs (227 kg);

(f) Take a marine mammal when conditions preclude conducting mitigation and monitoring requirements of these regulations or a Letter of Authorization.

§ 216.214 Definitions, terms, and criteria.

(a) *Definitions.* (1) *Below-mud-line or BML* means that the explosives are detonated below the water-mud interface, either inside or outside a pipe, other structure or cable.

(2) *Above-mud-line or AML* means that the explosives are detonated in the water column either inside or outside a pipe, other structure or cable.

(3) *Multiple charge detonation* means any explosive configuration where more than one charge is required in a single detonation event.

(4) *Scenario* means an alpha-numeric designation provided to describe charge size, activity location, and target design employed in order to apply appropriate marine mammal monitoring measures.

(b) *Terms.* (1) *Impact zone (required for all scenarios).* The impact zone means the area (i.e., a horizontal radius around a decommissioning target) in which a marine mammal could be affected by the pressure and or acoustic energy released during the detonation of an explosive-severance charge.

(2) *Predetonation survey (required for all scenarios).* A predetonation (pre-det) survey means any marine mammal monitoring survey (e.g., surface, aerial, or acoustic) conducted prior to the detonation of any explosive severance tool.

(3) *Postdetonation survey (required for all scenarios).* A postdetonation (post-det) survey means any marine mammal monitoring survey (e.g., surface, aerial, or post-post-det aerial) conducted after the detonation event occurs.

(4) *Waiting period (required for all scenarios).* Variable by scenario, the waiting period refers to the time in which detonation operations must hold before the requisite monitoring survey(s) can be reconducted.

(5) *Company observer (for scenarios A1–A4 only).* Trained company observers are authorized to perform marine mammal detection surveys for "very-small" blasting scenarios A1–A4.

(6) *Trained observer (for scenarios B1–E4).* Trained observers are observers trained and approved by an instructor with experience as a NMFS Platform Removal Observer Program trainer. Trained observers are required to perform marine mammal detection surveys for all detonation scenarios with the exception of scenarios A1–A4. Two observers will be assigned to each operation for detection survey duties. However, because mitigation-scenarios C2, C4, D2, D4, E2, and E4 require a minimum of three observers for the simultaneous surface, aerial, and acoustic surveys, at least two "teams" of observers will be required.

(c) *Blasting category parameters and associated severance scenarios.* To determine the appropriate marine mammal mitigation and monitoring requirements in §§ 216.217 and 216.218, holders of Letters of Authorization under this subpart must determine, from this table, the appropriate explosive severance scenario to follow for the blasting category, biological zone, and charge configuration for their activity.

BILLING CODE 3510–22–S

Blasting Category	Charge Range	Configuration	Impact Zone Radius (ft.)	Species-Delineation Zone	Scenario
Very-Small	0-10 lb	BML	856	Shelf (<200 m)	A1
		BML	856	Slope (>200 m)	A2
	0-5 lb	AML	961	Shelf (<200 m)	A3
		AML	961	Slope (>200 m)	A4
Small	>10-20 lb	BML	1224	Shelf (<200 m)	B1
		BML	1224	Slope (>200 m)	B2
	>5-20 lb	AML	1714	Shelf (<200 m)	B3
		AML	1714	Slope (>200 m)	B4
Standard	>20-80 lb	BML	2069	Shelf (<200 m)	C1
		BML	2069	Slope (>200 m)	C2
	>20-80 lb	AML	2721	Shelf (<200 m)	C3
		AML	2721	Slope (>200 m)	C4
Large	>80-200 lb	BML	3086	Shelf (<200 m)	D1
		BML	3086	Slope (>200 m)	D2
	>80-200 lb	AML	3693	Shelf (<200 m)	D3
		AML	3693	Slope (>200 m)	D4
Specialty	>200-500 lb	BML	4916	Shelf (<200 m)	E1
		BML	4916	Slope (>200 m)	E2
	>200-500 lb	AML	5012	Shelf (<200 m)	E3
		AML	5012	Slope (>200 m)	E4

BILLING CODE 3510–22–C

§ 216.215 Mitigation.

The activity identified in § 216.210(a) must be conducted in a manner that minimizes, to the greatest extent practicable, adverse impacts on marine mammals and their habitats. When conducting operations identified in § 216.210(a), all mitigation measures contained in the Letter of Authorization issued under §§ 216.106 and 216.217 must be implemented. Any mitigation measures proposed to be contained in a Letter of Authorization that are not specified in this subpart, or not considered an emergency requirement under § 216.218(d), will first be subject to public notice and comment through publication in the **Federal Register**, as provided by § 216.218(c). When using explosives, the following mitigation measures must be carried out:

(a)(1) If marine mammals are observed within (or about to enter) the relevant marine mammal impact zone identified in § 216.214 (c) column 4 for the relevant charge range and configuration (i.e., BML or AML) for the activity, detonation must be delayed until the marine mammal(s) are outside that zone;

(2) Required pre-detonation surveys must begin no earlier than 1 hour after sunrise and detonations must not occur if the post-detonation survey cannot be concluded prior to 1 hour before sunset;

(3) Whenever weather and/or sea conditions preclude adequate aerial, shipboard or subsurface marine mammal monitoring as determined by the trained observer, detonations must be delayed until conditions improve sufficiently for marine mammal monitoring to be undertaken or resumed;

(4) Whenever the weather and sea conditions prevent implementation of the aerial survey monitoring required under

§ 216.216(c)(2), the aerial survey must be repeated prior to detonation of charges; and

(5) Multiple charge detonations must be staggered at an interval of 0.9 sec (900 msec) between blasts.

(b) If a marine mammal/sea turtle is found shocked, injured, or dead, the explosive severance activity will immediately cease and the holder of the Letter of Authorization, designee or the lead observer will contact the Minerals Management Service and the Regional Administrator, National Marine Fisheries Service' Southeast Regional Office, or designee at the earliest opportunity.

§ 216.216 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization issued for activities described in § 216.210(a) are required to cooperate with the National Marine Fisheries Service, and any other Federal, state or local agency monitoring the impacts of the activity on marine mammals.

(b) Holders of Letters of Authorization must fully comply with the relevant mitigation and monitoring program for the explosive-severance activity that corresponds to the blast scenario in § 216.216(e)).

(c) Holders of Letters of Authorization must ensure that the following

monitoring programs are conducted as appropriate for the required monitoring scenario.

(1) *Surface monitoring survey.* Surface monitoring surveys must be conducted for all scenarios for the period of time that corresponds to the appropriate explosive severance scenario. Surface monitoring surveys are to be conducted from the highest vantage point available on the structure being removed or proximal surface vessels (i.e., crewboats, derrick barges, etc.). Surface surveys are restricted to daylight hours only, and the monitoring will cease upon inclement weather or when the lead observer determines that marine conditions are not adequate for visual observations.

(2) *Aerial monitoring survey.* Aerial surveys are required for all explosive severance scenarios except monitoring scenarios A1–A4. Aerial monitoring surveys are to be conducted from helicopters running standard low-altitude search patterns over the extent of the potential impact area that corresponds to the appropriate explosive severance scenario. Aerial surveys will be restricted to daylight hours only, and cannot begin until the requisite surface monitoring survey has been completed. Aerial surveys will cease upon onset of inclement weather or when marine conditions are not adequate for visual observations as determined by the lead observer, or when the pilot/removal supervisor determines that helicopter operations must be suspended.

(3) *Acoustic monitoring survey.* Acoustic monitoring surveys are required to be conducted on all Standard, Large, and Specialty blasting scenarios conducted at slope (≤200 m (656 ft)) locations (i.e., scenarios C2, C4, D2, D4, E2, and E4). Persons conducting acoustic surveys will be required to use NMFS-approved passive acoustic monitoring devices and technicians. Acoustic surveys will be run concurrent with requisite pre-detonation surveys; beginning with the surface observations and concluded at the finish of the aerial surveys when the detonation(s) is allowed to proceed.

(4) *Post-detonation surface monitoring survey.* A 30–minute post-detonation surface survey must be conducted by the trained observer for scenarios A1 - A4 immediately upon conclusion of the detonation.

(5) *Post-detonation aerial monitoring survey.* For scenarios B1–D4, a 30–minute aerial survey must be conducted immediately upon conclusion of the detonation. For scenarios E1–E4, a 45–minute aerial survey must be conducted immediately upon conclusion of the detonation.

(6) *Post-post-detonation aerial monitoring survey.* Post- post-detonation aerial monitoring surveys must be conducted for scenarios C4, D2, D4, E2 and E4 within 2–7 days after detonation activities conclude, by either helicopter or fixed-wing aircraft. Observations are to start at the removal site and proceed leeward and outward of wind and current movement. Any injured or dead marine mammals will be noted in the survey report, and if possible, tracked and collected after notifying the National Marine Fisheries Service within the time requirements stated in § 216.216(f).

(7) If unforeseen conditions or events occur during an explosive severance operation that may necessitate additional monitoring not specified in this paragraph, the lead biological observer will contact the appropriate National Marine Fisheries Service and Minerals Management Service personnel as detailed in the Letter of Authorization for additional guidance.

(d) Holders of Letters of Authorization must conduct all monitoring and/or research required under the Letter of Authorization. Any monitoring or research measures proposed to be contained in a Letter of Authorization that are not specified in this subpart or not considered an emergency requirement under § 216.218(d), will first be subject to public notice and comment through publication in the **Federal Register**, as provided by § 216.218(c).

(e) The following table summarizes the required survey mode and duration for all blasting scenarios of marine mammal impact zones for implementation of surface and aerial monitoring requirements depending upon charge weight and severance scenario.

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Blasting Category	Impact Zone Radius	Scenario	Pre-Det Surface Survey (min)	Pre-Det Aerial Survey (min)	Pre-Det Acoustic Survey (min)	Post-Det Surface Survey (min)	Post-Det Aerial Survey (min)	Post-Post-Det Aerial Survey (Yes/No)
Very-Small	261 m (856 ft)	A1	60	N/A	N/A	30	N/A	No
		A2	90	N/A	N/A	30	N/A	No
	293 m (961 ft)	A3	60	N/A	N/A	30	N/A	No
		A4	90	N/A	N/A	30	N/A	No
Small	373 m (1,224 ft)	B1	90	30	N/A	N/A	30	No
		B2	90	30	N/A	N/A	30	No
	522 m (1,714 ft)	B3	90	30	N/A	N/A	30	No
		B4	90	30	N/A	N/A	30	No
Standard	631 m (2,069 ft)	C1	90	30	N/A	N/A	30	No
		C2	90	30	120	N/A	30	No
	829 m (2,721 ft)	C3	90	45	N/A	N/A	30	No
		C4	90	60	150	N/A	30	Yes
Large	941 m (3,086 ft)	D1	120	45	N/A	N/A	30	No
		D2	120	60	180	N/A	30	Yes
	1,126m (3,693ft)	D3	120	60	N/A	N/A	30	No
		D4	150	60	210	N/A	30	Yes
Specialty	1,500 m (4,916 ft)	E1	150	90	N/A	N/A	45	No
		E2	180	90	270	N/A	45	Yes
	1,528 m (5,012 ft)	E3	150	90	N/A	N/A	45	No
		E4	180	90	270	N/A	45	Yes

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(f) *Reporting* (1) A report summarizing the results of structure removal activities, mitigation measures, monitoring efforts, and other information as required by a Letter of Authorization, must be submitted to the Director, Office of Protected Resources, within 30 days of completion of the removal activity.

(2) The National Marine Fisheries Service will accept the trained observer report as the activity report if all requirements for reporting contained in the Letter of Authorization are provided to that observer before the observer's report is submitted.

(3) If a marine mammal/sea turtle is found shocked, injured, or dead, the Holder of the Letter of Authorization, or designee, must report the incident to the National Marine Fisheries Service' Southeast Regional Office, at the earliest opportunity.

§ 216.217 Letters of Authorization.

(a) To incidentally take marine mammal species listed in § 216.210(b) pursuant to these regulations, each company or contractor responsible for the removal of the structure or an industry-related seafloor obstruction in the area specified in § 216.210(a) must apply for and obtain either a Letter of Authorization in accordance with § 216.106 or a renewal under § 216.218(a).

(b) An application for a Letter of Authorization must be submitted to the National Marine Fisheries Service at least 30 days before the explosive removal activity is scheduled to begin.

(c) Issuance and renewal of a Letter of Authorization will be based on a determination that the number of cetaceans taken annually by the activity will be small, that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the species or stock of affected marine mammal(s), and will not have an unmitigable adverse impact on the availability of species or stocks of marine mammals for taking for subsistence uses.

(d) A Letter of Authorization, unless suspended, revoked or not renewed, will be valid for a period of time not to exceed the period of validity of this subpart, but may be renewed annually subject to annual renewal conditions in § 216.218(a).

(e) A copy of the Letter of Authorization must be in the possession of the persons conducting activities that may involve incidental takings of marine mammals.

(f) Notice of issuance or denial of a Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

§ 216.218 Renewal of, and modifications to, Letters of Authorization.

(a) A Letter of Authorization issued under § 216.106 for the activity identified in § 216.210(a) will be renewed annually upon:

(1) Timely receipt of the report(s) required under § 216.216(f), which have been reviewed by the Assistant Administrator and determined to be acceptable; and

(2) A determination that the mitigation measures required under § 216.215 and the Letter of Authorization have been undertaken.

(b) Notice of issuance of a renewal of the Letter of Authorization will be published in the **Federal Register** within 30 days of a determination.

(c) In addition to complying with the provisions of § 216.106, except as provided in paragraph (b) of this section, no substantive modification, including withdrawal or suspension, to the Letter of Authorization issued pursuant to § 216.106 and subject to the provisions of this subpart shall be made until after notice and an opportunity for public comment. For purposes of this paragraph, renewal of a Letter of Authorization under

§ 216.218, without modification other than an effective date change, is not considered a substantive modification.

(d) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.210(b), the Letter of Authorization issued pursuant to § 216.106, or renewed pursuant to this paragraph may be substantively modified without prior notice and an opportunity for public comment, pursuant to the Administrative Procedure Act. A notice will be published in the **Federal Register** subsequent to the action.

[FR Doc. 06–3327 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 71, No. 67
Friday, April 7, 2006

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS 2006–0030]

National Animal Identification System (NAIS); Implementation Plan and Integration of Private and State Animal Tracking Databases With the NAIS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of three documents related to the National Animal Identification System (NAIS): A document that provides an update on the implementation plans, including operational milestones and participation goals; a document describing how private and State animal tracking databases may be integrated into the NAIS to provide animal health officials with animal movement information on an as-needed basis; and, in connection with the animal tracking databases document, a template for a cooperative agreement that the Animal and Plant Health Inspection Service may enter into with organizations that wish to participate in the animal tracking database component of the NAIS.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, National Coordinator, National Animal Identification System, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION:

Background

As part of ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of the National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). The main objective of the NAIS is to develop and implement a comprehensive information system which will support ongoing animal disease programs and enable State and Federal animal health officials to respond rapidly and effectively to animal health emergencies such as foreign animal disease outbreaks or emerging domestic diseases.

The NAIS is being developed to facilitate rapid tracing in the event of an outbreak of an animal disease of concern. Working groups have been formed and are developing plans for camelids (llamas and alpacas), cattle and bison, cervids (deer and elk), equine, goats, poultry, sheep, and swine. The ultimate long-term goal of the NAIS is to provide State and Federal officials with the capability to identify all animals and premises that have had direct contact with a disease of concern within 48 hours after discovery. A document providing an update on the implementation plans for the NAIS, titled "National Animal Identification System (NAIS)—Strategies for the Implementation of NAIS," is available at *http://www.usda.gov/nais* or at *http://www.regulations.gov*. Paper copies also may be requested by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document when requesting copies.

Currently a voluntary system, the NAIS will be established through a phased-in approach by implementing three key components: Premises registration, animal identification, and animal tracking. The USDA has already developed information systems to support the first two components. The third component will developed through a government/industry partnership, in which animal movement information will be maintained in private and/or State databases and made available to APHIS as needed in specific situations to trace animal movements.

The USDA's objective is to support the privatization of the animal tracking information component of the NAIS in the most practical and timely and least burdensome manner possible. We have determined that this can best be achieved by establishing a system that will allow the Federal Government to access information in multiple databases through a single portal, using a metadata layer (or portal) architecture.

A document entitled "Integration of Private and State Animal Tracking Databases with the NAIS; Interim Development Phase," presents our initial plans for moving forward with the implementation of this system. The document describes the Animal Trace Processing System (ATPS), a system for processing animal movement data. A two-phase plan for implementing the ATPS is also described. The plan consists of an interim/development phase, which is set to begin in 2006, and an implementation phase, which is targeted for early 2007. Finally, the document provides data standards and technical requirements and specifications that databases must meet to be eligible for participation in the interim phase.

The ATPS, which will be managed by APHIS, is an information system that includes the metadata portal or system and related functionality for processing the animal movement records returned to APHIS from participating animal tracking databases (ATDs) within our Animal Health Information System. The ATPS will also provide the security, the interfaces and communication platform, and the auditing process for participating ATDs, and will enable us to integrate other relevant data from other APHIS-managed systems within the APHIS" Animal Health Information System. The ATPS will be utilized by both Federal and State animal health officials to submit queries to the ADTs.

Metadata is usually defined as "data about the data." Using the metadata portal architecture, the Federal Government would regularly and routinely receive information from each participating NAIS database about which animal and premises identification numbers were tracked in each database, but would receive animal movement information only when such data are needed to support an animal disease program or investigation. In such a situation, the Federal Government's part of the system would query only those source systems that contain the animal and premises identification numbers needed. Other systems would not need to be queried, which would lessen the input and output burden on those systems. No animal movement records would be

stored permanently by the metadata portal.

The metadata system would provide the greatest flexibility for affected industries and stakeholders. While organizations that wish to consolidate their tracking data could still do so, and would be encouraged to do so, most of the existing industry and State systems would be able to continue collecting and storing information in much the same way they do now.

To "jump start" the integration of private and State ATDs into the NAIS, APHIS has designed an interim/development phase that will allow interested organizations to participate in early 2006. During this interim/development phase, APHIS will enter into a cooperative agreement (CA) for the integration of the ATD with any organization that has a qualifying database(s) and that wishes to support the advancement of the integration of private and State animal tracking/movement systems into the NAIS.

Included in the current document are the data standards and technical requirements and specifications that an organization's ATDs must meet to be eligible to participate in the interim/development phase of the ATPS. Organizations must complete the "Request for Evaluation of Interim Private/State Animal Tracking Database" to initiate an APHIS review of their systems. If its system meets the interim requirements, an organization may elect to enter into a CA with APHIS. The CA will ensure that animal health officials have access to the information contained in the ATD when necessary to perform their duties. Entering into a CA does not imply that an organization's ATD will be eligible to participate in the NAIS as a fully compliant system after ATPS implementation is completed and final eligibility requirements are established.

During the interim/development phase, APHIS, in cooperation with stakeholders, will continue to develop the complete requirements for the integration of private and State ATDs with the NAIS. Systems that meet these specifications will be defined as "NAIS Compliant Animal Tracking-Databases" upon the signing of the agreement with the organization responsible for the information system. It is anticipated that the requirements for compliant systems will be completed by late 2006, and actual integration, by early 2007.

APHIS will establish an agreement with each participating organization that maintains a database with animal tracking information and that elects to provide access to the information according to the NAIS requirements. In addition to outlining data elements and access and operating procedures, the agreement will also stipulate how movement data will be archived and transferred in the event the organization and/or technology company ceases business or elects to discontinue the operation of the ATD.

The document regarding the integration of private and state ATDs with the NAIS, and a template of the CA, may be viewed on the Internet at *http://www.usda.gov/nais* or at *http://www.regulations.gov*. You may request paper copies of the document by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the document ("Integration of Private and State Animal Tracking Databases with the NAIS; Interim Development Phase") when requesting copies.

Done in Washington, DC, this 5th day of April 2006.

W. Ron DeHaven,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 06–3412 Filed 4–6–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2006–0052]

National Animal Identification System; Notice of Web Conference Training Sessions for Animal Identification Number Managers and Resellers

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are informing producers and other stakeholders who plan to participate in the distribution of animal identification number (AIN) tags of the availability of additional training, via Web conferences, so that they can prepare to participate in this component of the National Animal Identification System (NAIS) by becoming AIN managers or resellers. The Web conferences will provide more details about the administration of AIN tags, as well as provide a demonstration of the AIN Management System, the Web-based system for distributing and administering AINs in the NAIS.

DATES: The Web conferences will be conducted on April 13, 2006, and April 26, 2006. Details regarding each event are provided in the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Neil Hammerschmidt, NAIS Coordinator, Surveillance and Identification Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737–1231; (301) 734–5571.

SUPPLEMENTARY INFORMATION: As part of ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of the National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). Its long-term goal is to track all animal movements, from birth to harvest, as part of USDA's National Animal Health Monitoring and Surveillance Program.

In order to facilitate the implementation of the NAIS, on November 8, 2004, we published in the **Federal Register** (69 FR 64644–64651, Docket No. 04–052–1) an interim rule that, among other things, amended the regulations to recognize additional numbering systems for the identification of animals in interstate commerce and State/Federal/industry cooperative disease control and eradication programs and to redefine the numbering system used to identify premises where animals are managed or held. Specifically, the interim rule recognized the animal identification number (AIN) as an official numbering system for the identification of individual animals, the group/lot identification number (GIN) for the identification of groups or lots of animals within the same production system, and the seven-character premises identification number (PIN) for the identification of premises in the NAIS. Use of the new numbering systems was not, however, required as a result of the interim rule. Finally, the interim rule amended the regulations to prohibit the removal of official identification devices and to eliminate potential regulatory obstacles to the recognition of emerging technologies that could offer viable alternatives to existing animal identification devices and methods.

On March 3, 2006, we published a notice in the **Federal Register** (71 FR 10951–10952, Docket No. APHIS–2005–0117) in which we announced the availability of a document entitled "Administration of Official Identification Devices with the Animal Identification Number," which expands upon certain aspects of the NAIS that were presented in the Draft Program Standards. The document describes how an AIN may be used in conjunction with official identification devices in the NAIS; provides performance and

printing requirements for visual identification tags with AINs and an explanation of the process by which these AIN tags will be authorized for use in the NAIS; presents performance standards for radio frequency identification tags or devices that may be used on cattle or bison to supplement visual AIN tags; and describes the AIN Management System, a Web-based system for distributing and administering AINs in the NAIS, and discusses the roles and responsibilities of key participants in the system.

The animal identification component utilizing the AIN in the voluntary phase of NAIS is now being implemented. Producers who elect to participate in the animal identification component using the AIN must first obtain a PIN.

Under the AIN Management System, animal identification numbers are allocated to companies that manufacture official identification devices or technologies. Other individuals and organizations may perform roles that support the distribution of official identification devices to producers. The complete and accurate recording of the AINs distributed and assigned to each premises is imperative. The AIN Management System allows for many participants in various roles and provides the means to record AIN allocations to manufacturers and distribution to premises.

The AIN Management System is now available to participants (pending authorization of AIN devices). In this notice, we are informing producers and other stakeholders who plan to participate in the distribution of AIN tags of the availability of additional training, via Web conferences, so that they can prepare to participate in this component of NAIS by becoming AIN managers or resellers. The Web conferences will provide more details about the administration of AIN tags, as well as provide a demonstration of the AIN Management System (the Web-based software application).

Two training sessions have been scheduled for April 2006. The visual elements of the training will be presented on the Internet while the audio portion is provided over the telephone. Details for participation in each training session are as follows:

- *Date/Time:* Thursday, April 13, 2006, at 1 p.m. eastern standard time.
  Internet participation at: https://www.mymeetings.com/nc/join/.
  Web conference number: PG7717522.
  Phone (audio participation): 1–888–566–0007.
  Passcode for phone conference: INDUSTRY2.

To access an Internet replay of the event, go to: *https://www.mymeetings.com/nc/join.php?i=PG7717522&p=INDUSTRY2&t=r.*

The replay of the April 13 event will be available for 30 days, ending May 13, 2006.

- *Date/Time:* Wednesday, April 26, 2006, at 1 p.m. eastern standard time.
  Internet participation at: https://www.mymeetings.com/nc/join/.
  Web conference number: PG7717530.
  Phone (audio participation): 1–888–566–0007.
  Passcode for phone conference: INDUSTRY3.

To access an Internet replay of the event, go to: *https://www.mymeetings.com/nc/join.php?i=PG7717530&p=INDUSTRY3&t=r.*

The replay of the April 26 event will be available for 30 days, ending May 26, 2006.

Done in Washington, DC, this 4th day of April 2006.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–5085 Filed 4–6–06; 8:45 am]

BILLING CODE 3410–34–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Courthouse Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to advise the Board on issues related to the accessibility of courthouses covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968. The Courthouse Access Advisory Committee (Committee) includes organizations with an interest in courthouse accessibility. This notice announces the date, times and location of the next Committee meeting, which will be open to the public.

DATES: The meeting of the Committee is scheduled for May 18, 2006 (beginning at 9 a.m. and ending at 5 p.m.) and May 19, 2006 (beginning at 9 a.m. and ending at 3 p.m.).

ADDRESSES: The meeting will be held at the Hyatt Regency Miami, 400 South East Second Avenue, Miami, FL.

FOR FURTHER INFORMATION CONTACT: David Yanchulis, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–0026 (Voice); (202) 272–0082 (TTY). E-mail *yanchulis@access-board.gov*. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk). This document is also available on the Board's Internet site (*http://www.access-board.gov/caac/meeting.htm*).

SUPPLEMENTARY INFORMATION: In 2004, as part of the outreach efforts on courthouse accessibility, the Access Board established a Federal advisory committee to advise the Access Board on issues related to the accessibility of courthouses, particularly courtrooms, including best practices, design solutions, promotion of accessible features, educational opportunities, and the gathering of information on existing barriers, practices, recommendations, and guidelines. On October 12, 2004, the Access Board published a notice appointing 31 members to the Courthouse Access Advisory Committee. 69 FR 60608 (October 12, 2004). Members of the Committee include designers and architects, disability groups, members of the judiciary, court administrators, representatives of the codes community and standard-setting entities, government agencies, and others with an interest in the issues to be explored. The Committee held its initial meeting on November 4 and 5, 2004. Members discussed the current requirements for accessibility, committee goals and objectives, and the establishment of subcommittees. The Committee established three subcommittees: Education, Courtrooms and Courthouses (areas unique to courthouses other than courtrooms).

The Committee has held quarterly meetings in the following cities: Phoenix (February 2005), Washington, DC (May 2005), Chicago (August 2005), San Francisco (November 2005), and Washington, DC (February 2006). At each of these meetings, Committee members toured area courthouses and held full Committee and subcommittee sessions. At the next meeting in Miami, members will continue to address issues in meetings of the full Committee and of each of the subcommittees. Meeting minutes and other information about the Committee are available on the Access

Board's Web site at *http://www.access-board.gov/caac/index.htm.*

Committee meetings are open to the public and interested persons can attend the meetings and communicate their views. Members of the public will have an opportunity to address the Committee on issues of interest to them and the Committee during public comment periods scheduled on each day of the meeting. Members of groups or individuals who are not members of the Committee are invited to participate on the subcommittees. The Access Board believes that participation of this kind can be very valuable for the advisory committee process.

The meeting will be held at a site accessible to individuals with disabilities. Real-time captioning will be provided. Individuals who require sign language interpreters should contact David Yanchulis by April 28, 2006. Persons attending Committee meetings are requested to refrain from using perfume, cologne, and other fragrances for the comfort of other participants. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. E6–5044 Filed 4–6–06; 8:45 am]

BILLING CODE 8150–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from Procurement List.

SUMMARY: This action adds to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and a service previously furnished by such agencies.

DATES: *Effective Date:* May 7, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On February 3, and February 10, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 5809, and 7007) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the product and services and impact of the additions on the current or most recent contractors, the Committee has determined that the product and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.
2. The action will result in authorizing small entities to furnish the product and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following product and services are added to the Procurement List:

Product

Product/NSN: Grommet, Rotating Band.
NSN: 8140–01–051–9953—6.95" DIA, 2.585" L.
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina.
Contracting Activity: U.S. Army Field Support Command, Rock Island, Illinois.

Services

Service Type/Location: Document Destruction, USDA, Animal and Plant Health Inspection Service, Food Safety Inspection Service, 100 North Sixth Street Butler Square West 5th Floor, Minneapolis, Minnesota.
NPA: AccessAbility, Inc., Minneapolis, Minnesota.
Contracting Activity: USDA, Animal & Plant Health Inspection Service, Minneapolis, MN.

Service Type/Location: Food Service Attendant, Connecticut Air National Guard, Building 20, 206 Boston Post Road, Orange, Connecticut.
NPA: CW Resources, Inc., New Britain, Connecticut.
Contracting Activity: Connecticut Air National Guard, 103d Fighter Wing, East Granby, CT.

Deletions

On February 10, 2006, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (71 FR 7007) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products

Product/NSN: Binder, Loose-leaf.
NSN: 7510–00–965–2442—Binder, Loose-leaf.
NPA: ForSight Vision, York, Pennsylvania.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: Cross "Solo" Pen and Refill.
NSN: 7520–01–424–4846—Cross "Solo" Pen and Refill.
NSN: 7520–01–424–4881—Cross "Solo" Pen and Refill.
NSN: 7520–01–424–4871—Cross "Solo" Pen and Refill.
NSN: 7520–01–424–4860—Cross "Solo" Pen and Refill.
NSN: 7520–01–424–4848—Cross "Solo" Pen and Refill.
NPA: In-Sight, Warwick, Rhode Island.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.

Product/NSN: Flu Detection Kit.
NSN: 6550–00–NIB–0001—Flu Detection Kit.

NSN: 6550–00-NIB–0002—Flu Detection Kit.
NPA: San Antonio Lighthouse for the Blind, San Antonio, Texas.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSN: Mailers, Audio Cassette.
NSN: 8105–01–386–2189—Mailers, Audio Cassette.
NSN: 8105–01–386–2181—Mailers, Audio Cassette.
NPA: ForSight Vision, York, Pennsylvania.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSN: Remanufactured Ink Jet Cartridge.
NSN: 7510–01–443–2123—Remanufactured Ink Jet Cartridge (HP51626A).
NSN: 7510–01–443–2122—Remanufactured Ink Jet Cartridge (HP51629A).
NPA: Work Transition Services, San Bruno, California.
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY.
Product/NSN: Sign Kit, Contaminate.
NSN: 9905–01–363–0875—Sign Kit, Contaminate.
NSN: 9905–01–363–0873—Sign Kit, Contaminate.
NSN: 9905–01–363–0872—Sign Kit, Contaminate.
NSN: 9905–01–363–0877—Sign Kit, Contaminate.
NSN: 9905–01–363–0876—Sign Kit, Contaminate.
NPA: Georgia Industries for the Blind, Bainbridge, Georgia.
Contracting Activity: Department of the Navy.

Service

Service Type/Location: Custodial & Grounds Maintenance, Federal Building, U.S. Post Office and Courthouse, 600 East First Street, Rome, Georgia.
NPA: Bobby Dodd Institute, Inc., Atlanta, Georgia.
Contracting Activity: GSA, Property Management Center (4PMB), Atlanta, GA.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–5077 Filed 4–6–06; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions And Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete products previously furnished by such agencies.

Comments Must be Received on or Before: May 7, 2006.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

For Further Information or to Submit Comments Contact: Sheryl D. Kennerly, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *SKennerly@jwod.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the product and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the product and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the product and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following product and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Product/NSN: Notebook Security Cable.
NSN: 5340–01–384–2016—Notebook Security Cable.
NPA: Alphapointe Association for the Blind, Kansas City, Missouri.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas

Services

Service Type/Location: Base Supply Store, Hazmart & Self Help Operations, Building 4406, Fort Hood, Texas.
NPA: San Antonio Lighthouse for the Blind, San Antonio, Texas.
Contracting Activity: Army Contract Agency, Fort Hood, Texas.
Service Type/Location: Custodial Services, Transportation Security Administration, Rafael Hernandez Airport, Ave. Ing. Alarcon Rodriquez Hanger #405, Aguadilla, Puerto Rico.
NPA: The Corporate Source, Inc., New York, New York.
Contracting Activity: GSA, Caribbean Property Management Center, Hato Rey, Puerto Rico.
Service Type/Location: Custodial Services, U.S. Geological Survey, Columbia River Research Lab, 5501–A Cook-Underwood Road, Cook, Washington.
NPA: Hood River Sheltered Workshop, Hood River, Oregon.
Contracting Activity: U.S. Geological Survey, Sacramento, California.
Service Type/Location: Grounds Maintenance, Internal Revenue Service, Fresno Campus, 5045 E. Butler Avenue, Fresno, California.
NPA: Valley Service Connection, Inc., Stockton, California.
Contracting Activity: U.S. Treasury, IRS, San Francisco, California.

Deletions

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the products to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products proposed for deletion from the Procurement List.

End of Certification

The following products are proposed for deletion from the Procurement List:

Products

Product/NSN: Brush, Plater's, Hand.
NSN: 7920–00–267–1213—Brush, Platers, Hand.

NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin.
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas.
Product/NSN: Staff Section.
NSN: 1015–00–699–0633—Staff Section.
NSN: 1025–00–563–7232—Staff Section.
NSN: 1010–00–225–4906—Staff Section.
NPA: Montgomery County Chapter, NYSARC, Inc., Amsterdam, New York.
Contracting Activity: Defense Supply Center Columbus, Columbus, Ohio.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E6–5078 Filed 4–6–06; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Thailand in response to a request by petitioners, Allied Tube & Conduit Corporation and Wheatland Tube Company. This review covers the period March 1, 2004 through February 28, 2005.

We preliminarily determine that U.S. sales of subject merchandise have been made by Saha Thai Steel Pipe Company, Ltd. (Saha Thai) below normal value (NV). If these preliminary results are adopted in our final results, we will instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties based on the difference between the export price (EP) and the NV. Interested parties are invited to comment on these preliminary results. *See* the "Preliminary Results of Review" section of this notice.

EFFECTIVE DATE: April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Jacqueline Arrowsmith or Myrna Lobo, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–5255 or (202) 482–2371, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1986, the Department published in the **Federal Register** an antidumping duty order on circular welded carbon steel pipes and tubes from Thailand. *See Antidumping Duty Order: Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 51 FR 8341 (March 11, 1986). On March 1, 2005, the Department published a notice of opportunity to request an administrative review of this order covering the period March 1, 2004 through February 28, 2005. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review*, 70 FR 9918 (March 1, 2005). A timely request for an administrative review of the antidumping order with respect to exports by Saha Thai during the POR was filed by the petitioners. The Department published a notice of initiation of this antidumping duty administrative review on April 22, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 70 FR 20862 (April 22, 2005).

In its June 27, 2005 questionnaire response, Saha Thai included a request for revocation in–part pursuant to section 351.222(e)(1) of the Department's regulations. On July 19, 2005, petitioners filed comments arguing that the Department should not consider Saha Thai's revocation request because it was untimely. The Department determined that Saha Thai's request was untimely filed, and denied its request because the Department found no good cause to extend the deadline for revocation. *See* "Memorandum from Jacqueline Arrowsmith, International Compliance Analyst, Office 6, to Maria Mackay, Acting Director, AD/CVD Operations, Office 6: Certain Welded Carbon Steel Pipes and Tubes from Thailand: Untimely Request for Revocation," dated September 13, 2005. In addition to the comments filed on July 19, 2005, petitioner also filed comments on August 24, 2005 and on January 19, 2006.

Because the Department determined that it was not practicable to complete this review within the statutory time limits, the Department extended the deadline for the preliminary results of this antidumping duty administrative review until March 31, 2006. *See Circular Welded Carbon Steel Pipes & Tubes from Thailand: Extension of Time Limit for the Preliminary Results of the Antidumping Duty Administrative Review* 70 FR 70785 (November 23, 2005).

Scope of the Order

The products covered by this antidumping order are certain welded carbon steel pipes and tubes from Thailand. The subject merchandise has an outside diameter of 0.375 inches or more, but not exceeding 16 inches. These products, which are commonly referred to in the industry as "standard pipe" or "structural tubing," are hereinafter designated as "pipes and tubes." The merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.1000, 7306.30.5025, 7306.30.5032, 7306.30.5040, 7306.30.5055, 7306.30.5085, and 7306.30.5090. Although the HTSUS subheadings are provided for convenience and purposes of U.S. Customs and Border Protection (CBP), our written description of the scope of the order is dispositive.

Analysis

Date of Sale

Saha Thai reported contract date as the date of sale for U.S. sales. Invoice date is the Department's presumptive date for date of sale (*see* section 351.401(i) of the Department's regulations). For purposes of this review, however, we examined whether invoice date or some other date better represents the date on which the material terms of sale were established. The Department examined sales documentation including contracts and invoices, provided by Saha Thai for its U.S. sales, and found that the material terms of sale are set at the contract date. Specifically, any changes in quantity were within the specified contract tolerances and as such were not material. As such, we preliminarily determine that contract date is the appropriate date of sale for U.S. sales in this administrative review because it better represents the date upon which the material terms of sale were established. This is consistent with the last two completed administrative reviews of this proceeding. We made this determination in the 1999–2000 administrative review. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review* 66 FR 53388 (October 22, 2001); *see also Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review* 69 FR 61649 (October 20, 2004) (*2002–2003 AR Final Results*).

In the home market, the invoice is the first written document that establishes the material terms of sale. Therefore, we are using the invoice date as the date of sale for home market sales.

Export Price

In accordance with section 772(a) of the Tariff Act of 1930, as amended (the Act), export price (EP) is the price at which the first sale of the subject merchandise is sold (or agreed to be sold) by the producer or exporter of subject merchandise outside of the United States market prior to the date of importation. We classified all of Saha Thai's sales to its U.S. customers as EP sales because, as in previous segments of the proceeding, we found that Saha Thai is not affiliated with its distributors, which are the first purchasers in the United States. *See, e.g., 2002–2003 AR Final Results.*

In accordance with section 772(c)(2) of the Act, we made deductions from the gross unit price for foreign inland freight, foreign brokerage and handling, foreign inland insurance, bill of lading charges, international freight, lighterage charges, U.S. brokerage and handling charges, and U.S. duty.

Section 772(c)(1)(B) of the Act states that the EP should be increased by the amount of any import duties "imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States." Saha Thai claimed an adjustment to EP for the amount of duties exempted on its imports of hot rolled steel coil into a bonded warehouse. In determining whether an adjustment should be made to EP for this exemption, we look for a reasonable link between the duties imposed and those rebated or exempted. We do not require that the imported input be traced directly from importation through exportation. We do require, however, that the company meet our "two–pronged" test in order for this addition to be made to EP. The first element is that the import duty and rebate or exemption be directly linked to, and dependent on, one another; and the second element is that the company must demonstrate that there were sufficient imports of the imported material to account for the duty drawback paid for the export of the manufactured product. *See Wheatland Tube Company v. United States*, Slip Op. 06–8 at 33 (CIT January 17, 2006); *see also Allied Tube & Conduit Corp. v. United States*, 374 F. Supp. 2d at 1261 (CIT 2005); *Rajinder Pipes Ltd. v. United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999).

Saha Thai has met our "two–pronged" test to make this addition to EP. However, we are making a downward adjustment to the amount of this addition to reflect Saha Thai's own actual yield loss adjustment rate as we did in the last completed administrative review. *See 2002–2003 AR Preliminary Results* at 18540. For additional information, *see* the "Memorandum from Arrowsmith/Lobo, Case Analysts, through Dana Mermelstein, Program Manager; Analysis of Saha Thai Steel Pipe Company, Ltd. for the Preliminary Results," ("Preliminary Analysis Memorandum") dated March 31, 2006.

Calculation of Normal Value

Home Market Viability: In accordance with sections 773(a)(1)(B) and (C) of the Act, to determine whether there was sufficient volume of sales in the home market and/or in third country markets to serve as a viable basis for calculating normal value (NV), we compared Saha Thai's volume of home market sales of foreign like product to the volume of U.S. sales of subject merchandise. Pursuant to sections 773(a)(1)(B) and (C) of the Act and section 351.404(b) of the Department's regulations, because the volume of Saha Thai's home market sales of foreign like product was greater than five percent of the volume of U.S. sales of the subject merchandise, we determine the home market to be viable.

Affiliated–Party Transactions and Arm's–Length Test: The Department's practice with respect to the use of home market sales to affiliated parties for NV is to determine whether such sales are at arm's–length prices. *See* 19 CFR 351.403(c). Saha Thai made sales in the home market to affiliated and unaffiliated customers. To test whether the sales to affiliates were made at arm's–length prices, we compared the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, discounts, and packing. Where the price to the affiliated party was, on average, within a range of 98 to 102 percent of the price of the same or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade*, 67 FR 69186 (November 15, 2002). In accordance with the Department's practice, in our margin analysis, we only included those sales to affiliated parties that were made at arm's length. We did not include in our analysis sales made to affiliated parties when they failed the arm's length test. Where the affiliated party transactions did not pass the arm's–length test, these sales have been excluded from the NV calculation and we instructed Saha Thai to report, for each reseller, the first sale to an unaffiliated customer.

COP Analysis: In accordance with section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to suspect that Saha Thai had made home market sales at prices below its cost of production (COP) in this review because the Department disregarded Saha Thai sales that failed the cost test in the 2002–2003 administrative review (the most recently completed administrative review at the time we issued our antidumping duty questionnaire in the instant review). *See 2002–2003 AR Preliminary Results* and *2002–2003 AR Final Results.*

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Saha Thai's cost of materials and fabrication for the foreign like product, plus amounts for general and administrative expenses, and interest expenses. We relied on the COP information as reported by Saha Thai in the December 9, 2005 supplemental Section D questionnaire response.

Cost Test: In accordance with section 773(b) of the Act, we compared the COP to the home market sales price (less any applicable movement charges and discounts) of the foreign like product on a product–specific basis in order to determine whether home market sales had been made at prices below COP.

In determining whether to disregard sales below the COP, and in accordance with section 773(b)(1) of the Act, we examined whether (1) such sales were made within an extended period of time in substantial quantities and (2) were not at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade.

In accordance with section 773(b)(2)(C) of the Act, when less than 20 percent of the respondent's sales of a given product were at prices less than the COP, we did not disregard any below–cost sales of that product because we determined that the below–cost sales of that product were not made in "substantial quantities." When 20 percent or more of the respondent's sales of a given product during the period of review were at prices less than the COP, in accordance with sections 773(b)(2)(B) and (C) of the Act, we determined such sales to have been made in substantial quantities within an extended period of time. In such cases, based on weighted average costs in the cost reference period, we determined that these sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded sales below cost.

Constructed Value: In accordance with section 773(a)(4) of the Act, we used

constructed value (CV) as the basis for NV when there were no contemporaneous sales of identical or similar merchandise in the comparison market that passed the cost test and for a very small quantity of U.S. sales of a particular type of subject merchandise, where there were no appropriate identical or similar matches. We calculated CV in accordance with section 773(e) of the Act, based on the sum of Saha Thai's cost of materials, fabrication, selling, general and administrative expenses (SG&A), profit, and packing. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the actual amounts incurred and realized by Saha Thai in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the average of the selling expenses reported for home market sales that passed the cost test, weighted by the total quantity of those sales. For profit, we first calculated the difference between the home market sales value and its corresponding COP, and divided the difference by this COP. We then multiplied this percentage by the COP for the respective U.S. model to derive a profit amount.

Home Market Price: To calculate Saha Thai's home market net price, we deducted billing adjustments, discounts, home market credit expenses, warehousing, and inland freight, where appropriate. In addition, pursuant to section 773(a)(6) of the Act, we deducted home market packing costs and added U.S. packing costs, U.S. credit expenses, and U.S. bank charges.

Level of Trade

Pursuant to section 773(a)(1)(B)(i) of the Act and the Statement of Administrative Action, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP. The NV LOT is that of the starting–price sale in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is the level of the starting–price sale, which is usually from exporter to importer. To determine whether NV sales are at a different LOT than EP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects the price comparability, as manifested in a pattern of consistent price differences between sales at different levels of trade in the country in which NV is determined, we make an LOT adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut–to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

For the U.S. market, Saha Thai reported only one LOT for its EP sales. For its home market sales, Saha Thai reported that its sales to unaffiliated customers were at the same level of trade as its U.S. sales. However, Saha Thai reported that, if the Department used the downstream sales of its affiliated resellers for the preliminary results, these sales were made at a distinct level of trade, and Saha Thai's home market would consist of two levels of trade. While Saha Thai provided some information on the differences between its own selling functions and those of its affiliated resellers, Saha Thai did not provide sufficient information to justify the Department determining that there were two levels of trade in the home market. For these preliminary results the Department is treating all home market sales as being at a single level of trade, which is the same level of trade as the U.S. sales. However, the Department intends to request further information from Saha Thai to allow it to demonstrate that there are two distinct levels of trade in the home market. *See* "Preliminary Analysis Memorandum."

Currency Conversion

We made currency conversions pursuant to section 351.415 of the Department's regulations based on rates certified by the Federal Reserve.

Preliminary Results of Review

Manufacturer/Exporter	Margin (percent)
Saha Thai Steel Pipe Company, Ltd.	2.95

Duty Assessment

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. Pursuant to section 351.212(b) of the Department's regulations, the Department calculates an assessment rate for each importer of the subject merchandise for each respondent. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review.

The Department clarified its "automatic assessment" regulation on May 6, 2003 (68 FR 23954). This clarification will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all–others rate if there is no rate for any intermediate company involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 239254 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit rates will be effective with respect to all shipments of Saha Thai from Thailand entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided for by section 751(a)(1) of the Act: (1) for Saha Thai, the cash deposit rate will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will rate will be the company–specific rate established for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered by this review, a prior review, or the LTFV investigation, the cash deposit rate shall be the "all other" rate established in the LTFV investigation, which is 15.67 percent. These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Public Comment

Pursuant to section 351.224(b) of the Department's regulations, the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to section 351.309 of the Department's regulations, interested parties may submit written comments in response to these preliminary results. Unless extended by the Department, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after

the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with section 351.303(f) of the Department's regulations.

Also, pursuant to section 351.310(c) of the Department's regulations, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Parties will be notified of the time and location.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of the preliminary results, unless extended. *See* section 351.213(h) of the Department's regulations.

Notification to Importers

This notice serves as a preliminary 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 duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 31, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–5118 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802, A–570–893]

Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Frozen Warmwater Shrimp from the Socialist Republic of Vietnam and the People's Republic of China

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

SUMMARY: The Department of Commerce ("Department") received timely requests to conduct administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp ("shrimp") from the Socialist Republic of Vietnam ("Vietnam") and the People's Republic of China ("PRC"). The anniversary month of these orders is February. In accordance with the Department's regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Alex Villanueva (Vietnam) or Christopher Riker (PRC), 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) 482–3208 or (202) 482–3441, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Petitioners[1] and certain individual companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty orders on shrimp from Vietnam and the PRC covering 164 companies for the PRC and 84 companies for Vietnam. Subsequently, Petitioners withdrew one request for review for the PRC. *See* Petitioners' letter dated March 1, 2006. On March 16, 2006, the Department issued a memorandum detailing Department officials' communications with Petitioners' counsel regarding concerns about the names and addresses of certain companies included in Petitioners' request for administrative reviews. *See Memorandum to the File, from Irene Darzenta Tzafolias, Acting Director, AD/CVD Operations, Office 2, Re: Conversation with Petitioners' Counsel Concerning Petitioners' Requests for Administrative Reviews*, dated March 16, 2006. On March 21, 2006, the Petitioners submitted a letter addressing the items outlined in the Department's memorandum of March 16, 2006. The Department is now initiating administrative reviews of the orders covering the 84 companies for Vietnam and the remaining 163 companies for the PRC.

Initiation of Reviews

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act"), we are initiating administrative reviews of the antidumping duty orders on shrimp from Vietnam and the PRC. We intend to issue the final results of these reviews no later than February 28, 2007.

Antidumping Duty Proceeding	Period To Be Reviewed
Vietnam[2]:	07/16/2004–01/31/2006
AAAS Logistics.	
Agrimex.	
Amanda Foods (Vietnam) Ltd.*.	
American Container Line.	
Angiang Agricultural Technology Service Company.	
An Giang Fisheries Import and Export Joint Stock Company (Agifish).	
Aquatic Products Trading Company*.	
Bac Lieu Fisheries Company Limited*.	
Bentre Frozen Aquaproduct Exports.	
Bentre Aquaproduct Imports & Exports.	
Cai Doi Vam Seafood Import–Export Company (Cadovimex)*.	
Camau Frozen Seafood Processing Import Export Corporation (Camimex)*.	
Cam Ranh Seafoods Processing Enterprise Company (Camranh Seafoods)*.	
Cantho Animal Fisheries Product Processing Export Enterprise (Cafatex)*.	
Can Tho Agricultural Products.	
Can Tho Agricultural and Animal Products Import Export Company (Cataco)*.	
Can Tho Seafood Exports.	

[1] Ad Hoc Shrimp Trade Action Committee ("Petitioners").

Antidumping Duty Proceeding	Period To Be Reviewed
Cautre Enterprises.	
Coastal Fishery Development.	
Coastal Fisheries Development Corporation (Cofidec)*.	
C P Vietnam Livestock Co. Ltd.*.	
C P Livestock.	
Cuu Long Seaproducts Limited (Cuulong Seapro)*.	
Danang Seaproducts Import Export Corporation (Seaprodex Danang)*.	
Dong Phuc Huynh.	
Frozen Seafoods Fty.	
General Imports & Exports.	
Grobest & I Mei Industry Vietnam.	
Hacota.	
Hai Viet.	
Hai Thuan Export Seaproducts Processing Co. Ltd..	
Hanoi Sea Products Import Export Corporation*.	
Hoa Nam Marine Agricultural.	
Hatrang Frozen Seaproduct Fty.	
Investment Commerce Fisheries Corporation (Incomfish)*.	
Kien Giang Sea Products Import - Export Company (Kisimex)*.	
Kim Anh Co. Ltd..	
Khanh Loi Trading.	
Lamson Import–Export Foodstuffs Corporation.	
Minh Hai Export Frozen Seafood Processing Joint Stock Company.	
Minh Hai Export Frozen Seafoods Processing Joint Stock Company (Minh Hai Jostoco)*.	
Minh Hai Joint Stock Seafoods Processing Company (Seaprodex Minh Hai)*.	
Minh Hai Sea Products Import Export Company (Seaprimiex Co)*.	
Minh Phat Seafood[3]*.	
Minh Phu Seafood Corporation[4]*.	
Minh Qui Seafood[5]*.	
Ngoc Sinh Seafoods*.	
Nha Trang Company Limited.	
Nha Trang Fisheries Joint Stock Company (Nhtrang Fisco)*.	
Nha Trang Fisheries Co. Ltd..	
Nha Trang Seaproduct Company (Nhatrang Seafoods)*.	
Pataya Food Industry (Vietnam) Ltd.*.	
Phu Cuong Seafood Processing and Import Export Company Ltd.*.	
Phuong Nam Co. Ltd.*.	
Phuong Nam Seafood Co. Ltd..	
Saigon Orchide.	
Sao Ta Foods Joint Stock Compay (Fimex VN)*.	
Seafood Processing Imports Exports Vietnam.	
Seaprodex.	
Sea Product.	
Sea Products Imports & Exports.	
Song Huong ASC Import–Export Company Ltd.*.	
Song Huong ASC Joint Stock Company.	
Soc Trang Aquatic Products and General Import Export Company (Stampimex)*.	
Soc Trang Aquatic Products and General Import Export Company (Stampimex)[6]*.	
Sonacos.	
Special Aquatic Products Joing Stock Company (Seaspimex)[7].	
Tacvan Frozen Seafoods Processing Export Company.	
Thami Shipping & AirfreightThanh Long.	
Thanh Long.	
Thien Ma Seafood.	
Tho Quang Seafood Processing & Export Company.	
Thuan Phuoc Seafoods and Trading Corporation*.	
Tourism Material and Equipment Company (Matourimex Hochiminh City Branch).	
Truc An Company.	
UTXI Aquatic Products Processing Company*.	
Viet Foods Co. Ltd.*.	
Viet Hai Seafoods Company Ltd. (Vietnam Fish One)*.	
Vietnam Northern Viking Technologie Co. Ltd..	
Viet Nhan Company*.	
Vilfood Co.	
Vinh Loi Import Export Company (Vimexco)*.	
Vita.	
V N Seafoods.	
PRC[8]:	07/16/2004–01/31/2006
Allied Pacific Food[9]*.	
Allied Pacific (H.K.) Co. Ltd.[10]*.	
Allied Pacific Aquatic Products (Zhongshan) Co., Ltd.[11]*.	
Allied Pacific Aquatic Products (Zhangjiang) Co., Ltd.[12]*.	
Allied Pacific Food (Dalian) Co. Ltd.[13]*.	
Ammon International.	

Antidumping Duty Proceeding	Period To Be Reviewed
Asian Seafoods (Zhanjiang) Co., Ltd *.	
Aquatic Foodstuffs FTY.	
Baofa Aquatic Products Co., Ltd.	
Beihai Zhengwu Industry Co., Ltd*.	
Chaoyang Qiaofeng Group Co., Ltd. (Shantou Qiaofeng (Group) Co., Ltd.) (Shantou/ Chaoyang Qiaofeng)*.	
Chengai Nichi Lan Foods Co., Ltd.*.	
Citic Heavy Machinery.	
Dafu Foods Industry.	
Dalian Ftz Sea–Rich International Trading Co., Ltd.*.	
Dalian Shanhai Seafood.	
Dalian Shan Li Food.	
Dhin Foong Trdg.	
Dongri Aquatic Products Freezing Plants*.	
Dongri Aquatic Products Freezing Plants Shengping.	
Dongshan Xinhefa Food.	
Evergreen Aquatic Product Science and Technology.	
Formosa Plastics.	
Fuchang Aquatic Products.	
Fuchang Trdg.	
Fuqing City Dongyi Trdg.	
Fuqing Chaohui Aquatic Food Co. Ltd..	
Fuqing Chaohui Aquatic Food Trdg..	
Fuqing Dongwei Aquatic Products Industry Co., Ltd.*.	
Fuqing Dongyi Trdg.	
Fuqing Fuchang Trdg.	
Fuqing Longwei Aquatic Foodstuff.	
Fuqing Xuhu Aquatic Food Trdg.	
Fuqing Yihua Aquatic Products Co., Ltd.[14]*.	
Gallant Ocean International.	
Gallant Ocean (Liangjiang) Co., Ltd.*.	
Gallant Seafoods.	
Gaomi Shenyuan Foodstuff.	
Go Harvest Aquatic Products.	
Guangxi Lian Chi Home Appliance Co.	
Guangzhou Lingshan Aquatic Products.	
Guolian Aquatic Products.	
Hai Li Aquatic Co., Ltd. Zhao An, Fujian.	
Hainan Fruit Vegetable Food Allocation Co., Ltd.*.	
Hainan Golden Spring Foods Co., Ltd/ Hainan Brich Aquatic Products Co., Ltd.*.	
Hainan Jiadexin Aquatic Products Co., Ltd.	
Hainan Jiadexin Foodstuff.	
I T Logistics.	
Jinfu Trading Co., Ltd.*.	
Jinhang Aquatic Industry.	
Juxian Zhonglu Foodstuffs.	
Kaifeng Ocean Sky Industry Co., Ltd.*.	
King Royal Investments, Ltd.[15]*.	
Laiyang Hengrun Foodstuff.	
Laiyang Luhua Foodstuffs.	
Leizhou Zhulian Frozen Food Co., Ltd.*.	
Logistics Harbour Dock.	
Longsheng Aquatic Product.	
Longwei Aquatic Foodstuff.	
Luk Ka Paper Industry.	
Marnex.	
Master International Logistics.	
Meizhou Aquatic Products.	
Meizhou Aquatic.	
Meizhou Aquatic Products Quick–Frozen Industry Co., Ltd..	
Nichi Lan Food Co. Ltd. Chen Hai.	
North Supreme Seafood (Zhejiang) Co., Ltd..	
Ocean Freezing Industry & Trade General.	
Perfection Logistics Service.	
Phoenix Seafood.	
Pingyang Xinye Aquatic Products Co., Ltd.*.	
Polypro Plastics.	
Power Dekor Group Co., Ltd..	
P & T International Trading.	
Putuo Fahua Aquatic Products Co., Ltd..	
Qingdao Dayang Jian Foodstuffs.	
Qinhuangdao Jiangxin Aquatic Food.	
Red Garden Food.	
Red Garden Foodstuff.	
Round The Ocean Logistics.	

Antidumping Duty Proceeding	Period To Be Reviewed
Rongcheng Tongda Aquatic Food.	
Ruian Huasheng Aquatic Products.	
Savvy Seafood Inc.*.	
Second Aquatic Foodstuffs Fty.	
Sealord North America.	
Seatrade International.	
Second Aquatic Food.	
Shandong Chengshun Farm Produce Trd.	
Shandong Sanfod Group.	
Shanghai Linghai Fisheries Economic and Trading Co..	
Shantou Longsheng Aquatic Product.	
Shanghai Taoen International Trading Co., Ltd.*.	
Shantou City Qiaofeng Group.	
Shantou Freezing Aquatic Product Food Stuffs Co.*.	
Shantou Jinhang Aquatic Industry Co., Ltd.*.	
Shantou Jinyuan District Mingfeng Quick–Frozen Factory*.	
Shantou Junyuan Pingyuan Foreign Trading.	
Shantou Long Feng Foodstuffs Co., Ltd. (Shantou Longfeng Foodstuffs Co., Ltd.)*.	
Shantou Ocean Freezing Industry and Trade General Corporation.	
Shantou Red Garden Foodstuff[16]*.	
Shantou Red Garden Food Processing Co[17]*.	
Shantou Ruiyuan Industry Co., Ltd.*.	
Shantou Sez Xuhoa Fastness Freeze Aquatic Factory Co..	
Shantou Shengping Oceanstar Business Co., Ltd.*.	
Shantou Wanya Food Factory Co., Ltd.*.	
Shantou Yelin Frozen Seafood Co. Ltd.[18]*.	
Shantou Yuexing Enterprise Company*.	
Silvertie Holding.	
South Bay Intl.	
Spectrum Plastics.	
Taizhou Lingyang Aquatic Products Co., Ltd.	
Taizhou Zhonghuan Industrial Co., Ltd..	
The Second Aquatic Food.	
Tianhe Hardware & Rigging. *	
Weifang Taihua Food.	
Weifang Yongqiang Food Ind.	
Wenling Xingdi Aquatic Products.	
Xiamen Sungiven Imports & Exports.	
Xuwen Hailang Breeding Co., Ltd.*.	
Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd.[19]*.	
Yantai Guangyuan Foods Co.	
Yantai Wei–Cheng Food Co., Ltd.*.	
Yantai Xinlai Trade.	
Yantai Xuehai Foodstuffs.	
Yelin Enterprise Co., Ltd. Hong Kong[20]*.	
Yelin Frozen Seafood Co.[21]*.	
Zhangjiang Bobogo Ocean Co., Ltd.*.	
Zhangjiang Newpro Food Co., Ltd.*.	
Zhanjiang Allied Pacific Aquaculture Co., Ltd.[22]*.	
Zhanjiang CNF Sea Products Engineering Ltd.	
Zhanjiang Evergreen Aquatic Product Science and Technology Co., Ltd.*.	
Zhanjiang Fuchang Aquatic Products.	
Zhanjiang Go–Harvest Aquatic Products Co., Ltd.*.	
Zhanjiang Jebshin Seafood Limited.	
Zhanjiang Regal Integrated Marine Resources Co. Ltd..	
Zhanjiang Runhai Foods Co., Ltd.*.	
Zhanjiang Shunda Aquatic Products.	
Zhanjiang Universal Seafood Corp*.	
Zhejiang Cereals, Oils & Foodstuff Import & Export Co., Ltd.*.	
Zhejiang Daishan Baofa Aquatic Products Co., Ltd..	
Zhejiang Evernew Seafood Co., Ltd..	
Zhejiang Taizhou Lingyang Aquatic Products Co..	
Zhejiang Xintianjiu Sea Products Co., Ltd..	
Zhejiang Xingyang Import & Export.	
Zhejiang Zhenlong Foodstuffs Co., Ltd..	
Zhejiang Zhongda.	
Zhenjaing Evergreen Aquatic Products Science & Technology Co., Ltd..	
Zhoushan Cereals, Oils, and Foodstuffs Import and Export Co., Ltd.*.	
Zhoushan Diciyuan Aquatic Products*.	
Zhoushan Guangzhou Aquatic Products Co., Ltd.	
Zhoushan Guotai Aquatic Products Co., Ltd..	
Zhoushan Haichang Food Co..	
Zhoushan Huading Seafood Co., Ltd.*.	
Zhoushan Industrial Co., Ltd..	

Antidumping Duty Proceeding	Period To Be Reviewed
Zhoushan International Trade Co., Ltd. Zhoushan Lizhou Fishery Co., Ltd.*. Zhoushan Jingzhou Aquatic Products Co., Ltd.. Zhoushan Putuo Huafa Sea Products Co., Ltd.. Zhoushan Provisions & Oil Food Export and Import Co., Ltd.. Zhoushan Xifeng Aquatic Co., Ltd.*. Zhoushan Xi'an Aquatic Products Co., Ltd.. Zhoushan Zhenyang Developing Co., Ltd.. ZJ CNF Sea Products Engineering Ltd..	

[2] If one of the below named companies does not qualify for a separate rate, all other exporters of shrimp from Vietnam that have not qualified for a separate rate are deemed to be covered by this review as part of the single Vietnam entity of which the named exporter is a part.

[3] In the less than fair value investigation, the Department treated Minh Phat Seafood, Minh Phu Seafood Corporation and Minh Qui Seafood as one combined entity.

[4] *See* Footnote 3.

[5] See Footnote 3.

[6] Petitioners requested that the Department conduct an administrative review of this company, but provided two different addresses for the same company. Therefore, we have listed them twice as it is possible that they are two distinct companies. If, however, they are separate companies, then one of the two did not in fact receive a separate rate in the investigation.

[7] The Department believes the correct company name is Special Aquatic Products Joint Stock Company (Seaspimex), but we are using the name directly from Petitioners' February 28, 2006, request for reviews.

[8] If one of the above named companies does not qualify for a separate rate, all other exporters of shrimp from the PRC that have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.

[9] In the original investigation, the Department found that the following companies comprised a single entity, the Allied Pacific Group: Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific (HK) Co., Ltd., King Royal Investments, Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., and Allied Pacific Aquatic Products (Zhongshan) Co., Ltd. On February 28, 2006 Allied Pacific Food (Dalian) Co., Ltd., Allied Pacific Aquatic Products (Zhanjiang) Co., Ltd., Zhanjiang Allied Pacific Aquaculture Co., Ltd., Allied Pacific (HK) Co., Ltd., and King Royal Investments, Ltd., submitted a request for review, referring to themselves collectively as Allied Pacific Group.

[10] *See* footnote 9.

[11] *See* footnote 9.

[12] *See* footnote 9.

[13] *See* footnote 9.

[14] In the original investigation, the Department found that the following companies comprised a single entity: Yelin Enterprise Co. Hong Kong, Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., Fuqing Yihua Aquatic Products Co., Ltd., and Yelin Frozen Seafood Co. On February 28, 2006, Yelin Enterprise Co. Hong Kong, Shantou Yelin Frozen Seafood Co., Ltd., Yangjiang City Yelin Hoitat Quick Frozen Seafood Co., Ltd., and Fuqing Yihua Aquatic Products Co., Ltd. submitted a request for review referring to themselves collectively as Yelin.

[15] *See* footnote 9.

[16] This company has the same address listed as Red Garden Foodstuff above. However, if they are separate companies, then one of the two did not in fact receive a separate rate in the investigation.

[17] This company has the same address listed as Red Garden Food above. However, if they are separate companies, then one of the two did not in fact receive a separate rate in the investigation.

[18] *See* footnote 14.

[19] *See* footnote 14.

[20] *See* footnote 14.

[21] *See* footnote 14.

[22] The Department is placing an asterisk by this company's name because it was requested as part of the Allied Pacific Group. *See* Footnote 9.

* These companies received a separate rate in the prior segment (the less–than-fair–value investigation) of this proceeding.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

Due to the large number of firms requested for these administrative reviews and the resulting administrative burden to review each company for which a request has been made, the Department is considering exercising its authority to limit the number of respondents selected for review. *See* Section 777A(c)(2) of the Act.

The Department has not yet determined the appropriate methodology to employ in limiting respondent selection. As discussed above, the Department may either use a statistically valid sample or examine the largest exporters and producers by volume. Should the Department determine to sample the exporters, it will employ the following procedures: the Department will (1) issue a letter to the interested parties detailing the proposed sampling methodology; (2) after analyzing the parties' comments, finalize its sampling methodology; (3) notify the parties and invite them to send a representative to witness the sampling selection; (4) conduct the sampling exercise; (5) notify all interested parties of the selection outcome of the sampling exercise (selected respondents will be issued the full antidumping duty questionnaire); and (6) record the results in a memorandum to the file.

Withdrawal of Request For Administrative Review

19 CFR 351.213(d)(1) provides that the Secretary will rescind an administrative review if the party that requested the review withdraws the request within 90 days of the date of publication of the notice in the **Federal Register**. Although the regulation provides that the Secretary may extend this deadline, it is unlikely that the Department will be able to grant any such extensions for these particular administrative reviews, due to the time constraints imposed by our statutory deadlines.[23]

[23] Should the Department use sampling, the need to preserve the statistical validity of the sampling

Continued

Separate Rates

In proceedings involving non–market economy ("NME") countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate.

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department's analysis mirrors that established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("*Sparklers*"), as amplified by *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("*Silicon Carbide*"). In accordance with the separate rate criteria, the Department assigns separate rates to companies in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

The Department recently modified the process by which exporters and producers may obtain separate rate status in NME investigations. *See* Policy Bulletin 05.1 Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non–Market Economy Countries, (April 5, 2005), available on the Department's website at *http://ia.ita.doc.gov/policy/bull05–1.pdf*. The process now requires the submission of a separate rate status application.

Due to the large number of companies subject to administrative reviews in both the Vietnam and the PRC proceedings, the Department is requiring all companies listed above that wish to qualify for separate rate status in these administrative reviews to complete, as appropriate, either a separate rate status application or certification, as described below.

If the Department determines to select the mandatory respondents through sampling in these administrative reviews, the Department will require all potential respondents to demonstrate their eligibility for a separate rate. The Department will then make the separate rate determinations for each company and allow only those respondents with separate rate status to be included in the sampling pool should the Department decide to sample. However, for any respondent that is determined later in this segment to have provided inaccurate information regarding its separate rate status, the Department may apply facts otherwise available with an adverse inference if it determines that such respondent failed to cooperate by not acting to the best of its ability.

If the Department determines to select the mandatory respondents by selecting the largest exporters/producers accounting for the largest volume of subject merchandise exported to the United States, the Department will also require all potential respondents to demonstrate their eligibility for a separate rate. For those respondents not representing the largest volume of subject merchandise exported to the United States, the Department will make the separate rate determinations for each company. Only those respondents with separate rate status will be included in the group receiving the weighted–average margin calculated from the selected respondents. However, for any respondent that is determined later in this segment to have provided inaccurate information regarding its separate rate status, the Department may apply facts otherwise available with an adverse inference if it determines that such respondent failed to cooperate by not acting to the best of its ability.

For these administrative reviews, in order to demonstrate separate rate eligibility, the Department requires companies for which a review was requested that were assigned a separate rate in the previous segment of this proceeding to certify that they continue to meet the criteria for obtaining a separate rate. The certification form will be available on the Department's website at *http://ia.ita.doc.gov/* on the date of publication of this **Federal Register** notice. In responding to the certification, please follow the "Instructions for Filing the Certification" in the Separate Rate Certification. Certifications for both Vietnam and China are due to the Department by close of business on April 28, 2006. The deadline and requirement for submitting a certification applies equally to NME–owned companies, wholly foreign–owned companies, and foreign resellers who purchase the subject merchandise and export it to the United States.

The Department requires, to demonstrate eligibility for a separate rate, a separate rates status application for companies that have not previously been assigned a separate rate. The separate rate status application will be available on the Department's Web site at *http://ia.ita.doc.gov/* on the date of publication of this **Federal Register** notice. In responding to the separate rate status application, please refer to instructions contained within the application. Separate rate status applications are due to the Department by close of business on May 19, 2006. The deadline and requirement for submitting a separate rate status application applies equally to NME–owned companies, wholly–foreign owned companies, and foreign resellers that purchase the subject merchandise and export it to the United States. Further, due to the time constraints imposed by our statutory deadlines, the Department may be unable to grant any extensions for the submission of separate rate certifications or separate rate status applications.

Quantity and Value ("Q&V") Questionnaire

In advance of issuing of the antidumping questionnaire, we will also be requiring all parties for whom a review is requested to respond to a Q&V questionnaire, which will request information on the respective quantity and U.S. dollar sales value of all exports of shrimp to the United States during the period July 16, 2004, through January 31, 2006. The Q&V questionnaire will be available on the Department's website at *http://ia.ita.doc.gov/* on April 3, 2006. The responses to the Q&V questionnaire are due to the Department by close of business on April 28, 2006. Due to the time constraints imposed by our statutory and regulatory deadlines, the Department may be unable to grant any extensions for the submission of the Q&V questionnaire responses. In responding to the Q&V questionnaire, please refer to the instructions contained in the Q&V questionnaire.

Notice

This notice constitutes public notification to all firms requested for review and seeking separate rate status in these administrative reviews that they must submit a separate rate status application or certification (as appropriate) as described above, and a complete response to the Q&V questionnaire, within the time limits established in this notice of initiation in order to receive consideration for separate rate status. For parties that fail to timely respond to the requisite separate rate status application or certification, or to the Q&V questionnaire, the Department may

methodology will further limit the Department's ability to grant such extensions.

resort to the use of facts otherwise available, and may employ an adverse inference. The Department notes that if any of the due dates for separate rate filings and/or Q&V responses fall on a weekend, holiday, or any other day the Department is closed, the due date will be the next business day. *See Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005). All information submitted by respondents in this administrative review is subject to verification. As discussed above, due to the large number of parties in these proceedings, and the Department's need to complete its proceedings within the statutory deadlines, the Department will be limited in its ability to extend deadlines on the above submissions. As noted above, the separate rate certification, the separate rate status application, and the Q&V questionnaire will be available on the Department's Web site at *http://ia.ita.doc.gov/* on April 3, 2006.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at *http://ia.ita.doc.gov/*.

This initiation and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(c)(1)(i).

Dated: March 31, 2006.

James C. Doyle,

Director, AD/CVD Operations, Office 9,Import Administration.

[FR Doc. E6–5114 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–838, A–331–802, A–533–840, A–549–822]

Notice of Initiation of Administrative Reviews of the Antidumping Duty Orders on Certain Frozen Warmwater Shrimp from Brazil, Ecuador, India and Thailand

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

SUMMARY: The Department of Commerce ("Department") received timely requests to conduct administrative reviews of the antidumping duty orders on certain frozen warmwater shrimp ("shrimp") from Brazil, Ecuador, India and Thailand. The anniversary month of these orders is February. In accordance with the Department's regulations, we are initiating these administrative reviews.

EFFECTIVE DATE: April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Kate Johnson at (202) 482–4929 (Brazil), David Goldberger at (202) 482–4136 (Ecuador), Elizabeth Eastwood at (202) 482–3874 (India) and Irina Itkin at (202) 482–0656 (Thailand), AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Background

The Department received timely requests from Petitioners[1] and certain individual companies, in accordance with 19 CFR 351.213(b), during the anniversary month of February, for administrative reviews of the antidumping duty orders on shrimp from Brazil, Ecuador, India, and Thailand covering 54 companies for Brazil, 72 companies for Ecuador, 348 companies for India, and 145 companies for Thailand. Subsequently, Petitioners withdrew one request for review for Ecuador. *See* Petitioners' letter dated March 1, 2006. On March 16, 2006, the Department issued a memorandum detailing Department officials' communications with Petitioners' counsel regarding concerns about the names and addresses of certain companies included in Petitioners' request for administrative reviews. *See Memorandum to the File, from Irene Darzenta Tzafolias, Acting Director, AD/CVD Operations, Office 2, Re: Conversation with Petitioners' Counsel Concerning Petitioners' Requests for Administrative Reviews*, dated March 16, 2006. On March 21, 2006, the Petitioners submitted a letter addressing the items outlined in the Department's memorandum of March 16, 2006. In their letter Petitioners withdrew their request for review of certain companies.[2] On March 29, 2006, we received letters from certain companies in Ecuador and India which were named in Petitioners' review requests, alleging certain errors in the review requests. These letters were not received in time for full consideration prior to the Department's initiation of these reviews. The Department is now initiating administrative reviews of the orders covering the remaining 50 companies for Brazil, 71 companies for Ecuador, 347 companies for India, and 145 companies for Thailand.

Initiation of Reviews

In accordance with section 751(a)(1) of the Tariff Act of 1930, as amended ("the Act"), we are initiating administrative reviews of the antidumping duty orders on shrimp from Brazil, Ecuador, India and Thailand. We intend to issue the final results of these reviews not later than February 28, 2007.

BRAZIL

Antidumping Duty Proceeding	Period to be Reviewed
Certain Frozen Warmwater Shrimp, A–351–838	8/4/04 - 1/31/06
Acarau Pesca Distr. de Pesc. Imp e Exp Ltda..	
Acarau Pesca Distr. de Pescado Imp E Exp Ltda..	
Amazonas Industria Alimenticias SA0.	
Aquacultura Fortaleza Aquafort SA.	
Aquamaris Aquaculture SA.	
Aquática Maricultura do Brasil Ltda..	
Artico.	
Bramex Brasil Mercantil Ltda..	

[1] Ad Hoc Shrimp Trade Action Committee ("Petitioners").

[2] With respect to Brazil, Petitioners withdrew the request for administrative review for Potiguar Alimenbtos do Mar Ltda., the spelling of which contains a typographical error. Petitioners requested an administrative review of the company using the correct spelling, Potiguar Alimentos do Mar Ltda. With respect to India, Petitioners unintentionally duplicated a request for an administrative review of the company Tim Tim Far East Export Trading Co.(P) Ltd. The company should only have been listed once in Petitioners' administrative review requests.

BRAZIL—Continued

Antidumping Duty Proceeding	Period to be Reviewed
Camanor - Produtos Marinhos Ltda..	
Camaros do Brasil Ltda..	
Camexim Captura Mec Exports Imports.	
Campi Camaroa do Piaui Ltda..	
Central de Industria.	
Cida Central de Industria.	
Cida Central de Ind. E Distribuicao de Alimentos Ltda.+.	
Cina Companhia Nordeste de Aquicultura E Alimentação.	
Comercio de Pescado Aracatiense Ltda..	
Compescal - Comèrcio de Pescado Aracatiense LTDA.	
Empaf - Empresa de Armazenagem Frigorifica Ltda.[3]++.	
Empresa de Armazenagem Frigorifica Ltda.++.	
Guy Vautrin Importacao & Exportaco.	
Ipesca.	
ITA Fish - S.W.F. Importacao e Exportacao Ltda..	
J K Pesca Ltda..	
Juno Ind & Com de Pescados.	
Lusomar Maricultura Ltdá..	
Maricultura Netuno SA++.	
Maricultura Rio Grandense.	
Maricultura Tropical.	
Marine Maricultura do Nordeste.	
Marine Maricultura do Nordeste SA.	
Marine Maricultura Nordeste SA.	
MM Monteiro Pesca E Exportacao Ltda..	
Mucuripe Pesca Ltda., Epp..	
Norte Pesca SA.	
Ortico.	
Pesqueira Maguary Ltda.+++.	
Potiguar Alimentos do Mar Ltda..	
Potipora Aquacultura Ltda..	
Produmar - Cia Exportadora de Produtos do Mar+.	
Produvale Produtos do Vale Ltda..	
Qualimar Comercio Importaçao E Exportacao Ltda..	
Santa Lavinia Comercio e Exportacio Ltda..	
Seafarm Criacao E Comercio de Produtos Aquaticos Ltda..	
Secom Aquicultura Comercio E Industria SA.	
SM Pescados Indùstria Comèrcio E Exportação Ltda..	
SM Trading Industria E Comercio Ltda..	
Sohagro Marina do Nordeste SA.	
Tecmares Maricultura Ltda..	
Terracar Tdg Exp. E Imp. Ltda..	
Torquato Pontes Pescados.	
Valencia da Bahia Maricultura SA.	

[3] There was a clerical error in the original investigation preliminary margin calculation resulting in a dumping margin of zero and no suspension of liquidation for entries from this entity. As a result of correction of this clerical error, an affirmative margin resulted and suspension of liquidation began on August 30, 2004. *See Notice of Amended Preliminary Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 52860 (August 30, 2004).

+ In the original investigation, the Department found that the following companies comprised a single entity: Central de Industrializacao e Distribuicao de Alimentos Ltda. and Cia. Exportadora de Produtos do Mar (Produmar).

++ In the original investigation, the Department found that the following companies comprised a single entity: Empresa de Armazenagem Frigorifica Ltda. and Maricultura Netuno S.A.

+++Petitioners' requests for review included certain companies with identical names but different addresses. For purposes of initiation, we have treated these companies as separate entities.

ECUADOR

Certain Frozen Warmwater Shrimp, A–331–802	8/4/04 - 1/31/06
Agricola e Ind Ecuaplantatio.	
Agrol.	
Alquimia Marina SA.	
Babychic SA.	
Brimon.	
Camarones.	
Comar Co Ltda..	
Doblertel SA.	
Dunci SA.	
Eculine.	
Edpacif.	
El Rosario Ersa SA.	
Empacadora Bilbo Bilbosa.	
Empacadora del Pacifico SA, Edpacif SA.	

ECUADOR—Continued

Empacadora Dufer Cia. Ltda..	
Empacadora Grupo Granmar SA.	
Empacadora Nacional.	
Empacadora y Exportadora Calvi Cia. Ltda..	
Empagran.	
Emprede.	
Estar CA.	
Exporklore Exports & Representacion.	
Exportadora Bananera Noboa.	
Exportadora del Oceano Oceanexa C. A..	
Exports del Oceano.	
Fortumar Ecuador SA.	
Gambas del Pacifico.	
Gondi.	
Hectorosa.	
Industrial Pesquera Santa Priscila SA.	
Industrial Pesquera Santa Priscilla.	
Inepexa Inc..	
Inepexa SA.	
Jorge Luis.	
Jorge Luis Benitez Lopez.	
Karpicorp SA.	
Luis Loaiza Alvarez.	
Mardex Cia. Ltda..	
Marecuador Co Ltda..	
Marines CA.	
Marisco.	
Mariscos de Chupadores Chupamar.	
Mariscos del Ecuador c.l. Marecuador.	
Mariscos del Ecuador Marecuador Co..	
Negocios Industriales Real Nirsa SA.	
Novapesca SA.	
Oceaninvest SA.	
Oceanmundo SA.	
Oceanpro.	
Omarsa–Ope.y Proc.de Prod. Marinos SA.	
Oyerly SA.	
P.C. Seafood SA.	
Pacifish.	
PCC Congelados & Frescos SA.	
Pescazul.	
Peslasa SA.	
Phillips Seafoods.	
Procesadora del Rio Proriosa SA.	
Procesadora Del Rio SA Proriosa.	
Productos Cultivados del Mar Proc..	
Promarisco.	
Promarosa Productos.	
Proriosa sa Procesadora del Rio SA.	
Seafood Padre Aguirre.	
Sociedad Atlantico Pacifico.	
Sociedad Nacional de Galapagos.	
Soitgar.	
Studmark SA.	
Tecnica & Comercio de la Pesca Teco.	
Transmarina C. A..	
Unilines Transport System.	

INDIA

Certain Frozen Warmwater Shrimp, A–533–840	8/4/04 - 1/31/06
A.S Marine Industries Pvt Ltd..	
Abad Fisheries.	
Accelerated Freeze Drying Co., Ltd..	
Accelerated Freeze–drying Co..	
Adani Exportse.	
Aditya Udyog.	
Agri Marine Exports Ltd..	
AL Mustafa Exp & Imp.	
Alapatt Marine Exports.	
Alfuzz Frozen Foods Pvt. Ltd..	
All Seas Marine P. Ltd..	
Allana Frozen Foods Pvt. Ltd..	

INDIA—Continued

Allanasons Ltd..
Alsa Marine & Harvests Ltd..
Amalgam Foods & Beverages Limited.
Ameena Enterprises.
AMI Enterprises.
Amison Foods Ltd..
Amison Seafoods Ltd..
Amulya Seafoods.
Ananda Aqua Exports Private Limited.
Ananda Foods.
Andaman Seafoods Pvt. Ltd..
Anjaneya Seafoods.
Anjani Marine Traders.
Apex Exports.
Aqua Star Marine Foods.
Arsha Seafood Exports Pvt. Ltd..
ASF Seafoods.
Ashwini Frozen Foods.
Asvini Exports.
Asvini Fisheries.
Asvini Fisheries Limited.
Asvrm Fisheries Ltd..
Aswin Associates.
Atta Export.
Avanti Feeds Limited.
Ayshwarya Seafood Private Limited.
Baby Marine (Eastern) Exports.
Baby Marine Exports.
Baby Marine International.
Baby Marine Products.
Baby Marine Sarass.
Balaji Seafood Exports I Ltd..
Baraka Overseas Traders.
Bell Foods (Marine Division).
Bengal Marine Pvt. Ltd..
Bharat Seafoods.
Bhatsons Aquatic Products.
Bhavani Seafoods.
Bhisti Exports.
Bijaya Marine Products.
Bilal Fish Suppliers.
Blue Water Foods & Exports P. Ltd..
Bluefin Enterprises.
Bluepark Seafoods P. Ltd..
BMR Exports.
Brilliant Exports.
Britto Exports.
C P Aquaculture (India) Ltd..
Calcutta Seafoods.
Capital Freezing Complex.
Capithan Exporting Co..
Castlecrock Seafoods Ltd..
Castlerock Fisheries Ltd..
Central Calcutta Cold Storage.
Cham Exports Ltd..
Cham Ocean Treasures Co., Ltd..
Cham Trading Organization.
Chand International.
Chemmeens (Regd.).
Cherukattu Industries (Marine Div.).
Choice Canning Company.
Choice Trading Corporation Pvt. Ltd..
Coastal Trawlers Ltd..
Cochin Frozen Food Exports Pvt. Ltd..
Corlim Marine Exports Pvt. Ltd..
Corline Exports.
Danda Fisheries.
Dariapur Aquatic Pvt. Ltd..
Deepmala Marine Exports.
Devi Fisheries Limited.
Devi Marine Food Exports Ltd..
Devi Marine Food Exports Private Limited.
Devi Seafoods Limited.
Devi Seafoods Pvt. Ltd..

INDIA—Continued

Dhanamjaya Impex P. Ltd..
Diamond Seafoods Exports.
Digha Seafood Exports.
Dorothy Foods.
Edhayam Frozen Foods Pvt. Ltd..
El–Te Marine Products.
Esmorio Export Enterprises.
Excel Ice Services/Chirag Int'l.
Exporter Coreline Exports.
Falcon Marine Exports Limited.
Fernando Intrcontinental.
Firoz & Company.
Five Star Marine Exports.
Five Star Marine Exports Private Limited.
Forstar Frozen Foods Pvt. Ltd..
Freeze Engineering Industries (Pvt. Ltd.).
Frigerio Conserva Allana Limited.
Frontline Exports Pvt. Ltd..
G A Randerian Ltd..
G.K S Business Associates Pvt. Ltd..
Gadre Marine Exports.
Gajula Exim P. Ltd..
Galaxy Maritech Exports P. Ltd..
Gausia Cold Stoiage P. Ltd..
Gayathri Seafoods.
Geo Aquatic Products (P) Ltd..
Geo Seafoods.
Global Sea Foods & Hotels Ltd..
Goan Bounty.
Gold Farm Foods (P) Ltd..
Golden Star Cold Stoiage.
Gopal Seafoods.
Grandtrust Overseas (P) Ltd..
Gtc Global Ltd..
GVR Exports.
GVR Exports Pvt. Ltd..
HA & R Enterprises.
Hanjar Ice and Cold Storage.
Hanswati Exports P. Ltd..
Haripriya Marine Food Exports.
HIC ABF Special Foods Pvt. Ltd..
Hindustan Lever, Ltd..
Hiravata Ice & Cold Storage.
Hiravati Exports Pvt. Ltd..
Hiravati International P. Ltd..
HMG Industries Ltd..
Honest Frozen Food Company.
I Ahamed & Company.
IFB Agro Industries Ltd. (Aquatic & Marine Products Div.).
India Seafoods.
Indian Aquatic Products.
Indian Seafood Corporation.
Indo Aquatics.
Innovative Marine Foods Limited/Amalgam Foods Limited.
Interfish.
International Freezefish Exports.
InterSea Exports Corporation.
Interseas.
ITC Ltd..
J R K Seafoods Pvt. Ltd..
Jagadeesh Marine Exports.
Jaya Satya Marine Exports.
Jayalakshmi Seafoods (P) Ltd..
Jaya Lakshmi Sea Foods Pvt. Ltd..
Jinny Marine Traders.
K.R.M. Marine Exports.
K R M Marine Exports Ltd..
K.V Marine Exports.
Kadalkanny Frozen Foods.
Kader Exports.
Kader Exports Private Limited.
Kader Inyestment and Trading Company Private Limited.
Kalyanee Marine.
Kaushalya Aqua Marine Product Exports Pvt. Ltd..

INDIA—Continued

Kay Kay Exports.
Keshodwala Foods.
Key Foods.
King Fish Industries.
Kings Marine Products.
KNR Marine Exports.
Koluthara Exports Ltd..
Konark Aquatics & Exports Pvt. Ltd..
Konkan Fisheries Pvt. Ltd..
L.G Seafoods.
Lakshmi Marine Products.
Lansea Foods Pvt. Ltd..
Laxmi Narayan Exports.
Lewis Natural Foods Ltd..
Liberty Frozen Foods Private Limited.
Liberty Group.
Liberty Oil Mills.
Libran Cold Storages (P) Ltd..
Lotus Sea Farms.
Lourde Exports.
M K Exports.
M.R.H. Trading Company.
Magnum Estate Private.
Magnum Estate Private Limited.
Magnum Exports.
Magnum Seafoods Pvt. Ltd..
Malabar Marine Exports.
Malnad Exports Pvt. Ltd..
Mamta Cold Storage.
Mangala Marine Exim Pvd. Ltd..
Mangala Sea Products.
Manufacturer Falcon Marine Exports.
Marina Marine Exports.
Marine Food Packers.
Markoorlose Sea Foods.
Meenaxi Fisheries Pvt. Ltd..
Miki Exports International.
MSC Marine Exporters.
Msngr Aqua Intl.
Mumbai Kamgar MGSM Ltd..
N.C Das & Company.
Naga Hanuman Fish Packers.
Naik Ice & Cold Storage.
Naik Seafoods Ltd..
Nas Fisheries Pvt Ltd..
National Seafoods Company.
National Steel.
National Steel & Agro Ind..
Navayuga Exports Ltd..
Navyauga Exports.
Nekkanti Sea Foods Limited.
New Royal Frozen Foods.
NG.R Aqua International.
Nila Seafoods Pvt. Ltd..
Noble Aqua Pvt. Ltd..
Noorani Exports Pvt. Ltd..
Nsil Exports.
Omsons Marines Ltd..
Overseas Marine Export.
Padmaja Exports.
Partytime Ice Pvt Ltd..
Penver Products (P) Ltd..
Philips Foods India Pvt Ltd..
Pijikay International Exports P Ltd..
Pisces Seafood International.
Premier Exports International.
Premier Marine Foods.
Premier Marine Products.
Premier Seafoods Exim (P) Ltd..
Pronto Foods Pvt. Ltd..
R F. Exports.
R K Ice & Cold Storage.
Raa Systems Pvt. Ltd..
Rahul Foods (GOA).

INDIA—Continued

Rahul International.
Raj International.
Raju Exports.
Ramalmgeswara Proteins & Foods Ltd..
Rameshwar Cold Storage.
Ram's Assorted cold Storage Ltd..
Raunaq Ice & Cold Storage.
Ravi Frozen Foods Ltd..
Raysons Aquatics Pvt. Ltd..
Razban Seafoods Ltd..
RBT Exports.
Reddy & Reddy Importers & Exports.
Regent Marine Industries.
Relish Foods.
Riviera Exports Pvt. Ltd..
Rohi Marine Private Ltd..
Royal Cold Storage India P Ltd..
Royal Link Exports.
Rubian Exports.
Ruby Marine Foods.
Ruchi Worldwide.
RVR Marine Products.
S & S Seafoods.
S A Exports.
S B Agro (India) Ltd..
S Chanchala Combines.
S K Exports (P) Ltd..
S S International.
Saanthi Seafoods Ltd..
Sabri Food Products.
Safa Enterprises.
Sagar Foods.
Sagar Grandhi Exports Pvt. Ltd..
Sagar Samrat Seafoods.
Sagrvihar Fisheries Pvt. Ltd., 9.
Sai Marine Exports Pvt. Ltd..
Salet Seafoods Pvt Ltd..
Samrat Middle East Exports (P) Ltd..
Sanchita Marine Products P Ltd..
Sandhya Marines Limited.
Santhi Fisheries & Exports Ltd..
Sarveshwari Ice & Cold Storage P Ltd..
Satya Seafoods Private Limited.
Satyam Marine Exports.
Sawant Food Products.
Sea Rose Marines (P) Ltd..
Seagold Overseas Pvt. Ltd..
Sealand Fisheries Ltd..
Seaperl Industries.
Selvam Exports Private Limited.
Sharon Exports.
Shart Industries Ltd..
Sheimar Seafoods Ltd..
Shimpo Exports.
Shipper Exporter National Steel.
Shivaganga Marine Products.
Shroff Processed Food & Cold ZStorage P Ltd..
Siddiq Seafoods.
Silver Seafood.
Sita Marine Exports.
Skyfish.
SLS Exports Pvt. Ltd..
Sonia Fisheries.
Sourab.
Sprint Exports.
Sree Vaialakshrm Exports.
Sreevas Export Enterprises.
Sri Chandrakantha Marine Exports, Ltd..
Sri Sakthi Marine Products P Ltd..
Sri Satya Marine Exports.
Sri Sidhi Freezers & Exporters Pvt. Ltd..
Sri Venkata Padmavathi Marine Foods Pvt. Ltd..
SSFLtd..
Star Agro Marine Exports Private Limited.

INDIA—Continued

Star Fish Exports.	
Sterling Foods.	
Sun–Bio Technology Limited.	
Supreme Exports.	
Surya Marine Exports.	
Suvarna Rekha Exports Private Limited.	
Suvarna Rekha Marines P Ltd..	
Swarna Seafoods Ltd..	
TBR Exports Pvt Ltd..	
Teekay Maine P. Ltd..	
The Canning Industries (Cochin) Ltd..	
The Waterbase Ltd..	
Theva & Company.	
Tim Tim Far East Export Trading Co.(P) Ltd..	
Tony Harris Seafoods Ltd..	
Tri Marine Foods Pvt. Ltd..	
Trinity Exports.	
Tri–Tee Seafood Company.	
Triveni Fisheries P Ltd..	
Ulka Seafoods (P) Ltd..	
Uniroyal Marine Exports Ltd..	
Universal Cold Storage Limited.	
Upasana Exports.	
Usha Seafoods.	
V Marine Exports.	
V.S Exim Pvt Ltd..	
Vaibhav Sea Foods.	
Vamita Cold Storage.	
Veejay Impex.	
Veraval Marines & Chemicals P Ltd..	
Victoria Marine & Agro Exports Ltd..	
Vijayalaxmi Seafoods.	
Vinner Marine.	
Waterbase.	
Wellcome Fisheries Limited.	
Wellcome Fisheries (P) Ltd..	
Winner Seafoods.	
Wisdom Marine Exports.	
Z A. Food Products.	

THAILAND

Certain Frozen Warmwater Shrimp, A–549–822	8/4/04 - 1/31/06
ACU Transport.	
Ampai Frozen Food Co., Ltd..	
Andaman Seafood Co., Ltd.*.	
Anglo–Siam Seafoods Co., Ltd..	
Applied DB Ind.	
AS Intermarine Foods Co., Ltd..	
Asian Seafoods Cold Storage Public Co., Ltd..	
Asian Seafoods Coldstorage (Suratthani) Company Limited.	
Asia Pacific Thailand.	
Assoc. Commercial Systems.	
Bangkok Dehydrated Marine Product Co., Ltd..	
Bright Sea Co., Ltd. **.	
C.Y. Frozen Food Co., Ltd..	
Capital Food Trade Limited.	
Chaivaree Marine Products Co., Ltd..	
Chaiwarut Co., Ltd..	
Chantaburi Seafood Co., Ltd.*, ****.	
Chanthaburi Frozen Foods Co., Ltd.*.	
Charoen Pokphand Foods Plc.	
Chonburi L C.	
Chue Eie Mong Eak.	
C P Mdse.	
Crystal Frozen Foods.	
Daedong (Thailand) Co. Ltd..	
Daiei Taigen (Thailand) Co., Ltd..	
Daiho (Thailand) Co., Ltd..	
Dynamic Intertransport.	
Euro–Asian International Seafoods Co., Ltd..	
Far East Cold Storage Co., Ltd..	
Fait.	

THAILAND—Continued

Findus (Thailand) Co., Ltd..
Fortune Frozen Foods (Thailand) Co., Ltd..
Frozen Marine Products Co., Ltd..
Gallant Ocean (Thailand) Co., Ltd..
Good Fortune Cold Storage Co., Ltd..
Good Luck Products Co., Ltd..
Haitai Seafood Co., Ltd.***.
Ham Intl.
Heng Seafood Ltd. Part..
Heritrade.
High Way International Co., Ltd..
Instant Produce.
Inter–Oceanic Resources Co., Ltd.***.
Inter–Pacific Marine Products Co., Ltd..
K D Trdg.
Kiang Huat Sea Gull Trading Frozen Food Public Co., Ltd..
Kingfisher Holdings Ltd.***.
Kitchens of the Ocean (Thailand) Ltd..
Klang Co., Ltd..
Klang Co., Ltd..
Kongphop Frozen Foods Co., Ltd..
Lee Heng Seafood Co., Ltd..
Leo Transports.
Li–Thai Frozen Foods Co., Ltd..
Lucky Union Foods.
Magnate & Syndicate Co., Ltd..
Mahachai Food Processing Co., Ltd..
Marine Gold Products Co., Ltd..
May Ao Co., Ltd..
May Ao Foods Co., Ltd..
Merkur Co., Ltd..
Ming Chao Ind Thailand.
MKF Interfood.
N&N Foods Co., Ltd..
Namprik Maesri.
Narong Seafood Co., Ltd.***.
Nongmon SMJ Products.
N R Instant Produce.
Ongkorn Cold Storage Co., Ltd..
Pacific Queen Co., Ltd..
Pakfood Public Company Limited.
Penta Impex.
Preserved Foods.
Phattana Seafood Co., Ltd.*.
Piti Seafoods Co., Ltd..
Premier Frozen Products Co., Ltd..
Queen Marine Food Co., Ltd..
Rayong Coldstorage (1987) Co., Ltd..
Samui Foods.
S&D Marine Products Co., Ltd..
S.C.C. Frozen Seafood Co., Ltd.*.
SCT Co., Ltd..
S. Chaivaree Cold Storage Co., Ltd..
Sea Bonanza Food Co., Ltd.***.
Seafoods Enterprise Co., Ltd..
Seafresh Industry Public Co., Ltd..
Seafresh Fisheries.
Search & Serve.
Shianlin Bangkok Co., Ltd.***.
Siam Food Supply Co., Ltd..
Siam Intersea Co., Ltd..
Siamchai International Food Co., Ltd..
Siam Marine Products.
Siam Ocean Frozen Foods.
Siam Union Frozen Foods.
Sky Fresh.
S Khonkaen Food Ind Public.
S Khonkaen Food Ind.
Smile Heart Foods.
SMP Food Products Co., Ltd..
Songkla Canning.
STC Foodpak Co., Ltd..
Suntechthai Intertrdg.
Surapon Seafoods Public Co., Ltd..

THAILAND—Continued

Surapon Nichirei Foods Co., Ltd..
Surat Seafood Co., Ltd.
Suratthani Marine Products Co., Ltd..
Suree Interfoods.
Takzin Ssmut.
Tey Seng Cold Storage Co., Ltd..
Tep Kinsho Foods.
Teppitak Seafood.
Thai Agri Foods.
Thai Excel Foods Co., Ltd..
Thai I–Mei Frozen Foods Co., Ltd..
Thai International Seafoods Co., Ltd.*, ****.
Thai Mahachai Seafood Products Co., Ltd..
Thai Prawn Culture Center Co., Ltd..
Thai Royal Frozen Food.
Thai Spring Fish Co., Ltd..
Thai Union Frozen Products Public Co., Ltd..
Thai Union Mfg..
Thai Union Seafood Co., Ltd..
Thai–Ger Marine Co., Ltd.
Thailand Fishery Cold Storage Public Co., Ltd.*.
Thai World Imports & Exports.
Thai Yoo.
Thanaya Intl.
The Siam Union Frozen Food Co., Ltd..
The Union Frozen Products Co., Ltd.**.
Trang Seafood Products Public Co., Ltd..
Transamut Food Co., Ltd..
United Cold Storage Co., Ltd..
Wales & Co. Universe Ltd.*.
Wann Fisheries Co., Ltd..
Xian - Ning Seafood Co., Ltd..
Y2K Frozen Foods Co., Ltd.*.
Yeenin Frozen Foods Co., Ltd..
Yong Siam Enterprise Co., Ltd..

* In the original investigation, the Department found that the following companies comprised a single entity: Andaman Seafood Co., Ltd., Chantaburi Seafood Co., Ltd., Chanthaburi Frozen Foods Co., Ltd., Phattana Seafood Co., Ltd., S.C.C. Frozen Seafood Co., Ltd., Thai International Seafoods Co., Ltd., Thailand Fishery Cold Storage Public Co., Ltd., Wales & Co. Universe Ltd., and Y2K Frozen Foods Co., Ltd.

** In the original investigation, the Department found that the following companies comprised a single entity: Union Frozen Products Co., Ltd. and Bright Sea Co., Ltd.

***Petitioners' requests for review included certain companies with identical names but different addresses. For purposes of initiation, we have treated these companies as separate entities.

****Petitioners requested that the Department conduct an administrative review of this company, but provided two different addresses for the same company. According to the record of the less–than-fair–value investigation, one of the addresses pertains to the company's office and the other pertains to the plant/factory. *See* the memorandum from The Team to the File entitled "Placing Information on the Record of the 2004–2006 Administrative Review on Certain Frozen Warmwater Shrimp from Thailand," dated March 31, 2006.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise because of the large number of such companies, section 777A(c)(2) of the Act permits the Department to limit its examination to either: (1) a sample of exporters, producers or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of subject merchandise from the exporting country that can be reasonably examined.

Due to the large number of firms requested for these administrative reviews and the resulting administrative burden to review each company for which a request has been made, the Department is considering exercising its authority to limit the number of respondents selected for review. *See* section 777A(c)(2) of the Act.

The Department has not yet determined the appropriate methodology to employ in limiting respondent selection. As described above, the Department may use a statistically valid sample or select the largest exporters and producers, by volume. Should the Department determine to sample the exporters, it will employ the following procedures: the Department will 1) issue a letter to the interested parties detailing the proposed sampling methodology; 2) after analyzing the parties' comments, finalize its sampling methodology; 3) notify the parties and invite them to send a representative to witness the sampling selection; 4) conduct the sampling exercise; 5) notify all interested parties of the selection outcome of the sampling exercise (selected respondents will be issued the full antidumping questionnaire); and 6) record the results in a memorandum to the file.

Withdrawal of Request For Administrative Review

Section 351.213(d)(1) of the Department's regulations provides that the Secretary will rescind an administrative review if the party that requested the review withdraws the request within 90 days of the date of publication of the notice in the **Federal Register**. Although the regulation provides that the Secretary may extend this deadline, it is unlikely that the Department will be able to grant any such extensions for these particular administrative reviews, due to the time

constraints imposed by our statutory deadlines.[4]

Quantity and Value ("Q&V") Questionnaire

In advance of issuance of the antidumping questionnaire, we will also be requiring all parties for whom a review is requested to respond to a Q&V questionnaire, which will request information on the respective quantity and U.S. dollar sales value of all exports of shrimp to the United States during the period August 4, 2004, through January 31, 2006. The Q&V questionnaire will be available on the Department's website at *http://ia.ita.doc.gov/* on April 3, 2006. The responses to the Q&V questionnaire are due to the Department by close of business on April 28, 2006. Due to the time constraints imposed by our statutory and regulatory deadlines, the Department may be unable to grant any extensions for the submission of the Q&V questionnaire responses. In responding to the Q&V questionnaire, please refer to the instructions contained in the Q&V questionnaire.

Notice

This notice constitutes public notification to all firms requested for review that a complete response to the Q&V questionnaire, within the time limits established in this notice of initiation is required in order for such information to receive consideration. For parties that fail to timely respond to the Q&V questionnaire, the Department may resort to the use of facts otherwise available, and may employ an adverse inference if the Department determines that the party failed to cooperate by not acting to the best of its ability. All information submitted by respondents in these administrative reviews is subject to verification. As discussed above, due to the large number of parties in these proceedings, and the Department's need to complete its proceedings within the statutory deadlines, the Department will be limited in its ability to extend deadlines on the above submissions. As noted above, the Q&V questionnaire will be available on the Department's website at *http://ia.ita.doc.gov/* on April 3, 2006.

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305. Instructions for filing such applications may be found on the Department's website at *http://ia.ita.doc.gov/*.

[4] Should the Department use sampling, the need to preserve the statistical validity of the sampling methodology will further limit the Department's ability to grant such extensions.

This initiation and notice are in accordance with section 751(a)(1) of the Act and 19 CFR 351.221(c)(1)(i).

Dated: March 31, 2006.

Irene Darzenta Tzafolias,

Acting Director, AD/CVD Operations, Office 2, for Import Administration.

[FR Doc. E6–5117 Filed 4–6–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker from Mexico: Rescission of Antidumping Duty Administrative Review and Compromise of Outstanding Claims

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

EFFECTIVE DATE: April 3, 2006

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3477 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION:

Rescission of Review

In August 2004, the petitioner, the Southern Tier Cement Committee, requested a review of the antidumping duty order on gray portland cement and clinker from Mexico with respect to sales by CEMEX, S.A. de C.V. (CEMEX), and CEMEX's affiliate, GCC Cemento, S.A. de C.V. (GCCC), during the period August 1, 2004, through July 31, 2005. In addition, in August 2005, CEMEX and GCCC requested reviews of their sales for the same period. On September 28, 2005, the Department published in the **Federal Register** a notice of initiation of this administrative review. See *Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review* (70 FR 56631).

On March 6, 2006, the petitioner, CEMEX, and GCCC withdrew their requests for review and requested that the Department rescind the administrative review.

Compromise of Outstanding Claims

On March 6, 2006, the Office of the United States Trade Representative, the United States Department of Commerce, and Secretaria de Economia of the Government of Mexico entered into an Agreement on Trade in Cement (Agreement). Effective April 3, 2006, the Agreement compromises all claims to outstanding duties from August 1, 2004, through April 2, 2006, pursuant to Section 617 of the Tariff Act of 1930, as amended (the Act). In accordance with the terms of the Agreement, all parties that requested this administrative review (*i.e.*, the petitioner, CEMEX, and GCCC) have submitted letters withdrawing their requests for an administrative review. See Section II. 7.a. and Appendix 9 of the Agreement. Also, see letter from CEMEX to the Department dated March 6, 2006, letter from GCCC to the Department dated March 6, 2006, and letter from the petitioner to the Department dated March 6, 2006. Section 351.213(d)(1) of the Department's regulations states that the Department will rescind an administrative review if a party requesting the review withdraws the request within 90 days of the publication of the notice of initiation. Further, 19 CFR 351.213(d)(1) allows the Department to extend the 90-day deadline if it considers it reasonable to do so. These requests are past the 90-day time limit but we find that it is reasonable to extend the deadline. Therefore, we are rescinding the review of the period August 1, 2004, through July 31, 2005.

In accordance with the terms of the Agreement, we will instruct U.S. Customs and Border Protection (CBP) to liquidate entries of cement produced or exported by CEMEX and GCCC which entered the United States during the period August 1, 2004, through July 31, 2005, at a rate of ten U.S. cents ($0.10) per metric ton. Further, because the Agreement compromises all claims through April 2, 2006, we will instruct CBP to liquidate entries of cement produced or exported by CEMEX and GCCC which entered the United States during the period August 1, 2005, through April 2, 2006, at a rate of ten U.S. cents ($0.10) per metric ton.

This notice is in accordance with section 777(i) of the Act and 19 CFR 351.213(d)(4).

Dated: April 3, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–5115 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker from Mexico: Notice of Amended Final Results of Antidumping Duty Administrative Reviews

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

EFFECTIVE DATE: April 3, 2006

FOR FURTHER INFORMATION CONTACT: Jeffrey Frank or Minoo Hatten, AD/CVD Operations, Office 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0090 or (202) 482–1690, respectively.

SUPPLEMENTARY INFORMATION: On August 30, 1990, the Department of Commerce (the Department) published the antidumping duty order on gray portland cement and clinker from Mexico (Mexican cement). See *Antidumping Duty Order: Gray Portland Cement and Clinker From Mexico*, 55 FR 35443. Since the antidumping duty order was issued, CEMEX, S.A. de C.V. (CEMEX), GCC Cemento, S.A. de C.V. (GCCC), and the domestic industry, the Southern Tier Cement Committee (STCC), have challenged aspects of the various administrative reviews and the sunset review the Department has conducted of the order on Mexican cement before North American Free Trade Agreement (NAFTA) panels. They have also challenged certain International Trade Commission (ITC) determinations before NAFTA panels.

On March 6, 2006, the Office of the United States Trade Representative, the United States Department of Commerce, and Secretaria de Economia of the Government of Mexico entered into an Agreement on Trade in Cement (Agreement). As part of the Agreement, the Department and all parties involved in the outstanding litigation have agreed to settle many of these disputes. Pursuant to this settlement of litigation, each complaining party has agreed to request termination of each outstanding challenge before a NAFTA panel listed below.

Review	Period	NAFTA Panel #	Federal Register Notice
6	95/96	USA–MEX–98–1904–02	63 FR 12764 (3/16/98); as amended by 63 FR 24528 (5/4/98)
8	97/98	USA–MEX 2000–1904–03	65 FR 13943 (3/15/00)
9	98/99	USA–MEX–2001–1904–04	66 FR 14889 (3/14/01); as amended by 66 FR 24324 (5/14/01)
10	99/00	USA–MEX–2002–1904–05	67 FR 12518 (3/19/02)
11	00/01	USA–MEX–2003–1904–01	68 FR 1816 (1/14/03); as amended by 68 FR 7346 (2/13/03)
12	01/02	USA–MEX–2003–1904–03	68 FR 54203 (9/16/03); as amended by 68 FR 60083 (10/21/03)
13	02/03	USA–MEX–2004–1904–03	69 FR 77989 (12/29/04)
14	03/04	USA–MEX–2006–1904–03	71 FR 2909 (1/18/06)

Every contested review period covered by these amended final results begins on August 1st and ends on July 31st of the following year.

According to the Agreement and as part of the settlement of litigation, each complaining party requested termination of each of the listed challenges before a NAFTA panel. The NAFTA Secretariat has terminated the reviews in accordance with the parties' consent. Having a final and conclusive resolution of these contested administrative reviews, the Department is amending the final results of the contested reviews and will instruct U.S. Customs and Border Protection (CBP) to liquidate entries covered by the contested reviews. The Agreement stipulates that any entries of cement produced by CEMEX or GCCC will be assessed antidumping duties equal to $.10 per metric ton. The Agreement also stipulates, pursuant to the settlement of litigation covering the fourteenth administrative review, that the Department will instruct CBP to revise the cash–deposit rate effective April 3, 2006, for entries of Mexican cement produced or exported by CEMEX or GCCC to $3.00 per metric ton.

Assessment of Duties

We are now amending the final results of these reviews of the antidumping duty order on Mexican cement to reflect the terms of the Agreement. Consequently, we determine that the per–unit amount to be assessed on all entries of Mexican cement produced by CEMEX or GCCC is $.10 per metric ton for the contested reviews.

Accordingly, the Department will instruct CBP to assess appropriate antidumping duties on the affected entries of the subject merchandise during the contested review periods. The Department will issue assessment instructions to CBP within 15 days of publication of this notice.

Cash–Deposit Requirements

As provided by section 751(a)(1) of the Tariff Act of 1930, as amended, and as stipulated in the Agreement with regard to the settlement of the fourteenth administrative review, the cash–deposit rate for all shipments of Mexican cement produced or exported by CEMEX and GCCC entered, or withdrawn from warehouse, for consumption on or after April 3, 2006, shall be $3.00 per metric ton. The deposit requirements shall remain in effect until further notice.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act of 1930, as amended.

Dated: April 3, 2006.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E6–5116 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting Gray

Portland Cement and Clinker from Mexico, 6th Administrative Review (Secretariat File No. USA–MEX–98–1904–02).

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel review of the above noted case is terminated as of April 3, 2006. A panel has been appointed to this panel review and has been dismissed in accordance with the *Rules of Procedure for Article 1904 Binational Panel Review*, effective April 3, 2006.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5062 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico, 8th Administrative Review (Secretariat File No. USA–MEX–2000–1904–03).

SUMMARY: Pursuant to the negotiated settlement between the United States and the Mexican industries the panel review of the above noted case is terminated as of April 3, 2006. No panel has been appointed to this panel review.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5063 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the Commerce full sunset review of the dumping order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico, Secretariat File No. USA–MEX–2000–1904–05.

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel review of the above noted case is terminated as of April 3, 2006. A panel has been appointed to this panel review and has been dismissed in accordance with the settlement agreement, effective April 3, 2006.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5064 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico, 9th Administrative Review (Secretariat File No. USA–MEX–2001–1904–04).

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel review of the above noted case is terminated as of April 3, 2006. No panel has been appointed to this panel review.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5065 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the Denial of Request for Initiation of Changed Circumstances review made by the International Trade Commission, respecting Gray Portland Cement and Clinker from Mexico, Secretariat File No. USA–MEX–2002–1904–01.

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel review of the above noted case is terminated as of April 3, 2006. No panel has been appointed to this panel review.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5066 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico, 10th Administrative Review (Secretariat File No. USA–MEX–2002–1904–05).

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel review of the above noted case is terminated as of April 3, 2006. No panel has been appointed to this panel review.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5067 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico, 11th Administrative Review (Secretariat File No. USA–MEX–2003–1904–01).

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel review of the above noted case is terminated as of April 3, 2006. No panel has been appointed to this panel review.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5068 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico, 12th Administrative Review (Secretariat File No. USA–MEX–2003–1904–03).

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel review of the above noted case is terminated as of April 3, 2006. No panel has been appointed to this panel review.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5069 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico, 13th Administrative Review (Secretariat File No. USA–MEX–2004–1904–03).

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel review of the above noted case is terminated as of April 3, 2006. No panel has been appointed to this panel review.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5070 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Stay of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Stay of Panel Review of the Final Results of Full Sunset Review made by the International Trade Commission, respecting Gray Portland Cement and Clinker from Mexico, Secretariat File No. USA–MEX–2000–1904–10.

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel proceedings of the above noted case is stayed as of April 3, 2006 until April 1, 2009. A panel was appointed to this panel review and no further action will be taken in the administration of this case effective April 3, 2006 through April 1, 2009.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules, stayed in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5071 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting Gray Portland Cement and Clinker from Mexico, 14th Administrative Review (Secretariat File No. USA–MEX–2006–1904–03).

SUMMARY: Pursuant to the negotiated settlement between the United States and Mexican industries, the panel review of the above noted case is terminated as of April 3, 2006. No panel has been appointed to this panel review.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested pursuant to these Rules and terminated in accordance with the settlement agreement.

Dated: April 3, 2006.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. E6–5072 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040306B]

Atlantic Coastal Fisheries Cooperative Management Act Provisions; Application for Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of a request for Exempted Fishing Permits to conduct experimental fishing; request for comments.

SUMMARY: This Exempted Fishing Permit (EFP) application is a continuation of a collaborative project involving the University of New Hampshire (UNH), Durham, New Hampshire (NH); the Lobster Conservancy, Friendship, Maine; the New England Aquarium, Boston, Massachusetts; and the Atlantic Offshore Lobstermen's Association, Candia, NH. The EFP proposes to continue monitoring a total of 150 legal sized egg bearing female lobsters (berried lobsters) carrying early-stage eggs until the eggs mature and are released. Each berried lobster will be tagged and fitted with a small ambient temperature recording device (Tidbit temperature-loggers) and then the movement and egg-development stages of these tagged berried lobsters will be documented. When a tagged berried lobster is recaptured in commercial lobster gear, participating lobstermen will download thermal data from the attached Tidbit temperature-logger, and also preserve a maximum of 10 eggs from each tagged berried lobster to allow researchers to estimate the egg developmental stage and time to maturity. The tagged berried lobsters will then be released unharmed. The EFP would waive the prohibition on removal of eggs specified at 50 CFR 697.7(c)(1)(iv) for a maximum of 16 participating vessels and is limited to the 150 pre-tagged berried lobsters in this project.

The Director, State, Federal and Constituent Programs Office, Northeast

Region, NMFS (Office Director) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Office Director has also made a preliminary determination that the activities authorized under the EFPs would be consistent with the goals and objectives of Federal management of the American lobster resource. However, further review and consultation may be necessary before a final determination is made to issue EFPs. Therefore, NMFS announces that the Office Director proposes to issue EFPs that would allow a maximum of 16 Federally permitted commercial fishing vessels to participate in the continuation of a project designed to monitor the movement of berried lobsters in two inshore locations in the vicinity of Portsmouth, New Hampshire, and Friendship, Maine, and in two offshore locations along the northern edge of Georges Bank and in Corsair and Lydonia Canyons to the southeast of Georges Bank.

This project would not involve the authorization of any additional trap gear, and all trap gear would conform to existing Federal lobster regulations. There would be no anticipated adverse effects on protected resources or habitat as a result of this research. Therefore, this document invites comments on the issuance of EFPs to allow a maximum of 16 commercial fishing vessels in possession of Federal lobster permits to remove a maximum of 10 eggs each time any one of the 150 tagged berried lobsters are captured during the course of normal fishing operations in the designated study areas.

DATES: Comments on this lobster EFP notification for berried lobster monitoring and data collection must be received on or before April 24, 2006.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930–2298. Mark the outside of the envelope "Comments - Lobster EFP Proposal". Comments also may be sent via facsimile (fax) to 978–281–9117. Comments on the Lobster EFP Proposal may be submitted by e-mail. The mailbox address for providing e-mail comments is *Lobster2006@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: "Comments - Lobster EFP Proposal".

FOR FURTHER INFORMATION CONTACT: Bob Ross, Fishery Management Specialist, (978) 281–9234, fax (978)-281–9117.

SUPPLEMENTARY INFORMATION:

Background

The regulations that govern exempted fishing, at 50 CFR 600.745(b) and 697.22 allow the Regional Administrator to authorize for limited testing, public display, data collection, exploration, health and safety, environmental clean-up, and/or hazardous removal purposes, and the targeting or incidental harvest of managed species that would otherwise be prohibited. An EFP to authorize such activity may be issued, provided there is adequate opportunity for the public to comment on the EFP application, the conservation goals and objectives of Federal management of the American lobster resource are not compromised, and issuance of the EFP is beneficial to the management of the species.

The American lobster fishery is one of the most valuable fisheries in the northeastern United States. In 2004, approximately 75 million pounds (34,169 metric tons (mt)) of American lobster were landed with an ex-vessel value of approximately 315 million dollars. Operating under the Atlantic States Marine Fisheries Commission's interstate management process, American lobster are managed in state waters under Amendment 3 to the American Lobster Interstate Fishery Management Plan (Amendment 3). In Federal waters of the Exclusive Economic Zone (EEZ), lobster is managed under Federal regulations at 50 CFR part 697. Amendment 3, and compatible Federal regulations established a framework for area management, which includes industry participation in the development of a management program which suits the needs of each lobster management area while meeting targets established in the Interstate Fisheries Management Program. The industry, through area management teams, with the support of state agencies, have played a vital role in advancing the area management program.

American lobster experience very high fishing mortality rates throughout their range, from Canada to Cape Hatteras, North Carolina. Although harvest and population abundance are near record levels due to high recent recruitment and favorable environmental conditions, there is significant risk of a sharp drop in abundance, and such a decline would have serious implications. To facilitate the development of effective management tools, extensive monitoring and detailed data on the biology and composition of lobsters throughout the range of the resource are necessary. To facilitate effective management, this proposed EFP would monitor egg growth and development of tagged berried lobsters in four study areas using traditional lobster trap gear.

Proposed EFP

The EFP proposes to continue the collection of statistical and scientific information as part of a project, originally announced in the **Federal Register** on October 21, 2004 (69 FR 19165), that is designed to monitor the movement of tagged berried lobsters to collect data that will assist in the assessment of the lobster resource and in the development of management practices appropriate to the fishery. Participants in this project are funded by, and under the direction of the Northeast Consortium, a group of four research institutions (University of New Hampshire, University of Maine, Massachusetts Institute of Technology, and Woods Hole Oceanographic Institution) which are working together to foster this initiative.

Each of the maximum of 16 commercial fishing vessels in possession of Federal lobster permits involved in this monitoring and data collection program would collect temperature data and a maximum of 10 eggs from each tagged berried lobster harvested using traditional lobster trap gear. Participating vessels would collect data from each of the four general study areas in the vicinity of Portsmouth, New Hampshire, and Friendship, Maine, the northern edge of Georges Bank and in the vicinity of Corsair and Lydonia Canyons along the southern edge of Georges Bank. This EFP would not involve the authorization of any additional lobster trap gear in the study areas. The participating vessels may retain on deck tagged egg bearing female lobsters, in addition to legal lobsters, for the purpose of collecting temperature data from the attached Tidbit temperature-loggers, and for the purpose of collecting a maximum of 10 eggs from each tagged berried lobster to allow researchers to estimate the egg developmental stage and time to maturity. All berried lobsters would be returned to the sea as quickly as possible after data collection. Pursuant to 50 CFR 600.745(b)(3)(v), the Regional Administrator may attach terms and conditions to the EFP consistent with the purpose of the exempted fishing.

This project would not involve the authorization of any additional lobster trap gear. All traps fished by the participating vessels would comply with all applicable lobster regulations specified at 50 CFR part 697. To allow for the collection of temperature data and the removal of a maximum of 10 eggs from each tagged berried lobster,

the EFP would waive the American lobster prohibition on removal of eggs specified at 50 CFR 697.7(c)(1)(iv). All sample collections would be conducted by a maximum of 16 federally permitted commercial fishing vessels, during the course of regular commercial fishing operations. There would not be observers or researchers onboard every participating vessel.

This project, including the lobster handling protocols, was initially developed in consultation with University of New Hampshire scientists. To the greatest extent practicable, these handling protocols are designed to avoid unnecessary adverse environmental impact on lobsters involved in this project, while achieving the data collection objectives of this project.

Authority:

16 U.S.C. 1801 *et seq.*

Dated: April 3, 2006.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–5119 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033006D]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of Spain under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the Eastern Tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Spain and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The renewal is effective from April 1, 2006, through March 31, 2007.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980–4000; fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Spain or obtained from the IATTC and the Department of State and has determined that Spain has met the MMPA's requirements to receive an annual affirmative finding renewal.

After consultation with the Department of State, the Assistant Administrator issued the Government of Spain's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction. Spain's affirmative finding will remain valid through March 31, 2010, subject to subsequent annual reviews by NMFS.

Dated: April 3, 2006.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–5120 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033006C]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of Mexico under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the Eastern Tropical Pacific Ocean(ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The renewal is effective from April 1, 2006, through March 31, 2007.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213; phone 562–980–4000; fax 562–980–4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based

upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Mexico or obtained from the IATTC and the Department of State and has determined that Mexico has met the MMPA's requirements to receive an annual affirmative finding renewal.

After consultation with the Department of State, the Assistant Administrator issued the Government of Mexico's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction. Mexico's affirmative finding will remain valid through March 31, 2010, subject to subsequent annual reviews by NMFS.

Dated: April 3, 2006.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. E6–5121 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Contracting Policy for Hydrographic Services

AGENCY: National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Notice and Request for Comment.

SUMMARY: The NOAA National Ocean Service (NOS) has drafted an updated contracting policy for hydrographic services. NOAA seeks public comment on this policy in accordance with the Congressional request made during the FY 2005 appropriation process to develop a strategy for expanding mapping and charting contracting with private entities. NOAA will consider comments from the public before finalizing its contracting policy. The final policy will be published in May 2006.

DATES: Comments must be submitted within 30 days of the date of this notice.

ADDRESSES: Written comments should be submitted to Ashley Chappell, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Station 6113, Silver Spring, MD 20910. Written comments may be faxed to (301) 713–4019, Attention: Ashley Chappell. Comments by e-mail should be submitted to *ashley.chappell@noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Ashley Chappell, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Station 6110 Silver Spring, Maryland 20910; Telephone: 301–713–2770 ext. 148.

SUPPLEMENTARY INFORMATION: The following documentation is the draft contracting policy for hydrographic services within the National Oceanic and Atmospheric Administration (NOAA), National Ocean Service (NOS). Appendices referenced in the background statement are available at *http://nauticalcharts.noaa.gov/ocs/hsrp/archive/library.htm.*

NOAA National Ocean Service Contracting Policy for Hydrographic Services

Background

In House Report 108–576, which accompanied the FY 2005 Consolidated Appropriations Act, Congress recommended that NOAA's National Ocean Service "work with the private mapping community to develop a strategy for expanding contracting with private entities to minimize duplication and take maximum advantage of private sector capabilities in fulfillment of NOAA's mapping and charting responsibilities." To satisfy this requests, NOAA issued a **Federal Register** notice for comments on the existing 1996 contracting policy (Appendix A) for surveying and mapping services. Comments received were generally supportive of the existing policy and NOAA's proactive implementation of it, with some suggestions for improvement. NOAA also consulted at public meetings with the Hydrographic Services Review Panel (HSRP), a Federal Advisory Committee established by Congress in the Hydrographic Services Improvement Act as amended, 33 U.S.C. 892c, to review the process by which NOAA's National Ocean Service procures hydrographic services and to provide recommendations for improving the process. NOAA reviewed the HSRP recommendations (Appendix B) and public comments (Appendix C) and incorporated many of the suggestions in the draft revision to the current contracting policy. This policy revision is being published to the **Federal Register** to allow for further public comment.

NOAA Hydrographic Services Contracting Policy

NOAA recognizes that qualified commercial sources can provide competent, professional, cost-effective hydrographic services to NOAA in support of its mapping and charting mission for enhancing navigation safety. NOAA also recognizes that the provision of hydrographic services, including the acquisition and dissemination of hydrographic and shoreline data, is a core mission requirement of NOAA under the Act of 1947 (known as the Coast and Geodetic Survey Act), 33 U.S.C. 883a *et seq.*, and the 1998 Hydrographic Services Improvement Act (HSIA), as amended in 2002, 33 U.S.C. 892 *et seq.* In the interest of public and environmental safety, the Federal government's responsibility for executing its hydrographic services missions is manifest and non-delegable. Therefore, it is incumbent upon NOAA, as recommended by the HSRP, to maintain its operational hydrographic services core capability, and contract for the remainder of its hydrographic services to the extent of available funding.

In general, it is the intent of NOAA to contract for hydrographic services when qualified commerical sources exist, and

when such contracts are the most cost effective method of conducting these functions. This policy documents the framework and conditions under which contracting will be employed to ensure an open and consistent approach. To support this policy, NOAA will maintain a dialogue with private sector organizations and constituent groups. For the purposes of this policy, the term "hydrographic services" is defined in the HSIA to include "the management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, geospatial, geomagnetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data."

Policy

NOAA will acquire hydrographic services from qualified sources in accordance with applicable Federal Acquisition Regulations (FAR) and as authorized and directed under the Act of 1947 and the HSIA, including use of the Federal Property and Administrative Services Act of 1949, 40 U.S.C. 1101–1104, when appropriate. Commonly known as the "Brooks Act," these contracting procedures are used in certain situations where the professional nature of the services to be procured requires that potential contractors have specialized technical expertise.

NOAA may determine that a particular surveying or mapping activity is inherently governmental. NOAA surveying and mapping activities considered inherently governmental in nature may include services necessary to: (1) Monitor the quality of NOAA products; (2) promulgate and promote national and international technical standards and specifications; (3) conduct basic research and development and ensure the rapid transfer to the private sector of the derived technology; (4) maintain the Federal geodetic and navigational databases necessary to support safe and efficient marine operations; (5) support coastal stewardship ecosystem applications; and (6) support Maritime Domain Awareness and Homeland Security preparation and response, including maintaining a response capability to provide emergency services and support in response to natural and manmade disasters and other unforeseen requirements. To carry out the above activities, and to adequately monitor contracted services, NOAA will maintain a core capability of field and office expertise.

The government's interests and responsibilities for surveying and mapping vary broadly, and experience has shown that maintaining flexibility is essential in responding to the Nation's changing needs for updated surveying and mapping data. Therefore, NOAA may task qualified commercial sources to conduct surveying and mapping services in any part of the U.S. Exclusive Economic Zone for any NOAA mission-related purpose, irrespective of pre-defined priority categories such as those documented in the NOAA Hydrographic Surveying Priorities.

Ancillary Statements and Actions

As recommended by the HSRP, NOAA will continue to utilize a mix of in-house and private-sector resources to accomplish its hydrographic services missions. Costs and productivity will be closely monitored within each category (*i.e.*, public and private) to ensure best use of hydrographic services resources. NOAA will also seek to determine the optimal resource allocation between in-house and private-sector resources based on the strength of the governmental interest, the total requirement for mapping and charting services, and the particular operational capabilities of either government or private-sector resources that may make one more suitable.

NOAA will continue to examine ways to improve its contracting process, such as methods of minimizing the turnover frequency of contracting personnel and for reducing the length of time required to award contracts and task orders. NOAA will maintain its offer of debriefings to successful and unsuccessful hydrographic services contractors after final selection has taken place. The purpose of these debriefings is to assist contractors with identifying significant weaknesses or deficiencies in their submissions. NOAA is also exploring the establishment an Ocean and Coastal Mapping Training Center. The Training Center was initially conceived as a curriculum to support NOAA's in-house hydrographic surveying training requirements. But NOAA now recognizes value in broadening the Center's scope to include training for NOAA and private sector contractors in techniques, standards, and technologies that support NOAA's many shoreline, coastal, and ocean mapping activities. This concept builds an NOAA's annual Hydrographic Training and Field Procedures Workshops currently held for NOAA personnel and its hydrographic services contractors to train and trade valuable lessons learned from surveying experience. Such training would be beneficial to current or prospective NOAA contractors seeking to strengthen their proposal submissions. To view Appendix A, B, or C; the 1996 National Ocean Service Contracting Policy; the Brooks Act, or the Acts authorizing NOAA Navigation Services programs, visit *http://nauticalcharts.noaa.gov/ocs/hsrp/archive/library.htm.*

Dated: March 28, 2006.

Roger L. Parsons,

Director, Office of Coast Survey, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 06–3340 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

NOAA Coral Ecosystem Research Plan Part II: Regional Priorities Draft

AGENCY: Coral Reef Conservation Program, NOAA, Department of Commerce.

ACTION: Notice and request for public comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) publishes this notice to announce the availability of the Draft NOAA Coral Ecosystem Research Plan Part II: Regional Priorities for public comment. The Draft NOAA Coral Ecosystem Research Plan is being developed by the NOAA Coral Reef Conservation Program to set priorities and guide NOAA-supported coral ecosystem research for fiscal years 2006 to 2010, including research conducted through extramural partners, grants, and contracts. The Draft NOAA Coral Ecosystem Research Plan covers all coral reef ecosystems under the jurisdiction of the United States and the Pacific Freely Associated States; and is written for a broad audience, including resource managers, scientists, policy makers, and the public.

DATES: Comments on this draft document must be submitted by May 8, 2006.

ADDRESSES: The Draft NOAA Coral Ecosystem Research Plan Part II: Regional Priorities will be available at the following location *http://www.nurp.noaa.gov/Docs/NOAA_CoralResearchPlanPartII_FRN.pdf*

The public is encouraged to submit comments on the Draft NOAA Coral Ecosystem Research Plan Part II: Regional Priorities electronically to

coral.researchplan@noaa.gov. For comments who do not have access to a computer, comments on the document may be submitted in writing to: NOAA Research, c/o Kimberly Puglise, NOAA's Undersea Research Program, 1315 East-West Highway R/NURP, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Kimberly Puglise by mail at NOAA's Undersea Research Program, 1315 East-West highway R/NURP, Silver Spring, Maryland 20910 or phone (301) 713–2427 ext. 199 or e-mail at *coral.research plan@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA is publishing this notice to announce the availability of the Draft NOAA Coral Ecosystem Research Plan Part II: Regional Priorities for public comment. The draft plan will be posted for public comment on April 7, 2006. All interested parties are encouraged to provide comments. The Draft NOAA Coral Ecosystem Research Plan Part II: Regional Priorities is being issued for comment only and is not intended for interim use. Suggested changes will be incorporated, where appropriate, in the final version.

The Draft NOAA Coral Ecosystem Research Plan is being developed by the NOAA Coral Reef Conservation Program to set priorities and guide NOAA-supported coral ecosystem research for fiscal years 2006 to 2010, including research conducted through extramural partners, grants, and contracts. The Draft NOAA Coral Ecosystem Research Plan covers all coral reef ecosystems under the jurisdiction of the United States and the Pacific Freely Associated States; and is written for a broad audience, including resource managers, scientists, policy makers, and the public.

The Draft NOAA Coral Ecosystem Research Plan consists of two sections: (1) Part I: National Priorities; and (2) Part II: Regional Priorities. At this time, we are requesting your comments solely on the Part II: Regional Priorities Draft.

Part I of the Plan is national in scope and identifies: the role of research in management, including a review of the major stressors and threats facing coral reef ecosystems and an overview of stressor-associated research priorities; the role of mapping and monitoring in management-driven research programs; a discussion of the tools and technologies necessary to conduct research and to manage ecosystems; a discussion of the importance of transferring science and technology into operations; and the importance of using strategic outreach and education to translate research results to improve management decisions.

Part II of the Plan is regional in scope and reviews the major stressors for coral ecosystems in each region under the jurisdiction of the United States and the Pacific Freely Associated States; identifies key management objectives specific to each region; and the research priorities for fiscal years 2006 to 2010 to help address the stated management objectives in each region. Part II is divided into the following regions: Florida with subsections for the Florida Keys, Southeast Florida, and the West Florida Shelf (also known as the Eastern Gulf of Mexico); Flower Garden Banks; Puerto Rico; the U.S. Virgin Islands; Navassa Island; the Hawaiian Islands with subsections for the Main and Northwestern Hawaiian Islands; American Samoa; the Commonwealth of the Northern Marianas Islands; Guam; the U.S. Pacific Remote Insular Areas, which includes Midway Atoll, Rose Atoll, Wake Atoll, Johnston Atoll, Kingman Reef, Palmyra Atoll, Jarvis Island, Howland Island, and Baker Island; and the Pacific Freely Associated States with subsections for the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia.

NOAA welcomes all comments on the content of the Draft NOAA Coral Ecosystem Research Plan Part II: Regional Priorities. We also request comments on any inconsistencies perceived within the document, and possible omissions of important topics or issues. For any shortcoming noted within the draft documents, please propose specific remedies.

Please adhere to the instructions detailed below for preparing and submitting your comments on the Draft NOAA Coral Ecosystem Research Plan Part II: Regional Priorities. Using the format guidance described below will facilitate the processing of reviewer comments and assure that all comments are appropriately considered. Please format your comments into the following three sections: (1) Background information about yourself (optional); (2) overview or general comments; and (3) specific comments. Section one may include background information about yourself including: your name(s), organization(s), area(s) of expertise, and contact information, such as mailing address, telephone and fax numbers, and e-mail address(s). Section two should consist of overview or general comments on the document and should be numbered. Section three should consist of comments that are specific to particular pages, paragraphs, or lines in the document and should identify the page and line numbers to which they apply. Please number and print identifying information at the top of all pages.

Public comments may be submitted from April 7, 2006, through May 8, 2006.

Dated: April 3, 2006.

David Kennedy,

Manager, Coral Reef Conservation Program.

[FR Doc. 06–3339 Filed 4–6–06; 8:45 am]

BILLING CODE 3510–JE–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[No. DoD–2006–OS–0060]

Proposed collection: Comment Request

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Finance and Accounting Service announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection: (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 6, 2006.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at

http://www.regulations.gov as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Defense Finance and Accounting Service-Cleveland, DFAS–CL/PDS, ATTN: Addie E1–Amin or Brenda Pope, 1240 E. 9th Street, Cleveland, OH 44199, or call Addie E1–Amin or Brenda Pope, 216–522–6096.

Title, Associated Form, and OMB Number: Physician Certificate for Child Ammuitant, DD Form 2828, OMB Number 0730–0011.

Needs and Uses: This form is required and must be on file to support an incapacitation occurring prior to page 18. The form provides the authority for the Directorate of Annuity Pay, Defense Finance and Accounting Service—Cleveland (DFAS–CL/PD) to establish and pay a Retired Serviceman's Family Protection Plan (RSFPP) or Survivor Benefit Plan (SBP) annuity to the incapacitated individual.

Affected Public: Incapacitated child annuitants, and/or their legal guardians, custodians and legal representatives.

Annual Burden Hours: 240.

Number of Respondents: 120.

Responses Per Respondents: 1.

Average Burden Per Response: 2 hours.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The form will be used by the Directorate of Annuity Pay, Defense Finance and Accounting Service—Cleveland (DFAS–CL/PD), in order to establish and start the annuity for a potential child annuitant. When the form is completed, it will serve as a medical report to substantiate a child's incapacity. The law requires that an unmarried child who is incapacitated must provide a current certified medical report. When the incapacity is not permanent a medical certification must be received by DFAS–CL/PD every two years in order for the child to continue receiving annuity payments.

Dated: March 30, 2006.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 06–3346 Filed 4–6–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare an Environmental Impact Statement for the Proposed TransAlta Pit 7 Mine Completion Project at Centralia, Washington

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The U.S. Army Corps of Engineers Seattle District (Corps) and the Washington State Department of Ecology (Ecology) will serve as joint lead agencies in the preparation of an environmental impact statement (EIS) pursuant to the National Environmental Policy Act (NEPA) and State Environmental Policy Act (SEPA) to evaluate proposed approaches to TransAlta Centralia Mining LLC's (TCM) completion of mining in Pit 7, a current mining operation at its Centralia Mine. The Corps will use the EIS in making its decision whether to issue a Section 404 permit under the Clean Water Act. Ecology will use the EIS in making its decision whether to issue a Section 401 Water Quality Certification under the Clean Water Act.

DATES: Submit comments by May 8, 2006. An agency scoping meet for this project will be held on April 18, 2006 from 9:30 a.m. to 1 p.m. at the Washington Department of Ecology 300 Desmond Drive SE., Lacey, Washington. A public scoping meeting will be held on April 18, 2006 from 5 p.m. to 8 p.m. at the Chehalis Courthouse, 351 NW., North Street, Chehalis, Washington.

ADDRESSES: Written comments on the scope of the EIS or requests for information should be sent to Mr. Jonathan Smith at the U.S. Army Corps of Engineers, Seattle Regulatory Branch, Post Office Box 3755, Seattle, Washington 98124–3755, or sent via e-mail to *Jonathan.Smith@nws02.usace.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Smith at the U.S. Army Corps of Engineers, Seattle Regulatory Branch, 4735 E. Marginal Way South, Seattle, Washington 98134, (206) 764–6910, or e-mail *Jonathan.Smith@nws02.usace.army.mil.* Mr. Mark Cline, at the Washington Department of Ecology, 300 Desmond Drive SE, Lacey, Washington 98503, or e-mail *mcli461@ecy.wa.gov.*

SUPPLEMENTARY INFORMATION: The Centralia Mine is a surface coal mine that has been operating in Lewis and Thurston Counties near Centralia, Washington since 1970. TCM currently operates the mine under permit WA–0001E, which was last renewed in 2005, from the U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSM). TCM's previous Pit 7 mining was authorized by the Corps and Ecology under the Clean Water Act by Nationwide Permit 21 (Surface Coal Mining Activities).

Proposed Action

TCM proposes to complete mining activities at its existing Pit 7 mine by removing an estimated 9.58 million tons of coal during the period of 2007 through 2010. The proposed action would involve continued mining coal at Pit 7 in areas of previous coal extraction, as well as completion of Pit 7 mining activities through an approximately 108-acre area across portions of Packwood Creek to access 6.34 million tons of coal reserves. Coal extracted at the Pit 7 mine would provide much of the fuel for the adjacent power plant operated by TransAlta Centralia Generating (TCG). TCM's sole customer is TCG's 1,404-megawatt (MW) power plant. According to TCM, the facility is capable of providing electricity equivalent to the amount consumed by 750,000 households in the greater Washington region (8% of the power produced in Washington).

As part of its mining activities, TCM proposes to reclaim the site, which would replace and restore impacted streams and wetland acreage and functions. In addition, TCM proposes to provide any additional wetland and stream mitigation that would be needed to replace any lost functions not addressed by the reclamation plan.

Preliminary Alternatives to the Proposed Action

In addition to the Proposed Action, the EIS will evaluate a range of alternatives, including a No Action Alternative (Restrict Mining to Currently Permitted Mine Pits), as well as other alternative sources of coal to provide fuel for the adjacent power plant. The EIS will consider alternatives that may result from comments received during the agency and public scoping period. The EIS will also discuss alternatives considered and eliminated from further detailed study.

EIS Scoping Process

The EIS process begins with the publication of this Notice of Intent. The scoping period will continue for 30 days after publication of this Notice of Intent and will close on May 8, 2006. During the scoping period the Corps and

Ecology invite Federal agencies, State and local governments, Native American Tribes, and the public to participate in the scoping process either by providing written comments or by attending one of the public scoping meeting scheduled for April 18, 2006 at the times and locations indicated above. We have identified the following as probable major topics to be analyzed in depth in the Draft EIS: wetland and streams including fish and wildlife habitat functions, surface water quality, surface water drainage and detention effects, mitigation, and cumulative impacts. Both written and oral scoping comments will be considered in the preparation of the Draft EIS. Comments postmarked or received by e-mail after the specified date will be considered to the extent feasible.

The purpose of the scoping meeting is to assist the Corps and Ecology in defining issues, public concerns, alternatives, and the depth to which they will be evaluated in the EIS. The public scoping meeting will begin with a briefing on the proposed Pit 7 Mine Completion Project, the extent of reclamation efforts proposed as part of the project, and the preliminary EIS alternatives. Copies of the meeting handouts will be available to anyone unable to attend by contacting the Corps Seattle District as described above. Following the initial presentation, Corps representatives will answer scope-related questions and accept comments.

EIS Preparation

The Corps has not made a determination of significance as to whether an EIS is required for the proposed project. Development of the Draft EIS will begin after the close of the public scoping period. The Draft EIS is expected to be available for public review in the Fall of 2006.

Other Environmental Review and Consultations

To the fullest extent possible, the EIS will be integrated with analysis and consultation required by the Endangered Species Act of 1973, as amended (Pub. L. 93–205; 16 U.S.C. 1531 *et seq.*); the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Pub. L. 94–265; 16 U.S.C. 1801, *et seq.*), the National Historic Preservation Act of 1966, as amended (Pub. L. 89–655; 16 U.S.C. 470, *et seq.*); the Fish and Wildlife Coordination Act of 1958, as amended (Pub. L. 85–624; 16 U.S.C 742a, *et seq.* and 661–666c); and the Clean Water Act of 1977, as amended (Pub. L. 92–500; 33 U.S.C. 1251, *et seq.*); and all applicable and appropriate Executive Orders.

Dated: March 31, 2006.

Michelle Walker,

Chief, Regulatory Branch, Seattle District.

[FR Doc. E6–5083 Filed 4–6–06; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel; Correction

AGENCY: Department of the Navy, DOD.

ACTION: Notice of Closed Meeting; correction.

SUMMARY: The Department of the Navy published a document in the **Federal Register** of March 15, 2006, announcing a closed meeting of the CNO Executive Panel. The document contained incorrect date and time.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Christopher Stopyra, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, 703–681–6207.

Correction

In the **Federal Register** of March 15, 2006, in FR Doc. E6–3638, in the first column, on page 13361, correct the **DATES** caption to read:

DATES: The meeting will be held on Friday, April 14, 2006, from 9 a.m. fo 10 a.m.

Dated: March 28, 2006.

Eric McDonald,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 06–3356 Filed 4–6–06; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–366–003 and CP04–425–001]

Gulf South Pipeline Company, LP; Notice of Application

March 31, 2006.

Take notice that on March 23, 2006, Gulf South Pipeline Company, LP (Gulf South), 20 East Greenway Plaza, Suite 900, Houston, Texas 77046, filed in Docket Nos. CP04–366–003 and CP04–425–001, an application to amend and clarify the limited-term certificate issued on November 9, 2004, in Docket No. CP04–425–000, to make it a permanent certificate, and contingent upon an order granting the amendment, vacate the permanent certificate issued on March 24, 2005, in Docket No. CP04–366–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Any initial questions regarding this application should be directed to J. Kyle Stephens, Director of Certificates, by mail to: Gulf South Pipeline Company, LP, 20 East Greenway Plaza, Suite 900, Houston, Texas 77046; by telephone: (713) 544–7309; by fax: (713) 544–3540; or by e-mail: *kyle.stephens@gulfsouthpl.com*.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters

will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

Comment Date: April 21, 2006.

Magalie Salas,

Secretary.

[FR Doc. E6–5097 Filed 4–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PH06–32–000, et al.]

Alexander & Baldwin, Inc. et al.; Electric Rate and Corporate Filings

March 31, 2006.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Alexander & Baldwin, Inc.; McBryde Sugar Company, Limited

[Docket No. PH06–32–000]

Take notice that on March 20, 2006, Alexander & Baldwin, Inc. and McBryde Sugar Company, Limited filed a Petition for Waiver of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(c)(1) and 366.4(c)(1) of the Commission's regulations on the basis that it is a single state holding company.

Comment Date: 5 p.m. eastern time on April 10, 2006.

2. LMB Capital, Inc.

[Docket No. PH06–33–000]

Take notice that on March 27, 2006, LMB Capital, Inc. filed a Petition for Exemption of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(a) 366.4(b)(1) of the Commission's regulations.

Comment Date: 5 p.m. eastern time on April 17, 2006.

3. Hawkeye Funding, Inc.

[Docket No. PH06–34–000]

Take notice that on March 27, 2006, Hawkeye Funding, Inc. filed a Petition for Exemption of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(b) 366.4(b)(1) of the Commission's regulations.

Comment Date: 5 p.m. eastern time on April 17, 2006.

4. Juniper Capital GP, LLC

[Docket No. PH06–35–000]

Take notice that on March 27, 2006, Juniper Capital GP, LLC filed a Petition for Exemption of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(b) 366.4(b)(1) of the Commission's regulations.

Comment Date: 5 p.m. eastern time on April 17, 2006.

5. JMG Capital, Inc.

[Docket No. PH06–36–000]

Take notice that on March 27, 2006, JMG Capital, Inc. filed a Petition for Exemption of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(b) 366.4(b)(1) of the Commission's regulations.

Comment Date: 5 p.m. eastern time on April 17, 2006.

6. Wygen Capital, Inc.

[Docket No. PH06–37–000]

Take notice that on March 27, 2006, Wygen Capital, Inc. filed a Petition for Exemption of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(a) and 366.4(b)(1) of the Commission's regulations.

Comment Date: 5 p.m. eastern time on April 17, 2006.

7. LIC Capital, Inc.

[Docket No. PH06–38–000]

Take notice that on March 27, 2006, LIC Capital, Inc. filed a Petition for Exemption of the Requirements of The Public Utility Holding Company Act of 2005, pursuant to 18 CFR 366.3(a) 366.4(b)(1) of the Commission's regulations.

Comment Date: 5 p.m. eastern time on April 17, 2006.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5093 Filed 4–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IS06–191–000]

Colonial Pipeline Company; Notice of Technical Conference

March 31, 2006.

Take notice that a technical conference will be convened on Wednesday, May 3, 2006, at 10 a.m. (EDT), in a room to be designated at the offices of the Federal Energy Regulatory Commission (FERC), 888 First Street, NE., Washington, DC 20426. If necessary, the technical conference will convene again on Thursday, May 4, 2006, at the same time and place.

The technical conference will deal with issues related to Colonial Pipeline Company's (Colonial) tariff supplements proposing changes relating to the

shipment of reformulated gasoline products containing methyl tertiary butyl ether on Colonial's pipeline system, as discussed in the March 16, 2006 order in this docket (*Colonial Pipeline Co.*, 114 FERC ¶ 61,276 (2006)).

FERC conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the required accommodations.

All interested persons and Staff are permitted to attend. However, participation in the conference is limited to Staff and Parties, as that term is defined in 18 CFR 385.102(c)(1) (2005). For further information, please contact Joe Athey at (202) 502–8138 or e-mail *joseph.athey@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5095 Filed 4–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of FERC Staff Attendance at a Meeting of PJM Interconnection, L.L.C.

March 31, 2006.

The Federal Energy Regulatory Commission hereby gives notice that members of its staff may attend the meeting noted below of the PJM Interconnection, L.L.C. The attendance by staff is part of the Commission's ongoing outreach efforts. Regional Planning Process Working Group (RPPWG), April 5, 2006, 10 a.m.–3 p.m. (EDT), Spencer Hotel, 700 King Street, Wilmington, DE 19801.

The discussion may address matters at issue in the following proceedings:

Docket Nos. ER05–1410 and EL05–148, *PJM Interconnection, L.L.C.*

Docket No. ER06–456, *PJM Interconnection, L.L.C.*

Docket No. EL06–50, *American Electric Power Service Corporation.*

The meeting is open to the public.

For additional information, contact Morris Margolis, Office of Energy Markets and Reliability at 202–502–8611 or by e-mail at *morris.margolis@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E6–5096 Filed 4–6–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

March 31, 2006.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Exempt:

Docket No.	Date received	Presenter or requester
1. IS06–191–000	3–10–06	Hon. David B. Albo.
2. IS06–191–000	3–10–06	Hon. William J. Howell.
3. IS06–191–000	3–13–06	Hon. Tim Hugo.
4. IS06–191–000	3–13–06	Hon. Mark D. Sickles.
5. IS06–191–000	3–14–06	Hon. Charles R. Hawkins.
6. IS06–191–000	3–20–06	Hon. Harris B. McDowell, III.
7. IS06–191–000	3–20–06	Hon. Bill Owens.
8. IS06–191–000	3–20–06	Hon. Richard Y. Stevens.
9. IS06–191–000	3–21–06	Hon. Rick Santorum, Hon. Arlen Specter.
10. IS06–191–000	3–22–06	Hon. John M. Perzel.
11. IS06–191–000	3–24–06	Hon. Bobby Moak.
12. IS06–191–000	3–24–06	Hon. Victor R. Ramirez.
13. IS06–191–000	3–24–06	Hon. Stephen M. Sweeney.
14. P–459–128	3–20–06	Hon. Christopher S. Bond.
15. P–1971–079	3–29–06	Ellen Hall/Alan Mitchnick.
16. P–2539–000, P–12522–000	3–24–06	Hon. Robert D. Carlson.

Magalie R. Salas,
Secretary.
[FR Doc. E6–5094 Filed 4–6–06; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8056–1]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Colorado Interstate Gas Company, Latigo Station

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final action.

SUMMARY: This document announces that the EPA Administrator has responded to a citizen petition asking EPA to object to an operating permit issued by the Colorado Department of Public Health and Environment (CDPHE). Specifically, the Administrator has partially granted and partially denied the petition submitted by Jeremy Nichols to object to the operating permit issued to Colorado Interstate Gas Company—Latigo Station.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), Petitioners may seek judicial review of those portions of the petitions which EPA denied in the United States Court of Appeals for the appropriate circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petition, and other supporting information at the EPA Region 8 Office, 999 18th Street, Suite 300, Denver, Colorado 80202–2466. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the copies of the final order, the petition, and other supporting information. You may view the hard copies Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. Additionally, the final order for the Latigo Station is available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/cig_latigo_decision2005.pdf.*

FOR FURTHER INFORMATION CONTACT: Hans Buenning, Air & Radiation Program, EPA, Region 8, 999 18th Street, Suite 200, Denver, Colorado 80202–2466, 303–312–6438, *buenning.hans@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

On July 5, 2005, the EPA received a petition from Jeremy Nichols requesting that EPA object to the issuance of the title V operating permit to the Colorado Interstate Gas Company—Latigo Station (Latigo). Mr. Nichols asserts that the permit: (1) Fails to ensure compliance with volatile organic compound and hazardous air pollutant emission standards for the glycol dehydrator; (2) fails to require opacity monitoring; and (3) fails to appropriately control volatile organic compound emissions from internal combustion engines.

On February 17, 2006, the Administrator issued an order partially granting and partially denying the petition. The order explains the reasons behind EPA's conclusion that the CDPHE must revise the permit to refine the fuel restrictions and recordkeeping provisions to adequately assure compliance with the State Implementation Plan opacity condition of 20%. The order also explains the reasons for denying Mr. Nichols' remaining claims.

Dated: March 27, 2006.

Kerrigan G. Clough,
Acting Regional Administrator, Region 8.
[FR Doc. E6–5111 Filed 4–6–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8055–9]

Notice of Prevention of Significant Deterioration Final Determination for Wanapa Energy Center

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of final action.

SUMMARY: This document announces that on February 9, 2006, the Environmental Appeals Board ("EAB") of EPA denied review of a petition for review of a Prevention of Significant Deterioration ("PSD") permit ("Permit") that EPA Region 10 issued to Diamond Wanapa I, L.P. ("Diamond") for construction and operation of the Wanapa Energy Center ("Facility"), a natural gas-fired combined cycle electric generating facility. The Permit was issued pursuant to 40 CFR 52.21.

DATES: The effective date of the EAB's decision was February 9, 2006. Judicial review of this permit decision, to the extent it is available pursuant to section 307(b)(1) of the Clean Air Act ("CAA"), may be sought by filing a petition for review in the United States Court of Appeals for the Ninth Circuit within 60 days of April 7, 2006.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: EPA, Region 10, 1200 Sixth Avenue (AWT–107), Seattle, Washington 98101. To arrange viewing of these documents, call Dan Meyer at (206) 553–4150.

FOR FURTHER INFORMATION CONTACT: Dan Meyer, EPA, Region 10, 1200 Sixth Avenue (AWT–107), Seattle, Washington 98101.

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

A. What Action Is EPA Taking?

We are notifying the public of a final decision by the EAB on the Permit issued by EPA Region 10 pursuant to the PSD regulations found at 40 CFR 52.21.

B. What Is the Background Information?

The Facility will be a 1200-megawatt natural gas-fired, combined cycle electric generating facility located near Umatilla, Oregon on land held in trust by the federal government for the benefit of the Confederated Tribes of the Umatilla Indian Reservation. The Facility will combust natural gas and will employ selective catalytic reduction (SCR) and an oxidation catalyst to reduce emissions.

On November 23, 2004, EPA Region 10 issued the draft PSD permit for public review and comment. On August 8, 2005, after providing an opportunity for public comment and a public hearing, EPA Region 10 approved the Permit. On September 9, 2005, Mr. K.E.

Thompson ("Petitioner") petitioned the EAB for review of the Permit.

C. What Did the EAB Decide?

Petitioner, acting *pro se*, raised the following issues on appeal: (1) EPA Region 10 failed to address the human health or environmental effects of the proposed facility on "both majority and minority populations"; (2) EPA Region 10 improperly treated emission from nonroad heavy duty diesel engines differently than emission from power plants such as the Facility; (3) Region 10 failed to perform a cumulative impact analysis; (4) EPA Region 10 improperly considered meteorological data from Spokane and Walla Walla, Washington; (5) EPA Region 10 should have treated the airshed around the proposed Facility in the same manner as a Class I or Class II wilderness or scenic area; (6) EPA Region 10 did not consider a Bonneville Power Administration (BPA) study of regional air quality; (7) EPA Region 10 erred in establishing the Permit's volatile organic compound (VOC) emissions limitation; and (8) EPA Region 10 erred by failing to include permit conditions addressing emissions from nonroad heavy-duty diesel engines that will be used during construction of the proposed Facility.

The EAB denied review of the following four issues because these issues were not raised during the public comment period on the draft Permit or during the public hearing on the draft Permit: (1) EPA Region 10 failed to address the human health or environmental effects of the proposed facility on "both majority and minority populations"; (2) EPA Region 10 did not consider a BPA study of regional air quality; (3) EPA Region 10 erred in establishing the Permit's VOC emissions limitation; and (4) EPA Region 10 erred by failing to include permit conditions addressing emissions from nonroad heavy-duty diesel engines that will be used during construction of the proposed Facility. Moreover, the EAB found that, even if these four issues had been preserved for review, Petitioner failed to demonstrate that EPA Region 10's permit determination was clearly erroneous or otherwise warranted review.

The EAB denied review of the following four remaining issues because the Petitioner failed to demonstrate why the Region's response to public comments was clearly erroneous or otherwise warrants review: (1) EPA Region 10 improperly treated emission from nonroad heavy duty diesel engines differently than emission from power plants such as the Facility; (2) Region 10 failed to perform a cumulative impact analysis; (3) EPA Region 10 improperly considered meteorological data from Spokane and Walla Walla, Washington; and (4) EPA Region 10 should have treated the airshed around the proposed Facility in the same manner as a Class I or Class II wilderness or scenic area. For these reasons, the EAB denied review of the petition for review in its entirety.

Pursuant to 40 CFR 124.19(f)(1), for purposes of judicial review, final agency action occurs when a final PSD permit is issued and agency review procedures are exhausted. This notice is being published pursuant to 40 CFR 124.19(f)(2), which requires notice of any final agency action regarding a PSD permit to be published in the **Federal Register.** This notice constitutes notice of the final agency action denying review of the PSD Permit and, consequently, notice of the EPA Region 10's issuance of PSD Permit No. R10PSD–OR–05–01 to Diamond. If available, judicial review of these determinations under section 307(b)(1) of the CAA may be sought only by the filing of a petition for review in the United States Court of Appeals for the Ninth Circuit, within 60 days from the date on which this notice is published in the **Federal Register.** Under section 307(b)(2) of the Clean Air Act, this determination shall not be subject to later judicial review in any civil or criminal proceedings for enforcement.

Dated: March 1, 2006.

L. Michael Bogert,

Regional Administrator, Region 10.

[FR Doc. E6–5109 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6674–1]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments repared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7167.

Summary of Rating Definitions

Environmental Impact of the Action

LO—Lack of Objections

The EPA review has not identified any potential environmental impacts requiring substantive changes to the proposal. The review may have disclosed opportunities for application of mitigation measures that could be accomplished with no more than minor changes to the proposal.

EC—Environmental Concerns

The EPA review has identified environmental impacts that should be avoided in order to fully protect the environment. Corrective measures may require changes to the preferred alternative or application of mitigation measures that can reduce the environmental impact. EPA would like to work with the lead agency to reduce these impacts.

EO—Environmental Objections

The EPA review has identified significant environmental impacts that must be avoided in order to provide adequate protection for the environment. Corrective measures may require substantial changes to the preferred alternative or consideration of some other project alternative (including the no action alternative or a new alternative). EPA intends to work with the lead agency to reduce these impacts.

EU—Environmentally Unsatisfactory

The EPA review has identified adverse environmental impacts that are of sufficient magnitude that they are unsatisfactory from the standpoint of public health or welfare or environmental quality. EPA intends to work with the lead agency to reduce these impacts. If the potentially unsatisfactory impacts are not corrected at the final EIS stage, this proposal will be recommended for referral to the CEQ.

Adequacy of the Impact Statement

Category 1—Adequate

EPA believes the draft EIS adequately sets forth the environmental impact(s) of the preferred alternative and those of the alternatives reasonably available to the project or action. No further analysis or data collection is necessary, but the reviewer may suggest the addition of clarifying language or information.

Category 2—Insufficient Information

The draft EIS does not contain sufficient information for EPA to fully assess environmental impacts that should be avoided in order to fully protect the environment, or the EPA reviewer has identified new reasonably available alternatives that are within the spectrum of alternatives analyzed in the draft EIS, which could reduce the environmental impacts of the action. The identified additional information,

data, analyses, or discussion should be included in the final EIS.

Category 3—Inadequate

EPA does not believe that the draft EIS adequately assesses potentially significant environmental impacts of the action, or the EPA reviewer has identified new, reasonably available alternatives that are outside of the spectrum of alternatives analyzed in the draft EIS, which should be analyzed in order to reduce the potentially significant environmental impacts. EPA believes that the identified additional information, data, analyses, or discussions are of such a magnitude that they should have full public review at a draft stage. EPA does not believe that the draft EIS is adequate for the purposes of the NEPA and/or Section 309 review, and thus should be formally revised and made available for public comment in a supplemental or revised draft EIS. On the basis of the potential significant impacts involved, this proposal could be a candidate for referral to the CEQ.

Draft EISs

EIS No. 20050530, ERP No. D–FHW–L40229–ID, ID–75 Timmerman to Ketchum—US–20 to Saddle Road, Increase Roadway and Transportation Safety, Cities of Bellevue, Hailey, Ketchum and the City of Sun Valley, Blaine County, ID

Summary: EPA expressed environmental concerns about the aquatic resources, ecological connectivity, habitat permeability for wildlife, and air toxic, and is also concerned about the limited range of alternatives analyzed and the secondary effects of induced travel demand and land use change. Rating EC2.

EIS No. 20050544, ERP No. D–FHW–E40805–KY, Newtown Pike Extension Project, Road Connection from West Main Street to South Limestone Street in Lexington, Fayette County, KY

Summary: EPA expressed environmental concerns about the air quality impacts, noise impacts, and the adequacy of mitigation for environmental justice issues. Rating EC2.

EIS No. 20060011, ERP No. D–BLM–J02050–UT, Chapita Wells-Stagecoach Area Natural Gas Development, Drilling and Production Operations of Natural Gas Wells and Associated Access Road, and Pipelines, Uintah County, UT

Summary: EPA expressed environmental concerns about impacts to riparian areas along the White River and wildlife habitat in specific locations of the project area, and recommended that the final EIS should include analysis and comparison of the full range of alternatives considered. Rating EC2.

EIS No. 20060032, ERP No. D–AFS–L65502–AK, Kuiu Timber Sale Area, Proposes to Harvest Timer and Build Associated Temporary Roads, US. Army COE Section 10 and 404 Permits, North Kuiu Island, Petersburg Ranger District, Tongass National Forest, AK

Summary: EPA expressed environmental concerns about sediment loading to streams from timber harvesting, and recommended Alternative 2 because it would minimize potential adverse impacts to water quality and aquatic habitat. Rating EC1.

EIS No. 20060036, ERP No. D–BLM–L65503–OR, North Steens Ecosystem Restoration Project, To Reduce Juniper-Related Fuels and Restore Various Plant Communities, Implementation, Andrews Resource Area, Cooperative Management and Protection Area (CMPA), Harney County, OR

Summary: EPA expressed environmental concerns about impacts to air quality, water quality and riparian areas, and requested that the above impacts be avoided and/or mitigated. Rating EC2.

EIS No. 20060038, ERP No. D–BLM–J02051–UT, Greater Deadman Bench Oil and Gas Producing Region, Proposes to Develop Oil and Gas Resources, Right-of-Way Grants and Applications for Permit to Drill, Vernal, Uintah County, UT

Summary: EPA expressed environmental concerns about potential impacts to riparian areas and wildlife habitat, and recommended that the final EIS provide a detailed management plan, including mitigation and monitoring for the duration of the proposed action. Rating EC2.

Final EISs

EIS No. 20060039, ERP No. F–FAA–K51042–AZ, Phoenix Sky Harbor International Airport (PHX), Construction and Operation of a Terminal, Airfield and Surface Transportation, City of Phoenix, Maricopa County, AZ

Summary: EPA does not object to the proposed project but continues to recommend additional voluntary mitigation measures for construction-related air emissions.

EIS No. 20060049, ERP No. F–FHW–L40217–AK, South Extension of the Coastal Trail Project, Extending the existing Tony Knowles Coastal Trail from Kincaid Park through the Project Area to the Potter Weigh Station, COE Section 10 and 404 Permits, Municipality of Anchorage, Anchorage, AK

Summary: EPA does not object to the preferred alternative.

Dated: April 4, 2006.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–5113 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6673–9]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed March 27, 2006 Through March 31, 2006

Pursuant to 40 CFR 1506.9.

EIS No. 20060108, Revised Final EIS, AFS, CO, Gold Camp Road Plan, Develop a Feasible Plan to Manage the Operation of Tunnel #3 and the 8.5 mile Road Segment, Pike National Forest, Pikes Peak Ranger District, Colorado Springs, El Paso County, CO, Wait Period Ends: May 8, 2006, Contact: Frank Landis 719–477–4203.

EIS No. 20060109, Draft EIS, NPS, KY, Abraham Lincoln Birthplace National Historic Site, General Management Plan, Implementation, LaRue County, KY, Comment Period Ends: June 5, 2006, Contact: Matthew Safford 303–969–2898.

EIS No. 20060110, Draft EIS, AFS, MT, Whitetail-Pipestone Travel Management, Develop Site-Specific Travel Management Plan, Jefferson and Butte Ranger Districts, Beaverhead-Deerlodge National Forest, Jefferson and Silver Bow Counties, MT, Comment Period Ends: May 22, 2006, Contact: Cheryl Martin 406–287–3223 Ext 107.

EIS No. 20060111, Final Supplement, COE, MO, St. Johns Bayou and New Madrid Floodway Project, Channel Enlargement and Improvement, Revised Information to Clarify and Address Issues of Concern, Flood Control National Economic Development (NED), New Madrid, Mississippi and Scott Counties, MO,

Wait Period Ends: May 8, 2006, Contact: Daniel D. Ward 901–544–0709.

EIS No. 20060112, Final EIS, OSM, PA, Adoption—Dents Run Watershed Ecosystem Restoration, Construction and Operation of Six Acid Mine Drainage Abatement Projects, Implementation, Benezette Township, Susquehana River Basin, Elk County, PA, Wait Period Ends: May 8, 2006, Contact: Fred Sherfy 717–782–4931 Ext 19. OSM has adopted the Corps of Engineer's, FEIS #20020021 filed January 11, 2002. OSM was not a Cooperating Agency on the FEIS. Under Section 1506.3(b) of the CEQ Regulation, the FEIS must be Recirculated for a 30-day Wait Period.

EIS No. 20060113, Draft EIS, FHW, MO, Interstate 29/35 Paseo Bridge Corridor, Reconstruct and Widen I–29/35, Missouri River, North Kansas City and Kansas City, Clay and Jackson Counties, MO, Comment Period Ends: May 22, 2006, Contact: Peggy Casey 573–636–7104.

EIS No. 20060114, Final EIS, EPA, CA, Regional Non-Potable Water Distribution System Project, Funding, U.S. Army COE Section 404 Permit, Riverside and San Bernardino County, CA, Wait Period Ends: May 8, 2006, Contact: Elizabeth Borowiec 415–972–3419.

EIS No. 20060115, Draft EIS, AFS, UT, Upper Strawberry Allotments Grazing, Authorize Liverstock Grazing, Heber Ranger District, Uinta National Forest, Wasatch County, UT, Comment Period Ends: May 22, 2006, Contact: Jim Percy 435–654–0470.

EIS No. 20060116, Final EIS, NPS, OH, First Ladies National Historic Site General Management Plan, Implementation, Canton, OH, Wait Period Ends: May 8, 2006, Contact: Carol J. Spears 440–974–2993.

EIS No. 20060117, Draft EIS, FHW, LA, I–49 South Wax Lake Outlet to Berwick Route US–90, Transportation Improvements, Funding and Right-of-Way Acquisition, St. Mary Parish, LA, Comment Period Ends: 05/31/2006, Contact: William C. Farr 225–757–7615.

EIS No. 20060118, Final EIS, AFS, OR, Drew Creek Diamond Rock and Divide Cattle Allotments, Alternative 2 Preferred Alternative, Issuance of Term Grazing Permits on Livestock Allotments on Tiller Ranger District, Implementation, Umpqua National Forest, Douglas and Jackson Counties, OR, Wait Period Ends: May 8, 2006, Contact: Wes Yamamoto 541–825–3100.

EIS No. 20060119, Draft EIS, FHW, VA, Harrisonburg Southeast Connector Location Study, Transportation Improvements from U.S. Route 11 to U.S. Route 33, Funding and US Army COE Section 404 Permit, City of Harrisonburg, Rockingham County, VA, Comment Period Ends: May 26, 2006, Contact: John Simkins 804–775–3342.

EIS No. 20060120, Final Supplement, FTA, WA, Central Link Light Rail Transit Project (Sound Transit) Construction and Operation of the North Link Light Rail Extension, from Downtown Seattle and Northgate, Updated Information on Refined Design Concepts, Funding, Right-of-Way and U.S. Army COE Section 404 Permits, King County, WA, Wait Period Ends: May 8, 2006, Contact: James Irish 206–398–5000.

EIS No. 20060121, Final EIS, CGD, 00, Compass Port and Deepwater Port License Application, To Construct a Liquefied Natural Gas (LNG) Receiving, Storage and Regasification Facility, Proposed Offshore Pipeline and Fabrication Site, NPDES Permit, U.S. Army COE Section 10 and 404 Permits, Mobile County, AL and San Patricio and Nueces County, TX, Wait Period Ends: May 22, 2006, Contact: M.A. Prescott 202–267–0225.

Dated: April 4, 2006.

Ken Mittelholtz,

Environmental Protection Specialist, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E6–5090 Filed 4–6–06; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

[Public Notice 83]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Export-Import Bank of U.S.

ACTION: Notice and request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. The form will be used by Banks to apply for comprehensive or political insurance coverage on foreign banks for letter of credit transactions. Our customers will be able to submit this form on paper or electronically.

DATES: Written comments should be received on or before May 8, 2006 to be assured of consideration.

ADDRESSES: Address all comments to David Rostker, Office of Management and Budget, Office of Information and Regulatory Affairs, NEOB, Room 10202, Washington, DC 20503, (202) 395–3897.

SUPPLEMENTARY INFORMATION:

Time and Form Number: Export-Import Bank of the United States Application for Issuing Bank Credit Limit (IBCL) Under Bank Letter of Credit Policy, EIB 92–36.

OMB Number: None.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to process credit risk applications involving foreign letter of credit issuing banks.

Affected Public: The form affects entities involved in the export of U.S. goods and services.

Estimated Annual Respondents: 60.

Estimated Time per Respondent: 20 minutes.

Estimated Annual Burden: 240 hours.

Frequency of Reporting or Use: 1 to 12 times per year depending on the particular respondent's need/risk portfolio.

Dated: March 31, 2006.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

EXPORT-IMPORT BANK OF THE UNITED STATES

APPLICATION FOR ISSUING BANK CREDIT LIMIT (IBCL) UNDER BANK LETTER OF CREDIT POLICY

App. No. _____
(Ex-Im Bank Use Only)

1. Applicant Bank:	Policy No.:	2. Broker	(If none, state "None")
State:			
Attn.:	Tel No.:	Contact:	Tel No.:
Fax No.:	E-Mail:	Fax No.:	E-Mail:

3. Issuing Bank
(Legal name, address, city, country)

File No. _____
(Ex-Im Bank Use Only)

4. Is this application a resubmission of a previously submitted application? ___ Yes ___ No
5. Coverage option: ___Comprehensive ___Political only
6. Details of letters of credit (L/Cs) you wish to insure:
   a. L/C Amount $_____
   b. L/C number (if available) _____
   c. L/C transaction type (check): ___ Usance Letter of Credit - or - ___ Refinanced Letter of Credit
   d. L/C tenor (enter): ____ Actual # of Days - or - ___ Sight (check)
   e. Expiry date of L/C: ___/___/_____ (mm/dd/yyyy)
   f. Importer Name: _____ City: _____ Country: _____
      ___ If Various Importers (check here)
   g. Exporter Name: _____ City: _____ Country: _____
      ___ If Various Exporters (check here)
   h. Beneficiary Name: _____ City: _____ Country: _____
      (if exporter is not the beneficiary)
      ___ If Various Beneficiaries (check here)
   i. L/C Payment currency: _____
   j. L/C Payment country: _____
7. Products:
   a. (describe products) * _____
   b. Are the products on the Munitions Control List? ___ Yes ___ No
   c. Are the products capital goods sold to foreign manufacturers or producers? ___ Yes ___ No
   d. If you answered "Yes" in 7c: (i) Provide details of product use _____
      (ii) Will the products be used to produce exportable goods? ___ Yes ___ No
8. What effective date do you require for the IBCL? ___/___/_____ (mm/dd/yyyy)

* The Borrower, Guarantor, Buyer and End User must be foreign entities in countries for which Ex-Im is able to provide support, see Ex-Im's Country Limitation Schedule (CLS) at www.exim.gov . There may not be trade sanctions in force against them. For a list of products and countries with Anti-Dumping or Countervailing Duty sanctions see www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/antidump_countervailing/index.htm. There may not be trade measures against them under Section 201 of the Trade Act of 1974, see www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/completed/index.htm#safeguardclick on 201.

9. Applicant's experience with the issuing bank:

a. Do you extend insured or uninsured credit facilities to the L/C issuing bank? ___ Yes ___ No

b. If "Yes," provide details on the type, size, and usage of credit facilities extended to the L/C issuing bank:_____

_____

_____

_____

c. If "Yes," does the L/C issuing bank consistently meet its credit obligations in accordance with the agreed terms? ___ Yes ___ No

10. Is the L/C issuing bank an affiliate of the applicant as defined in the policy? ___ Yes ___ No. If "Yes," please describe the relationship:

_____

_____

11. Please provide any additional comments and/or specify any special requirements for the IBCL application:

_____

_____

_____

_____

12. The following credit information on the L/C issuing bank may be required. Ex-Im Bank will notify you if any of these items are required to process the application. At your option, you may attach copies of any of these items or others that you wish to submit with the application.

A. Audited fiscal year-end financials statements for the past two (2) years, including notes. Interim financial statements may also be required if the most recent fiscal year-end statements are more than 9 months old.

B. A bank reference dated within 6 months of the application from a correspondent bank. The reference should indicate if credit lines are secured and the type of credit facilities offered.

C. Background information on the L/C issuing bank, including a description of the bank's operation and structure and a list of the shareholders who directly or indirectly own 10% or more of the bank, with their corresponding ownership percentages.

D. Rating Agencies' reports on the L/C issuing bank.

13. The applicant certifies that neither it, nor its Principals, have within the past 3 years been i) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Covered Transaction, ii) formally proposed for debarment, with a final determination still pending, iii) indicted, convicted or had a civil judgement rendered against it for any of the offenses listed in the Regulations, iv) delinquent on any substantial debts owed to the U.S. Government or its agencies or instrumentalities as of the date of execution of this application; or v) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Covered Transaction despite an inability to make certifications i) through iv) in this paragraph.

The applicant further certifies that it has not and will not knowingly enter into any agreements in connection with the products and services to be exported in the transaction described herein, with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Covered Transaction. The term "Covered Transaction" shall have the meaning set forth in the Ex-Im Bank Debarment and Suspension Regulations at 12 C.F.R. Part 413 (Regulations).

In addition , the applicant further certifies that it has not, and will not engage in any activity in connection with this transaction that is a violation of i) the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78dd-1 et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), ii) the Arms Export Control Act, 22 U.S.C. 2751 et seq., iii) the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., oriv) the Export Administration Act of 1979, 50 U.S.C. 2401 et seq.; nor been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

The applicant certifies that the representations made and the facts stated in this document and any attachments are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts, and if any of the certifications made herein become untrue, Ex-Im Bank will be promptly informed of such changes. The applicant further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 U.S.C. 1001 et seq.).

Notices: The applicant is hereby notified that information requested by this application is done so under authority of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635 et seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see upper right of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

By: _____ _____ _____ _____

(Authorized Signature) (Print Name) (Title) (Date

Note: Please answer all questions and sign application. Applications not completely filled out or not submitted with required financial and credit information will be withdrawn.

Send, or ask your insurance broker to review and send, this application to

Ex-Im Bank, 811 Vermont Avenue, NW, Washington, D.C. 20571.
The Ex-Im Bank website is <http://www.exim.gov >

[FR Doc. 06–3282 Filed 4–6–06; 8:45 am]
BILLING CODE 6690–01–C

EXPORT-IMPORT BANK

[Public Notice 84]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Notice of request for comments.

SUMMARY: The Export-Import Bank, as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995. Our customers will be able to submit this form on paper or electronically. The form has been updated in the following ways:

- The application now accommodates requests for Finance Lease Guarantee coverage. Information on Lessees and Lessors is requested in those circumstances.
- The application accommodates requests for Foreign Dealer Insurance policies. A separate one-page attachment (Attachment IV) is required when the applicant requests this coverage.
- The format has been changed so that it accords with the on-line version of the form which will be made available later in 2006. Formatting changes include:

—The names of the applicant and broker have been moved up to the first item.
—Section 1 has been relabeled "General Questions" instead of "Financing Type Requested".
—Requests for Special Coverages have been moved up in front of the Participants section.

- Information about a new participant, the agent, is now requested. Gathering this information helps Ex-Im Bank evaluate the creditworthiness of the transaction.
- Legal certifications have been updated.

DATES: Written comments should be received on or before June 6, 2006 to be assured consideration.

ADDRESSES: Direct all comments and requests for additional information to Angela Beckham, Export-Export Bank of the U.S., 811 Vermont Avenue, NW., Washington, DC 20571, (202) 565–3418.

SUPPLEMENTARY INFORMATION:

Title and Form Number: Application for Medium-term Insurance or Guarantee, EIB–03–02.

OMB Number: 3048–0014.

Type of Review: Regular.

Need and Use: The information requested enables the applicant to provide Ex-Im Bank with the information necessary to obtain legislatively required assurance of repayment and fulfills other statutory requirements.

Affected Public: The form affects entities involved in the export of U.S. goods and services.

Estimated Annual Respondents: 800.

Estimated Time per Respondent: 1.5 hour.

Estimated Annual Burden: 1200 hours.

Frequency of Reporting or Use: As needed, each time an applicant seeks medium-term insurance or guarantee.

Dated: March 31, 2006.

Solomon Bush,

Agency Clearance Officer.

BILLING CODE 6690–01–M

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

This application is to be used for insurance and guarantee transactions with financed amounts of $10 million or less (excluding financed premium) and repayment terms between eighteen months and seven years. Applications for other Ex-Im Bank products can be found on Ex-Im Bank's web site under the "Apply" section.

Additional information on how to apply for Ex-Im Bank medium-term insurance or guarantees can be found at Ex-Im Bank's web site http://www.exim.gov/tools/how_to_apply.html.

An online version of this application is available on Ex-Im Bank's web site. Ex-Im Bank encourages customers to apply on-line, as it will facilitate our review and allow customers a faster response time. Additional information on how to apply for Ex-Im Bank insurance can be found at Ex-Im's web site http://www.exim.gov.

Send this completed application to Ex-Im Bank, 811 Vermont Avenue, NW, Washington, DC 20571. Ex-Im Bank will also accept e-mailed PDF and faxed applications. Please note the applications must be PDF scans of original applications and all required application attachments. (Fax number 202.565.3675, e-mail exim.applications@exim.gov).

APPLICATION FORM

Applicant name: _____ Duns#: _____

Contact person: _____ Phone#: _____

Position Title: _____ Fax#: _____

Street address: _____ E-mail: _____

City: _____ State/Province: _____ Nine-digit Zip Code: _____

Country: _____ NAICS Code: _____

Total number of employees: _____ Total Revenues: _____

Broker (Insurance Only)

☐ Check if there is no broker

Broker name: _____ Ex-Im Bank Broker#: _____

Contact person: _____ Phone # _____ Fax#: _____ E-mail: _____

1. GENERAL QUESTIONS

A. Product
- ☐ Insurance
- ☐ Finance Lease Guarantee
- ☐ Loan Guarantee. Enter MGA# if known _____

B. Coverage type
- ☐ Comprehensive risk
- ☐ Political risk

C. Conversion of a Preliminary Commitment or a Letter of Interest
- ☐ No
- ☐ Yes. The Ex-Im Bank reference number is: _____

D. Resubmission

☐ Check if this is a resubmission of an application that was previously deemed incomplete or was withdrawn for other reasons. The Ex-Im Bank reference number is: _____

E. Renewal
- ☐ CGF (Credit Guarantee Facility)
- ☐ MTR (Medium-Term Repetitive Insurance Policy)

F. Primary contact point for Ex-Im Bank inquiries on this transaction:

☐ Exporter ☐ Broker (Insurance only) ☐ Lender/Lessor

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

2. SPECIAL COVERAGES

Check the boxes for the coverage(s) that apply to the transaction. View the fact sheets describing the coverage(s) on Ex-Im Bank's website as noted below. Complete and attach the requested forms.

☐Pre-shipment Cover Attachment II – Pre-shipment Questionnaire required	☐Used Equipment Attachment III - Used Equipment Information and Questionnaire required	☐Co-Financing with Foreign Export Credit Agency Attachment H required http://www.exim.gov/pub/pdf/95-10.pdf
☐Local Cost Support www.exim.gov/products/policies/local_cost.html	☐Foreign Currency Coverage (specify currency) _____ Supply contract denominated in. ☐US$ ☐Foreign currency	☐Environmental Exports Program www.exim.govv/products/special/environment.html
☐Ancillary Service Fees www.exim.gov/products/ebd-m-13.html	☐Credit Guarantee Facility www.exim.gov/products/credit_guar.html	☐Military/Security/Police http://www.exim.gov/products/policies/military.html
☐Foreign Dealer Insurance Policy Attachment IV Required	☐ Leasing Specify ☐Guarantee www.exim.gov/tools/appsforms/leaseguar.html ☐Insurance http://www.exim.gov/products/insurance/leasing.html	☐Other _____

3. PARTICIPANTS:

What is the Applicant's role in the transaction? ☐ Exporter ☐Buyer/borrower/lessee ☐ Lender/lessor?

Exporter: The exporter is the U.S. entity that contracts with the buyer for the sale of the U.S. goods and services. In the case of a finance lease, if the lessor is a U.S. entity and takes title to the goods and services for lease to the foreign lessee, the lessor is the exporter.

☐Check if the exporter is the applicant. Otherwise, complete the information below for each exporter, including ancillary service providers.

Exporter name:_____ Duns #:_____

Contact person:_____ Phone#:_____

Position title:_____ Fax#:_____

Street address: _____ E-mail: _____

City: _____ State:_____ Postal code:_____

NAICS Code: _____ Total number of employees: _____ Total Sales: _____

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

Supplier: The supplier is the U.S. company that manufactures the goods and/or performs the services to be exported.
☐ Check if the supplier is also the exporter. Otherwise, complete the information below for each supplier, including ancillary service providers.

Supplier name: _____ Duns#: _____

Position title: _____ Fax:# _____

Street address: _____ E-mail: _____

City: _____ State: _____ Nine-digit Zip Code: _____

NAICS Code: _____ Total number of employees: _____ Total Sales: _____

Borrower or Lessee: The borrower is the entity that agrees to repay the loan. The lessee is the entity that agrees to lease the goods and services from the lessor and pay rent under a finance lease.
☐ Check if the borrower/lessee is the applicant. If not, complete the information below.

Borrower's/Lessee's name: _____

Contact person: _____ Phone#: _____

Position title: _____ Fax#: _____

Street address: _____ E-mail: _____

City: _____ State/Province: _____ Postal code: _____

Country: _____

Guarantor: The guarantor is the person or entity that agrees to repay the credit if the borrower or lessee does not. Refer to the Medium-Term Credit Standards (at http://www.exim.gov/tools/credit_stds.html) to determine in what situations personal or corporate guarantors are required for medium-term transactions.
Check to indicate whether
☐ There is no guarantor ☐ The guarantor is an individual ☐ The guarantor is a financial institution ☐ The guarantor is a corporation. Complete the information below for each guarantor.

Guarantor name: _____

Contact person: _____ Phone#: _____

Position title: _____ Fax#: _____

Street address: _____ E-mail: _____

City: _____ State/Province: _____ Postal code: _____

Country: _____

Buyer: The buyer is the entity that contracts with the exporter for the purchase of the U.S. goods and services. Check if the buyer is also the ☐ borrower/lessee or lessor or ☐ guarantor. Otherwise, complete the information below.

Buyer name: _____

Contact person: _____ Phone#: _____

Position title: _____ Fax#: _____

Street address: _____ E-mail: _____

City: _____ State/Province: _____ Postal code: _____

Country: _____

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

End-user: The end-user is the foreign entity that uses the U.S. goods and services.

Check if end-user is ☐ The borrower/lessee or ☐ Guarantor or ☐ Buyer. Otherwise, complete the information below.

End-user name: _____

Contact person: _____ Phone#: _____

Position title: _____ Fax#: _____

Street address: _____ E-mail: _____

City: _____ State/Province: _____ Postal code: _____

Country: _____

Lender/Lessor: The lender is the company that extends the Ex-Im Bank guaranteed or insured loan to the Borrower. The Lessor is the company that extends the Ex-Im Bank guaranteed finance lease to the Lessee.
☐ Check if the lender/lessor is the applicant. Otherwise, complete the information below.

Lender's/Lessor's name: _____

Contact person: _____ Phone#: _____

Position title: _____ Fax#: _____

Street address: _____ E-mail: _____

City: _____ State/Province: _____ Postal code: _____

Country: _____

Agent:
An agent is a business entity or individual, usually located in the country of the borrower or buyer, who has assisted in the sourcing, packaging, and/or preparation of a request for support from Ex-Im Bank, and who will receive compensation in some form for their services.
Is an agent involved in this transaction? Yes ☐ No ☐
If yes, add the agent information below:
Agent's legal name: _____ Province: _____

Contact person: _____ Country: _____

Position title: _____ E-mail: _____

Street address: _____ Phone: _____

City: _____ Postal code: _____ Fax: _____

Primary Source of Repayment (PSOR)
The PSOR is the entity whose financial statements form the basis of Ex-Im Bank's evaluation of reasonable assurance of repayment, i.e. the entity whose financial statements Ex-Im Bank uses to calculate the ratios for medium-term credit standards compliance. For this transaction, indicate whether the PSOR is:
☐ the buyer
☐ the corporate guarantor, or
☐ business combination, (e.g. the consolidated or combined financial statement of the buyer and one or more corporate guarantors.) If business combination, indicate which entities comprise the combination

_____

Is the PSOR a financial institution? Yes ☐ No ☐
Select the risk category of the PSOR: Sovereign ☐ Public Non-sovereign ☐ Private ☐
Does the PSOR have a bond rating? Yes ☐ No ☐
If yes, indicate the name of the rating agency, rating, and the date of the rating. _____

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

4. TRANSACTION DESCRIPTION

a) Describe the U.S. goods and service(s). Include make, model, manufacturer/supplier or NAICS of goods and services, number of units, values and estimated U.S. and foreign content. This section does not need to be completed if the exporter attaches a Content Report (www.exim.gov/pub/pdf/ebd-m-58.pdf) or if the request is for a Credit Guarantee Facility.

_____

_____

_____

b) Describe the purpose of the transaction. Include answers to the following: Will the goods be used to create or expand production capacity for an exportable product? Are the goods and services destined for an identifiable project? If so, provide information on the total estimated project costs in U.S. dollars. Also provide information on other sources of financing for the project, including working capital.

_____

_____

_____

c) Indicate whether an application for support of this export contract or a related project has been filed with the U.S.Agency for International Development, U.S. Maritime Administration, Overseas Private Investment Corporation, U.S. Trade Development Agency or a multilateral financing agency. If so, include a brief description of the additional support.

_____

_____

_____

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

5. REQUESTED FINANCING AMOUNTS AND STRUCTURE

Ex-Im Bank support is based on the value of the eligible goods and services in the exporter's supply contract(s) or purchase order(s). The total level of support will be the lesser of: 85% of the value of all eligible goods and services or 100% of the U.S. content included in all eligible goods and services in the exporter's supply contracts. In addition, Ex-Im Bank may also finance certain local costs, ancillary services as approved, and the exposure fee/premium. Fill out the chart below to determine estimated eligible amounts.

		Definition	US$
A	Supply Contracts or Purchase Orders [If the lessor is a U.S. entity and takes title to the U.S. goods and services for lease to a foreign lessee, the finance lease is the supply contract]	The aggregate price of all goods and services in all the supply contract(s) or purchase order(s), including local costs, ancillary services, and excluded goods and services. Break out ancillary services in A(ii).	A(i) A(ii)
B	Excluded Goods and Services	The aggregate price of all goods and services that are not eligible for or are excluded from Ex-Im Bank support (e.g. goods not shipped from the U.S. and excluded ancillary services). Local costs should not be included in this line.	
C	Total Local Costs	The aggregate price of all goods manufactured in the end-user's country and all services provided by residents of the purchaser's country. Ex-Im Bank may be able to finance these amounts up to 15% of D below.	
D	Net Contract Price	A minus B minus C	
E	Eligible Foreign Content	The aggregate cost of any goods produced or manufactured outside the U.S., or services provided by third country personnel or foreign freight cost and foreign insurance included in the net contract price (line D), (e.g. foreign items shipped from the U.S.).	
F	U.S. Content	D minus E	
G	Cash Payment	This amount must be the greater of E or 15% of D	
H	Local Cost Financing Requested	This can be no more than 15% of D	
I	**Financed Amount Requested** (Excluding Exposure Fee)	D minus G plus H	

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

A. Exposure Fee (Guarantees)/ Premium (Insurance) Check one box.
☐ Ex-Im Bank to finance the fee/premium, which will be paid as the credit is drawn down.
☐ Ex-Im Bank to finance the fee/premium, which will be paid up front.
☐ Ex-Im Bank will not finance the fee/premium, and it will be paid as the credit is drawn down.
☐ Ex-Im Bank will not finance the fee/premium, and it will be paid up front.

B. Transaction Structure:
i. Principal Repayment Term/Finance Lease: _____(years). Unless otherwise requested, equal installments of principal will be repaid semi-annually beginning six months after the starting point. In the case of a finance lease, unless otherwise requested, rent will be calculated based on equal installments of principal, paid semi-annually beginning six months after the starting point.

ii Starting Point: The starting point is generally the event that marks the fulfillment of the exporter's contractual responsibility. See Ex-Im Bank's fact sheets on starting points and reach-back policies at www.exim.gov.
(Check one box.)

☐ Shipment (single shipment)
☐ Final Shipment (multiple shipments)
☐ Mean Shipment (multiple shipments)
☐ Consolidation Date (Foreign Dealer Insurance Policy only)
☐ Services Completion.
☐ Completion of Installation. Specify date:_____
☐ Project Completion. Specify date:_____

iii Shipment Period: Shipments will be completed and/or services will be performed from:
[ ] (month/year) to [ ] (month/year) excluding any acceptance, retention, or warranty period. If shipment is planned for a certain number of days after Ex-Im Bank authorization, so note: _____

iv. Promissory Notes/Lease Supplements: For transactions with multiple shipments indicate:
☐ There will be one promissory note per shipment.
☐ Disbursements will be consolidated into one promissory note.
☐ (Finance lease only) There will be one lease supplement per shipment.
☐ (Finance lease only) Lease deliveries will be consolidated under one lease supplement.

v. Interest rate:
The interest rate to be charged on the guaranteed/insured loan or used to calculate the rent under a finance lease is: _____

6. REASON FOR REQUESTING EX-IM BANK SUPPORT

Ex-Im Bank will finance the export of U.S. goods and services if it can be demonstrated that Ex-Im Bank support is necessary for the transaction to proceed. Check one of the boxes below describing why support is necessary.

☐ The exporter is aware that foreign companies are competing, or are expected to compete, for the sale. Provide company name, country, and (if known/applicable) the supporting export credit agency.

_____

_____

☐ The exporter is aware that foreign companies manufacture comparable goods and services that are sold in the buyer's market with export credit agency support available. Provide company name, country, and (if known/applicable) the supporting export credit agency.

_____

_____

☐ There is limited availability of private financing available from either external or domestic sources.

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

7. CREDIT INFORMATION

☐ The information requested in Attachment I: Credit information is attached.

8. OTHER INFORMATION, NOTICES AND CERTIFICATIONS

A. General Information Provide the following
☐ Credit Agency report(s) on the exporter(s). If exporter has a credit rating of BBB or better, this is not required.
☐ Annex A to the Master Guarantee Agreement (Guarantees only) at www.exim.gov/pub/pdf/mt-anx-exec.pdf
☐ Annex A to the Medium-Term Master Guarantee Agreement – Finance Lease (Finance Lease Guarantees only)
☐ Lender's mandate letter (require when applicant is a financial institution)

B. Supply Contracts Between the Exporter and Buyer
☐ Sales contract(s), pro forma invoice(s), or purchase order(s) and finance lease(s) are attached.
☐ This is a request for a repetitive sales insurance policy (MTR or Foreign Dealer Insurance Policy) or a credit guarantee facility (CGF) and no contract is attached.

C. Anti-Lobbying Disclosure Form
Please refer to the Anti-Lobbying Declaration/Disclosure forms attached as Attachment V and, if applicable, the Disclosure Form available at http://www.exim.gov/pub/ins/pdf/lll.pdf and include a copy of the signed form(s) with your application. This requirement applies both to applicants and recipients who are not the applicant for a final commitment.

The disclosure requirements do not apply where the U.S. Government-financed portion is $150,000 or less. Nor do they apply to foreign governments, their instrumentalities or their wholly-owned companies.

D. Certifications
The applicant certifies that neither it, nor its Principals, have within the past 3 years been a) debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in, a Covered Transaction, b) formally proposed for debarment, with a final determination still pending, c) indicted, convicted or had a civil judgment rendered against it for any of the offenses listed in the Regulations, d) delinquent on any substantial debts owed to the U.S. Government or its agencies or instrumentalities as of the date of execution of this application; or e) the undersigned has received a written statement of exception from Ex-Im Bank attached to this certification, permitting participation in this Covered Transaction despite an inability to make certifications a) through d) in this paragraph.

The applicant further certifies that it has not and will not knowingly enter into any agreements, in connection with the products and services to be exported in the transaction described herein, with any individual or entity that has been debarred, suspended, declared ineligible from participating in, or voluntarily excluded from participation in a Covered Transaction. The term "Covered Transaction" shall have the meaning set forth in the Ex-Im Bank Debarment and Suspension Regulations at 12 C.F.R. Part 413 (Regulations).

In addition, the applicant further certifies that it has not, and will not, engage in any activity in connection with this transaction that is a violation of a) the Foreign Corrupt Practices Act of 1977, 15 U.S.C. 78dd-1 et seq. (which provides for civil and criminal penalties against individuals who directly or indirectly make or facilitate corrupt payments to foreign officials to obtain or keep business), b) the Arms Export Control Act, 22 U.S.C. 2751 et seq., c) the International Emergency Economic Powers Act, 50 U.S.C. 1701 et seq., or d) the Export Administration Act of 1979, 50 U.S.C. 2401 et seq.; nor been found by a court of the United States to be in violation of any of these statutes within the preceding 12 months, and to the best of its knowledge, the performance by the parties to this transaction of their respective obligations does not violate any other applicable law.

The applicant certifies that the representation made and the facts stated in this document and any attachments are true, to the best of its knowledge and belief, and it has not misrepresented or omitted any material facts, and if any of the certifications made herein become untrue, Ex-Im Bank will be promptly informed of such changes. The applicant further understands that these certifications are subject to the penalties for fraud against the U.S. Government (18 U.S.C. 1001 et seq.).

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

Notices

The applicant is hereby notified that information requested by this application is done so under authority of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635 et seq.); provision of this information is mandatory and failure to provide the requested information may result in Ex-Im Bank being unable to determine eligibility for support. The information provided will be reviewed to determine the participants' ability to perform and pay under the transaction referenced in this application. Ex-Im Bank may not require the information and applicants are not required to provide information requested in this application unless a currently valid OMB control number is displayed on this form (see lower left of each page).

Public Burden Statement: Reporting for this collection of information is estimated to average 1 hour per response, including reviewing instructions, searching data sources, gathering information, completing, and reviewing the application. Send comments regarding the burden estimate, including suggestions for reducing it, to Office of Management and Budget, Paperwork Reduction Project OMB# 3048-0009, Washington, D.C. 20503.

Applicant Name: _____

Name and title of authorized officer: _____

Signature of authorized officer: _____

Date: _____

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

Attachment I: Credit Information Requirements

1. INFORMATION ON THE BORROWER:

☐ If the primary source of repayment for the transaction is a corporate guarantor provide only 1a), 1b) and 1 c) on the borrower;

☐ If current information (within the last six months) as described below is on file at Ex-Im Bank, indicate Guarantee or Policy #_____

☐ If the primary source of repayment is the borrower, provide the information noted in 1 a) – 1 g) below (note optional information described in part 3):

a) Company description and ownership

☐ Provide a concise description of the company origin, legal status, facilities, business activities and primary markets.

☐ Provide the name of each owner of at least 10% of company shares and his/her ownership percent.

b) Related party information

☐ Provide names and a brief description of subsidiaries, parent company, and/or commonly owned companies ("related parties").

☐ Indicate which, if any, of the related parties account for more than 25% of the borrower's sales or purchases during the last fiscal year.

☐ Indicate which, if any, related parties extend loans to the borrower or to whom the borrower extends loans, if loans are material to the borrower. Materiality is defined as 10% of the borrower's total assets.

☐ Provide details of guarantees given on behalf of related parties by the borrower, if loans are material to the borrower.

c) Credit agency report

☐ Provide a credit agency report on the borrower not older than six months from date of application, or

☐ Check if credit agency report is not applicable because the borrower is a financial institution (bank), or a foreign government agency.

d) Creditor Bank or Supplier References

☐ Provide a creditor bank reference prepared within six months of the application date. Report should include bank name, address, and length of relationship, amount, currency, and terms of secured and unsecured credit and repayment experience.

☐ If the borrower does not have any financial institution creditors, provide two supplier references. Supplier references should be dated within six months of the application and include years of credit experience, annual sales, the terms of sale, the amount of the last sale, the recent high credit, the amount currently outstanding, details on any past due amounts, and repayment experience.

e) Financial Statements

There are certain requirements for all financial statements, regardless of the amount of the transaction. These are as follows:

i) ☐ Provide financial statements for the previous three fiscal years, as well as interim statements if the latest fiscal year end statements are dated more than nine months from the date of application. When interim statements are provided, also provide interim statements for the same interim period for the previous year (for comparative purposes).

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

ii) ☐ A summary of significant accounting principles must accompany all financial statements. These should outline, at a minimum, the depreciation methods and rates, valuation methods for inventory, fixed assets and investments and the inflation accounting method used, if any. For construction companies, a description of the revenue recognition method should be included. Additionally, financial statements should break out depreciation expense, gross interest expense, tax expense and current maturities of long-term financial institution or supplier debt, if any.

iii) ☐ For all financial statements that present combined or consolidated results, provide the percentage of total assets, total liabilities, tangible net worth, sales, and net income represented by each entity that is participating in the transaction as the buyer, borrower, guarantor or end-user. A combining/consolidating worksheet would have all this information.

There are certain additional financial statement information requirements that depend on the amount of the financing request as follows:

iv) ☐ For financed amounts of up to and including $1 million: Audited financial statements are preferred but not required for non-financial institutions. Audited statements are required for financial institutions. While English language statements are preferred, Ex-Im Bank will accept Spanish language financial statements.

v) ☐ For financed amounts of greater than $1 million up to and including $5 million: While English language statements are preferred, Ex-Im Bank will accept Spanish language financial statements. Financial statements must be audited by an external independent auditor.

vi) ☐ For financed amounts of greater than $ 5 million: Financial statements must be audited by an external independent auditor. Statements must be in English.

f) Market indications, if available, are as follows:

Name of rating agency: _____ Rating:_____ Date: _____

Include the debt rating reports issued by the rating agency, and if applicable, the prospectus for a debt or equity offering during the two years prior to the application dates.

g) Supplemental Credit Questions

☐ Provide the answers to the questions listed in Attachment C to the Medium-Term Credit Standards for transactions of greater than $5 million up to and including $10 million where the primary source of repayment is a non-financial institution that does not have market indications. These questions are located on Ex-Im Bank's web site at http://www.exim.gov/pub/pdf/ebd-m-39.pdf.

2. INFORMATION ON THE CORPORATE GUARANTOR (S):

☐ Not applicable. Refer to the Medium-Term Credit Standards at http://www.exim.gov/pub/pdf/ebd-m-39.pdf to determine in what situations corporate guarantors are required for medium term transactions.

☐ If the corporate guarantor is not the primary source of repayment, provide 1 a), and 1 b) and 1 c) as described above.

☐ If the corporate guarantor is the primary source of repayment, provide the information noted in 1 a) – 1 g)

3. OPTIONAL ITEMS WHICH THE APPLICANT MAY ATTACH. (These may expedite the processing of your application).

☐ Financial spreads on the borrower and/or guarantor designated as the primary source of repayment. See Ex-Im Bank's

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

website for spreading conventions, which should be used as guidelines.

☐ Calculation of the financial performance criteria of Ex-Im Bank's Medium-Term Credit Standards on the borrower or guarantor designated as the primary source of repayment.

☐ Mitigating factors for any of the performance criteria that are not met.

☐ Supplemental credit questions as detailed in 1 g) for deals of less than $5 million.

☐ Translations of Spanish language financial statements, if applicable.

☐ Explanations of any adverse information contained in the credit report, references and/or financial statements, including interims.

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States

APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

Attachment II:

Pre-shipment Questionnaire

Complete this form only if you are requesting pre-shipment insurance coverage for your transaction. Details on pre-shipment coverage can be found at **http://www.exim.gov/pub/ins/pdf/eib01-04.pdf**.

Details of Coverage Requested:

a) Provide the reason pre-shipment coverage is being requested: _____

b) Indicate the date the contract was executed or the anticipated date of signing: _____

c) Indicate the estimated period between the contract date and the final shipment date of items: _____

d) Provide a schedule of any progress payments made or to be made by the borrower during the pre-shipment period, or indicate none:

_____

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

Attachment III – Used Equipment Information and Questionnaire

USED AND REFURBISHED EQUIPMENT

Equipment that has been previously owned or placed into service is generally eligible for support under Ex-Im Bank's loan, guarantee and insurance programs, provided certain criteria are met. To be eligible for Ex-Im Bank support, used equipment, including equipment that has been refurbished in the U.S., must meet the following eligibility criteria:

1 . To be considered U.S. content, the used equipment must be of original U.S. manufacture, AND, if previously exported, must have been in use in the U.S. for at least one year prior to export.

2 The U.S. costs associated with the refurbishment of the equipment are eligible for Ex-Im Bank support, provided they meet Ex-Im Bank's foreign content policy parameters. Ex-Im Bank can support the lesser of 85 percent of the U.S. Contract Price of the item or 100% of the actual U.S. content of the item provided that (a) the item is shipped from the U.S. and (b) the foreign content of the item does not exceed 50 percent of the item's total production cost.

3. If the used equipment is of either original foreign manufacture or original U.S. manufacture, previously exported and has not been in use in the U.S. for at least one year prior to its proposed export, then Ex-Im Bank will treat it as foreign content and the following applies:

a. If the equipment is to be refurbished, the used equipment procurement cost is considered eligible foreign content provided that this cost is less than 50 percent of the total procurement and refurbishment cost.

b. If the foreign content of the used equipment exceeds 50 percent of the cost associated with the procurement and refurbishment of the equipment, then only the U.S. refurbishment portion will be considered eligible for Ex-Im Bank support.

4. Previously exported goods that benefited from Ex-Im Bank financing in the past will be considered eligible for Ex-Im Bank support provided that the original financing has been paid in full and that the equipment has been in use in the U.S. at least one year.

5. The repayment term that Ex-Im Bank offers for used and refurbished equipment will be consistent with Ex-Im Bank's international agreements for repayment terms based on contract value. Ex-Im Bank, at its sole discretion, will determine the remaining useful life of such equipment.

a. If the remaining useful life of the equipment is at least half the useful life of equivalent new equipment, then Ex-Im Bank may support a repayment term equal to that offered new equipment,

b. If the remaining useful life of the equipment is less than half the useful life of equivalent new equipment, then Ex-Im Bank may support a repayment term equal to the useful life remaining.

c. If the sale includes more than one item, including a mixture of new and used items, a weighted average of the useful lives of all the items will be calculated by applying the rules of 5(a) and 5(b) above.

6. Foreign Content for used pieces should be determined by contacting the original manufacturer to ascertain the value on a percentage basis of foreign components contained in the equipment during the manufacturing process. This percentage should be applied to the supplier's purchase price to determine the current value of foreign components. This value should then be adjusted to account for the value of any additional foreign components installed during the refurbishment process.

Export-Import Bank of the United States
APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

USED EQUIPMENT QUESTIONNAIRE

Complete a separate questionnaire for each item of used equipment.

1. Product information

Provide name and description of used equipment: _____

Equipment History

a) year manufactured: _____ b) hour meter reading: _____ c) mileage: _____ d) where is equipment located? _____ e) how long has the equipment been there?: _____

Is the product under warranty? ____Yes ____No
Term_____ Description _____
Has the equipment been rebuilt/reconditioned?
By whom? _____ Location: _____ Date: _____

Does this equipment have an independent mechanical certification, evaluation, or assessment? ___Yes ___No
Term: _____ _____ Description: _____ Has the equipment been rebuilt or reconditioned? Is the product under warranty?

2. Export/Import History

Was the equipment previously exported? _____Yes ____No
Did Ex-Im Bank provide support? ____Yes ____No If yes, provide details.
Was the equipment imported to the U.S.?_____Yes ____ No

3. Prices and Costs

Contract price: $ ____Foreign content included in the contract price: $_____
U.S. supplier's purchase price: $_____ Purchase Date: _____
Cost of rebuilding/reconditioning: $_____ Cost of spare parts included: _____
Description of rebuilding and/or spare parts_____

4. Used Aircraft Only.

Have all airworthiness directives been completed? ___Yes ___No
If no, describe the regulation or directive permits required for continued operation of the aircraft:_____
Number of cycle hours remaining on the airframe and engines: _____
Months remaining before next maintenance "C" and "D" checks: _____
Names of each previous owner and lessee with the corresponding acquisition dates: _____

Signature: _____ Date: _____ Title: _____
Name: _____
Broker: _____ Administrator (if applicable): _____
(For insurance program):

If you have questions about this questionnaire, please contact the Business Development Division (Telephone: 202.565.3900 or Fax: 202.565.3931). For questions concerning large aircraft, please contact the Transportation Division (Telephone: 202.565.3550 or Fax: 202.565.3558).

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States

APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

Attachment IV: Supplemental Information Requirements for Foreign Dealer Insurance Policy

I. Requested Financing Amounts and Structures

☐ For Supply Contracts or Purchase Orders Amount identified in Item 5.A of the application, please indicate amounts requested for each of the following (total must accumulate to the amount in Item 5.A):

- o Short-term only (for capital goods that will not be refinanced on a medium-term basis together with spare parts and other non-capital items): $_____
- o Medium-term (for capital goods that will be refinanced on a medium-term basis): $_____

II. Dealer Information

☐ Do you or the exporter (please specify) have a distribution agreement with the proposed dealer? If so, is this an exclusive relationship? _____

☐ How long have you or the exporter (please specify) been working with the proposed dealer?

_____

☐ For how long, if at all, have you or the exporter extended credit to this dealer? _____

☐ What, if any, credit limits have been established? At what terms?

A) Parts _____ B) Equipment _____

Are guarantees or collateral required to support this credit? _____

☐ Is a minimum level of sales per year required from this dealer? _____

☐ What financial and credit criteria have you established to qualify the dealer?

_____

☐ How often do you conduct a credit review of this dealer? _____ ☐ What are the terms extended by the dealer to its customers? _____

☐ What warranty support is provided to the dealer? _____

☐ How far past due must the dealer be before shipments are discontinued?

_____

OMB 3048-0014
EIB 03-02
Revised 03/06

Export-Import Bank of the United States

APPLICATION FOR MEDIUM-TERM INSURANCE OR GUARANTEE

Attachment V

Anti-Lobbying Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that: If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee if a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure of Lobbying Activities" (available at www.exim.gov/pub/ins/pdf/lll.pdf) in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Date _____

OMB 3048-0014
EIB 03-02
Revised 03/06

[FR Doc. 06–3283 Filed 4–6–06; 8:45am]
BILLING CODE 6690–01–C

FEDERAL MARITIME COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Federal Maritime Commission.
TIME AND DATE: 10 a.m.—April 12, 2006.
PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.
STATUS: Closed.
MATTERS TO BE CONSIDERED: 1. Docket No. 02–04—*Anchor Shipping Co.* v. *Alianca Navegacao E Logistica Ltda.*
CONTACT PERSON FOR MORE INFORMATION: Bryant L. VanBrakle, Secretary, (202) 523–5725.

[FR Doc. 06–3394 Filed 4–5–06; 12:10 pm]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

ACTION: Board of Governors of the Federal Reserve System

SUMMARY: Background.

Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Michelle Long—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829).

OMB Desk Officer—Mark Menchik—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503, or e-mail to mmenchik@omb.eop.gov.

Final approval under OMB delegated authority of the extension for three years, with revision of the following reports:

1. Report title: Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks

Agency form number: FR 2502q

OMB Control number: 7100–0079

Frequency: Quarterly

Reporters: Large foreign branches and banking subsidiaries of U.S. depository institutions

Annual reporting hours: 826 hours

Estimated average hours per response: 3.5 hours

Number of respondents: 59

General description of report: This information collection is required (12 U.S.C. §§ 248(a) (2), 353 et seq., 461, 602, and 625) and is given confidential treatment (5 U.S.C. § 552(b) (4)).

Abstract: This reporting form collects data quarterly on the geographic distribution of the assets and liabilities of major foreign branches and subsidiaries of U.S. commercial banks and of Edge and agreement corporations. Data from this reporting form comprise a piece of the flow of funds data that are compiled by the Federal Reserve.

Current Actions: On January 24, 2006, the Federal Reserve published a notice soliciting comments on the proposed revisions to the Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks (71 FR 3844). The comment period ended on March 27, 2006. The Federal Reserve will implement the following revisions, effective for the March 31, 2006 report date: (1) discontinue Schedule A as a result of the elimination of M3 and (2) reduce the reporting panel to require offices located only in the Caribbean and the United Kingdom to file the FR 2502q. In addition, the Federal Reserve will implement the following revisions, effective for the June 30, 2006 report date: (1) discontinue Memorandum item 3a; (2) revise the instructions for data to be reported in the unallocated data items; and (3) conform the names of several countries and one region to the country list compiled by the U.S. Treasury.

The Federal Reserve received one comment letter from a federal agency describing its use of the data to prepare economic account information and estimates of international transactions. The revisions will be implemented as originally proposed.

2. Report title: Consolidated Report of Condition and Income for Edge and Agreement Corporations

Agency form number: FR 2886b

OMB control number: 7100–0086

Frequency: Quarterly

Reporters: Edge and agreement corporations

Annual reporting hours: 3,055

Estimated average hours per response: 14.7 banking corporations, 8.5 investment corporations

Number of respondents: 19 banking corporations, 57 investment corporations

General description of report: This information collection is mandatory (12 U.S.C. §§ 602 and 625). For Edge corporations engaged in banking, information collection on schedules RC–M and RC–V are held confidential pursuant to Section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)). For investment Edge corporations, only information collected on schedule RC–M are given confidential treatment pursuant to Section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4).

Abstract: This reporting form comprises a balance sheet, income statement, two schedules reconciling changes in capital and reserve accounts, and ten supporting schedules, and it parallels the commercial bank Consolidated Reports of Condition and Income (Call Report)(FFIEC 031; OMB No. 7100–0036). The Federal Reserve uses the data collected on the FR 2886b to supervise Edge corporations, identify present and potential problems, and monitor and develop a better understanding of activities within the industry.

Current action: On January 24, 2006, the Federal Reserve published a notice soliciting comments on the proposed revisions to the FR 2886b (71 FR 3844). The comment period ended on March 27, 2006. The notice described the Federal Reserve's proposal to delete three data items related to bankers acceptances, consistent with proposed changes to the Call Report and to make minor clarifications to the reporting form and instructions. The Federal Reserve did not receive any comments on the proposed revisions. The revisions will be effective as of March 31, 2006.

Board of Governors of the Federal Reserve System, April 4, 2006.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. E6–5125 Filed 4–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

SUMMARY: Background.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board–approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for comment on information collection proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before June 6, 2006.

ADDRESSES: You may submit comments, identified by FR 2064, FR H–4 or RFP/RFPQ, by any of the following methods:

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E–mail: regs.comments64;federalreserve.gov. Include docket number in the subject line of the message.
- FAX: 202–452–3819 or 202–452–3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Michelle Long, Federal Reserve Board Clearance Officer (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202–263–4869), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposals to approve under OMB delegated authority the extension for three years, without revision, of the following reports:

1. Report title: Recordkeeping Requirements Associated with Changes in Foreign Investments (Made Pursuant to Regulation K)

Agency form number: FR 2064

OMB Control number: 7100–0109

Frequency: On–occasion

Reporters: State member banks (SMBs), Edge and agreement corporations, and bank holding companies (BHCs)

Annual reporting hours: 320 hours

Estimated average hours per response: 2 hours

Number of respondents: 40

General description of report: The recordkeeping requirements of this information collection are mandatory (Section 5(c) of the BHC Act (12 U.S.C. 1844(c)); Sections 7 and 13(a) of the International Banking Act of 1978 (12 U.S.C. 3106 and 3108(a)); Section 25 of the Federal Reserve Act (FRA) (12 U.S.C. 601–604a); Section 25A of the FRA (12 U.S.C. 611–631); and Regulation K (12 CFR 211.8(c))). Since the Federal Reserve does not collect this information no issue of confidentiality under the Freedom of Information Act (FOIA) arises. FOIA will only be implicated if the Board's examiners retain a copy of the records in their examination or supervision of the institution, and would be exempt from disclosure pursuant to FOIA (5 U.S.C. 552(b)(4), (b)(6), and (b)(8)).

Abstract: Internationally active U.S. banking organizations are expected to maintain adequate internal records to allow examiners to review for compliance with the investment provisions of Regulation K. For each investment made under Subpart A of Regulation K, records should be maintained regarding the type of investment, for example, equity (voting shares, nonvoting shares, partnerships, interests conferring ownership rights, participating loans), binding commitments, capital contributions, and subordinated debt; the amount of the investment; the percentage ownership; activities conducted by the company and the legal authority for such activities; and whether the investment was made under general consent, prior notice, or specific consent authority. With respect to investments made under general consent authority, information also must be maintained that demonstrates compliance with the various limits set out in Section 211.9 of Regulation K.

2. Report title: Recordkeeping Requirements Associated with Real

Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y

Agency form number: FR H–4
OMB control number: 7100–0250
Frequency: Event–generated
Reporters: SMBs and nonbank subsidiaries of BHCs
SMBs, 24,915; nonbank subsidiaries of BHCs, 20,638
Estimated average hours per response: 0.25
Number of respondents: 1,541
General description of report: This information collection is mandatory (12 U.S.C. 3331–3351). Since the Federal Reserve does not collect this information, no issue of confidentiality under FOIA arises.
Abstract: For federally related transactions, Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 requires SMBs and BHCs with credit extending subsidiaries to use appraisals prepared in accordance with the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. Generally, these standards include the methods and techniques used to analyze a property as well as the requirements for reporting such analysis and a value conclusion in the appraisal. There is no formal reporting form.

3. Report title: Request for Proposal (RFP) and Request for Price Quotations (RFPQ)
Agency form number: RFP/RFPQ
OMB control number: 7100–0180
Frequency: On–occasion
Reporters: Vendors and suppliers
Annual reporting hours: 8,400
Estimated average hours per response: RFP, 50 hours; RFPQ, 2 hours.
Number of respondents: RFP, 120; RFPQ, 1,200.
General description of report: This information collection is required to obtain a benefit (12 U.S.C. 243, 244, and 248(l)). This information collection is not given confidential treatment unless a respondent requests that portions of the information be kept confidential and the Board's staff grants the request pursuant to the applicable exemptions provided by FOIA (5 U.S.C. 552).
Abstract: The Federal Reserve uses the RFP and the RFPQ as needed to obtain competitive bids and contracts submitted by vendors (offerors). Depending upon the goods and services for which the Federal Reserve is seeking bids, the offeror is requested to provide either prices for providing the goods or services (RFPQ) or a document covering not only prices, but the means of performing a particular service and a description of the qualification of the staff of the offeror who will perform the service (RFP). This information is used to analyze the proposals and select the offer providing the best value.

Board of Governors of the Federal Reserve System, April 4, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E6–5126 Filed 4–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 24, 2006.

A. Federal Reserve Bank of Atlanta (Andre Anderson, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

1. J. Autry and Martha Gobbell; Stephen or Jane Ann Gobbell; Stephen Gobbell, as custodian for Stephen Mark Gobbell; PB Bancshares, Inc., ESOP, J. Autry Gobbell, Gailand Grinder; Tommy Martin; Kelvin Runions; Carl Skelton; and Andrew Yarbrough, as trustees; Frances Hassell Wade Trust, J. Autry Gobbell, Martha Gobbell, and Stephen Gobbell, as trustees, all of Clifton, Tennessee; to retain voting shares of PB Bancshares, Inc., and thereby indirectly retain voting shares of Peoples Bank, both of Clifton, Tennessee.

Board of Governors of the Federal Reserve System, April 4, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5105 Filed 4–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 5, 2006.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. CSAB Holdings, LLC, Dallas, Texas; to acquire 100 percent of the voting shares of Parkway National Bancshares, Inc., Plano, Texas, and thereby indirectly acquire Parkway National Bancshares of Delaware, Inc., Wilmington, Delaware, and Parkway Bank, National Association, Plano, Texas.

2. WCM Holdings, Inc., and WCM-Parkway, LTD, both of Dallas, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of CSAB Holdings, LLC, Dallas, Texas; and thereby indirectly acquire Parkway National Bancshares, Inc., Plano, Texas; Parkway National Bancshares of Delaware, Inc., Wilmington, Delaware; and Parkway

Bank, National Association, Plano, Texas.

B. Federal Reserve Bank of San Francisco (Tracy Basinger, Director, Regional and Community Bank Group) 101 Market Street, San Francisco, California 94105-1579:

1. Belevedre Capital LLC and Belvedere Capital Fund II, L.P., both of San Francisco, California; to become bank holding companies by acquiring up to 50 percent of the voting shares of Presidio Bank, San Francisco, California (in organization).

Board of Governors of the Federal Reserve System, April 4, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5103 Filed 4–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2006.

A. Federal Reserve Bank of Cleveland (Cindy West, Manager) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Kentucky Bancshares, Inc., Paris, Kentucky; to acquire Peoples Bancorp of Sandy Hook, Inc., Sandy Hook, Kentucky and thereby indirectly acquire voting shares of Peoples Secure, LLC, Lexington, Kentucky, and engage in data processing activities, pursuant to section 225.28(b)(14)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, April 4, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E6–5104 Filed 4–6–06; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m. (EDT) April 17, 2006.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and parts closed to the public.

Matters to Be Considered

Parts Open to the Public

1. Approval of the minutes of the March 20, 2006, Board member meeting.
2. Thrift Savings Plan activity report by the Executive Director.
3. Quarterly Reports:

—Investment Policy Report [Board Vote].
—Performance Report.
—Vendor Financial Report.

Parts Closed to the Public

5. Internal personnel matters.
6. Procurement matters.

FOR MORE INFORMATION CONTACT: Thomas J. Trabucco, Director, Office of External Affairs. (202) 942–1640.

Dated: April 5, 2006.

Thomas K. Emswiler,

Acting Secretary to the Federal Retirement Thrift Investment Board.

[FR Doc. 06–3392 Filed 4–5–06; 11:42 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Consumer Benefits and Harms: How Best to Distinguish Aggressive, Pro-Consumer Competition From Business Conduct To Attain or Maintain a Monopoly

AGENCY: Federal Trade Commission and U.S. Department of Justice, Antitrust Division.

ACTION: Notice of Public Hearings and Opportunity for Comment.

SUMMARY: The Federal Trade Commission (FTC) and the Antitrust Division of the U.S. Department of Justice (DOJ) will hold a series of public Hearings to explore how best to identify anticompetitive exclusionary conduct for purposes of antitrust enforcement under section 2 of the Sherman Act, 15 U.S.C. 2. Among other things, the Hearings will examine whether and when specific types of conduct that potentially implicate section 2 are procompetitive or benign, and when they may harm competition and consumer welfare.

The Agencies expect to focus on legal doctrines and jurisprudence, economic research, and business and consumer experiences. To begin, the Agencies are soliciting public comment from lawyers, economists, the business community, consumer groups, academics (including business historians), and other interested parties on two general subjects: (1) The legal and economic principles relevant to the application of section 2, including the administrability of current or potential antitrust rules for section 2, and (2) the types of business practices that the Agencies should examine in the upcoming Hearings, including examples of real-world conduct that potentially raise issues under section 2. With respect to the Agencies' request for examples of real-world conduct, the Agencies are soliciting discussions of the business reasons for, and the actual or likely competitive effects of, such conduct, including actual or likely efficiencies and the theoretical underpinnings that inform the decision of whether the conduct had or has pro-or anticompetitive effects. The Agencies will solicit additional submissions about the topics to be covered at the individual Hearings at the time that each Hearing is announced.

The Agencies encourage submissions from business persons from a variety of unregulated and regulated markets, recognizing that market participants can offer unique insight into how competition works and that the implications of various business practices may differ depending on the industry context and market structure. The Agencies seek this practical input to provide a real-world foundation of knowledge from which to draw as the Hearings progress. Respondents are encouraged to respond on the basis of their actual experiences.

The goal of these Hearings is to promote dialogue, learning, and consensus building among all interested parties with respect to the appropriate legal analysis of conduct under section 2 of the Sherman Act, both for purposes

of law enforcement and to provide practical guidance to businesses on antitrust compliance. The FTC and the DOJ plan to hold two to four days of Hearings per month between June and December 2006, exclusive of August 2006. The Agencies plan to publish a more detailed description of the topics to be discussed before each Hearing and to solicit additional submissions about each topic. The Hearings will be transcribed and placed on the public record. Any written comments received also will be placed on the public record. A public report that incorporates the results of the Hearings, as well as other research, will be prepared after the Hearings.

DATES: Any interested person may submit written comments responsive to any of the topics addressed in this **Federal Register** notice. Respondents are encouraged to provide comments as soon as possible, but in any event no later than the last session of the Hearings.

ADDRESSES: When in session, the Hearings will be held at either the FTC headquarters, 600 Pennsylvania Avenue, NW., or at 601 New Jersey Avenue, NW., Washington, DC. All interested parties are welcome to attend.

Written comments should be submitted in both paper and electronic form to both the Federal Trade Commission and the Department of Justice. All comments received will be publicly posted. The comments should be submitted as follows:

Federal Trade Commission. Two paper copies of each submission should be addressed to Donald S. Clark, Office of the Secretary, Federal Trade Commission, Room H–135 (Annex Z), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Submissions should be captioned "Comments Regarding Section 2 Hearings, Project No. P062106" to facilitate the organization of comments. The paper version of each comment should include this reference both in the text and on the envelope. The FTC is requesting that the paper copies of each comment be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. The electronic version of each comment should be submitted by clicking on the following Web link: *https://secure.commentworks.com/ftc-section2hearings* and following the instructions on the Web-based form.

Department of Justice. Two paper copies should be addressed to Legal Policy Section, Antitrust Division, United States Department of Justice, 950 Pennsylvania Ave., NW., Suite 3234, Washington DC 20530. The Antitrust Division is requesting that the paper copies of each comment be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Division is subject to delay due to heightened security precautions. The electronic version of each comment should be submitted by electronic mail to *singlefirmconduct@usdoj.gov.*

FOR FURTHER INFORMATION CONTACT: Susan DeSanti, Deputy General Counsel, Policy Studies, 600 Pennsylvania Avenue, NW., Washington, DC 20580; telephone (202) 326–2167; e-mail: *sdesanti@ftc.gov* or Gail Kursh, Deputy Chief, Legal Policy Section, Antitrust Division, United States Department of Justice, 950 Pennsylvania Ave., NW., Suite 3234, Washington DC 20530; telephone (202) 307–5799; e-mail: *singlefirmconduct@usdoj.gov.* Detailed agendas and schedules for the Hearings will be available on the FTC Home Page (*http://www.ftc.gov*) and the DOJ single firm conduct Web site, *http://www.usdoj.gov/atr/public/hearings/single_firm/sfchearing.htm.*

SUPPLEMENTARY INFORMATION: Section 2 of the Sherman Antitrust Act condemns "every person who shall monopolize, or attempt to monopolize, or combine or conspire * * * to monopolize * * * *." [1] The law does not prohibit monopoly as such, however. Rather, the possession of monopoly power will not be found unlawful unless it is accompanied by an element of anticompetitive exclusionary conduct. The Supreme Court has described the requisite conduct as "the willful acquisition or maintenance of [monopoly] power as distinguished from growth or development as a consequence of a superior product, business acumen, or historic accident." [2]

This description distinguishing when certain types of conduct should be of antitrust concern is necessarily general. Caution is necessary, because the aggressive, unilateral behavior often at issue in section 2 antitrust cases typically resembles the vigorous rivalry that the antitrust law seeks to promote.[3] Sound antitrust policy encourages all firms, regardless of size, to compete vigorously. In the long run, competition forces firms to become as or more efficient than their rivals. Those that do not lose sales and, ultimately, exit the market. Antitrust enforcers must strive to avoid "false positives" (erroneous antitrust condemnation) that would chill procompetitive behavior that benefits consumers. On the other hand, allowing firms with market power to use any business practice available may result in reduced competition, the consolidation and persistence of monopoly power, and ultimately, higher prices and reduced output. Under-enforcement of the antitrust laws may result in "false negatives" in which firms continue to engage in anticompetitive exclusionary conduct that harms consumers.

An appropriate antitrust approach, therefore, requires means for distinguishing permissible from impermissible conduct in varied circumstances. Moreover, those means should provide reasonable guidance to businesses attempting to evaluate the legality of proposed conduct before undertaking it. The development of clear standards that work to the advantage of consumers while enabling businesses to comply with the antitrust laws presents some of the most complex issues facing the FTC, the DOJ, the courts, and the antitrust bar. Commentators actively debate the character of conduct that implicates section 2, and the utility of different tests for distinguishing anticompetitive and procompetitive business practices.

Given these circumstances, and because "[a]ntitrust analysis must always be attuned to the particular structure and circumstances of the industry at issue," [4] the Agencies encourage commenters to provide real-world examples of the types of conduct that the Agencies should consider in the context of these Hearings and to discuss the business reasons for their use and their actual or likely competitive effects. In addition, the Agencies encourage commenters to provide real-world examples from their own experience that illustrate the types of conduct listed below, the business reasons for the use of such conduct, the conduct's actual or likely competitive effects, what types of analyses the firm performed in deciding whether to adopt and how to implement the practice, alternative practices that were considered and why they were rejected, and how implementation of the

[1] 15 U.S.C. 2.

[2] United States v. Grinnell Corp., 384 U.S. 563, 570–71 (1966).

[3] Verizon Communications Inc. v. Law Offices of Curtis V. Trinko, 540 U.S. 398, 414 (2004) ("Under the best of circumstances, applying the requirements of § 2 can be difficult because the means of illicit exclusion, like the means of legitimate competition, are myriad. Mistaken inferences and the resulting false condemnations are especially costly, because they chill the very conduct the antitrust laws are designed to protect.") (internal quotations and citations omitted).

[4] Id. at 411.

practice affected the firm's costs, prices, risks, sales, shares, and profits. Participants in markets where other firms use such practices are invited to respond with real-world examples of the practice's effect on competition in the market as a whole, including what market conditions changed when the practice was instituted or ended and whether buyers perceive specific benefits or disadvantages from the use of the practice and, if so, what they are.

The following lists particular types of conduct that commenters may wish to address, followed by sample questions that commenters may wish to consider with respect to each or all of the types of conduct they discuss.

Particular Types of Conduct for Possible Discussion

Bundled Loyalty Discounts and Market Share Discounts. Sellers sometimes offer discounts contingent upon a buyer's purchase of two or more different products—for example, restaurants may offer a choice between a la carte items and complete meals (priced at a discount). Sellers also may offer a discount on all units sold to the buyer, if the buyer meets a target (*e.g.*, volume or market share) for purchases of a single item.

Product Tying and Bundling. Tying occurs when a firm conditions the sale of one product on the customer's agreement to buy or to take a second product. Tying often involves separate prices for components that purchasers can use in different proportions, and a contractual or technological requirement that if users purchase the tying product, they must also purchase the tied product from the same seller. When a firm charges a single price for a specified bundle of tied goods, the practice has been called "bundling." If the components are also sold separately, with a discount for purchasing the bundle, the practice is called "mixed bundling."

Exclusive Dealing. Exclusive dealing includes arrangements in which a seller agrees to sell its product to only a single distributor, a seller precludes its customer from purchasing some product from another supplier, or a buyer requires its supplier to sell some product only to the buyer.

Predatory Pricing. Predatory pricing involves pricing below "an appropriate measure" of a firm's costs, combined with a dangerous probability that the firm can later raise its prices to recoup its prior investment in below-cost prices.

Refusals to Deal. Refusals to deal occur when a firm chooses not to make a product or service available to another firm.

Most-Favored-Nation Clauses. A most-favored-nation clause is a contractual agreement between a buyer and a seller that requires the seller to sell to the buyer on pricing terms that are at least as favorable as, and sometimes more favorable than, the pricing terms on which the seller sells to any other buyer.

Product Design. Claims may arise under section 2 that a firm has modified its product design to exclude a competitor in a product-related market (*e.g.*, a market for an attachment that must fit with the product design), rather than to improve product design.

Misleading or Deceptive Statements or Conduct. Misleading or deceptive statements or conduct by a firm may potentially implicate section 2.

Sample Questions for Consideration With Respect to Each or All of the Types of Conduct That the Commenter Discusses

1. How should the structure of the market and the market shares of participants be taken into account in analyzing such conduct?

2. What are the likely procompetitive and antitcompetitive effects of the conduct in the short run? In the long run?

3. What specific types of cost savings, risk reduction, or other efficiencies (*e.g.*, elimination of free riding or otherwise protecting investments in services and reputation, product improvement or innovation) could be generated by such conduct? Would these efficiencies depend to any extent on the seller maintaining a certain scale or scope of operation?

4. Would a business typically analyze or estimate the likely cost savings from this type of conduct before engaging in it? After engaging in it? Why or why not? What other business practices, if any, could be used to achieve similar or greater efficiencies? What factors would influence the practical or economic feasibility of such alternative conduct?

5. How might competitors respond to counteract a loss of sales to the firm engaging in such conduct? If implemented by a firm with a very large market share, could such conduct raise the costs of the firm's rivals? If such conduct could raise the costs of the firm's rivals, could that lead to consumer harm? If so, how and under what circumstances?

6. Would you expect such conduct to affect the likelihood of entry into the market? If so, how and under what circumstances?

7. How widespread in your industry are the types of conduct that you have discussed? What features of the conduct may vary and why? What are the typical business contexts in which such types of conduct occur? How frequently do firms that lack market power undertake such conduct and why?

8. What tests and standards should courts and enforcement agencies use in assessing whether such conduct violates section 2?

9. If any scenario that you have discussed could result in liability under section 2, what remedy or remedies would you propose for consideration? What tests and standards should courts and enforcement agencies use in assessing which remedy to apply in a section 2 case? Should section 2 remedies address conduct or market structure, and why should one be preferred over the other? Would your preferred remedy require ongoing oversight by a court or agency—*e.g.*, oversight of prices, conduct between competitors (*e.g.*, licensing), or costs? If so, please describe how such oversight could be conducted.

10. In what circumstances, if any, should an agency decline to pursue a section 2 case due to an absence of a practical, judicially manageable, and economically feasible remedy?

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–3366 Filed 4–6–06; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 051 0154]

Fresenius AG; Analysis of Agreement Containing Consent Orders To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of Federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before May 2, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to "Fresenius AG, File No. 051 0154," to facilitate the

organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room 135–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, must be clearly labeled "Confidential," and must comply with Commission Rule 4.9(c). 16 CFR 4.9(c) (2005).[1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments that do not contain any nonpublic information may instead be filed in electronic form as part of or as an attachment to e-mail messages directed to the following e-mail box: *consentagreement@ftc.gov*.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov*. As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm*.

FOR FURTHER INFORMATION CONTACT: Gary H. Schorr, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3063.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and § 2.34 of the Commission Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 31, 2006), on the World Wide Web, at *http://www.ftc.gov/os/2006/03/index.htm*. A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before the date specified in the **DATES** section.

Analysis of Agreement Containing Consent Order to Aid Public Comment

I. Introduction

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Fresenius AG and entities it controls, including Fresenius Medical Care AG & Co. KGaA, Fresenius Medical Care Holdings, Inc., and Florence Acquisition, Inc. ("Fresenius"). The purpose of the Consent Agreement is to prevent the anticompetitive effects that would result from Fresenius's purchase of Renal Care Group, Inc. ("RCG"). Under the terms of the Consent Agreement, Fresenius is required to divest 91 dialysis clinics, and RCG's joint venture equity interests in an additional 12 clinics, in 66 markets across the United States.

The Consent Agreement has been placed on the public record for 30 days to solicit comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the Consent Agreement and the comments received, and will decide whether it should withdraw from the Consent Agreement or make it final.

Pursuant to an Agreement dated May 3, 2005, Fresenius proposed to acquire RCG for approximately $3.5 billion. The Commission's complaint alleges, as summarized in sections II and III below, that the proposed acquisition, if consummated, would violate section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, by lessening competition in the market for the provision of outpatient dialysis services in local geographic markets across the United States.

II. The Parties

Fresenius, based in Germany, has its United States headquarters in Lexington, Massachusetts. After acquiring RCG, Fresenius will be the largest provider of outpatient dialysis services in the United States. In 2005, Fresenius had approximately $4.1 billion in revenues from the provision of outpatient dialysis services to approximately 89,000 end stage renal disease ("ESRD") patients at approximately 1,155 outpatient dialysis clinics nationwide.

Headquartered in Nashville, Tennessee, RCG is the third-largest provider of outpatient dialysis services in the United States, with approximately 450 outpatient dialysis clinics nationwide, at which over 32,000 ESRD patients receive treatment. In 2005, RCG had approximately $1.5 billion in revenues from the provision of outpatient dialysis services at approximately 450 clinics.

III. Outpatient Dialysis Services

Outpatient dialysis services is the relevant product market in which to assess the effects of the proposed transaction. Most ESRD patients receive dialysis treatments in an outpatient dialysis clinic three times per week, in sessions lasting between three and five hours. The only alternative to outpatient dialysis treatments for ESRD patients is a kidney transplant. However, the wait-time for donor kidneys—during which ESRD patients must receive dialysis treatments—can exceed five years. Additionally, many ESRD patients are not viable transplant candidates. As a result, many ESRD patients have no alternative to ongoing dialysis treatments.

The Commission's complaint alleges that the relevant geographic markets for the provision of dialysis services are local in nature. They are circumscribed by the distance ESRD patients are able to travel to receive dialysis treatments. Most ESRD patients are quite ill and suffer from multiple health problems. As such, ESRD patients are unwilling and/or unable to travel long distances for dialysis treatment. The time and distance a patient will travel in a particular location are significantly affected by traffic patterns; whether an area is urban, suburban, or rural; local geography; and a patient's proximity to the nearest center. The size and dimensions of relevant geographic markets are also influenced by a variety

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

of other factors including population density, roads, geographic features, and political boundaries.

The Commission alleges that each of the 66 outpatient dialysis markets defined in the complaint is highly concentrated. With few exceptions, these markets have no more than one significant dialysis provider other than Fresenius and RCG. In each of these 66 markets, evidence that Fresenius and RCG are actual and substantial competitors in these markets, along with the high post-acquisition concentration levels, suggest that the combined firm likely would be able to exercise unilateral market power. The evidence shows that health plans and other private payors who pay dialysis providers for dialysis services used by their members benefit from direct competition between Fresenius and RCG when negotiating the rates of the dialysis provider. As a result, the proposed combination likely would result in higher prices and reduced incentives to improve service or quality for outpatient dialysis services in the 66 outpatient dialysis markets defined in the complaint.

In the outpatient dialysis services markets defined by the complaint, entry on a level sufficient to deter or counteract the likely anticompetitive effects of the proposed transaction is not likely to occur in a timely manner. The primary barrier to entry is the difficulty associated with locating nephrologists with established patient pools who are willing and able to serve as medical directors. Federal law requires each dialysis clinic to have a physician medical director. As a practical matter, having a nephrologist serve as medical director is essential to the success of a clinic because they are the primary source of referrals. Entry is also inhibited where certain attributes (such as a rapidly growing ESRD population, a favorable regulatory environment, average or below average nursing and labor costs, and a low penetration of managed care) are not present, as the Commission alleges is the case in particular geographic markets defined in the Commission's complaint.

IV. The Consent Agreement

The Consent Agreement effectively prevents the anticompetitive effects that the proposed acquisition would otherwise be likely to have in the 66 markets where both Fresenius and RCG operate dialysis clinics, by requiring Fresenius to divest 91 outpatient dialysis clinics, and RCG's joint venture equity interests in 12 additional clinics, to National Renal Institutes, Inc. ("NRI"), a wholly-owned subsidiary of DSI Holding Company, Inc.

As part of these divestitures, Fresenius is required to obtain the agreement of the medical directors affiliated with the divested clinics to continue providing physician services after the transfer of ownership to NRI. Similarly, the Consent Agreement requires Fresenius to obtain the consent of all lessors necessary to assign the leases for the real property associated with the divested clinics to NRI. These provisions ensure that NRI will have the assets necessary to operate the divested clinics in a competitive manner.

The Consent Agreement contains several additional provisions designed to ensure that the divestitures will be successful. First, the Consent Agreement provides NRI with the opportunity to interview and hire employees affiliated with the divested clinics, and prevents Fresenius from offering these employees incentives to decline NRI's offer of employment. This will ensure that NRI has access to patient care and supervisory staff who are familiar with the clinic's patients and the local physicians. Second, the Consent Agreement prevents Fresenius from contracting with the medical directors (or their practice groups) affiliated with the divested clinics for three years. This provides NRI with sufficient time to build goodwill and a working relationship with its medical directors before Fresenius can attempt to capitalize on its prior relationships in soliciting their services. Third, the Consent Agreement requires Fresenius to provide NRI with a license to Fresenius's policies and procedures, as well as the option to obtain Fresenius's medical protocols, which will further enhance NRI's ability to provide continuity of care to patients. Finally, the Consent Agreement requires Fresenius to provide prior notice to the Commission of its planned acquisitions of dialysis clinics located in the 66 markets addressed by the Consent Agreement. This provision ensures that subsequent acquisitions do not adversely impact competition in the markets at issue and undermine the remedial goals of the proposed order.

The Commission is satisfied that NRI is a qualified acquirer of the divested assets. NRI's management team has extensive experience in all facets of operating and developing outpatient dialysis clinics. In addition, Fresenius will provide transition services to NRI for a period of 12 months to ensure continuity of patient care and records as NRI implements its quality care, billing, and supply systems. Firewalls and confidentiality agreements will ensure that competitively sensitive information is not exchanged. NRI has received substantial financial backing from Centre Partners, a private equity firm focused on making investments in middle market companies.

The Commission has appointed Richard Shermer as Monitor to oversee the transition service agreements, and the implementation of, and compliance with, the Consent Agreement. Mr. Shermer is the President of R. Shermer & Company, a professional services firm that specializes in providing services for companies undergoing transitions in ownership through divestitures, mergers, or acquisitions. R. Shermer & Company has served as a monitor in connection with other Commission actions.

The purpose of this analysis is to facilitate public comment on the Consent Agreement, and it is not intended to constitute an official interpretation of the proposed Decision and Order or the Order to Maintain Assets, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E6–5053 Filed 4–6–06; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Cooperative Agreement to the New Mexico Outreach Office To Strengthen Public Health Services at the New Mexico-Chihuahua Border

AGENCY: Office of Global Health Affairs, Office of the Secretary, HHS.

Announcement Type: Cooperative Agreement—FY 2006 Initial Announcement. Single Source.

Catalog of Federal Domestic Assistance: 93.018.

Key Dates: Application Availability: April 7, 2006. Applications are due by 5 p.m. Eastern Time on May 8, 2006.

Executive Summary: The Office of Global Health Affairs (OGHA) announces that up to $345,600 in fiscal year (FY) 2006 funds is available for a cooperative agreement to the New Mexico Department of Health, New Mexico Outreach Office of the U.S.-Mexico Border Health Commission (USMBHC) to strengthen the binational public health projects and programs along the New Mexico-Chihuahua border. This initiative addresses outreach and health promotion activities, evaluation and assessments,

health data analysis and surveillance, Healthy Border/Healthy Gente activities, and administrative support to the members and staff of the U.S.-Mexico Border Health Commission. The project will be approved for up to a one-year period for a total of $345,600 (including indirect costs). Funding for the cooperative agreement is contingent upon the availability of funds.

I. Funding Opportunity Description

Under the authority of Section 4 of the U.S.-Mexico Border Health Commission Act (the Act), Public Law 103–400, the Office of Global Health Affairs (OGHA) announces the intent to allocate fiscal year (FY) 2006 funds for a cooperative agreement to the New Mexico Department of Health, New Mexico Outreach Office of the U.S.-Mexico Border Health Commission to strengthen the binational public health projects and programs along the New Mexico-Chihuahua border. Activities to be addressed through the cooperative agreement will relate to the following topic areas, as appropriate: (1) Access to Care; (2) Cancer; (3) Diabetes; (4) HIV/AIDS; (5) Immunizations and Infectious Diseases; (6) Injury Prevention; (7) Maternal, Infant and Child Health; (8) Tobacco Use; and (9) Substance Abuse; and (10) Nutrition and Obesity. Funding will be provided by OGHA, through the U.S.-Mexico Border Health Commission, to the awardee.

This assistance is geared to support current, on-going and proposed public health initiatives in this border region that support the goals and objectives of the U.S.-Mexico Border Health Commission serve to strengthen access to health care, disease prevention, and public health along this border region.

Background: The U.S.-Mexico Border Health Commission (USMBHC), in collaboration with the U.S. Department of Health and Human Services, works toward creating awareness about the U.S.-Mexico border, its people, and its environment. It educates others about the unique challenges at the border through outreach efforts, data collection and analysis, and joint collaborative efforts with public and private partners in the border health community. The USMBHC serves as a rallying point for shared concerns about the U.S.-Mexico border and as a catalyst for action to develop plans directed toward solving specific health related problems.

Outreach offices of the USMBHC work with the border states to address public health concerns and needs affecting the border region. The New Mexico Outreach Office works with Mexican counterparts to promote and strengthen binational health initiatives along the New Mexico-Chihuahua border.

Purpose: The project's main goal is to preserve and enhance the health of the New Mexico-Chihuahua border population. The New Mexico Outreach Office, in coordination with their Mexican counterparts, will support and coordinate the USMBHC objectives and activities within this region. Program areas will include: (1) Outreach and health promotion activities; (2) evaluation and assessment activities; (3) health data analysis and surveillance; (4) Healthy Border/healthy Gente activities; and (5) programmatic support to the members of the USMBHC.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goals:

- Increase access to care and improve quality of care;
- Improve disease prevention and health education;
- Improve workforce development and retention;
- Improve public health infrastructure; and
- Improve outreach and health promotion to the community.

Activities: Awardee activities for this program will be focused in the flowing areas and sub-areas:

(1) Outreach and health promotion activities to establish or strengthen linkages between public health and border activities; including:

- Community projects supporting Healthy Border/Healthy Gente objectives;
- Strengthening the Border Information and Education Network;
- Supporting the Binational Health Councils and Border Health Council activities; and
- Strengthening binational promotion and communication mechanisms;

(2) Evaluation and assessments of health services, health research, health care technologies, and delivery systems;

(3) Health data analysis and surveillance; and

(4) Programmatic support to the members and staff for the USMBHC.

II. Award Information

The administrative and funding instrument to be used for this program will be the cooperative agreement in which substantial OGHA/HHS scientific and/or programmatic involvement is anticipated during the performance of the project. Under the cooperative agreement, OGHA/HHS will support and/or stimulate awardee activities by working with them in a non-directive partnership role. Awardee will also be expected to work directly with and in support of the U.S.-Mexico Border Health Commission and its stated goals and initiatives as outlined in the submitted workplan.

Approximately $345,600 in FY 2006 funds is available to support the agreement. The anticipated start date is May 1, 2006. There will only be one single award made from this announcement. The program and budget period for this agreement is for 12 months.

Although this program is provided for in the financial plans of the OGHA, the award pursuant to this RFA is contingent upon the availability of funds for this purpose.

III. Eligibility Information

1. Eligible Applicants

This is a single eligibility cooperative agreement offered to the New Mexico Department of Health, New Mexico Outreach Office (ORO) of the USMBHC. The ORO has extensive past experience working with the USMBHC and supporting its binational goals, objectives and initiatives. The New Mexico ORO also has an existing working relationship and on-going initiatives with Mexico through the Chihuahua Outreach Office. Continuity and consistency in this binational effort within this region is essential to the productivity and success of public health efforts in this region.

2. Cost Sharing or Matching

Cost sharing, matching funds, and cost participation is not a requirement of this agreement.

IV. Application and Submission Information

1. Address To Request Application Package

Application kits may be requested by calling (240) 453–8822 or writing to: Office of Grants Management, Office of Public Health Science (OPHS), 1101 Wootton Parkway, Suite 550, Rockville, MD 20852. Applications must be prepared using Form OPHS–1. Applicants may fax a written request to the OPHS Office of Grants Management to obtain a hard copy of the application kit at (240) 453–8823.

2. Content and Form of Application Submission

All applications must be accompanied by a Project Abstract submitted on 3.5 inch floppy disk. The abstract must be typed, single-spaced, and not exceed 2 pages. Reviewers and staff will refer frequently to the information contained in the abstract, and therefore it should contain substantive information about the proposed projects in summary form.

A list of suggested keywords and a format sheet for your use in preparing the abstract will be included in the application packet.

All grant applications must be accompanied by a Project Narrative. In addition to the instructions provided in OPHS–1 (Rev 8/2004) for project narrative, the specific guidelines for the project narrative are provided in the program guidelines. Format requirements are the same as for the Project Abstract Section; margins should be 1 inch at the top and 1 inch at the bottom and both sides; and typeset must be no smaller than 12 cpi and not reduced. Biographical sketches should be either typed on the appropriate form or plain paper and should not exceed two pages, with publications listed being limited only to those that are directly relevant to this project.

Application Format Requirements

If applying on paper, the entire application may not exceed 80 pages in length, including the abstract, project and budget narratives, face page, attachments, any appendices and letters of commitment and support. Pages must be numbered consecutively.

Applications submitted electronically that exceed 80 pages when printed will be deemed non-compliant. All non-compliant applications will be returned to the applicant without further consideration.

a. Number of Copies: Please submit one (1) original and two (2) unbound copies of the application. Please do not bind or staple the application. Application must be single sided.

b. Font: Please use an easily readable serif typeface, such as Times Roman, Courier, or CG Times. The text and table portions of the application must be submitted in not less than 12 point and 1.0 line spacing. Applications not adhering to 12 point font requirements may be returned.

c. Paper Size and Margins: For scanning purposes, please submit the application on 8½″ x 11″ white paper. Margins must be at least one (1) inch at the top, bottom, left and right of the paper. Please left-align text.

d. Numbering: Please number the pages of the application sequentially from page 1 (face page) to the end of the application, including charts, figures, tables, and appendices.

e. Names: Please include the name of the applicant on each page.

f. Section Headings: Please put all section headings flush left in bold type.

Application Format: Applications for funding must consist of the following documents in the following order:

i. *Application Face Page:* Public Health Service (PHS) Application Form OPHS–1, provided with the application package. Prepare this page according to instructions provided in the form itself.

DUNS Number: All applicant organizations are required to have a Data Universal Numbering System (DUNS) number in order to apply for a grant from the Federal Government. The DUNS number is a unique nine-character identification number provided by the commercial company, Dun and Bradstreet. There is no charge to obtain a DUNS number. Information about obtaining a DUNS number can be found at *https://www.dnb.com/product/eupdate/requestOptions.html* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Additionally, the applicant organization will be required to register with the Federal Government's Central Contractor Registry (CCR) in order to do electronic business with the Federal Government. Information about registering with the CCR can be found at *http://www.hrsa.gov/grants/ccr.htm.*

Finally, applicants applying electronically through Grants.gov are required to register with the Credential Provider for Grants.gov. Information about this requirement is available at *http://www.grants.gov/CredentialProvider.*

Applicants applying electronically through the OPHS E-Grants System are required to register with the provider. Information about this requirement is available at *https://egrants.osophs.dhhs.gov.*

ii. *Program Narrative:* This section provides a comprehensive framework and description of all aspects of the proposed program. It should be succinct, self-explanatory and well organized so that reviewers can understand the proposed project.

Use the following section headers for the Narrative:

- Executive Summary: This section should briefly describe the proposed project and supporting initiatives as well as summarize goals that the program intends to achieve through the project initiatives.
- Work Plan: Describe the current and proposed activities or steps that will be used to achieve the stated goals and objectives. Describe expected outcomes resulting from activities as well as any evaluation mechanisms that will be used to measure the success of the initiatives.
- Mechanism For Administration: Describe how resources and funds will be administered with regards to the proposed projects.
- In-Kind Support/Resources: Describe any in-kind support from other sources, if any, that will be used to support the proposed initiatives and activities.

iii. *Appendices:* Please provide the additional relevant information (including tables, charts, and other relevant documents) to complete the content of the application. Please note that these are supplementary in nature, and are not intended to be a continuation of the project narrative. Be sure each appendix is clearly labeled.

3. Submission Dates and Times

Application Submission

Submission Mechanisms: The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Web site Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. eastern time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines

specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Web site Portal: The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed "Invalid" by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions via the OPHS eGrants System: The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (e.g., Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (eastern time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components, required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications: Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System

Impact Statement (PHSIS). Applicants shall submit a copy of the application face page (SF–424) and a one page summary of the project, called the Public Health System Impact Statement. The PHSIS is intended to provide information to State and local health officials to keep them apprised on proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OGHA/HHS.

This program is also subject to the requirements of Executive Order 12372 that allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States that have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. A complete list of SPOCs may be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*. The due date for State process recommendations is 60 days after the application deadline. The OGHA/HHS does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs," Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

5. Funding Restrictions

Funds may not be used for construction, building alterations, equipment purchase, medical treatment, renovations, or to purchase food. Allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged are outlined in the following documents: OMB–21 (Institutes of Higher Education); OMB Circular A–122 (Nonprofit Organizations) and 45 CFR part 74, appendix E (Hospitals). Copies of these circulars can be found on the Internet at: *http://www.whitehouse.gov/omb.*

V. Application Review Information

1. Criteria

Applications will be screened by OGHA staff for completeness and for responsiveness to the program guidance. Applicant should pay strict attention addressing these criteria, as they are the basis upon which applications will be judged.

Applications that are complete and responsive to the guidance will be evaluated for scientific and technical merit by an appropriate peer review group specifically convened for this solicitation and in accordance with HHS policies and procedures. As part of the initial merit review, all applications will receive a written critique. All applications recommended for approval will be discussed fully by the ad hoc peer review group and assigned a priority score for funding. Eligible applications will be assessed according the following criteria:

(1) *Technical Approach (45 points):*

- The applicant's presentation of a sound and practical technical approach for executing the requirements with adequate explanation, substantiation and justification for methods for handling the projected needs of the USMBHC.
- The successful applicant must demonstrate a clear understanding of the scope and objectives of the cooperative agreement, recognition of potential difficulties that may arise in performing the work required, presentation of adequate solutions, and understanding of the close coordination necessary between appropriate state offices and resources, and the USMBHC New Mexico and Chihuahua Delegation Offices.

(2) *Experience and Capabilities of the Organization: (45 Points):*

- Applicants should submit documented relevant experience of the organization in managing projects of similar complexity and scope of the activities.
- Clarity and appropriateness of lines of communication and authority for coordination and management of the project. Adequacy and feasibility of plans to ensure successful coordination of a multiple-partner collaboration.

(3) *Facilities and Resources (10 Points):*

- Documented availability and adequacy of facilities, equipment and resources necessary to carry out the activities.

2. Review and Selection Process

Applications will be reviewed in competition with other submitted applications, by a panel of peer reviewers. Each of the above criteria will be addressed and considered by the reviewers in assigning the overall score. Final award will be made on the basis of score, program relevance and, availability of funds.

VI. Award Administration Information

1. Award Notices

OGHA/HHS does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter regarding the outcome of their applications. The official document notifying an applicant that an application has been approved and funded is the Notice of Award, which specifies to the awardee the amount of money awarded, the purpose of the agreement, the terms and conditions of the agreement, and the amount of funding, if any, to be contributed by the awardee to the project costs.

2. Administrative and National Policy Requirements

The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to state and local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from: *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitation, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the

percentage and dollar amount of the total cost of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. Reporting

All projects are required to have an evaluation plan, consistent with the scope of the proposed project and funding level that conforms to the project's stated goals and objectives. The evaluation plan should include both a process evaluation to track the implementation of project activities and an outcome evaluation to measure changes in knowledge and skills that can be attributed to the project. Project funds may be used to support evaluation activities.

In addition to conducting their own evaluation of projects, successful applicants must be prepared to participate in an external evaluation, to be supported by OGHA/HHS and conducted by an independent entity, to assess efficiency and effectiveness for the project funded under this announcement.

Within 30 days following the end of each of quarter, submit a performance report no more than ten pages in length must be submitted to OGHA/HHS. A sample monthly performance report will be provided at the time of notification of award. At a minimum, monthly performance reports should include:

- Concise summary of the most significant achievements and problems encountered during the reporting period, e.g. number of training courses held and number of trainees.
- A comparison of work progress with objectives established for the quarter using the grantee's implementation schedule, and where such objectives were not met, a statement of why they were not met.
- Specific action(s) that the grantee would like the OGHA/HHS to undertake to alleviate a problem.
- Other pertinent information that will permit monitoring and overview of project operations.
- A quarterly financial report describing the current financial status of the funds used under this award. The awardee and OGHA will agree at the time of award for the format of this portion of the report.

Within 90 days following the end of the project period a final report containing information and data of interest to the Department of Health and Human Services, Congress, and other countries must be submitted to OGHA/HHS. The specifics as to the format and content of the final report and the summary will be sent to successful applicants. At minimum, the report should contain:

- A summary of the major activities supported under the agreement and the major accomplishments resulting from activities to improve mortality in partner country.
- An analysis of the project based on the problem(s) described in the application and needs assessments, performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures resulting from activities during the grant period.

Quarterly performance reports and the final report may be submitted to: U.S. Department of Health and Human Services, Office of the Secretary, Office of Global Health Affairs, 5600 Fishers Lane, Suite 18–105, Rockville, Maryland 20857.

A Financial Status Report (FSR) SF–269 is due 90 days after the close of each 12-month budget period and submitted to the OPHS—Office of Grants Management.

VII. Agency Contacts

For programmatic requirements, please contact: Jeff Waggoner, DHHS, Office of Global Health Affairs, 5600 Fishers Lane, Suite 18–105, Rockville MD, 20857, 301–443–4560.

For administrative requirements, please contact: DHHS, Office of Public Health and Science, Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20857, Telephone: (240) 453–8822.

VIII. Other Information

Tips for Writing a Strong Application

Include DUNS Number. You must include a DUNS Number to have your application reviewed. To obtain a DUNS number, access *www.dunandbradstreet.com* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Keep your audience in mind. Reviewers will use only the information contained in the application to assess the application. Be sure the application and responses to the program requirements and expectations are complete and clearly written. Do not assume that reviewers are familiar with the applicant organization. Keep the review criteria in mind when writing the application.

Start preparing the application early. Allow plenty of time to gather required information from various sources.

Follow the instructions in this guidance carefully. Place all information in the order requested in the guidance. If the information is not placed in the requested order, you may receive a lower score.

Be brief, concise, and clear. Make your points understandable. Provide accurate and honest information, including candid accounts of problems and realistic plans to address them. If any required information or data is omitted, explain why. Make sure the information provided in each table, chart, attachment, etc., is consistent with the proposal narrative and information in other tables.

Be organized and logical. Many applications fail to receive a high score because the reviewers cannot follow the thought process of the applicant or because parts of the application do not fit together.

Be careful in the use of appendices. Do not use the appendices for information that is required in the body of the application. Be sure to cross-reference all tables and attachments located in the appendices to the appropriate text in the application.

Carefully proofread the application. Misspellings and grammatical errors will impede reviewers in understanding the application. Be sure pages are numbered (including appendices) and that page limits are followed. Limit the use of abbreviations and acronyms, and define each one at its first use and periodically throughout application.

Dated: March 31, 2006.

Mary Lou Valdez,

Deputy Director for Policy, Office of Global Health Affairs.

[FR Doc. E6–5046 Filed 4–6–06; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Availability of Funds for Cooperative Agreement to the Texas Outreach Office To Strengthen Public Health Services at the Texas-Mexico Border

AGENCY: Office of Global Health Affairs, Office of the Secretary, HHS.

Announcement Type: Cooperative Agreement—FY 2006 Initial Announcement. Single Source.

Catalog of Federal Domestic Assistance: 93.018.

Key Dates: Application Availability: April 7, 2006.

Applications are due by 5 p.m. eastern time on May 8, 2006.

Executive Summary: The Office of Global Health Affairs (OGHA)

announces that up to $497,500 in fiscal year (FY) 2006 funds is available for a cooperative agreement to the Texas Department of State Health Services, Outreach Office of the U.S.-Mexico Border Health Commission to strengthen the binational public health projects and programs along the Texas-Mexico border. In collaboration with other Texas Department of State Health Services entities, the Texas Outreach Office will implement and monitor the progress of the Healthy Border 2010 program in the Texas-Mexico border region, work with communities to implement programs to improve the health of border residents, and will publicize the achievements and challenges of border health. The project will be approved for up to a one-year period for a total of $497,500 (including indirect costs). Funding for the cooperative agreement is contingent upon the availability of funds.

I. Funding Opportunity Description

Under the authority of section 4 of the U.S.-Mexico Border Health Commission Act (the Act), Public Law 103–400, the Office of Global Health Affairs (OGHA) announces the intent to allocate fiscal year (FY) 2006 funds for a cooperative agreement to the Texas Department of State Health Services, Outreach Office of the U.S.-Mexico Border Health Commission (USMBHC) to strengthen the binational public health projects and programs along the Texas-Mexico border. Activities to be addressed through the cooperative agreement will relate to two main topic areas: (1) Support for the USMBHC and its activities, and (2) Implementation of the Healthy Border 2010 program. The Healthy Border 2010 Program focuses on the following health topic areas: Access to health care; cancer; diabetes; environmental health; HIV/AIDS; immunization and infectious diseases; injury prevention; maternal, infant and child health; mental health; oral health; respiratory diseases; tobacco use; substance abuse; heart disease; gastrointestinal diseases; nutrition and obesity; physical activity; and bioterrorism preparedness. Funding will be provided by OGHA, through the U.S.-Mexico Border Health Commission, to the awardee.

This assistance is geared to support current, on-going and proposed public health initiatives in this border region that support the goals and objectives of the U.S.-Mexico Border Health Commission and serve to strengthen access to health care, disease prevention, and public health along the Texas-Mexico border.

Background: The USMBHC, in collaboration with the U.S. Department of Health and Human Services, works toward creating awareness about the U.S.-Mexico border, its people, and its environment. It educates others about the unique challenges at the border through outreach efforts, data collection and analysis, and joint collaborative efforts with public and private partners in the border health community. The USMBHC serves as a rallying point for shared concerns about the U.S.-Mexico border and as a catalyst for action to develop plans directed toward solving specific health related problems.

Outreach offices of the USMBHC work with the border states to address public health concerns and needs affecting the border region. The Texas Outreach Office works with Mexican counterparts to promote and strengthen binational health initiatives along the Texas-Mexico border.

Purpose: The project's overarching goal is to implement the Healthy Border 2010 program and supporting initiatives in the Texas-Mexico Border region. In pursuit of this goal, this project will strive to: (1) Increase border-wide capacity to perform essential functions of public health, both unilaterally and binationally, at the local, state, and federal levels; (2) Continue expansion of the Healthy Border 2010 Program within this region; and (3) Create and maintain viable Binational Health Councils, whose roles provide vital links for local binational border health relations.

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goals:

- Increase access to care and improve quality of care;
- Improve disease prevention and health education; and
- Improve public health infrastructure.

Activities: Awardee activities for this program will be focused in the flowing areas and sub-areas:

(1) Outreach and health promotion activities to establish or strengthen linkages between public health and border activities; including

- Support for USMBHC initiatives and activities, and
- Promotion, support and involvement in Healthy Border 2010 activities with the Local Public Health Forums;

(2) Evaluation and assessments of health services, health research, health care technologies, and delivery systems;

(3) Health data analysis and surveillance;

(4) Programmatic support to the members and staff for the USMBHC; and

(5) Mobilization, assessment, planning, implementation, and tracking of Healthy Border 2010 Programs.

II. Award Information

The administrative and funding instrument to be used for this program will be the cooperative agreement in which substantial OGHA/HHS scientific and/or programmatic involvement is anticipated during the performance of the project. Monitoring of efforts covered in the workplan will be done by OGHA to ensure awardee is meeting program objectives and will work with the Commission to ensure goals and accomplishments are met and reported. Under the cooperative agreement, OGHA/HHS will support and/or stimulate awardee activities by working with them in a non-directive partnership.

Awardee will also be expected to work directly with and in support of the U.S.-Mexico Border Health Commission and its stated goals and initiatives as outlined in the submitted workplan.

Approximately $497,500 in FY 2006 funds is available to support the agreement. The anticipated start date is May 1, 2006. There will only be one single award made from this announcement. The program and budget period for this agreement is for 12 months.

Although this program is provided for in the financial plans of the OGHA, the award pursuant to this RFA is contingent upon the availability of funds for this purpose.

III. Eligibility Information

1. Eligible Applicants

This is a single eligibility cooperative agreement offered to the Texas Department of State Health Services, Outreach Office (ORO) of the USMBHC. The ORO has extensive past experience working with the USMHBC and supporting its binational goals, objectives and initiatives. The Texas ORO also has an existing working relationship and on-going initiatives with Mexico through the Mexican Outreach Offices. Continuity and consistency in this binational effort within this region is essential to the productivity and success of public health efforts in this region.

2. Cost Sharing or Matching:

Cost sharing, matching funds, and cost participation is not a requirement of this agreement.

IV. Application and Submission Information

1. Address to Request Application Package

Application kits may be requested by calling (240) 453–8822 or writing to: Office of Grants Management, Office of Public Health Science (OPHS), 1101 Wootton Parkway, Suite 550, Rockville, MD, 20852. Applications must be prepared using Form OPHS–1. Applicants may fax a written request to the OPHS Office of Grants Management to obtain a hard copy of the application kit at (240) 453–8823.

2. Content and Form of Application Submission:

All applications must be accompanied by a Project Abstract submitted on 3.5 inch floppy disk. The abstract must be typed, single-spaced, and not exceed 2 pages. Reviewers and staff will refer frequently to the information contained in the abstract, and therefore it should contain substantive information about the proposed projects in summary form. A list of suggested keywords and a format sheet for your use in preparing the abstract will be included in the application packet.

All grant applications must be accompanied by a Project Narrative. In addition to the instructions provided in OPHS–1 (Rev 8/2004) for project narrative, the specific guidelines for the project narrative are provided in the program guidelines. Format requirements are the same as for the Project Abstract Section; margins should be 1 inch at the top and 1 inch at the bottom and both sides; and typeset must be no smaller than 12 cpi and not reduced. Biographical sketches should be either typed on the appropriate form or plain paper and should not exceed two pages, with publications listed being limited only to those that are directly relevant to this project.

Application Format Requirements

If applying on paper, the entire application may not exceed 80 pages in length, including the abstract, project and budget narratives, face page, attachments, any appendices and letters of commitment and support. Pages must be numbered consecutively.

Applications submitted electronically that exceed 80 pages when printed will be deemed non-compliant. All non-compliant applications will be returned to the applicant without further consideration.

a. Number of Copies.

Please submit one (1) original and two (2) unbound copies of the application.

Please do not bind or staple the application. Application must be single sided.

b. Font.

Please use an easily readable serif typeface, such as Times Roman, Courier, or CG Times. The text and table portions of the application must be submitted in not less than 12 point and 1.0 line spacing. Applications not adhering to 12 point font requirements may be returned.

c. Paper Size and Margins.

For scanning purposes, please submit the application on 8½″ x 11″ white paper. Margins must be at least one (1) inch at the top, bottom, left and right of the paper. Please left-align text.

d. Numbering.

Please number the pages of the application sequentially from page 1 (face page) to the end of the application, including charts, figures, tables, and appendices.

e. Names.

Please include the name of the applicant on each page.

f. Section Headings.

Please put all section headings flush left in bold type.

Application Format

Applications for funding must consist of the following documents in the following order:

i. Application Face Page

Public Health Service (PHS) Application Form OPHS–1, provided with the application package. Prepare this page according to instructions provided in the form itself.

DUNS Number

All applicant organizations are required to have a Data Universal Numbering System (DUNS) number in order to apply for a grant from the Federal Government. The DUNS number is a unique nine-character identification number provided by the commercial company, Dun and Bradstreet. There is no charge to obtain a DUNS number. Information about obtaining a DUNS number can be found at *https://www.dnb.com/product/eupdate/requestOptions.html* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Additionally, the applicant organization will be required to register with the Federal Government's Central Contractor Registry (CCR) in order to do electronic business with the Federal Government. Information about registering with the CCR can be found at *http://www.hrsa.gov/grants/ccr.htm.*

Finally, applicants applying electronically through Grants.gov are required to register with the Credential Provider for Grants.gov. Information about this requirement is available at *http://www.grants.gov/CredentialProvider.*

Applicants applying electronically through the OPHS E-Grants System are required to register with the provider. Information about this requirement is available at *https://egrants.osophs.dhhs.gov.*

ii. Program Narrative

This section provides a comprehensive framework and description of all aspects of the proposed program. It should be succinct, self-explanatory and well organized so that reviewers can understand the proposed project.

Use the following section headers for the Narrative:

• Executive Summary.

This section should briefly describe the proposed project and supporting initiatives as well as summarize goals that the program intends to achieve through the project initiatives.

• Work Plan.

Describe the current and proposed activities or steps that will be used to achieve the stated goals and objectives. Describe expected outcomes resulting from activities as well as any evaluation mechanisms that will be used to measure the success of the initiatives.

• Mechanism for Administration.

Describe how resources and funds will be administered with regards to the proposed projects.

• In-Kind Support/Resources.

Describe any in-kind support from other sources, if any, that will be used to support the proposed initiatives and activities.

iii. Appendices

Please provide the additional relevant information (including tables, charts, and other relevant documents) to complete the content of the application. Please note that these are supplementary in nature, and are not intended to be a continuation of the project narrative. Be sure each appendix is clearly labeled.

3. Submission Dates and Times

The Office of Public Health and Science (OPHS) provides multiple mechanisms for the submission of applications, as described in the following sections. Applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of applications submitted using any of these

mechanisms. Applications submitted to the OPHS Office of Grants Management after the deadlines described below will not be accepted for review. Applications which do not conform to the requirements of the grant announcement will not be accepted for review and will be returned to the applicant.

Applications may only be submitted electronically via the electronic submission mechanisms specified below. Any applications submitted via any other means of electronic communication, including facsimile or electronic mail, will not be accepted for review. While applications are accepted in hard copy, the use of the electronic application submission capabilities provided by the OPHS eGrants system or the Grants.gov Website Portal is encouraged.

Electronic grant application submissions must be submitted no later than 5 p.m. Eastern Time on the deadline date specified in the **DATES** section of the announcement using one of the electronic submission mechanisms specified below. All required hardcopy original signatures and mail-in items must be received by the OPHS Office of Grants Management no later than 5 p.m. eastern time on the next business day after the deadline date specified in the **DATES** section of the announcement.

Applications will not be considered valid until all electronic application components, hardcopy original signatures, and mail-in items are received by the OPHS Office of Grants Management according to the deadlines specified above. Application submissions that do not adhere to the due date requirements will be considered late and will be deemed ineligible.

Applicants are encouraged to initiate electronic applications early in the application development process, and to submit early on the due date or before. This will aid in addressing any problems with submissions prior to the application deadline.

Electronic Submissions via the Grants.gov Web Site Portal

The Grants.gov Web site Portal provides organizations with the ability to submit applications for OPHS grant opportunities. Organizations must successfully complete the necessary registration processes in order to submit an application. Information about this system is available on the Grants.gov Web site, *http://www.grants.gov.*

In addition to electronically submitted materials, applicants may be required to submit hard copy signatures for certain Program related forms, or original materials as required by the announcement. It is imperative that the applicant review both the grant announcement, as well as the application guidance provided within the Grants.gov application package, to determine such requirements. Any required hard copy materials, or documents that require a signature, must be submitted separately via mail to the OPHS Office of Grants Management, and, if required, must contain the original signature of an individual authorized to act for the applicant agency and the obligations imposed by the terms and conditions of the grant award.

Electronic applications submitted via the Grants.gov Web site Portal must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. All required mail-in items must received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission via the Grants.gov Web site Portal, the applicant will be provided with a confirmation page from Grants.gov indicating the date and time (Eastern Time) of the electronic application submission, as well as the Grants.gov Receipt Number. It is critical that the applicant print and retain this confirmation for their records, as well as a copy of the entire application package.

All applications submitted via the Grants.gov Web site Portal will be validated by Grants.gov. Any applications deemed "Invalid" by the Grants.gov Web site Portal will not be transferred to the OPHS eGrants system, and OPHS has no responsibility for any application that is not validated and transferred to OPHS from the Grants.gov Web site Portal. Grants.gov will notify the applicant regarding the application validation status. Once the application is successfully validated by the Grants.gov Web site Portal, applicants should immediately mail all required hard copy materials to the OPHS Office of Grants Management to be received by the deadlines specified above. It is critical that the applicant clearly identify the Organization name and Grants.gov Application Receipt Number on all hard copy materials.

Once the application is validated by Grants.gov, it will be electronically transferred to the OPHS eGrants system for processing. Upon receipt of both the electronic application from the Grants.gov Web site Portal, and the required hardcopy mail-in items, applicants will receive notification via mail from the OPHS Office of Grants Management confirming the receipt of the application submitted using the Grants.gov Web site Portal.

Applicants should contact Grants.gov regarding any questions or concerns regarding the electronic application process conducted through the Grants.gov Web site Portal.

Electronic Submissions via the OPHS eGrants System

The OPHS electronic grants management system, eGrants, provides for applications to be submitted electronically. Information about this system is available on the OPHS eGrants Web site, *https://egrants.osophs.dhhs.gov,* or may be requested from the OPHS Office of Grants Management at (240) 453–8822.

When submitting applications via the OPHS eGrants system, applicants are required to submit a hard copy of the application face page (Standard Form 424) with the original signature of an individual authorized to act for the applicant agency and assume the obligations imposed by the terms and conditions of the grant award. If required, applicants will also need to submit a hard copy of the Standard Form LLL and/or certain Program related forms (e.g., Program Certifications) with the original signature of an individual authorized to act for the applicant agency.

Electronic applications submitted via the OPHS eGrants system must contain all completed online forms required by the application kit, the Program Narrative, Budget Narrative and any appendices or exhibits. The applicant may identify specific mail-in items to be sent to the Office of Grants Management separate from the electronic submission; however these mail-in items must be entered on the eGrants Application Checklist at the time of electronic submission, and must be received by the due date requirements specified above. Mail-In items may only include publications, resumes, or organizational documentation.

Upon completion of a successful electronic application submission, the OPHS eGrants system will provide the applicant with a confirmation page indicating the date and time (Eastern Time) of the electronic application submission. This confirmation page will also provide a listing of all items that constitute the final application submission including all electronic application components. required hardcopy original signatures, and mail-in items, as well as the mailing address of the OPHS Office of Grants

Management where all required hard copy materials must be submitted.

As items are received by the OPHS Office of Grants Management, the electronic application status will be updated to reflect the receipt of mail-in items. It is recommended that the applicant monitor the status of their application in the OPHS eGrants system to ensure that all signatures and mail-in items are received.

Mailed or Hand-Delivered Hard Copy Applications

Applicants who submit applications in hard copy (via mail or hand-delivered) are required to submit an original and two copies of the application. The original application must be signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Mailed or hand-delivered applications will be considered as meeting the deadline if they are received by the OPHS Office of Grant Management on or before 5 p.m. Eastern Time on the deadline date specified in the DATES section of the announcement. The application deadline date requirement specified in this announcement supersedes the instructions in the OPHS–1. Applications that do not meet the deadline will be returned to the applicant unread.

4. Intergovernmental Review

This program is subject to the Public Health Systems Reporting Requirements. Under these requirements, a community-based non-governmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). Applicants shall submit a copy of the application face page (SF–424) and a one page summary of the project, called the Public Health System Impact Statement. The PHSIS is intended to provide information to State and local health officials to keep them apprised on proposed health services grant applications submitted by community-based, non-governmental organizations within their jurisdictions.

Community-based, non-governmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted: (a) A copy of the face page of the application (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, and (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the OGHA/HHS.

This program is also subject to the requirements of Executive Order 12372 that allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States that have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC in each affected State. A complete list of SPOCs may be found at the following Web site: *http://www.whitehouse.gov/omb/grants/spoc.html*. The due date for State process recommendations is 60 days after the application deadline. The OGHA/HHS does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs," Executive Order 12372, and 45 CFR part 100 for a description of the review process and requirements.)

5. Funding Restrictions

Funds may not be used for construction, building alterations, equipment purchase, medical treatment, renovations, or to purchase food. Allowability, allocability, reasonableness, and necessity of direct and indirect costs that may be charged are outlined in the following documents: OMB–21 (Institutes of Higher Education); OMB Circular A–122 (Nonprofit Organizations) and 45 CFR part 74, Appendix E (Hospitals). Copies of these circulars can be found on the Internet at: *http://www.whitehouse.gov/omb*.

V. Application Review Information

1. Criteria

Applications will be screened by OGHA staff for completeness and for responsiveness to the program guidance. Applicants should pay strict attention addressing these criteria, as they are the basis upon which applications will be judged. Those applications judged to be non-responsive or incomplete will be returned to the applicant without review.

Applications that are complete and responsive to the guidance will be evaluated for scientific and technical merit by an appropriate peer review group specifically convened for this solicitation and in accordance with HHS policies and procedures. As part of the initial merit review, all applications will receive a written critique. All applications recommended for approval will be discussed fully by the ad hoc peer review group and assigned a priority score for funding. Eligible applications will be assessed according the following criteria:

(1) *Technical Approach 45 points:*

- The applicant's presentation of a sound and practical technical approach for executing the requirements with adequate explanation, substantiation and justification for methods for handling the projected needs of the USMBHC.
- The successful applicant must demonstrate a clear understanding of the scope and objectives of the cooperative agreement, recognition of potential difficulties that may arise in performing the work required, presentation of adequate solutions, and understanding of the close coordination necessary between appropriate state offices and resources, and the USMBHC Texas and Mexican Delegation Offices.

(2) *Experience and Capabilities of the Organization 45 points:*

- Applicants should submit documented relevant experience of the organization in managing projects of similar complexity and scope of the activities.
- Clarity and appropriateness of lines of communication and authority for coordination and management of the project. Adequacy and feasibility of plans to ensure successful coordination of a multiple-partner collaboration.

(3) *Facilities and Resources 10 points:*

- Documented availability and adequacy of facilities, equipment and resources necessary to carry out the activities.

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Applications will be reviewed in competition with other submitted applications, by a panel of peer reviewers. Each of the above criteria will be addressed and considered by the reviewers in assigning the overall score. Final award will be made on the basis of score, program relevance and, availability of funds.

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2. Administrative and National Policy Requirements

The regulations set out at 45 CFR parts 74 and 92 are the Department of Health and Human Services (HHS) rules and requirements that govern the administration of grants. Part 74 is applicable to all recipients except those covered by part 92, which governs awards to state and local governments. Applicants funded under this announcement must be aware of and comply with these regulations. The CFR volume that includes parts 74 and 92 may be downloaded from: *http://www.access.gpo.gov/nara/cfr/waisidx_03/45cfrv1_03.html.*

The HHS Appropriations Act requires that when issuing statements, press releases, requests for proposals, bid solicitation, and other documents describing projects or programs funded in whole or in part with Federal money, grantees shall clearly state the percentage and dollar amount of the total cost of the program or project which will be financed with Federal money and the percentage and dollar amount of the total costs of the project or program that will be financed by non-governmental sources.

3. Reporting

All projects are required to have an evaluation plan, consistent with the scope of the proposed project and funding level that conforms to the project's stated goals and objectives. The evaluation plan should include both a process evaluation to track the implementation of project activities and an outcome evaluation to measure changes in knowledge and skills that can be attributed to the project. Project funds may be used to support evaluation activities.

In addition to conducting their own evaluation of projects, successful applicants must be prepared to participate in an external evaluation, to be supported by OGHA/HHS and conducted by an independent entity, to assess efficiency and effectiveness for the project funded under this announcement.

Within 30 days following the end of each of quarter, submit a performance report no more than ten pages in length must be submitted to OGHA/HHS. A sample monthly performance report will be provided at the time of notification of award. At a minimum, monthly performance reports should include:

- Concise summary of the most significant achievements and problems encountered during the reporting period, *e.g.* number of training courses held and number of trainees.
- A comparison of work progress with objectives established for the quarter using the grantee's implementation schedule, and where such objectives were not met, a statement of why they were not met.
- Specific action(s) that the grantee would like the OGHA/HHS to undertake to alleviate a problem.
- Other pertinent information that will permit monitoring and overview of project operations.
- A quarterly financial report describing the current financial status of the funds used under this award. The awardee and OGHA will agree at the time of award for the format of this portion of the report.

Within 90 days following the end of the project period a final report containing information and data of interest to the Department of Health and Human Services, Congress, and other countries must be submitted to OGHA/HHS. The specifics as to the format and content of the final report and the summary will be sent to successful applicants. At minimum, the report should contain:

- A summary of the major activities supported under the agreement and the major accomplishments resulting from activities to improve mortality in partner country.
- An analysis of the project based on the problem(s) described in the application and needs assessments, performed prior to or during the project period, including a description of the specific objectives stated in the grant application and the accomplishments and failures resulting from activities during the grant period.

Quarterly performance reports and the final report may be submitted to: U.S. Department of Health and Human Services, Office of the Secretary, Office of Global Health Affairs, 5600 Fishers Lane, Suite 18–105, Rockville, Maryland 20857. A Financial Status Report (FSR) SF–269 is due 90 days after the close of each 12-month budget period and submitted to OPHS-Office of Grants Management.

VII. Agency Contacts

For programmatic requirements, please contact: Jeff Waggoner, Office of Global Health Affairs, 5600 Fishers Lane, Suite 18–105, Rockville, MD 20857.

For administrative requirements, please contact: DHHS, Office of Public Health and Science, Office of Grants Management, 1101 Wootton Parkway, Suite 550, Rockville, Maryland 20857, Telephone: (240) 453–8822.

VIII. Tips for Writing a Strong Application

Include DUNS Number. You must include a DUNS Number to have your application reviewed. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please include the DUNS number next to the OMB Approval Number on the application face page.

Keep your audience in mind. Reviewers will use only the information contained in the application to assess the application. Be sure the application and responses to the program requirements and expectations are complete and clearly written. Do not assume that reviewers are familiar with the applicant organization. Keep the review criteria in mind when writing the application.

Start preparing the application early. Allow plenty of time to gather required information from various sources.

Follow the instructions in this guidance carefully. Place all information in the order requested in the guidance. If the information is not placed in the requested order, you may receive a lower score.

Be brief, concise, and clear. Make your points understandable. Provide accurate and honest information, including candid accounts of problems and realistic plans to address them. If any required information or data is omitted, explain why. Make sure the information provided in each table, chart, attachment, etc., is consistent with the proposal narrative and information in other tables.

Be organized and logical. Many applications fail to receive a high score because the reviewers cannot follow the thought process of the applicant or because parts of the application do not fit together.

Be careful in the use of appendices. Do not use the appendices for

information that is required in the body of the application. Be sure to cross-reference all tables and attachments located in the appendices to the appropriate text in the application.

Carefully proofread the application. Misspellings and grammatical errors will impede reviewers in understanding the application. Be sure pages are numbered (including appendices) and that page limits are followed. Limit the use of abbreviations and acronyms, and define each one at its first use and periodically throughout application.

Dated: March 31, 2006.

Mary Lou Valdez,

Deputy Director for Policy, Office of Global Health Affairs.

[FR Doc. E6–5047 Filed 4–6–06; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Amendment of February 4, 2004, Order To Embargo Birds and Bird Products Imported From Jordan

SUMMARY: On February 4, 2004, the Centers for Disease Control and Prevention (CDC) within the U.S. Department of Health and Human Services issued an order to ban immediately the import of all birds (Class: *Aves*) from specified countries, subject to limited exemptions for returning pet birds of U.S. origin and certain processed bird-derived products. HHS/CDC took this step because birds from these countries potentially can infect humans with avian influenza (influenza A/ [H5N1]). The February 4, 2004, order complemented a similar action taken at the same time by the Animal and Plant Health Inspection Service (APHIS) within the U.S. Department of Agriculture (USDA).

On March 10, 2004, HHS/CDC lifted the embargo of birds and bird products from the Hong Kong Special Administrative Region (HKSAR) because of the documented public-health and animal health measures taken by Hong Kong officials to prevent spread of the outbreak within the HKSAR, and the absence of highly pathogenic avian influenza H5N1 cases in Hong Kong's domestic and wild bird populations. USDA/APHIS took a similar action. On September 28, 2004, HHS/CDC extended the embargo on birds and bird products to include Malaysia because of the documented cases of highly pathogenic avian influenza A H5N1 in poultry in Malaysia. On July 20, 2005, USDA/APHIS adopted as a final rule the interim rule that became effective on February 4, 2004, which amended its regulations to prohibit or restrict the importation of birds, poultry, and unprocessed birds and poultry products from regions that have reported the presence of highly pathogenic avian influenza H5N1 in poultry. (See 70 FR 41608 [July 20, 2005].) As the United Nations Food and Agriculture Organization and the World Organization for Animal Health (OIE) have confirmed additional cases of highly pathogenic avian influenza (H5N1), USDA/APHIS has added additional countries to its ban. Because of the documentation of highly pathogenic avian influenza H5N1 in poultry, HHS/CDC added the following countries to its embargo: Kazakhstan, Romania, Russia, Turkey, and Ukraine on December 29, 2005; Nigeria on February 8, 2006; Indian on February 22, 2006; Egypt on February 27, 2006; Niger on March 2, 2006; Albania, Azerbaijan, Cameroon, and Burma (Myanmar) on March 15, 2006; Israel on March 20, 2006; and Afghanistan on March 21, 2006.

On March 23, 2006, OIE reported confirmation of highly pathogenic avian influenza H5N1 in poultry in Jordan. At this time, HHS/CDC is adding Jordan to its current embargo. This action is effective on March 29, 2006, and will remain in effect until further notice.

SUPPLEMENTARY INFORMATION:

Background

On March 23, 2006, OIE reported confirmation of highly pathegenic avian influenza H5N1 in chickens and turkeys in Kofranja, Jordan.

Introduction of birds infected with highly pathogenic avian influenza H5N1 into the United States could lead to outbreaks of disease among birds and among the human population, a significant public health threat. Banning the importation of all avian species from affected countries is an effective means of limiting this threat. HHS/CDC is therefore taking this action to reduce the likelihood of introduction or spread of influenza A H5N1 into the United States.

Immediate Action

Therefore, pursuant to 42 CFR 71.32(b), HHS/CDC is amending the February 4, 2004, order to add Jordan to the list of countries subject to the order's embargo of birds and products derived from birds. All other portions of the February 4, 2004, order, as further amended on March 10, 2004, September 28, 2004, December 29, 2005, February 8, 2006, February 22, 2006, February 27, 2006, March 2, 2006, March 25, 2006, March 20, 2006, and March 21, 2006 shall remain in effect until further notice.

Dated: March 30, 2006.

Julie Louise Gerberding,

Director, Centers for Disease Control and Prevention, U.S. Department of Health and Human Services.

[FR Doc. 06–3273 Filed 4–6–06; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–52 and CMS–R–194]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Conditions for Coverage of Suppliers of End Stage Renal Disease (ESRD) Services and Supporting Regulations Contained in 42 CFR 405.2100–405.2171; *Use:* The requirements associated with the Medicare and Medicaid Conditions for Coverage for Suppliers of ESRD Services fall into two categories: record keeping requirements and reporting requirements. With regard to the recordkeeping requirements, CMS uses these conditions for coverage to certify health care facilities that want to participate in the Medicare or Medicaid

programs. These record keeping requirements are no different than other conditions for coverage in that they reflect comparable standards developed by industry organizations such as the Renal Physicians Association, American Society of Transplant Surgeons, and the National Association of Patients on Hemodialysis and Transplantation. With respect to reporting requirements, the information is needed to assess and ensure proper distribution and effective utilization of ESRD treatment resources while maintaining or improving quality of care. It is CMS's responsibility to closely monitor ESRD service utilization to prevent over-expansion of facilities and resultant under-utilization.; *Form Number:* CMS–R–52 (OMB#: 0938–0386); *Frequency:* Recordkeeping and Reporting—Annually; *Affected Public:* Business or other for-profit and Federal government; *Number of Respondents:* 4,757; *Total Annual Responses:* 4,757; *Total Annual Hours:* 160,702.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicare Disproportionate Share Adjustment Procedures and Criteria and Supporting Regulations in 42 CFR 412.106; *Use:* A hospital's disproportionate share adjustment is determined by its fiscal intermediary (FI) using a combination of Medicare Part A and Supplemental Security Income data provided by CMS, and Medicaid data calculated from the hospital's cost report. The data provided through these calculations are then compared to the qualifying criteria located in 42 CFR 412.106 to determine the final adjustment. If these calculations, based on the Federal fiscal year, do not allow the hospital to qualify for a disproportionate share adjustment, the hospital may request that the calculations be performed using its cost reporting period.; *Form Number:* CMS–R–194 (OMB#: 0938–0691); *Frequency:* Recordkeeping and Reporting—On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 100; *Total Annual Hours:* 100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on June 6, 2006. CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—B, Attention: William N. Parham, III, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 30, 2006.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E6–4947 Filed 4–6–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1481–N]

Medicare Program; Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG) Meeting—May 1 Through May 2, 2006

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2), this notice announces the fourth meeting of the Emergency Medical Treatment and Labor Act (EMTALA) Technical Advisory Group (TAG). The purpose of the EMTALA TAG is to review regulations affecting hospital and physician responsibilities under EMTALA to individuals who come to a hospital seeking examination or treatment for medical conditions. The primary purpose of the fourth meeting is to enable the EMTALA TAG to hear additional testimony and further consider written responses from medical societies and other organizations on specific issues considered by the TAG at previous meetings. However, the public is permitted to attend this meeting and, to the extent that time permits and at the discretion of the Chairperson, the EMTALA TAG may hear comments from the floor.

DATES: *Meeting Date:* The meetings of the EMTALA TAG announced in this notice are as follows:

Monday, May 1, 2006, 9 a.m. to 5 p.m. e.s.t.

Tuesday, May 2, 2006, 9 a.m. to 5 p.m. e.s.t.

Registration Deadline: All individuals must register in order to attend this meeting. Individuals who wish to attend the meeting but do not wish to present testimony must register by April 24, 2006. Individuals who wish to attend the meeting and to present their testimony must register by April 10, 2006 and must submit copies of their testimony in writing by April 17, 2006. See Section IV for more detailed registration instructions.

Comment Deadline: Written comments/statements to be presented to the EMTALA TAG must be received by April 17, 2006.

Special Accommodations: Individuals requiring sign-language interpretation or other special accommodations should send a request for these services to Eric Ruiz by 5 p.m. on April 17, 2006 at the address listed below.

ADDRESSES: *Meeting Address:* The EMTALA TAG meeting will be held in Room 800 of the Hubert Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20001.

Mailing and E-mail Addresses for Inquiries or Comments: Inquiries or comments regarding this meeting may be sent to—Eric Ruiz, Division of Acute Care, Centers for Medicare & Medicaid Services, Mail Stop C4–08–06, 7500 Security Boulevard, Baltimore, MD 21244–1850. Inquiries or comments may also be emailed to *Eric.Ruiz@cms.hhs.gov* or *EMTALATAG@cms.hhs.gov*.

Web Site Address for Additional Information: For additional information on the EMTALA TAG meeting agenda topics, updated activities, and to obtain Charter copies, please search our Internet Web site at (*http://www.cms.hhs.gov/faca/07_emtalatag.asp*).

FOR FURTHER INFORMATION CONTACT: Eric Ruiz, (410) 786–0247. George Morey, (410) 786–4653. Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Social Security Act (the Act) impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request or have a request made on their behalf for examination or treatment for a medical condition. The Emergency Medical Treatment and Labor Act (EMTALA) applies to all these individuals, regardless of whether or not they are

beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for emergency medical conditions, as well as necessary stabilizing treatment or appropriate transfer.

Regulations implementing the EMTALA legislation are set forth at 42 CFR 489.20(l), (m), (q) and (r) and 489.24. Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173), mandates that the Secretary establish a Technical Advisory Group (TAG) for advice concerning issues related to EMTALA regulations and implementation.

Section 945 of the MMA specifies that the EMTALA TAG—

- Shall review the EMTALA regulations;
- May provide advice and recommendations to the Secretary concerning these regulations and their application to hospitals and physicians;
- Shall solicit comments and recommendations from hospitals, physicians, and the public regarding implementation of such regulations; and
- May disseminate information concerning the application of these regulations to hospitals, physicians, and the public.

The EMTALA TAG, as chartered under section 945 of the MMA, is also governed by the provisions of the Federal Advisory Committee Act (FACA) (5 U.S.C. Appendix 2) for the selection of members and the conduct of all meetings.

In the May 28, 2004 **Federal Register** (69 FR 30654), we specified the statutory requirements regarding the charter, general responsibilities, and structure of the EMTALA TAG. That notice also solicited nominations for members based on the statutory requirements for the EMTALA TAG. In the August 27, 2004 **Federal Register** (69 FR 52699), we solicited nominations again for members in two categories (patient representatives and a State survey agency representative) for which no nominations were received in response to the May 28, 2004 **Federal Register** notice. In the March 15, 2005 **Federal Register** (70 FR 12691), we announced the inaugural meeting of the EMTALA TAG and the membership selection. In the May 18, 2005 **Federal Register** (70 FR 28541) and the September 23, 2005 **Federal Register** (70 FR 55903) we announced the second and third meetings of the EMTALA TAG, respectively, with a purpose to hear public testimony and consider written responses from medical societies and other organizations on specific issues considered by the EMTALA TAG at its previous meetings. The EMTALA TAG has established the following three subcommittees:

- *On-Call Subcommittee* (Chairperson, John Kusske, M.D.) charged with reviewing the testimony and other materials provided to the TAG to identify some specific issues related to on-call requirements.
- *Action Subcommittee* (Chairperson, Julie Nelson, J.D.) charged with identifying issues other than on-call issues.
- *Framework Subcommittee* (Chairperson, Charlotte Yeh, M.D.) charged with clarifying the historical context and conceptual basis for the TAG s recommendations and developing a document for review and approval by the TAG.

II. Meeting Format, Agenda, and Presentation Topics

A. Meeting Format

The initial portion of the meeting will convene at 9 a.m. on May 1, will involve opening remarks, and will be followed by a limited period of public testimony on issues related to EMTALA and its implementation. TAG members will have the opportunity to ask questions, prioritize the topics presented, and to conduct other necessary business. At the conclusion of each day's meeting, to the extent that time is available and at the discretion of the Chairperson, the public will be permitted a reasonable time to comment on issues being considered by the TAG.

B. Tentative Meeting Agenda

The tentative agenda for the EMTALA TAG meetings is as follows:

Day 1—Convenes at 9 a.m.

- Welcome, Call to Order, and Opening Remarks.
- Administrative and Housekeeping Issues.
- Public Testimony on issues related to EMTALA and its implementation.
- Subcommitte Reports.
- Public Comment.

Day 2—Convenes at 9 a.m.

- Subcommittee Reports (cont.).
- Public Comment.

C. Public Presentations

Only individuals who register and submit written testimony as specified in the Security Information section of this notice will be considered registered presenters. The time allotted for each presentation will be approximately 5 minutes and will be based on the number of registered presenters. Presenters will speak in their assigned order. If registered presenters are not given an opportunity to speak because of time restrictions, we will accept and present their written testimony to the TAG members. Comments from other participants (individuals who are not registered presenters) may be heard after the scheduled testimonies, if time permits.

If there are individuals who cannot attend the meeting but wish to submit comments/statements regarding issues related to the EMTALA TAG, we will accept and present their written comments/statements at the meeting if their comments/statements are received by postal mail or email at the address listed in the **ADDRESSES** section of this notice by April 17, 2006.

III. Registration Instructions

The Center for Medicare Management of CMS is coordinating meeting registration. While there is no registration fee, all individuals must register to attend due to limited seating. As specified in the **DATES** section of this notice, individuals who wish to attend the meeting but do not plan to present testimony must register by April 24, 2006. Individuals who would like both to attend and to present testimony on issues relating to the EMTALA TAG must register by April 10, 2006 and must state specifically in their registration request that they wish to present testimony for EMTALA TAG consideration. A copy of the presenter's written testimony must be received by CMS at the address specified in the **ADDRESSES** section of this notice by April 17, 2006.

You may register by e-mail to Marianne Myers at *Marianne.Myers@cms.hhs.gov*, by fax to the attention of Marianne Myers at (410) 786–0681, or by telephone at (410) 786–5962. All registration requests must include your name, name of the organization (if applicable), address, telephone and fax numbers, e-mail address (if available). Individuals will receive a registration confirmation with instructions for your arrival at the Hubert Humphrey Building. If seating capacity has been reached, registrants will be notified that the meeting has reached capacity. All registrants are asked to arrive at the Hubert Humphrey Building no later than 20 minutes before the scheduled starting time of each meeting session they wish to attend.

V. Security Information

Since this meeting will be held in a Federal government building, Federal security measures are applicable. As noted above, in planning your arrival time, we recommend allowing additional time to clear security. In

order to gain access to the building, participants must bring a government-issued photo identification such as a driver's license or a passport and a copy of your registration information for the meeting. Access may be denied to persons without proper identification.

All persons entering the building must pass through a metal detector. In addition, all items brought to CMS, whether personal or for the purpose of demonstration or to support a presentation, are subject to inspection. We cannot assume responsibility for coordinating the receipt, transfer, transport, storage, set-up, safety, or timely arrival of any personal belongings or items used for demonstration or to support a presentation.

Authority: Section 945 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: April 4, 2006.

Mark B. McClellan,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 06–3375 Filed 4–6–06; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: 45 CFR 1303—Appeal Procedures for Head Start Grantees and Current or Prospective Delegate Agencies.

OMB No. 0980–0242.

Description: Section 646 of the Head Start Act requires the Secretary to prescribe a timeline for conducting administrative hearings when adverse actions are taken or proposed against Head Start or Early Head Start grantees or delegate agencies. The Head Start Bureau is proposing to renew without changes the rule that implements these requirements and that prescribes when a grantee must submit information and what that information should include to support a contention that adverse action should not be taken.

Respondents: Head Start and Early Head Start grantees and delegate agencies against which the Head Start Bureau has taken or proposes to take adverse actions.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
45 CFR 1303—Appeal Procedures for Head Start Grantees and Current or Prospective Delegate Agencies	20	1	26	520

Estimated Total Annual Burden Hours: 520.

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 Information Services, 370 L'Infant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail: *infocollection@acf.hhs.gov*. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: April 3, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–3347 Filed 4–6–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Supporting Healthy Marriage (SHM) Project Baseline Data Collection.

OMB No.: New Collection.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is conducting a demonstration and evaluation called the Supporting Healthy Marriage (SHM) Project. Based on a substantial body of research that has shown a relationship between healthy marriages and a variety of positive child and family outcomes, the project is a large-scale, multi-site, multi-year, rigorous test of marriage education programs for interested low-income married couples with children. The SHM Project is designed to inform program operators and policymakers of the most effective ways to help couples who voluntarily choose to participate in demonstrations designed to strengthen and maintain healthy marriages.

The baseline data collection will serve several key functions in the SHM study. It will help describe the population being served, which will be useful to the programs themselves, to other marriage education program providers, and to policymakers who seek to understand the characteristics of couples that are interested in marriage education services. It will allow the SHM team to define and conduct analyses of key subgroups, addressing the key study question of who benefits most and least from marriage education services. A baseline data collection will also increase the precision of estimated impacts and allow the research team to conduct analyses using pre- and post-intervention measures. Lastly, the baseline data collection is an opportunity to collect participant contact information, to check the validity of random assignment, and to

assess the quality of survey data and attrition.

Respondents: The target population of the SHM study is low-income married couples with children or expecting a child. Both members of the couple must be over 18, and both must volunteer to participate in the program. In addition, SHM is not intended for couples who are in dangerous relationships or who are experiencing serious family violence. Programs will provide opportunities for the safe disclosure of family violence, as well as access to appropriate services when family violence is disclosed.

The respondents for the Supporting Healthy Marriage Project Baseline Data Collection will be participants in the SHM study. This will include both those receiving SHM program services and those in the SHM study control group. The respondents will be both spouses of 1,000 low-income married couples (2,000 respondents) in each of up to eight sites. The total number of respondents could be up to 16,000. In summary, the evaluation will include up to 8 sites phased in over four years, in which case the annual burden can be represented by one quarter of the total burden. The chart below outlines the estimated annual burden that could result from the SHM baseline data collection. The estimates below are based on pre-tests of the baseline instrument with individuals similar to the SHM target population.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden per response (min)	Estimated annual burden hours
Eligibility Checklist	4,000	1	5	332
Informed Consent Form	4,000	1	10	668
Baseline Information Form	4,000	1	9	600
Self-Administered Questionnaire	4,000	1	11	732
Contact Information Sheet	4,000	1	10	668

Estimated Annual Burden Hours: 3,000.

Additional Information: Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollections@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *Katherine_T._Astrich@omb.eop.gov*.

Dated: March 31, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–3348 Filed 4–6–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[OMB No. 0970–0174]

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Native Employment Works (NEW) Program Plan Guidance and Program Report

Description: The Native Employment Works (NEW) program plan is the application for NEW program funding. As approved by the Department of Health and Human Services (HHS), it documents how the grantee will carry out its NEW program. The NEW program plan guidance specifies the information needed to complete a NEW program plan and explains the process for plan submission every third year. The NEW program report provides information on the activities and accomplishments of grantees' NEW programs. The NEW program report and instructions specify the program data that NEW grantees report annually.

Respondents: Federally recognized Indian Tribes and Tribal organizations that are NEW program grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
NEW program plan guidance	26	1 every 3 years	29	754
NEW program report	48	1 annually	15	720

Estimated Total Annual Burden Hours: 1,474

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: March 31, 2006.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 06–3349 Filed 4–6–06; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0457]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Substances Generally Recognized as Safe: Notification Procedure

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by May 8, 2006.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Substances Generally Recognized as Safe: Notification Procedure (OMB Control Number 0910–0342)—Extension

Section 409 of the act (21 U.S.C. 348) establishes a premarket approval requirement for "food additives;" section 201(s) of the act (21 U.S.C. 321(s)) provides an exemption from the definition of "food additive" and thus from the premarket approval requirement, for uses of substances that are generally recognized as safe (GRAS) by qualified experts. FDA is proposing a voluntary procedure whereby members of the food industry who determine that use of a substance satisfies the statutory exemption may notify FDA of that determination. The notice would include a detailed summary of the data and information that support the GRAS determination, and the notifier would maintain a record of such data and information. FDA would make the information describing the GRAS claim, and the agency's response to the notice, available in a publicly accessible file; the entire GRAS notice would be publicly available consistent with the Freedom of Information Act (FOIA) and other Federal disclosure statutes.

In the **Federal Register** of December 8, 2005 (70 FR 73009), FDA published a 60-day notice requesting public comment on the information collection provisions to which one comment was received. The comment states that obtaining the entire GRAS notification through the provisions of FOIA is not a practical means for interested persons to learn about the safety of a substance. The comment suggests that, to enhance the quality, utility, and clarity of the information to be collected, FDA should make publicly available a summary of data and information that supports the GRAS notice and also contains a discussion of any negative or inconsistent data.

FDA does not agree that obtaining information through the provisions of FOIA is impractical for interested persons. FDA also disagrees with the comment's suggestion that the agency make publicly available in the GRAS notification process a summary of data and information that supports the GRAS notice and also contains a discussion of any negative or inconsistent data, because such a summary would be duplicative of information available through FOIA procedures. This information collection is associated with the proposed rule entitled "Notice of a Claim for GRAS Exemption Based on a GRAS Determination" (the proposed rule) (62 FR 18938). Proposed § 170.36(c)(4) describes requirements for a detailed summary in the GRAS notification procedures. This section states that notifiers shall submit a detailed summary of the basis for the notifier's determination that a particular use of the notified substance is exempt from the premarket approval requirements of the act because such use is GRAS. Such determination may be based either on scientific procedures or on common use in food. Proposed § 170.36(c)(4)(i)(B) and 170.36(c)(4)(ii)(B) state that this detailed summary shall contain a comprehensive discussion of any reports of investigations or other information that may appear to be inconsistent with the GRAS determination. Proposed § 170.36(f)(1) states that all remaining data and information in the GRAS notice shall be available for public disclosure, in accordance with the provisions of FOIA, on the date the notice is received. This would include the detailed summary of the basis for the notifier's GRAS determination. To the extent that the comment suggests a change to the requirements of the proposed rule, FDA responds that such a request is outside the scope of the four collection of information topics on which the notice solicits comments and, thus, will not be addressed in this document. In response to the request for comments in that proposed rule, the commenter timely filed a similar comment. This comment will be considered in the development of the final rule.

Description of Respondents: Manufacturers of Substances Used in Food and Feed.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of respondents	Annual frequency per response	Total annual responses	Hours per response	Total hours
170.36	50	1	50	150	7,500
570.36	10	1	10	150	1,500
Total					9,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of recordkeepers	Annual frequency per recordkeeping	Total annual records	Hours per recordkeeper	Total hours
170.36(c)(v)	50	1	50	15	750
570.36(c)(v)	10	1	10	15	150
Total					900

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting requirement is for a proposed rule that has not yet been issued as a final rule. In developing the proposed rule, FDA solicited input from representatives of the food industry on the reporting requirements, but could not fully discuss with those representatives the details of the proposed notification procedure. FDA received no comments on the agency's estimate of the hourly reporting requirements, and thus has no basis to revise that estimate at this time. In 1998, FDA began receiving notices that were submitted under the terms of the proposed rule. Since it began receiving notices, FDA has received 12 in 1998, 23 in 1999, 30 in 2000, 28 in 2001, 26 in 2002, 23 in 2003, 20 in 2004, and 22 to date in 2005, notices annually. To date, the number of annual notices is less than FDA's estimate; however, the number of annual notices could increase when the proposed rule becomes final.

Dated: April 3, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. E6–5088 Filed 4–6–06; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support a Single-Source Application—The Critical Path Institute: Collaborative Cardiovascular Drug Safety and Biomarker Research Program—ACTION; Availability of Sole Source Cooperative Agreement; Request for Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

I. Funding Opportunity Description

The Food and Drug Administration (FDA), Office of the Commissioner (OC) is announcing its intent to accept and consider a single source application (RFA–FDA–OC–2006–1) for the award of a Cooperative Agreement to the Critical Path Institute. FDA anticipates providing up to $750,000 (direct and indirect costs combined) in fiscal year 2006 to support this multiphased research program that will include, but will not be limited to, the development of an infrastructure to support this program and subsequent related studies in cardiovascular disease and genomic/proteomic biomarker research, as stipulated by Congress.

Subject to the availability of Federal funds and successful performance, an additional 2 years of support up to $750,000(direct and indirect costs combined) per year may be available.

FDA will support the research covered by this notice under the authority of section 301 of the Public Health Service (PHS) Act (42 U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public.

The cooperative agreement ensures FDA's continued participation in the Collaborative Cardiovascular Drug Safety and Biomarker Research Program, as proposed by Congress and to be conducted under FDA's Critical Path Initiative. A goal of the Critical Path Initiative is to foster the development of new tools to both promote drug safety and accelerate the development of innovative new therapies, through appropriate collaboration with multiple parties. This collaborative research program is expected to be conducted in a multiphase process, leveraging resources and expertise from the awardee, other collaborators, and FDA to address public health needs involving cardiovascular disease and biomarker research.

II. Eligibility Information

Competition is limited because of Congressional mandate, the mission of the Critical Path Institute, its established collaboration with the University of Utah, and the combined ability of these parties to leverage existing databases, specimen repositories, clinical and other technical expertise in support of this program.

III. Application and Submission

For further information or a copy of the complete Request for Applications (RFA) contact Cynthia Polit, Grants Management Officer, Division of Contracts and Grants Management

(HFA–500), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7180, e-mail: *cynthia.polit@fda.hhs.gov*. This RFA can be viewed on *Grants.gov* under "Grant Find." A copy of the complete RFA can also be viewed on the FDA Web site at *http://www.fda.gov/oc/initiatives/criticalpath/*. For issues regarding the programmatic and scientific aspects of this notice contact Wendy Sanhai, Ph. D., Senior Scientific Advisor, Office of the Commissioner (HF–1), Food and Drug Administration, 5600 Fishers Lane, rm. 1471, Rockville, MD 20857, 301–827–7867, e-mail: *wendy.sanhai@fda.hhs.gov*.

Dated: March 31, 2006.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 06–3408 Filed 4–5–06; 2:33 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Loan Repayment Program for Clinical Researchers (L30s).

Date: April 14, 2006.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Deborah P. Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260, *beebed@nhlbi.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Conference Grants (R13s).

Date: April 14, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Deborah P Beebe, PhD, Director, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, NIH, Two Rockledge Center, Room 7100, 6701 Rockledge Drive, Bethesda, MD 20892, 301/435–0260, *beebed@nhlbi.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Project (R01).

Date: April 21, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Valerie L. Prenger, PhD, Health Scientist Administrator, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, MSC 7924, Room 7214, Bethesda, MD 20892–7924, (301) 435–0270, *prengerv@nhlbi.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Research Demonstration and Dissemination Projects (R18s).

Date: April 27, 2006.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Patricia A. Haggerty, PhD, Scientific Review Administrator, National Heart, Lung, and Blood Institute/NIH, Clinical Studies & Training Studies Rev. Grp., Division of Extramural Affairs/Section Chief, 6701 Rockledge Drive, Room 7194, Bethesda, MD 20892, 301/435–0288, *haggertp@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research: 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3328 Filed 4–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 562b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Central Tolerance and Autoimmune Disease.

Date: April 18, 2006.

Time: 11 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Thames E. Pickett, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *pickettte@niaid.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Host Mechanisms of Viral Resistance.

Date: April 24, 2006.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge 6700, 6700B Rockledge Drive, Room 3258, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Stefani T. Rudnick, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–496–2550, *srudnick@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3330 Filed 4–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Clinical Trial Applications.

Date: April 13, 2006.

Time: 12 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH/NIAMS, Democracy One, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yan Z Wang, MD, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957, *wangy1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Clinical Studies Support.

Date: April 18, 2006.

Time: 10 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: NIH/NIAMS, One Democracy Plaza, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Yan Z Wang, MD, PhD, Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957, *wangy1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3331 Filed 4–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Translational Studies in Epilepsy Research.

Date: April 18, 2006.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Studies of Neurodegenerative Disorders.

Date: April 18, 2006.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call).

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892, 301–496–0660, *sawczuka@ninds.nih.gov.*

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Blueprint.

Date: April 24–25, 2006.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street, NW., Washington, DC 20007.

Contact Person: Alan L. Willard, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–5390, *willarda@ninds.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3332 Filed 4–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C, as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Acute Stroke Therapies SEP.

Date: April 3, 2006.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: San Diego Marriott Hotel & Marina, South Tower, 333 West Harbor Drive, Board Room, 3rd Floor, San Diego, CA 92101.

Contact Person: Shantadurga Rajaram, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, Msc 9529, Bethesda, MD 20852, (301) 435–6033, *rajarams@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 30, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3333 Filed 4–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commerical property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Risk and Addictions.

Date: April 11, 2006.

Time: 11:15 a.m. to 12:15 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gayle M. Boyd, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3028–D, MSC 7759, Bethesda, MD 20892, 301–451–9956, *gboyd@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the reveiw and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; AIDS Clinical and Epidemiological Studies.

Date: April 18, 2006.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5222, MSC 7852, Bethesda, MD 20892, 301–451–1167, *srinivar@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Physiology and Channels.

Date: April 18, 2006.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7850, Bethesda, MD 20892, 301–451–1164, *custerm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Medical Imaging/Bone Imaging.

Date: May 1, 2006.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Xiang-Ning Li, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7854, Bethesda, MD 20892, (301) 435–1744, *lixiang@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict for BTSS.

Date: May 9, 2006.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, Bethesda, MD 20892, (301) 435–1744, *dhindsad@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Interdisciplinary Partnerships in Environmental Health Sciences.

Date: May 10–11, 2006.

Time: 8 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: The Radisson Governors' Inn, I–40 at Davis Drive, Exit 280, Research Triangle Park, NC 27709.

Contact Person: Patricia Greenwel, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2174, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology Study Section.

Date: May 22–23, 2006.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Medical Imaging Study Section.

Date: May 22–23, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20910.

Contact Person: Eileen W. Bradley, DSC, Scientific Review Administrator and Chief, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5100, MSC 7854, Bethesda, MD 20892, (301) 435–1179, *bradleye@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Ultrasound Exploratory Studies.

Date: May 23, 2006.

Time: 6 p.m. to 11 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Rosslyn at Key Bridge, 1900 N. Fort Myer Drive, Arlington, VA 22209.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group; Biochemistry and Biophysics of Membranes Study Section.

Date: May 25–26, 2006.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: Nuria E. Assa-Munt, PhD, Scientific Review Administrator, Center for

Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3120, MSC 7806, Bethesda, MD 20892, (301) 451–1323, *assamunu@csr.nih.gov*.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group; Auditory System Study Section.

Date: May 31—June 1, 2006.

Time: 8 a.m . to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Edwin C. Clayton, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5095C, MSC 7844, Bethesda, MD 20892, (301) 402–1304, *claytone@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 31, 2006.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 06–3329 Filed 4–6–06; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services (HHS) notifies Federal agencies of the laboratories currently certified to meet the standards of Subpart C of the Mandatory Guidelines for Federal Workplace Drug Testing Programs (Mandatory Guidelines). The Mandatory Guidelines were first published in the **Federal Register** on April 11, 1988 (53 FR 11970), and subsequently revised in the **Federal Register** on June 9, 1994 (59 FR 29908), on September 30, 1997 (62 FR 51118), and on April 13, 2004 (69 FR 19644).

A notice listing all currently certified laboratories is published in the **Federal Register** during the first week of each month. If any laboratory's certification is suspended or revoked, the laboratory will be omitted from subsequent lists until such time as it is restored to full certification under the Mandatory Guidelines.

If any laboratory has withdrawn from the HHS National Laboratory Certification Program (NLCP) during the past month, it will be listed at the end, and will be omitted from the monthly listing thereafter.

This notice is also available on the Internet at *http://workplace.samhsa.gov* and *http://www.drugfreeworkplace.gov*.

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, SAMHSA/CSAP, Room 2–1035, 1 Choke Cherry Road, Rockville, Maryland 20857; 240–276–2600 (voice), 240–276–2610 (fax).

SUPPLEMENTARY INFORMATION: The Mandatory Guidelines were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Mandatory Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards that laboratories must meet in order to conduct drug and specimen validity tests on urine specimens for Federal agencies. To become certified, an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification, a laboratory must participate in a quarterly performance testing program plus undergo periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements described in the HHS Mandatory Guidelines. A laboratory must have its letter of certification from HHS/SAMHSA (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Mandatory Guidelines dated April 13, 2004 (69 FR 19644), the following laboratories meet the minimum standards to conduct drug and specimen validity tests on urine specimens:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227. 414–328–7840/800–877–7016. (Formerly: Bayshore Clinical Laboratory).

ACM Medical Laboratory, Inc., 160 Elmgrove Park, Rochester, NY 14624. 585–429–2264.

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118. 901–794–5770/888–290–1150.

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210. 615–255–2400.

Baptist Medical Center-Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299. 501–202–2783. (Formerly: Forensic Toxicology Laboratory Baptist Medical Center).

Clinical Reference Lab, 8433 Quivira Road, Lenexa, KS 66215–2802. 800–445–6917.

Diagnostic Services, Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913. 239–561–8200/800–735–5416.

Doctors Laboratory, Inc., 2906 Julia Drive, Valdosta, GA 31602. 229–671–2281.

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road; Warminster, PA 18974. 215–674–9310.

Dynacare Kasper Medical Laboratories,* 10150–102 St., Suite 200, Edmonton, Alberta, Canada T5J 5E2. 780–451–3702/800–661–9876.

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655. 662–236–2609.

Express Analytical Labs, 3405 7th Ave., Suite 106, Marion, IA 52302. 319–377–0500.

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare, Laboratory Partnership, 245 Pall Mall Street. London, ONT, Canada N6A 1P4. 519–679–1630.

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715. 608–267–6225.

Kroll Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053. 504–361–8989/800–433–3823. (Formerly: Laboratory Specialists, Inc.).

Kroll Scientific Testing Laboratories, Inc., 450 Southlake Blvd., Richmond, VA 23236. 804–378–9130. (Formerly: Scientific Testing Laboratories, Inc.).

Laboratory Corporation of America Holdings, 7207 N. Gessner Road, Houston, TX 77040. 713–856–8288/800–800–2387.

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869. 908–526–2400/800–437–4986. (Formerly: Roche Biomedical Laboratories, Inc.).

Laboratory Corporation of America Holdings, 1904 Alexander Drive, Research Triangle Park, NC 27709. 919–572–6900/800–833–3984. (Formerly: LabCorp Occupational Testing Services, Inc., CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group).

Laboratory Corporation of America Holdings, 10788 Roselle St., San Diego, CA 92121. 800–882–7272. (Formerly: Poisonlab, Inc.).

Laboratory Corporation of America Holdings, 550 17th Ave., Suite 300,

Seattle, WA 98122, 206–923–7020/800–898–0180. (Formerly: DrugProof, Division of Dynacare/Laboratory of Pathology, LLC; Laboratory of Pathology of Seattle, Inc.; DrugProof, Division of Laboratory of Pathology of Seattle, Inc.).

Laboratory Corporation of America Holdings, 1120 Main Street, Southaven, MS 38671. 866–827–8042/800–233–6339. (Formerly: LabCorp Occupational Testing Services, Inc.; MedExpress/National Laboratory Center).

Marshfield Laboratories, Forensic Toxicology Laboratory, 1000 North Oak Ave., Marshfield, WI 54449. 715–389–3734/800–331–3734.

MAXXAM Analytics Inc.,* 6740 Campobello Road, Mississauga, ON, Canada L5N 2L8. 905–817–5700. (Formerly: NOVAMANN (Ontario), Inc.).

MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112. 651–636–7466/800–832–3244.

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232. 503–413–5295/800–950–5295.

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, MN 55417. 612–725–2088.

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304. 661–322–4250/800–350–3515.

One Source Toxicology Laboratory, Inc., 1213 Genoa-Red Bluff, Pasadena, TX 77504. 888–747–3774. (Formerly: University of Texas Medical Branch, Clinical Chemistry Division; UTMB Pathology-Toxicology Laboratory).

Oregon Medical Laboratories, 123 International Way, Springfield, OR 97477. 541–341–8092.

Pacific Toxicology Laboratories, 9348 DeSoto Ave., Chatsworth, CA 91311. 800–328–6942. (Formerly: Centinela Hospital Airport Toxicology Laboratory).

Pathology Associates Medical Laboratories, 110 West Cliff Dr., Spokane, WA 99204. 509–755–8991/800–541–7897x7.

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210. 913–339–0372/800–821–3627.

Quest Diagnostics Incorporated, 3175 Presidential Dr., Atlanta, GA 30340. 770–452–1590/800–729–6432. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063. 800–824–6152. (Moved from the Dallas location on 03/31/01; Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories).

Quest Diagnostics Incorporated, 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412. 702–733–7866/800–433–2750. (Formerly: Associated Pathologists Laboratories, Inc.).

Quest Diagnostics Incorporated, 10101 Renner Blvd., Lenexa, KS 66219. 913–888–3927/800–873–8845. (Formerly: LabOne, Inc.; Center for Laboratory Services, a Division of LabOne, Inc.).

Quest Diagnostics Incorporated, 400 Egypt Road, Norristown, PA 19403. 610–631–4600/877–642–2216. (Formerly: SmithKline Beecham Clinical Laboratories; SmithKline Bio-Science Laboratories)

Quest Diagnostics Incorporated, 506 E. State Pkwy., Schaumburg, IL 60173. 800–669–6995/847–885–2010. (Formerly: SmithKline Beecham Clinical Laboratories; International Toxicology Laboratories).

Quest Diagnostics Incorporated, 7600 Tyrone Ave., Van Nuys, CA 91405. 866–370–6699/818–989–2521. (Formerly: SmithKline Beecham Clinical Laboratories).

Quest Diagnostics Incorporated, 2282 South Presidents Drive, Suite C, West Valley City, UT 84120, 801–606–6301/800–322–3361. (Formerly: Northwest Toxicology, a LabOne Company; LabOne, Inc., dba Northwest Toxicology; NWT Drug Testing, NorthWest Toxicology, Inc.; Northwest Drug Testing, a division of NWT Inc.).

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109. 505–727–6300/800–999–5227.

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601. 574–234–4176 x276.

Southwest Laboratories, 4645 E. Cotton Center Boulevard, Suite 177, Phoenix, AZ 85040. 602–438–8507/800–279–0027.

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915. 517–364–7400. (Formerly: St. Lawrence Hospital & Healthcare System).

St. Anthony Hospital Toxicology Laboratory, 1000 N. Lee St., Oklahoma City, OK 73101. 405–272–7052.

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203. 573–882–1273.

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166. 305–593–2260.

US Army Forensic Toxicology Drug Testing Laboratory, 2490 Wilson St., Fort George G. Meade, MD 20755–5235, 301–677–7085.

*The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. HHS, with the HHS' NLCP contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, HHS will recommend that DOT certify the laboratory (**Federal Register**, July 16, 1996) as meeting the minimum standards of the Mandatory Guidelines published in the **Federal Register** on April 13, 2004 (69 FR 19644). After receiving DOT certification, the laboratory will be included in the monthly list of HHS-certified laboratories and participate in the NLCP certification maintenance program.

Anna Marsh,

Director, Office Program Services, SAMHSA.

[FR Doc. E6–5037 Filed 4–6–06; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–2006–0006]

Re-Establishment of the National Urban Search and Rescue Response System Advisory Committee

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

ACTION: Committee Management; Notice of Committee Re-Establishment.

SUMMARY: The Secretary of the Department of Homeland Security has determined that the re-establishment of the National Urban Search and Rescue

Response System Advisory Committee is necessary and in the public interest in connection with the performance of duties of the National Urban Search and Rescue Response System. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: National Urban Search and Rescue Response System Advisory Committee.

DATES: If you desire to submit comments, they must be submitted by May 8, 2006.

ADDRESSES: You may submit comments, identified by Docket Number FEMA–2006–0006 by one of the following methods:

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

E-mail: *FEMA-RULES@dhs.gov*. Include Docket Number FEMA–2006–0006 in the subject line of the message.

Fax: 202–646–4536.

Mail/Hand Delivery/Courier: Rules Docket Clerk, Office of General Counsel, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472.

Instructions: All Submissions received must include the agency name and docket number (FEMA–2006–0006). Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov*, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov*.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *http://www.regulations.gov*. Submitted comments may also be inspected at FEMA, Office of General Counsel, 500 C Street, SW., Room 840, Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Michael Tamillow, Chief, Urban Search and Rescue Response System, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, tel.: (202) 646–2549, email: *mike.tamillow@dhs.go*.

Purpose and Objective: The Committee will advise the Director of the Federal Emergency Management Agency on programmatic, policy, operational, administrative, and technological issues within DHS that affect the readiness and operational effectiveness of the National Urban Search and Rescue Response System, and other related issues.

Balanced Membership Plans: The Committee will consist of not more than 15 members selected for their demonstrated professional and personal qualifications, and on their direct and continuing experience with urban search and rescue activities and organizations. The Committee membership is a balanced mix of sponsoring organizations by geographical region, management, labor, and the Operations Group, which is the principal work group through which all functional work groups report to the Advisory Committee.

Duration: Two years, subject to renewal.

Responsible DHS Officials: William Lokey, Operations Branch Chief, Response Division, Federal Emergency Management Agency, Department of Homeland Security, 500 C Street, SW., Washington DC 20472, tel. (202) 646–7085, (e-mail) *William.Lokey@dhs.gov*.

Dated: April 3, 2006.

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–5076 Filed 4–6–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5045–N–14]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, Room 7262, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: March 30, 2006.

Mark R. Johnston,

Acting Deputy Assistant Secretary for Special Needs.

[FR Doc. 06–3243 Filed 4–6–06; 8:45 am]

BILLING CODE 4210–67–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Federal Housing Enterprise Oversight; Strategic Plan

AGENCY: Office of Federal Housing Enterprise Oversight, HUD.

ACTION: Solicitation of comments for Updating the Strategic Plan.

SUMMARY: Office of Federal Housing Enterprise Oversight (OFHEO) is soliciting comments as it updates its Strategic Plan. In accordance with the requirements of the Government Performance and Results Act of 1993 that agencies update their Strategic Plans every three years, OFHEO is developing its 2006–2011 Strategic Plan and soliciting the views and suggestions of those entities potentially affected by or interested in the plan. OFHEO's current Strategic Plan, for FY 2003–2008, may be viewed on the OFHEO Web site at *http://www.ofheo.gov* in the "About OFHEO" section.

DATES: Written comments regarding the Strategic Plan must be received by May 5, 2006.

ADDRESSES: All comments concerning the notice should be addressed to: Susan S. Jacobs, Chief Strategic Planning Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Third Floor, Washington, DC 20552. Comments may also be submitted via electronic mail to: "*StrategicPlan@ofheo.gov*". OFHEO requests that written comments submitted in hard copy also be accompanied by the electronic version in MS Word or in portable document format (PDF) on 3.5 disk or CD–ROM. If OFHEO cannot read your comment due to technical difficulties and cannot contact you for clarification, OFHEO

may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Susan S. Jacobs, Chief Strategic Planning Officer, Office of Federal Housing Enterprise Oversight, 1700 G Street, NW., Third Floor, Washington, DC 20552, telephone (202) 414–3821 (not a toll-free number). The telephone number for the Telecommunications Device for the Deaf is: (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Office of Federal Housing Enterprise Oversight (OFHEO) is charged by Congress, as established in Title XIII of the Housing and Community Development Act of 1992, known as the Federal Housing Enterprises Financial Safety and Soundness Act of 1992, with the mandate of overseeing the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation, Fannie Mae and Freddie Mac (Enterprises).

Three years ago, OFHEO adopted a Strategic Plan covering FY 2003–2008. Section 306 of the Government Performance and Results Act of 1993 (GPRA), 31 U.S.C. 1115 *et seq.*, requires that agencies update and revise their Strategic Plans every three years. OFHEO is currently drafting a new plan for FY 2006–2011 that will describe the agency's mission, strategic goals and objectives, and strategies to achieve them. This plan will provide a framework for the years ahead. OFHEO uses its Strategic Plan to guide each year's performance goals, which are described in OFHEO's Annual Performance Budgets. They may be viewed on the OFHEO Web site at *http://www.ofheo.gov* in the "News Center & FOIA" section, "Reports" section.

In today's notice, OFHEO is soliciting the views and suggestions that may be considered in the development of its revised plan. Additionally, OFHEO will publish a draft plan on the OFHEO Web site in late summer and will continue to encourage comments. OFHEO will then submit its Strategic Plan to the President and the Congress, pursuant to the statutory requirements, and make it available to the public on the OFHEO Web site.

Dated: April 3, 2006.

Stephen A. Blumenthal

Acting Director, Office of Federal Housing Enterprise Oversight.

[FR Doc. E6–5129 Filed 4–6–06; 8:45 am]

BILLING CODE 4220–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Initiation of a 5-Year Review of Maguire Daisy, Holmgren Milk-Vetch, Shivwits Milk-Vetch, Virgin River Chub, Woundfin, and Kanab Ambersnail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 5-year review of Maguire daisy (*Erigeron maguirei*), Holmgren milk-vetch (*Astragalus holmgreniorum*), Shivwits milk-vetch (*Astragalus ampullarioides*), Virgin River chub (*Gila seminuda*), woundfin (*Plagopterus argentissimus*), and Kanab ambersnail (*Oxyloma haydeni kanabensis*) under the Endangered Species Act of 1973 (ESA). The purpose of reviews conducted under this section of the ESA is to ensure that the classification of species as threatened or endangered on the List of Endangered and Threatened Wildlife and Plants (50 CFR 17.12) 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 June 6, 2006. However, we will continue to accept new information about any listed species at any time.

ADDRESSES: Submit information to the Utah Field Office, U.S. Fish and Wildlife Service, Attention: 5-year Review, 2369 West Orton Circle, Suite 50, West Valley City, Utah 84119. 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 address.

FOR FURTHER INFORMATION CONTACT: Henry Maddux, Field Supervisor, at the above address, or telephone 801–975–3330.

SUPPLEMENTARY INFORMATION:

Why Is a 5-Year Review Being Conducted?

Section 4(c)(2)(A) of the ESA (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), 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 endangered (Holmgren milk-vetch (66 FR 49560, September 28, 2001), Kanab ambersnail (57 FR 13657, April 17, 1992), Shivwits milk-vetch (66 FR 49560, September 28, 2001), Virgin River chub (54 FR 35305, August 24, 1989), Woundfin (39 FR 1171, January 4, 1974), and Maguire daisy (50 FR 36089, September 5, 1985)). For Maguire daisy, we especially request information since its 1996 reclassification from endangered to threatened (61 FR 31054, June 19, 1996). While the Holmgren and Shivwits milk-vetches have not yet been listed for 5 years, these reviews will not be completed until after the 5-year period on September 28, 2006. 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 active review of the Holmgren milk-vetch, Kanab ambersnail, Maguire daisy, Shivwits milk-vetch, Virgin River chub, and woundfin.

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 Holmgren milk-vetch, Kanab ambersnail, Maguire daisy, Shivwits milk-vetch, Virgin River chub, and woundfin. 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; information on the current condition of designated or proposed critical habitat (only applies to Holmgren and Shitwits milk-vetches, Virgin River chub, and Woundfin); 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 ESA) 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. There also may be circumstances in which we may withhold from the supporting record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

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 THE LISTING INFORMATION FOR HOLMGREN MILK-VETCH, KANAB AMBERSNAIL, MAGUIRE DAISY, SHIVWITS MILK-VETCH, VIRGIN RIVER CHUB, AND WOUNDFIN

Species		Historic range	Where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*	*	
PLANTS							
Holmgren Milk-vetch	*Astragalus holmgreniorum.*	U.S.A. (AZ, UT)	Entire	E	711	NA	NA
Maguire Daisy	*Erigeron maguirei* ...	U.S.A. (UT)	Entire	T	202,584	NA	NA
Shivwits Milk-vetch ..	*Astragalus ampullarioides.*	U.S.A. (UT)	Entire	E	711	NA	NA
*	*	*	*	*	*	*	
FISH							
Virgin River Chub	*Gila seminuda*	U.S.A. (AZ, NV, UT)	Entire	E	361	17.95 (e)	NA
Woundfin	*Plagopterus argentissimus.*	U.S.A. (AZ, NV, UT)	Entire, except Gila R. drainage, AZ, NM.	E	2,193	17.95 (e)	NA
Do	do	do	Gila R. drainage, AZ, NM.	EXPN	193	NA	17.84 (b)
*	*	*	*	*	*	*	
INVERTEBRATES							
Kanab Ambersnail ...	*Oxyloma haydeni kanabensis.*	U.S.A. (AZ, UT)	Entire	E	431E, 459,477	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 ESA 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 ESA 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 Holmgren milk-vetch, Kanab ambersnail, Maguire daisy, Shivwits milk-vetch, Virgin River chub, and woundfin 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: March 20, 2006.

Casey Stemler,

Acting Deputy Regional Director, Denver, Colorado.

[FR Doc. E6–5087 Filed 4–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

Application From the Nevada Department of Wildlife; Elko, Eureka, Lander, and Nye Counties, NV, for an Enhancement of Survival Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application.

SUMMARY: In response to an application from the Nevada Department of Wildlife (Applicant), the Fish and Wildlife Service (we, the Service) is considering issuance of an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA). The permit application includes a proposed programmatic Safe Harbor Agreement (SHA) between the Applicant and the Service. The proposed SHA provides for voluntary habitat restoration, maintenance, enhancement, or creation activities to enhance the reintroduction and recovery of Lahontan cutthroat trout (*Oncorhynchus clarki henshawi*) within the Humboldt River Distinct Population Segment and the Interior Basin areas in Nevada. The proposed duration of both the SHA and permit is 50 years.

The Service has made a preliminary determination that the proposed SHA and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement, which also is available for public review.

DATES: Written comments must be received by 5 p.m. on May 8, 2006.

ADDRESSES: Please address comments to Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada, facsimile number (775) 861–6301.

FOR FURTHER INFORMATION CONTACT: David Potter, Fish and Wildlife Biologist, (see **ADDRESSES**), telephone (775) 861–6300.

SUPPLEMENTARY INFORMATION:

Document Availability

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the proposed SHA, including a map of the proposed permit area, references, and description of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section. Documents also will be available for public inspection, by appointment, during normal business hours at this office (see **ADDRESSES**).

We specifically request information, views, and opinions from the public on the proposed Federal action of issuing a permit, including the identification of any aspects of the human environment not already analyzed in our Environmental Action Statement. Further, we specifically solicit information regarding the adequacy of the SHA as measured against our permit issuance criteria found in 50 CFR 17.22(c).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their identity from the administrative record. We will honor such requests to the extent allowed by law. Respondents wishing us to withhold their identity (e.g., individual name, home address and home phone number) must state this prominently at the beginning of their comments. We will make all submissions from organizations, agencies or businesses, and from individuals identifying themselves as representatives of officials of such entities, available for public inspection in their entirety.

Background

The primary objective of this proposed SHA is to encourage voluntary habitat restoration, maintenance or enhancement activities to benefit Lahontan cutthroat trout by relieving a landowner who enters into the provisions of a Cooperative Agreement with the Applicant from any additional section 9 liability under the Endangered Species Act beyond that which exists at the time the Cooperative Agreement is signed and Certificate of Inclusion issued ("regulatory baseline"). A SHA encourages landowners to conduct voluntary conservation activities and assures them that they will not be subjected to increased listed species restrictions should their beneficial stewardship efforts result in increased listed species populations. Application requirements and issuance criteria for enhancement of survival permits and SHAs are found in 50 CFR 17.22(c). As long as enrolled landowners allow the agreed-upon conservation measures to be completed on their property and agree to maintain their baseline responsibilities, they may make any other lawful use of the property during the term of the Cooperative Agreement, even if such use results in the take of individual Lahontan cutthroat trout or harm to this species' habitat.

As proposed in the SHA, landowners within the Humboldt River Distinct Population Segment, as identified by the Lahontan Cutthroat Trout Recovery Plan, and the Interior Basin in Nevada, may be enrolled by the Applicant under the SHA. Landowners, as Cooperators, would receive a Certificate of Inclusion when they sign a Cooperative Agreement. The Cooperative Agreement would include: (1) A map of the property; (2) delineation of the portion of the property to be enrolled and its stream mileage/feet; (3) the property's baseline and biological assessment which would include a thorough stream analysis (with photos) of the enrolled

stream miles/feet; (4) a description of the specific conservation measures to be completed; and (5) the responsibilities of the Cooperator and the Applicant.

The Applicant would provide draft copies of the Cooperative Agreement to the Service for an opportunity to review and concur with the recommended management activities and conservation measures. The Service would have a period of 15 business days in which to make comments on the Cooperative Agreement. If no comments were made within 15 business days, the Applicant would proceed to finalize the Cooperative Agreement. The Applicant, as the Permittee, would be responsible for annual monitoring and reporting related to implementation of the SHA and Cooperative Agreements and fulfillment of provisions by the Cooperators. As specified in the proposed SHA, the Applicant would issue yearly reports to the Service related to implementation of the program.

Each Cooperative Agreement would cover conservation activities to create, maintain, restore, or enhance habitat for Lahontan cutthroat trout and achieve species' recovery goals. These actions, where appropriate, could include (but are not limited to): (1) Restoration of riparian habitat and stream form and function; (2) control of stocking rates for livestock (number/density of animals per unit area); (3) repair or installation of fences to protect existing or created habitat from human disturbance; (4) establishment of riparian buffers; and (5) installation of screens on irrigation diversions as well as facilitation of the implementation of other objectives recommended by the Lahontan Cutthroat Trout Recovery Plan. The overall goal of Cooperative Agreements entered into under the proposed SHA is to produce conservation measures that are mutually beneficial to the Cooperators and the long-term existence of Lahontan cutthroat trout.

Based upon the probable species' response time for Lahontan cutthroat trout to reach a net conservation benefit, the Service estimates it will take 5 years of implementing the planned conservation measures to fully reach a net conservation benefit; some level of benefit would likely occur within a shorter time period. Most Cooperative Agreements under the proposed SHA are expected to have at least 10 years' duration.

After maintenance of the restored/created/enhanced Lahontan cutthroat trout habitat on the property for the agreed-upon term, Cooperators may then conduct otherwise lawful activities on their property that result in the partial or total elimination of the habitat improvements and the taking of Lahontan cutthroat trout. However, the restrictions on returning a property to its original baseline condition include: (1) The Cooperator must demonstrate that baseline conditions were maintained during the term of the Cooperative Agreement and the conservation measures necessary for achieving a net conservation benefit were carried out; (2) the Applicant and the Service will be notified a minimum of 30 days prior to the activity and given the opportunity to capture, rescue, and/or relocate any Lahontan cutthroat trout; and (3) return to baseline conditions must be completed within the term of the Certificate of Inclusion issued to the Applicant. Cooperative Agreements could be extended if the Applicant's permit is renewed and that renewal allows for such an extension.

The Service has made a preliminary determination that approval of the proposed SHA qualifies for a categorical exclusion under NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the SHA would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the SHA would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the SHA, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects, would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

Decision

The Service provides this notice pursuant to section 10(c) of the ESA and pursuant to implementing regulations for NEPA (40 CFR 1506.6). We will evaluate the permit application, the proposed SHA, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the ESA and NEPA regulations. If the requirements are met, the Service will sign the proposed SHA and issue an enhancement of survival permit under section 10(a)(1)(A) of the ESA to the Applicant for take of the Lahontan cutthroat trout incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: March 22, 2006.

Robert D. Williams,

Field Supervisor, Nevada Fish and Wildlife Office, Reno, Nevada.

[FR Doc. E6–5091 Filed 4–6–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Santa Ana Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Pueblo of Santa Ana Liquor Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Pueblo of Santa Ana Indian Reservation. The Reservation is located on trust land and this Ordinance allows for possession and sale of alcoholic beverages within the exterior boundaries of the Pueblo of Santa Ana Indian Reservation. This Ordinance will increase the ability of the tribal government to control the community's liquor distribution and possession, and at the same time will provide an important source of revenue for the continued operation and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective on April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Iris A. Drew, Tribal Government Services Officer, Southwest Regional Office, 1001 Indian School Road, NW., Albuquerque, New Mexico 87104, Telephone: (505) 563–3530; Fax: (505) 563–3060; or Ralph Gonzales, Office of Tribal Services, 1951 Constitution Avenue, NW., Mail Stop 320–SIB, Washington, DC 20240, Telephone: (202) 513–7629.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Santa Ana Tribal Council-approved amendments to its Liquor Ordinance by

Resolution No. 05–R–54 on November 15, 2005. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Pueblo of Santa Ana Indian Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Principal Deputy Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Pueblo of Santa Ana was duly adopted by the Tribal Council on November 15, 2005.

Dated: March 31, 2006.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

The Pueblo of Santa Ana's Liquor Ordinance Reads as Follows

Title 10: Licensing & Regulation

Chapter One: Liquor Code

Subchapter One: General Provisions

Section 101: Findings

The Tribal Council finds as follows:

A. The introduction, possession and sale of alcoholic beverages on the Santa Ana Indian Reservation has, for a long time, been clearly recognized as a matter of special concern to the Pueblo and its members and to the United States;

B. Under federal law and New Mexico state law, and as a matter of inherent Tribal sovereignty, the question of when and to what extent alcoholic beverages may be introduced into and sold or consumed within the Santa Ana Indian Reservation is to be decided by the governing body of the Tribe;

C. It is desirable that the Tribal Council legislate comprehensively on the subject of the sale and possession of alcoholic beverages within the Santa Ana Indian Reservation, both to establish a consistent and reasonable Tribal policy on this important subject, as well as to facilitate economic development projects within the Santa Ana Indian Reservation that may involve outlets for the sale and consumption of alcoholic beverages; and

D. It is the policy of the Tribal Council that the introduction, sale and consumption of alcoholic beverages within the Santa Ana Indian Reservation be carefully regulated so as to protect the public health, safety and welfare, and that licensees be made fully accountable for violations of conditions of their licenses and the consequences thereof.

Section 102: Definitions

As used in this Chapter, the following words shall have the following meanings:

A. "Council" means the Tribal Council of the Pueblo of Santa Ana.

B. "Development Area" means those lands within the Santa Ana Indian Reservation that are situated west of the Rio Grande and that abut U.S. Highway 550, State Road 528 or the Jemez Canyon Dam Road, but does not include any lands within one mile of the intersection of U.S. Highway 550 and the turnoff to the village of Tamaya (provided, however, that if such term is more specifically defined in a planning or zoning statute or ordinance adopted by the Tribal Council, or in any regulations issued under the authority of any such duly adopted planning or zoning statute or ordinance, such definition shall supersede and control the definition of such term set forth herein).

C. "Governor" means the Governor of the Pueblo of Santa Ana.

D. "Licensed Premises" means the location within the Santa Ana Indian Reservation at which a licensee is permitted to sell and allow the consumption of alcoholic beverages, and may, if requested by the applicant and approved by the Governor, include any related or associated facilities under the control of the licensee, or within which the licensee is otherwise authorized to conduct business (but subject to any conditions or limitations as to sales within such area that may be imposed by the Governor in issuance of the license).

E. "Licensee" means a person or entity that has been issued a license to sell alcoholic beverages on the licensed premises under the provision of this Liquor Code.

F. "Liquor" or "Alcoholic Beverage" includes the four varieties of liquor commonly referred to as alcohol, spirits, wine and beer, and all fermented, spirituous, vinous or malt liquors or combinations thereof, mixed liquor, any part of which is fermented, spirituous, vinous, or malt liquor, or any otherwise intoxicating liquid, including every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine or beer and intended for oral consumption.

G. "Liquor Code" means the Santa Ana Pueblo Liquor Code, this Chapter.

H. "Person" means any natural person, partnership, corporation, joint venture, association, or other legal entity.

I. "Pueblo" or "Tribe" means the Pueblo of Santa Ana.

J. "Sale" or "sell" means any exchange, barter, or other transfer of goods from one person to another for commercial purposes, whether with or without consideration.

K. "Santa Ana Indian Reservation" means all lands within the exterior boundaries of the Santa Ana Indian Reservation, all lands within the exterior boundaries of the El Ranchito Grant and the Santa Ana Pueblo Grant, and all other lands owned by the Pueblo subject to federal law restrictions on alienation or held by the United States for the use and benefit of the Pueblo.

L. "Special Event" means a bona fide special occasion such as a fair, fiesta, show, tournament, contest, meeting, picnic or similar event within the Development Area, sponsored by an established business or organization, lasting no more than three days. A special event may be open to the public or to a designated group, and it may be a one-time event or periodic, provided, however, that such events held more than four times a year by the same business or organization may not be deemed special events for purposes of this Liquor Code, in the discretion of the Governor.

M. "Server" means an individual who sells, serves or dispenses alcoholic beverages for consumption on or off licensed premises, including any person who manages, directs or controls the sale or service of alcohol.

N. "Tribal Administrator" means the Tribal Administrator of the Pueblo of Santa Ana.

Section 103: Sovereign Immunity Preserved

Nothing in the Liquor Code shall be construed as a waiver or limitation of the sovereign immunity of the Pueblo.

Section 104: Initial Compliance

No person shall be disqualified from being issued a license under the provisions of this Liquor Code, or shall be found to have violated any provision of this Chapter, solely because such person, having been duly authorized to engage in the sale of alcoholic beverages within the Santa Ana Indian Reservation under the law as it existed prior to enactment of this Liquor Code, continues to engage in such business without a license issued under the provisions of this Liquor Code after the effective date hereof, so long as such person, within 90 days after such effective date (or within 30 days after receiving written notice from the Pueblo of the enactment of the Liquor Code, whichever is later) submits an application for such license in compliance with the provisions of this Liquor Code, and a license is thereafter issued in due course; provided, however, that upon the issuance of a license under the provisions of this Liquor Code to any person or entity, or

upon the rejection of an application for such license by any person or entity, no license issued by the State of New Mexico or issued under the provisions of any prior law of the Pueblo that is held by such person or entity, or that purports to authorize the possession, sale or consumption of alcoholic beverages on premises covered by a license issued (or a license application rejected) under the provisions of this Liquor Code, shall have any further validity or effect within the Santa Ana Indian Reservation.

Section 105: Severability

In the event any provision of this Liquor Code is held invalid or unenforceable by any court of competent jurisdiction, the remainder of the Code shall continue in full force and effect, notwithstanding the invalidity or unenforceability of such provision, to the fullest extent practicable.

Subchapter Two: Sale, Possession and Consumption Of Alcoholic Beverages

Section 121: Prohibition

The sale, introduction for sale, purchase, or other dealing in alcoholic beverages, except as is specifically authorized by the Liquor Code, is prohibited within the Santa Ana Indian Reservation.

Section 122: Possession For Personal Use

Possession of alcoholic beverages for personal use shall be lawful within the Santa Ana Indian Reservation only if such alcoholic beverages were lawfully purchased from an establishment duly licensed to sell such beverages, whether on or off the Santa Ana Indian Reservation, and are possessed by a person or persons 21 years of age or older. Such possession is otherwise prohibited.

Section 123: Transportation Through Reservation Not Affected

Nothing herein shall pertain to the otherwise lawful transportation of alcoholic beverages through the Santa Ana Indian Reservation by persons remaining upon public highways (or other areas paved for motor vehicles) and where such beverages are not delivered, sold or offered for sale to anyone within the Santa Ana Indian Reservation.

Section 124: Requirement of Pueblo License

No person shall sell any alcoholic beverage within the Santa Ana Indian Reservation at retail, or offer any such beverage for sale at retail, unless such person holds a license issued by the Pueblo under the provisions of this Chapter.

Section 125: All Sales for Personal Use

No person licensed to sell alcoholic beverages within the Santa Ana Indian Reservation shall sell any such beverage for resale, but all such sales shall be for the personal use of the purchaser. Nothing herein shall prohibit a duly licensed wholesale dealer in alcoholic beverages from selling and delivering such beverages to properly licensed retailers within the Santa Ana Indian Reservation, so long as such sales and deliveries are otherwise in conformity with the laws of the State of New Mexico and this Liquor Code.

Section 126: Package Sales and Sales of Liquor By The Drink Permitted

Sales of alcoholic beverages on the Santa Ana Indian Reservation may be in package form or for consumption on the premises, or both, so long as the seller is properly licensed by the Pueblo to make sales of that type. No seller of alcoholic beverages shall permit any person to bring onto premises where liquor by the drink is authorized to be sold any alcoholic beverages purchased elsewhere, unless such person is otherwise licensed to possess or distribute such beverages on such premises.

Section 127: No Sales to Minors

No alcoholic beverages may be sold within the Santa Ana Indian Reservation to persons under the age of 21 years.

Section 128: Hours and Days of Sale

Alcoholic beverages may be sold, offered for sale or consumed on licensed premises within the Santa Ana Indian Reservation at such hours as are established by the Licensee, but provided that in no event shall any such sales or consumption occur between the hours of 2 a.m. and 7 a.m. on any day.

Section 129: [Repealed]

Section 130: Other Prohibitions on Sales

The Tribal Council may, by duly enacted resolution, establish other days on which or times at which sales or consumption of alcoholic beverages are not permitted within the Santa Ana Indian Reservation. The Council shall give notice of any such enactment promptly to all licensees within the Santa Ana Indian Reservation. In addition, the Governor of the Pueblo may, in the event of a bona fide emergency, and by written order, prohibit the sale of any alcoholic beverages within the Santa Ana Indian Reservation for a period of time not to exceed 48 hours. The Governor shall give prompt notice of such emergency order to all licensees within the Santa Ana Indian Reservation. No such emergency order may extend beyond 48 hours, unless during that time the Tribal Council meets and determines that the emergency requires a further extension of such order.

Section 131: Location of Sales

No person licensed to sell alcoholic beverages within the Santa Ana Indian Reservation shall make such sales except at the licensed premises specifically designated in such license. No person holding a premises license shall permit consumption of alcoholic beverages purchased from such licensee to occur off of the licensed premises.

Section 132: Sales to Be Made by Adults

A. No person shall be employed as a server at a licensed premises unless within 30 days after such person's employment such person has obtained alcohol server training equivalent to that required under the laws of the State of New Mexico.

B. No person shall be employed as a server at a licensed premises who is less than 21 years of age, except that a premises licensee that operates a restaurant or other facility that is held out to the public as a place where meals are prepared and served may employ persons 19 years of age or older to sell or serve alcoholic beverages to persons who are also ordering food, provided that no person under the age of 21 shall be employed as a bartender by any licensee within the Santa Ana Indian Reservation.

Section 133: All Sales Cash

No licensee shall make any sale of any alcoholic beverages within the Santa Ana Indian Reservation without receiving payment therefor by cash, check or credit card at or about the time the sale is made; provided, that nothing herein shall preclude a licensee from receiving a delivery of alcoholic beverages from a duly authorized wholesaler where arrangements have been made to pay for such delivery at a different time; and provided further that nothing herein shall preclude a licensee from allowing a customer to purchase more than one alcoholic beverage in sequence, and to pay for all such purchases at the conclusion thereof, so long as payment is made in full before the customer has left the licensed premises; and provided further that nothing herein shall prevent a licensee from distributing alcoholic beverages to customers without charge, so long as such distribution is not

otherwise in violation of any provision of this Liquor Code.

Subchapter Three: Issuance of Licenses

Section 151: Requirement of License

Any person who sells, offers for sale, stores or possesses for commercial purposes, or maintains premises for the consumption of alcoholic beverages within the Santa Ana Indian Reservation, must be duly licensed under the provisions of this Liquor Code.

Section 152: Classes of Licenses

The following types or classes of licenses for the sale or distribution of alcoholic beverages within the Santa Ana Indian Reservation shall be permitted:

A. Package license, which shall authorize the licensee to store, possess, sell and offer for sale alcoholic beverages in unopened containers, for consumption only off the licensed premises.

B. Premises license, which shall authorize the licensee to store, possess and sell alcoholic beverages for consumption on the licensed premises only, and to permit such consumption on the licensed premises only, provided that such license when held by an inn or hotel shall also permit the licensee to stock any individual guest room with alcoholic beverages contained in a locked compartment, the key to which may be made available to the registered guest to whom such room is rented and who is 21 years of age or older.

C. Special event license, which shall authorize the licensee to possess, distribute, sell and offer for sale alcoholic beverages for consumption only on the licensed premises, and to permit such consumption, but only for a bona fide special event, and only during the period or periods specified in such license, which period or periods shall be limited to the periods during which the special event is occurring and from beginning to end shall not exceed 72 hours.

Section 153: Qualifications for License

A. No person shall be entitled to be issued a license under the provisions of this Liquor Code who has previously been the subject of any proceeding resulting in the revocation or the denial of a renewal of any license for the sale of alcoholic beverages issued by the Pueblo or by any state or other jurisdiction, or who has been convicted of any felony in any jurisdiction involving theft, corruption, dishonesty or embezzlement, or who has not at the time the application for license is submitted attained the age of 21 years, or who is otherwise determined by the Pueblo to be unfit to be licensed to sell alcoholic beverages, or whose spouse is a person not qualified to hold a license under the provisions of this section.

B. No partnership or corporation shall be entitled to be issued a license under the provisions of this Liquor Code if any individual occupying any management or supervisory position within such corporation or partnership, or who sits on the management committee or board of directors or trustees thereof, or who holds or controls a financial interest of ten percent or more in such partnership or corporation, is a person who would not be entitled to be issued a license under the provisions of this section.

C. No person shall be entitled to be issued a package or premises license hereunder unless such person has, by virtue of an approved lease or other valid interest in lands within the Santa Ana Indian Reservation, lawful entitlement to engage in a business within the Development Area with which such license would be compatible, and can demonstrate that such person is otherwise capable of complying with all of the requirements imposed on licensees by this Liquor Code.

D. No application for a package or premises license shall be issued for any licensed premises outside of the Development Area.

E. Notwithstanding anything in this section to the contrary, the Pueblo and its agencies, programs and enterprises shall be entitled to be issued licenses hereunder in appropriate circumstances, provided that all other provisions of this Liquor Code are complied with.

Section 154: Package and Premises License Application; Procedure; Fees

A. Every person seeking a package or premises license under the provisions of this Liquor Code (other than the Pueblo or any of its agencies, programs or enterprises) shall submit to the Tribal Administrator a written application, under oath, in the form prescribed by and containing the information required by this section.

B. If the applicant is a natural person, the application shall contain, at a minimum, all of the following information:

1. The full legal name of the applicant, plus any other names under which the applicant has been known or done business during the previous 20 years, and the applicant's date and place of birth, as shown by a certified copy of the applicant's birth certificate.

2. The applicant's current legal residence address and business address, if any, and every residence address that the applicant has maintained during the previous ten years, with the dates during which each such address was current.

3. The trade name, business address and description of every business in which the applicant has engaged or had any interest (other than stock ownership or partnership interest amounting to less than five percent of total capital) during the previous ten years, and the dates during which the applicant engaged in or held an interest in any such business.

4. A listing of every other jurisdiction in which the applicant has ever applied for a license to sell or distribute alcoholic beverages, the date on which each such application was filed, the name of the regulatory agency with which the application was filed, the action taken on each such application, and if any such license was issued, the dates during which it remained in effect, and as to each such license a statement whether any action was ever taken by the regulatory body to suspend or revoke such license, with full dates and details of any such incident.

5. A listing of every crime with which the applicant has ever been charged, other than routine traffic offenses (but including any charge of driving while intoxicated or the like), giving as to each the date on which the charge was made, the location, the jurisdiction, the court in which the matter was heard, and the outcome or ultimate disposition thereof.

6. The name and address of every person or entity holding any security interest in any of the assets of the business to be conducted by the applicant, or in any of the proceeds of such business.

7. A detailed plat of the business premises within the Development Area, including the floor plans of any structure and the details of any exterior areas intended to be part of the licensed premises, together with evidence of the applicant's right to conduct business on such premises.

8. A detailed description of the business conducted or intended to be conducted on the licensed premises, and including (but not limited to) hours of operation and number of employees.

9. The type(s) of license(s) requested.

C. If the applicant is a corporation, the corporation, each officer of the corporation and every person holding 10% or more of the outstanding stock in the corporation shall submit an application complying with the provisions of paragraph B of this section, and in addition, the applicant shall also submit the following:

1. A certified copy of its Articles of Incorporation and Bylaws.

2. The names and addresses of all officers and directors and those stockholders owning 5% or more of the voting stock of the corporation and the amount of stock held by each such stockholder.

3. The name of the resident agent of the corporation who would be authorized to accept service of process, including orders and notices issued by the Pueblo, and who will have principal supervisory responsibility for the business to be conducted on the licensed premises.

4. Such additional information regarding the corporation as the Tribal Administrator may require to assure a full disclosure of the corporation's structure and financial responsibility.

D. If the applicant is a partnership, the partnership, the managing partner and every partner having an interest amounting to 10% or more of the total equity interest in the partnership shall submit applicants complying with the provisions of paragraph B of this section, and in addition, the applicant shall submit the following:

1. A certified copy of the Partnership Agreement.

2. The names and addresses of all general partners and of all limited partners contributing 10% or more of the total value of contributions made to the limited partnership or who are entitled to 10% or more of any distributions of the limited partnership.

3. The name and address of the partner, or other agent of the partnership, authorized to accept service of process, including orders and notices issued by the Pueblo, and who will have principal supervisory responsibility for the business to be conducted in the licensed premises.

4. Such additional information regarding the partnership as the Tribal Administrator may require to assure a full disclosure of the partnership's structure and financial responsibility.

E. Every applicant who is a natural person, and every person required by paragraphs C or D of this section to comply with the provisions of paragraph B, shall also submit with the application a complete set of fingerprints, taken under the supervision of and certified to by an officer of an authorized law enforcement agency located within the State of New Mexico.

F. Every applicant for either a package license or a premises license shall submit with the completed license application a non-refundable license processing fee, in the amount set forth below:

Package license—$5,000.00

Premises license—$1,000.00

In addition, each applicant shall pay a fee to cover the cost of a background investigation of each individual for whom such investigation must be undertaken in connection with the application, in an amount to be set by the tribal administration from time to time.

G. Upon receiving a completed license application together with the required fee, the Tribal Administrator shall cause a background investigation to be performed of the applicant, to determine whether the applicant is qualified to be licensed under the provisions of this Liquor Code. Upon the written recommendation of the Tribal Administrator (if requested by the applicant), the Governor may, in his discretion, issue a preliminary license to the applicant effective for a period of no more than 90 days, but which shall be renewable for one additional period of 90 days in the event the background investigation cannot be completed within the first 90-day period; provided, however, that in no event shall the issuance of a preliminary license, or the renewal of such license for an additional 90-day period, entitle the applicant to favorable consideration with respect to the application for a package or premises license.

H. The Pueblo or any of its agencies, programs or enterprises may apply for a package or premises license by submitting an application to the Tribal Administrator identifying the applicant, describing in detail the purpose of the license, including a detailed description of the proposed licensed premises, and including the appropriate fee as set forth in paragraph F of this section.

Section 155: Issuance of License

A. Upon making a determination that an applicant for a package or premises license satisfies the requirements of Section 153 of this chapter, the Governor shall issue the license, authorizing the applicant to engage in sales of alcoholic beverages within the Santa Ana Indian Reservation as permitted by the class of license applied for, and specifying in detail the licensed premises where such sales are permitted (which shall be within the Development Area), but subject also to all the terms and conditions of this Liquor Code, and to such other appropriate conditions, not inconsistent with the provisions of this Liquor Code, as the Governor may deem reasonable and necessary under the circumstances.

B. In the event the Governor concludes that the applicant does not satisfy the requirements of Section 153 of this chapter, the Governor shall issue a notice denying the application, and explaining the basis for such denial.

C. Any applicant whose application is denied shall have the right to appeal such denial, by filing a Notice of Appeal with the Office of the Governor and with the Santa Ana Tribal Court, within 30 days of the date of receipt of the Notice of Denial. Upon receiving a copy of a Notice of Appeal, the Governor's office shall prepare a copy of the entire file pertaining to the application and shall transmit it to the Tribal Court, with a copy to the applicant. The Pueblo, represented by the Pueblo's attorney, shall appear in the action in the Tribal Court. The proceedings in the Tribal Court shall be based upon the information submitted to the Governor by the applicant and any other information obtained by the Governor in the course of processing the application, except that the applicant shall be permitted to submit additional evidence to rebut or explain information relied on by the Governor for his denial of the application that was not obtained from the applicant. The Tribal Court shall affirm the Governor's decision unless it finds that the Governor acted arbitrarily or capriciously or otherwise abused his discretion in making his determination.

D. Any party that is aggrieved by the decision of the Tribal Court may petition the Tribal Council to review the Tribal Court decision, in writing, within 30 days after issuance of the Tribal Court decision. The petition shall set forth the specific grounds on which the petitioner claims the Tribal Court erred in its decision, and why its decision should be reviewed, and shall be served on the Governor and all parties. The prevailing party may submit a response to the petition within 15 days of service of the petition. The Governor shall place the petition on the agenda of the next Tribal Council meeting after service of the response (or the expiration of the 15-day period, if no response is filed), and the Tribal Council shall, at such meeting, decide whether to hear the petition. In the event the Tribal Council decides to hear the petition, the Governor shall notify all parties of that decision, and of the date on which the Tribal Council shall consider the matter. The Governor shall provide each Tribal Council member with a copy of the Tribal Court decision, the petition for Tribal Council review and the response, if any, and the complete record before the Tribal Court shall be available for inspection by any Tribal Council member. The Tribal Council shall hear each party's representative present its arguments, and shall decide by majority vote whether a license should be issued to the applicant. The Tribal Council's

decision shall be final and nonreviewable.

Section 156: Term; Renewal; Fee

A. Each package or premises license issued hereunder shall have a term of one (1) year from the date of issuance, provided that such license shall be renewable for additional periods of one year each by any licensee who has complied fully with the terms and provisions of the license and of this Liquor Code during the term of the license, and who remains fully qualified to be licensed under the provisions of Section 153 of this Chapter, upon payment to the Pueblo of a license renewal fee in the amount of the initial application fee, and submission of an application for renewal on a form specified by the Tribal Administrator, no less than thirty (30) days prior to the expiration date of the license. The failure to submit timely renewal application, with the required fee, may subject the licensee to a late charge of $500.00. If the renewal application is not submitted prior to expiration of the license, the Tribal Administrator may treat the license as having expired, and may require the licensee to file a new application in compliance with Section 154 of this chapter.

B. Upon receipt of an application for renewal of a license, the Governor shall undertake to determine whether the licensee has conducted its operations in compliance with the provisions of this Code, and is otherwise qualified to be licensed. In the event the Governor receives information indicating that the licensee has not complied with the provisions of this Code or is otherwise not qualified to be licensed hereunder, the Governor shall deny the application for renewal, giving the licensee written notice thereof with a statement of the reasons for such denial.

C. A licensee may appeal a denial of an application for renewal of its license, by filing a Notice of Appeal with the Office of the Governor and with the Santa Ana Tribal Court, within 30 days of receipt of the Notice of Denial of the application for renewal. Upon recciving the Notice of Appeal, the Governor's office shall prepare a complete copy of the entire file pertaining to the application and shall transmit it to the Tribal Court, with a copy to the applicant. The Pueblo, represented by the Pueblo's attorney, shall appear in the action in the Tribal Court. The proceedings in the Tribal Court shall be based upon the information submitted to the Governor by the licensee and any other information obtained by the Governor in the course of processing the application, except that the licensee shall be permitted to submit additional evidence to rebut or explain information relied on by the Governor for his denial of the application that was not obtained from the licensee. The licensee may apply to the Tribal Court for an order maintaining the license in effect during the pendency of the appeal, but in the absence of such order, the license shall expire at the end of its term. The Tribal Court shall affirm the Governor's decision unless it finds that the Governor acted arbitrarily or capriciously or otherwise abused his discretion in making his determination.

D. Any party that is aggrieved by the decision of the Tribal Court may petition the Tribal Council to review the Tribal Court decision, in writing, within 30 days after issuance of the Tribal Court decision. The petition shall set forth the specific grounds on which the petitioner claims the Tribal Court erred in its decision, and why its decision should be reviewed, and shall be served on the Governor and all parties. The prevailing party may submit a response to the petition within 15 days of service of the petition. The Governor shall place the petition on the agenda of the next Tribal Council meeting after service of the response (or the expiration of the 15-day period, if no response is filed), and the Tribal Council shall, at such meeting, decide whether to hear the petition. In the event the Tribal Council decides to hear the petition, the Governor shall notify all parties of that decision, and of the date on which the Tribal Council shall consider the matter. The Governor shall provide each Tribal Council member with a copy of the Tribal Court decision, the petition for Tribal Council review and the response, if any, and the complete record before the Tribal Court shall be available for inspection by any Tribal Council member. The Tribal Council shall hear each party's representative present its arguments, and shall decide by majority vote whether the license should be renewed. The Tribal Council's decision shall be final and nonreviewable.

Section 157: Conditions of License

No licensee shall have any property interest in any license issued under the provisions of this Liquor Code, and every such license shall be deemed to confer a privilege, revocable by the Pueblo in accordance with the provisions of this Chapter. The continued validity of every package and premises license issued hereunder shall be dependent upon the following conditions:

A. Every representation made by the licensee and any of its officers, directors, shareholders, partners or other persons required to submit information in support of the application, shall have been true at the time such information was submitted, and shall continue to be true, except to the extent the licensee advises the Tribal Administrator in writing of any change in any such information, and notwithstanding any such change, the licensee shall continue to be qualified to be licensed under the provisions of this Liquor Code.

B. The licensee shall at all times conduct its business on the Santa Ana Indian Reservation in full compliance with the provisions of this Liquor Code and with the other laws of the Pueblo.

C. The licensee shall maintain in force, public liability insurance covering the licensed premises, insuring the licensee and the Pueblo against any claims, losses or liability whatsoever for any acts or omissions of the licensee or of any business invitee on the licensed premises resulting in injury, loss or damage to any other party, with coverage limits of at least $1 miliion per injured person, and the Tribal Administrator shall at all times have written evidence of the continued existence of such policy of insurance.

D. The licensee shall continue to have authority to engage in business within the Development Area, and shall have paid all required rentals, assessments, taxes, or other payments due the Pueblo.

E. The business conducted on the licensed premises shall be conducted by the licensee or its employees directly, and shall not be conducted by any lessee, sublessee, assignee or other transferee, nor shall any license or any interest therein be sold, assigned, leased or otherwise transferred to any other person.

F. All alcoholic beverages sold on the licensed premises shall have been obtained from a New Mexico licensed wholesaler.

G. The licensee shall submit to the jurisdiction of the Tribal Court of the Pueblo with respect to any action brought by the Pueblo or any of its agencies or officials to enforce the provisions of this Liquor Code.

Section 158: Sanctions for Violation of License

A. Upon determining that any person licensed by the Pueblo to sell alcoholic beverages under the provisions of this chapter is for any reason no longer qualified to hold such license under the provisions of Section 153 hereof, or has violated any of the conditions set forth in Section 157, the Governor shall immediately serve written notice upon such licensee directing that he show cause within ten (10) calendar days why

his license should not be suspended or revoked, or a fine imposed. The notice shall specify the precise grounds relied upon and the action proposed.

B. If the licensee fails to respond to such notice within ten (10) calendar days of service of such notice, the Governor shall issue an order suspending the license for such period as the Governor deems appropriate, or revoking the license, effective immediately, or imposing a fine, in such amount as the Governor deems reasonable. If the licensee, within the 10-day period, files with the Office of the Governor a written response and request for a hearing before the Santa Ana Tribal Court, such hearing shall be set no later than thirty (30) calendar days after receipt of such request.

C. At the hearing, the licensee, who may be represented by counsel, shall present evidence and argument directed at the issue of whether or not the asserted grounds for the proposed action are in fact true, and whether such grounds justify such action. The Pueblo may present such other evidence as it deems appropriate.

D. The court after considering all of the evidence and arguments shall issue a written decision either upholding the proposed action of the Governor, modifying such action by imposing some lesser penalty, or ruling in favor of the licensee, and such decision shall be final and conclusive.

Section 159: Special Event License

A. Any person authorized to conduct business within the Development Area, or any established organization (including any agency, department or enterprise of the Pueblo) that includes any member of the Pueblo and that has authority to conduct any activities within the Santa Ana Indian Reservation, that is not a licensee hereunder and that has not had an application for a license rejected, may apply to the Tribal Administrator for a special event license, which shall entitle the applicant to distribute alcoholic beverages, whether or not for consideration, in connection with a bona fide special event to be held by the applicant within the Development Area. Any such application must be filed in writing, in a form prescribed by the Tribal Administrator, no later than ten (10) calendar days prior to the event, and must be accompanied by a fee in the amount of $10.00, and must contain at least the following information:

1. The exact days and times during which the event will occur (provided, that in no event shall any license be in effect for a period exceeding 72 hours, from the beginning of the first day of the event until the end of the last day);

2. The precise location within the Development Area where the event will occur, and where alcoholic beverages will be distributed;

3. The nature and purpose of the event, and the identity or categories of persons who are invited to participate;

4. The nature of any food and beverages to be distributed, and the manner in which such distribution shall occur;

5. Details of all provisions made by the applicant for sanitation, security and other measures to protect the health and welfare of participants at the event;

6. Certification that the event will be covered by a policy of public liability insurance as described in Section 157(C) of this Liquor Code, that includes the Pueblo as a co-insured, or that the applicant will indemnify the Pueblo and hold it harmless from any claims, demands, liability or expense as a result of the act or omission of any person in connection with the special event, in which latter case the Tribal Administrator or Governor may require a bond to ensure compliance with such indemnification provision.

7. Any other information required by the Tribal Administrator relative to the event.

B. The Tribal Administrator, or the Governor, shall act to approve or reject the application no later than three days following submission of the application with the required fee. If the application is approved, the Tribal Administrator or the Governor shall issue the license, which shall specify the hours during which and the premises within which sales, distribution and consumption of alcoholic beverages may occur. If any application is rejected, the rejection shall indicate the grounds therefor, and the applicant shall be entitled to file a new application correcting any deficiencies or problems found in the original application that warranted the rejection.

C. Alcoholic beverages may be sold or distributed pursuant to a special event license only at the location and during the hours specified in such license, in connection with the special event, only to participants in such special event, and only for consumption on the premises described in the license. Such sales or distribution must comply with any conditions imposed by the license, and with all other applicable provisions of this Liquor Code. All such alcoholic beverages must have been obtained from a New Mexico licensed wholesaler or retailer.

Section 160: Display of License

Every person licensed by the Pueblo to sell alcoholic beverages within the Santa Ana Indian Reservation shall prominently display the license on the licensed premises during hours of operation.

Subchapter Four: Offenses

Section 181: Purchase From or Sale to Unauthorized Persons

Within the Santa Ana Indian Reservation, no person shall purchase any alcoholic beverage at retail except from a person licensed by the Pueblo under the provisions of this title; no person except a person licensed by the Pueblo under the provisions of this title shall sell any alcoholic beverage at retail; nor shall any person sell any alcoholic beverage for resale to any person other than a person properly licensed by the Pueblo under the provisions of this title.

Section 182: Sale to Minors

A. No person shall sell or serve any alcoholic beverage to any person under the age of 21 years.

B. It shall be a defense to an alleged violation of this Section that the purchaser presented to the seller or server an apparently valid identification document showing the purchaser's age to be 21 years or older, provided that the seller or server, as the case may be, had no actual or constructive knowledge of the falsity of the identification document, and relied in good faith on its apparent validity.

Section 183: Purchase by Minor

No person under the age of 21 years shall purchase, attempt to purchase or possess any alcoholic beverage.

Section 184: Sale to an Intoxicated Person

No person shall sell any alcoholic beverage to a person who the seller has reason to believe is intoxicated or who the seller has reason to believe intends to provide such alcoholic beverage to an intoxicated person.

Section 185: Purchase by an Intoxicated Person

No intoxicated person shall purchase any alcoholic beverage.

Section 186: Drinking in Public Places

No person shall consume any alcoholic beverage in any public place within the Santa Ana Indian Reservation except on premises licensed by the Pueblo for the sale of alcoholic beverages by the drink.

Section 187: Bringing Liquor Onto Licensed Premises

No person shall bring any alcoholic beverage for personal consumption onto any premises within the Santa Ana Indian Reservation where liquor is authorized to be sold by the drink, unless such beverage was purchased on such premises, or unless the possession or distribution of such beverages on such premises is otherwise licensed under the provisions of this Liquor Code.

Section 188: Open Containers Prohibited

No person shall have an open container of any alcoholic beverage in a public place, other than on premises licensed for the sale of alcoholic beverages by the drink, or in any automobile, whether moving or standing still. This Section shall not apply to empty containers such as aluminum cans or glass bottles collected for recycling.

Section 189: Use of False or Altered Identification

No person shall purchase or attempt to purchase any alcoholic beverage by the use of any false or altered identification document that falsely purports to show the individual to be 21 years of age or older.

Section 190: Penalties

A. Any person convicted of committing any violation of this Chapter shall be subject to punishment of up to one (1) year imprisonment or a fine not to exceed Five Thousand Dollars ($5,000.00), or to both such imprisonment and fine.

B. Any person not a member of the Pueblo, upon committing any violation of any provision of this Chapter, may be subject to a civil action for trespass, and upon having been determined by the court to have committed the alleged violation, shall be found to have trespassed upon the lands of the Pueblo, and shall be assessed such damages as the court deems appropriate in the circumstances.

C. Any person suspected of having violated any provision of this Chapter shall, in addition to any other penalty imposed hereunder, be required to surrender any alcoholic beverages in such person's possession to the officer making the arrest or issuing the complaint.

Section 191: Jurisdiction

Any and all actions, whether civil or criminal, pertaining to alleged violations of this title, or seeking any relief against the Pueblo or any officer or employee of the Pueblo with respect to any matter addressed by this Liquor Code, shall be brought in the Tribal Court of the Pueblo, which court shall have exclusive jurisdiction thereof.

[FR Doc. E6–5045 Filed 4–6–06; 8:45 am]
BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–956–06–1420–BJ]

Notice of Filing of Plats of Survey; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey, supplemental and amended protraction diagram described below are scheduled to be officially filed in the Arizona State Office, Bureau of Land Management, Phoenix, Arizona, (30) thirty calendar days from the date of this publication.

SUPPLEMENTARY INFORMATION:

The Gila and Salt River Meridian, Arizona

The plat representing the dependent resurvey of the subdivision of the northwest quarter of section 5 and a portion of the 1973–75 meanders of the left bank of the Verde River in section 5 and the metes-and-bounds survey in the Northwest quarter of section 5, Township 13 North, Range 5 East, accepted September 9, 2005, and officially filed September 12, 2005, for Group 916 Arizona.

This plat was prepared at the request of the United States Forest Service.

The plat representing the dependent resurvey of a portion of the Seventh Standard Parallel North (south boundary) a portion of the subdivision lines, and the subdivision of section 22 and 34, Township 29 North, Range 8 East, accepted January 18, 2006, and officially filed January 26, 2006, for Group 944 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat (3 sheets) representing the dependent resurvey of the south boundary, Township 26 North, Range 18 East, a portion of the south boundary, Township 26 North, Range 17 East, a portion of the Sixth Standard Parallel North (south boundary), the east and west boundaries, the subdivisional lines and a portion of the boundary, management district number 6, Hopi Indian Reservation Township 25 North, Range 18 East, accepted February 16, 2006, and officially filed February 28, 2006 for Group 913 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and a metes-and-bounds survey in section 36, Township 1 North, Range 14 East, accepted September 9, 2005, and officially filed September 12, 2005 for Group 966 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat (3 sheets) representing the dependent resurvey of the east and west boundaries, the subdivisional lines and a portion of the boundary, Management District No. 6, Hopi Indian Reservation, Township 26 North, Range 18 East, accepted March 14, 2006, and officially filed March 24, 2006 for Group 922 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of the south, east, west and north boundaries, and the subdivisional lines, the subdivision of certain sections and the metes-and-bounds survey in section 12, Township 23 North, Range 21 East, accepted January 9, 2006, and officially filed January 19, 2006 for Group 935 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the Sixth Guide Meridian East (east boundary) and the south and west boundaries and the subdivisional lines, Township 24 North, Range 24 East, accepted January 9, 2006 and officially filed January 19, 2006 for Group 925 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the east boundary and the survey of the south boundary, the governing section line and the subdivisional lines, Township 26 North, Range 27 East, accepted March 14, 2006, and officially filed March 24, 2006, for Group 926 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the east boundary, and the subdivisional lines, Township 28 North, Range 27 East, accepted August 17, 2005, and officially filed August 26, 2005 for Group 902 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of the north boundary, Township 26 North, Range 28 East and the survey of the Seventh Guide Meridian East (east boundary), the north boundary, the latitudinal governing section line and subdivisional lines, Township 27 North, Range 28 East, accepted August 17, 2005, and officially filed August 26, 2005 for Group 902 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the survey of the south, east and north boundaries, and the subdivisional lines of Township 27 North, Range 27 East, accepted August 17, 2005, and officially filed August 26, 2005 for Group 902 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Navajo Regional Office.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the survey of a portion the First Guide Meridian West (west boundary), the east and north boundaries and a portion of the subdivisional lines Township 41 North, Range 4 West, accepted February 16, 2006, and officially filed February 28, 2006 for Group 911 Arizona.

This plat was prepared at the request of the Bureau of Indian Affairs, Western Regional Office.

The plat representing the dependent resurvey of a portion of the east boundary and a portion of the subdivisional lines and a metes-and-bounds survey in section 1 Township 20 North, Range 16 West, accepted January 10, 2006, and officially filed January 19, 2006 for Group 967 Arizona.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the subdivision of section 1, a portion of a metes-and-bounds survey in section 1 and metes-and-bounds survey in section 1, Township 9 South, Range 22 West, accepted August 16, 2005 and officially filed August 23, 2005 for Group 951 Arizona.

This plat was prepared at the request of the United States Fish and Wildlife Service.

The plat representing the dependent resurvey of a portion of the south boundary and a portion of the subdivisional, Township 18 South, Range 9 East, accepted August 16, 2005, and officially filed August 23, 2005 for Group 952 Arizona.

This plat was prepared at the request of the United States Fish and Wildlife Service.

Supplemental Plats

The plat representing the supplemental plat of section 25, Township 5 South, Range 26 East, accepted September 7, 2005, and officially filed September 12, 2005.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the supplemental plat of the northwest 1/4 of section 6, Township 6 South, Range 27 East, accepted September 7, 2005, and officially filed September 12, 2005.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the supplemental plat of sections 22, 23, 26 and 27 of Township 5 South, Range 26 East, accepted September 7, 2005, and officially filed September 12, 2005.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the supplemental plat of section 13, Township 21 North, Range 16 West, accepted August 23, 2005, and officially filed August 26, 2005.

This plat was prepared at the request of the Bureau of Land Management.

The plat representing the supplemental plat of section 1, Township 6 South, Range 26 East, accepted September 7, 2005, and officially filed September 12, 2005.

This plat was prepared at the request of the Bureau of Land Management.

Amended Protraction Diagrams

These amended protraction diagrams were prepared at the request of the United States Forest Service to accommodate Revision of Base Quadrangle Maps for the Geometronics Service Center.

The Amended Protraction Diagram of partially surveyed Township 9 North, Range 3 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of partially surveyed Township 7 North, Range 4 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 4 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of partially surveyed Township 11 North, Range 4 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of partially surveyed Township 6 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 7 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 5 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 11 North Range 5 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of partially surveyed Township 6 North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 9 North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 9½ North, Range 6 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 10 North Range 6 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 11 North Range 6 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 12 North Range 6 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of partially surveyed Township 5 North, Range 7 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 6 North, Range 7 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 7

East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 7 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 9 North, Range 7 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 10 North Range 7 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 11 North Range 7 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 11½ North, Range 7 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 12 North Range 7 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of partially surveyed Township 2 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted June 25, 2003.

The Amended Protraction Diagram of partially surveyed Township 3 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted June 25, 2003.

The Amended Protraction Diagram of partially surveyed Township 4 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 5 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 6 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 7 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 9 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 10 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 11 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 11½ North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of partially surveyed Township 12 North, Range 8 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

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The Amended Protraction Diagram of unsurveyed Township 4 North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 5 North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 7 North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 9 North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 10 North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of unsurveyed Township 11½ North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of partially surveyed Township 12 North, Range 9 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted June 25, 2003.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted June 25, 2003.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 5 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 6 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 7 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 11 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 11½ North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of partially surveyed Township 12 North, Range 10 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 1 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted June 25, 2003.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted June 25, 2003.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted July 16, 2003.

The Amended Protraction Diagram of partially surveyed Township 4 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of partially surveyed Township 5 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted October 09,2003.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range

11 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of partially surveyed Township 10 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of partially surveyed Township 11 North, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 1 North, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted June 18, 2003.

The Amended Protraction Diagram of partially surveyed Township 2 North, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted June 25, 2003.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted July 16, 2003.

The Amended Protraction Diagram of partially surveyed Township 4 North, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 5 North, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 6 North, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 12 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of partially surveyed Township 1 North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted July 16, 2003.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 6 North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of unsurveyed Township 8 North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 10 North, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of partially surveyed Township 1 North, Range 14 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of partially surveyed Township 2 North, Range 14 East, Gila and Salt River Meridian, Arizona, was accepted June 18, 2003.

The Amended Protraction Diagram of partially surveyed Township 3 North, Range 14 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of partially surveyed Township 4 North, Range 14 East, Gila and Salt River Meridian, Arizona, was accepted July 16, 2003.

The Amended Protraction Diagram of unsurveyed Township 7 North, Range 14 East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of partially surveyed Township 8 North, Range 14 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 10½ North, Range 14 East, Gila and Salt River Meridian, Arizona, was accepted February 10, 2006.

The Amended Protraction Diagram of partially surveyed Township 2 North, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted June 18, 2003.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 5 North, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of unsurveyed Township 6 North, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted October 09, 2003.

The Amended Protraction Diagram of partially surveyed Township 7 North, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 15½ East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 15½ East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 15½ East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 2 North, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 4½ North, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of unsurveyed Township 5 North, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of unsurveyed Township 3 North, Range 17 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 17 East, Gila and Salt River Meridian, Arizona, was accepted July 23, 2003.

The Amended Protraction Diagram of unsurveyed Township 4½ North, Range 17 East, Gila and Salt River Meridian, Arizona, was accepted February 03, 2006.

The Amended Protraction Diagram of unsurveyed Township 5 North, Range 17 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 4 North, Range

30 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 4½ North, Range 29 East, Gila and Salt River Meridian, Arizona, was accepted February 17, 2006.

The Amended Protraction Diagram of unsurveyed Township 1 South, Range 11 East, Gila and Salt River Meridian, Arizona, was accepted June 18, 2003.

The Amended Protraction Diagram of partially surveyed Township 1 South, Range 13 East, Gila and Salt River Meridian, Arizona, was accepted June 18, 2003.

The Amended Protraction Diagram of partially surveyed Township 2 South, Range 14 East, Gila and Salt River Meridian, Arizona, was accepted June 18, 2003.

The Amended Protraction Diagram of unsurveyed Township 1 South, Range 14½ East, Gila and Salt River Meridian, Arizona, was accepted June 18, 2003.

The Amended Protraction Diagram of partially surveyed Township 1 South, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted June 25, 2003.

The Amended Protraction Diagram of partially surveyed Township 2 South, Range 15 East, Gila and Salt River Meridian, Arizona, was accepted June 18, 2003.

The Amended Protraction Diagram of partially surveyed Township 1 South, Range 16 East, Gila and Salt River Meridian, Arizona, was accepted July 16, 2003.

If a protest against a survey, supplemental and or amended protraction diagram as shown on any of the above plats is received prior to the date of official filing, the filing will be stayed pending consideration of the protest. A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

A person or party who wishes to protest against any of these surveys must file a written protest with the Arizona State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed.

FOR FURTHER INFORMATION CONTACT: These plats will be available for inspection in the Arizona State Office, Bureau of Land Management, One North Central Avenue, Suite 800, Phoenix, Arizona, 85004–4427.

Dated: March 27, 2006.

Stephen K. Hansen,

Cadastral Chief.

[FR Doc. E6–5102 Filed 4–6–06; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

Investigation Nos. 701–TA–442–443 (Final) and 731–TA–1095–1097 (Final) Certain Lined Paper School Supplies From China, India, and Indonesia

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of countervailing duty and antidumping investigations.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of countervailing duty investigation Nos. 701–TA–442–443 (Final) under section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act) and the final phase of antidumping investigation Nos. 731–TA–1095–1097 (Final) under section 735(b) of the Act (19 U.S.C. § 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports from India and Indonesia of certain lined paper school supplies, and by reason of any less-than-fair-value ("LTFV") imports from China, India, and Indonesia of certain lined paper school supplies, as provided for in statistical reporting numbers 4820.10.2050, 4810.22.5044, and 4811.90.9090 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: March 27, 2006.

FOR FURTHER INFORMATION CONTACT: Jai Motwane (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. § 1671b) are being provided to manufacturers, producers, or exporters of certain lined paper school supplies in India and Indonesia, and that such products from Indonesia are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b).[2] The investigations were requested in a petition filed on September 9, 2005, by MeadWestvaco Corp., Dayton, OH; Norcom, Inc., Norcross, GA; and Top Flight, Inc., Chattanooga, TN (collectively, the Association of American School Paper Suppliers).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to

[1] The scope of the subject merchandise for purposes of these investigations is defined by the Department of Commerce in the notice of its preliminary LTFV determination for Indonesia. 71 FR 15162, March 27, 2006 ("Scope of Investigation").

[2] The Department of Commerce has aligned its final countervailing duty determinations for India and Indonesia with its final antidumping determinations for these two countries, respectively (see 71 FR 11379, March 7, 2006). The Department is scheduled to make its preliminary antidumping determinations for China and India on April 7, 2006 (see 71 FR 13090, March 14, 2006). The Commission will conduct its final phase countervailing duty and antidumping investigations for China, India, and Indonesia concurrently.

section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on May 30, 2006, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on June 13, 2006, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before June 7, 2006. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations may be required to attend a prehearing conference to be held at 9:30 a.m. on June 9, 2006, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is June 6, 2006. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is June 20, 2006; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before June 20, 2006. On July 7, 2006, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before July 11, 2006, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 Fed. Reg. 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 Fed. Reg. 68168, 68173 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 3, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–5101 Filed 4–06–06; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539–C (Second Review)]

Uranium From Russia

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject five-year review investigation.

DATES: *Effective Date:* April 3, 2006.

FOR FURTHER INFORMATION CONTACT: Cynthia Trainor (202–205–3354), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this five-year review investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

SUPPLEMENTARY INFORMATION: On January 11, 2006, the Commission established a schedule for the conduct of the subject five-year review investigation (71 FR 3326, January 20, 2006). The Commission hereby gives notice that it is revising its schedule for the subject review investigation.

The Commission's schedule for the five-year review investigation is revised as follows: The hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on May 25, 2006; and the deadline for filing posthearing briefs is June 5, 2006. All other dates cited in the Commission's original scheduling notice cited above remain unchanged.

For further information concerning this five-year review investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This five-year review investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 3, 2006.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E6–5100 Filed 4–6–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of the Secretary

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Proposed Job Corps Center To Be Located at the Dome Industrial Park on 5th Avenue and 22nd Street in St. Petersburg, FL

AGENCY: Office of the Secretary (OSEC), Department of Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the proposed Job Corps Center to be located at the Dome Industrial Park on 5th Avenue and 22nd Street in St. Petersburg, Florida.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Office of the Secretary (OSEC), in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a proposed new Job Corps Center to be located in St. Petersburg, Florida, and that the proposed plan for a new Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by May 8, 2006.

ADDRESSES: Any comment(s) are to be submitted to Michael F. O'Malley, Office of the Secretary (OSEC), Department of Labor, 200 Constitution Avenue, NW, Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA are available to interested parties by contacting Michael F. O'Malley, Architect, Unit Chief of Facilities, U.S. Department of Labor, Office of the Secretary (OSEC), 200 Constitution Avenue, NW, Room N–4460, Washington, DC 20210, (202) 693–3108 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Environmental Assessment (EA) summary addresses the proposed construction of a new Job Corps Center in St. Petersburg, Florida. The subject property for the proposed Job Corps Center is an approximately 16-acre vacant parcel of land owned by the City of St. Petersburg, Florida.

The new center will require construction of approximately seven (7) to ten (10) new buildings, a retention pond, and a recreation field. The proposed Job Corps center will provide housing, training, and support services for 272 resident students and approximately 28 non-residential students for a total of 300 students. The current facility utilization plan includes new dormitories, a cafeteria building, administration offices, a Physical Fitness facility, vocational and educational classroom facilities, and a maintenance and storage facility.

The construction of the Job Corps Center on this proposed site would be a positive asset to the area in terms of environmental and socioeconomic improvements, and long-term productivity. The proposed Job Corps Center will be a new source of employment opportunity for people in the west-central Florida area. The Job Corps program provides basic education, vocational skills training, work experience, counseling, health care and related support services. The program is designed to graduate students who are ready to participate in the local economy.

The proposed project will not have any significant adverse impact on any natural systems or resources. No state or federal threatened or endangered species (proposed or listed) have been identified on the subject property.

Although the project is located in the Dome Industrial Park which contained the historical and significantly cultural landmark, the Manhattan Casino building, this landmark has experienced a major exterior renovation. Thus, the design and construction of a Job Corps center will not adversely affect any existing historic structures or neighborhoods, either adjacent or actually in the historically designated section of the Midtown neighborhood. More importantly, the design and construction of the center will take into account the historic fabric of this neighborhood in terms of construction materials, the physical setting of buildings and the proper use of color so that the center will blend into the existing neighborhood.

Air quality and noise levels should not be affected by the proposed development project. Due to the nature of the proposed project, it would not be a significant source of air pollutants or additional noise, except possibly during construction of the facility. All construction activities will be conducted in accordance with applicable noise and air pollution regulations, and all pollution sources will be permitted in accordance with applicable pollution control regulations.

The proposed Job Corps Center is not expected to significantly increase the vehicle traffic in the vicinity, since many of the Job Corps Center residents will either live at the Job Corps Center or use public transportation. While some Job Corps Center students and staff may use personal vehicles, their number would not result in a significant increase in vehicular traffic in the area. Access is planned from 5th Avenue and 22nd Street. Road improvements and/or installation of signals to facilitate site ingress/egress do not appear necessary.

The proposed project will not have any significant adverse impact on the surrounding water, sewer, and storm water management infrastructure. The new building to be constructed for the proposed Job Corps center will be tied into the existing City of St. Petersburg water distribution system. The new buildings to be constructed for the proposed center will also be tied into the City's existing wastewater utility system.

TECO would provide the electricity for the site. This is not expected to create any significant impact to the regional utility infrastructure.

No significant adverse affects to local medical, emergency, fire, and police services are anticipated. The primary medical provider located closest to the proposed Job Corps parcel is Bayfront Medical Center, approximately 1 mile from the proposed Job Corps Center. Never the less, the Job Corps center will have a small medical and dental facility as part of the campus for use by the residents, as necessary for providing a ward for sick students with the flu or small non-emergency incapacities. Security services at the Job Corps will be provided by the center's security staff. Law enforcement services are provided by the St. Petersburg Police Department, located approximately 1 mile from the proposed project site. The local fire station is the St. Petersburg Fire & Rescue. The fire department has two stations which operate 24 hours a day near the proposed site. One of the stations is less than 5 minutes away and will provide all of the necessary fire protection for the center in the near future.

The proposed project will not have a significant adverse sociological affect on the surrounding community. Similarly, the proposed project will not have a significant adverse affect on

demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; and (2) Continue Project as Proposed. The No Action alternative was not selected. The U.S. Department of Labor's goal of improving the Job Corps Program by improving the learning environment at Job Corps Centers would not be met under this alternative. Due to the suitability of the proposed site for establishment of a new Job Corps Center, and the absence of any identified significant adverse environmental impacts from locating a Job Corps Center on the subject property, the "Continue Project as Proposed" alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Center site. The construction of the Job Corps Center at the Dome Industrial Park on 5th Avenue and 22nd Street in St. Petersburg, Florida will not create any significant adverse impacts on the environment.

Dated: April 3, 2006.

Esther R. Johnson,

National Director of Job Corps.

[FR Doc. E6–5107 Filed 4–6–06; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Number D–11046]

Amendment to Prohibited Transaction Exemption 80–26 (PTE 80–26) for Certain Interest Free Loans to Employee Benefit Plans

AGENCY: Employee Benefits Security Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 80–26.

SUMMARY: This document amends PTE 80–26, a class exemption that permits parties in interest with respect to employee benefit plans to make certain interest free loans to such plans, provided that the conditions of the exemption are met. The amendment affects all employee benefit plans, the participants and beneficiaries of such plans, and parties in interest with respect to those plans engaging in the described transactions.

DATES: *Effective Date:* The amendment to PTE 80–26 is effective December 15, 2004.

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, (202) 693–8540 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On December 15, 2004, notice was published in the **Federal Register** (69 FR 75088) of the pendency before the Department of a proposed amendment to PTE 80–26 (45 FR 28545 (April 29, 1980), as amended at 65 FR 17540 (April 3, 2000) and 67 FR 9485 (March 1, 2002)).[1] PTE 80–26 provides an exemption from the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(B) and (D) of the Code.

The amendment to PTE 80–26 adopted by this notice was proposed by the Department on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[2]

The notice of pendency gave interested persons an opportunity to comment or to request a hearing on the proposed amendment. The Department received two comment letters, and no requests for a public hearing. Upon consideration of the comments received, the Department has determined to grant the proposed amendment, with one minor modification. The modification and the comments are discussed below.

For the sake of convenience, the entire text of PTE 80–26, as amended, has been reprinted in this notice.

Executive Order 12866 Statement

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This amendment has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that this amendment is not a "significant regulatory action" under Executive Order 12866, section 3(f). Accordingly, it does not require an assessment of potential costs and benefits under section 6(a)(3) of that order.

Paperwork Reduction Act

As part of its continuing effort to reduce paperwork and respondent burden, the Department of Labor conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that the public can provide the requested data in the desired format and clearly understand the Department's collection instruction; and that the Department properly assesses the impact of its collection requirements on respondents and minimizes the reporting burden (time and financial resources) imposed on the public.

Currently, EBSA is soliciting comments concerning the information collection request (ICR) included in this Notice of Adoption of Amendment to PTE 80–26 (for certain interest-free loans to employee benefit plans). A copy of the ICR may be obtained by contacting Susan G. Lahne, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue, NW., Room N–5618, Washington, DC are not toll-free numbers. Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for the Employee Benefits Security

[1] A minor correction was made to the title of the final exemption in a notice published in the **Federal Register** on May 23, 1980. (45 FR 35040).

[2] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. at 214 (2000 ed.) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

Administration. Although comments may be submitted through June 6, 2006 OMB requests that comments be received within 30 days of publication of the Notice of Amendment to PTE 80–26 to ensure their consideration. The Department and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the 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 appropriated automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, by permitting electronic submission of responses.

As proposed on December 15, 2004, the amendment to PTE 80–26 did not contain any information collection as defined under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) (PRA). Therefore, the Department did not submit an information collection request (ICR) to the Office of Management and Budget (OMB) in connection with the proposal. In response to public comments on the proposal, the final amendment to PTE 80–26 adopted by this notice adds a condition to availability of the exemption that requires any loan with a duration of more than sixty days to be made pursuant to a written loan agreement that contains all of the material terms applicable to such loan.

The Department believes that it is a usual and customary business practice, generally within the business community and especially with respect to employee benefit plans, to evidence the creation of a loan agreement that involves an employee benefit plan as a party through a written document that sets forth the terms of the loan. Therefore the Department believes that the addition of this condition to the exemption does not impose any appreciable additional paperwork burden under the PRA. However, the Department has submitted an ICR for OMB control number 1210–0091 to OMB in connection with the adoption of the amendment to the PTE because the condition newly added to the exemption constitutes an information collection within the meaning of the PRA.

Discussion of the Proposed Exemption and the Comments Received

On December 15, 2004, the Department proposed to remove the three-day duration limit that applied to loans engaged in under PTE 80–26 for a purpose incidental to the ordinary operation of a plan. The Department recognizes that broadening the scope of the exemption in this manner would greatly benefit plans facing liquidity problems. The Department believes that plans will be adequately protected regarding such loans, i.e., loans for a purpose incidental to the ordinary operation of a plan where such loans have durations that exceed three days, to the extent the conditions of the class exemption, as amended herein, have been met. Accordingly, the Department has determined that the effective date of the amendment will be December 15, 2004; the date the proposed amendment was published in the **Federal Register**.

One of the commenters recommended that the class exemption expressly require that loans with durations that exceed a certain number of days be in writing. This commenter expressed concern that the removal of the three-day limit without additional conditions will raise the potential for abuse of a plan's assets.

For example, the commenter describes a scenario in which a plan sponsor pays certain expenses on behalf of a plan without intending to be repaid. Years later, the plan sponsor seeks to re-characterize such payment as a "loan" covered by PTE 80–26, and, thereafter, causes the plan to "repay" the plan sponsor in reliance on the relief provided by the class exemption. The commenter states that the situation described above may arise where a plan sponsor experiences a change in personnel, including the plan's fiduciaries, and the "new" plan fiduciaries are unsure whether the payment by the plan sponsor was originally intended to be a loan covered by PTE 80–26. According to the commenter, it is also possible that a plan sponsor may seek to re-characterize a payment the sponsor previously made on behalf of a plan, notwithstanding the sponsor's full awareness that such payment was not intended to be repaid by the plan.

The commenter states that, in the above situations, the Department may have difficulty demonstrating that the payments by the plan sponsor are not loans covered by PTE 80–26. The commenter recommends that the class exemption contain a condition expressly requiring that all loans of extended durations be made in writing, and that such written loan agreements exist at the time the plan enters into the loans.

As noted in the preamble to the proposed class exemption, section 404 of ERISA requires, among other things, that a fiduciary act prudently and discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan. Accordingly, a plan fiduciary would violate section 404 of ERISA if such fiduciary transferred plan assets to the plan sponsor in the absence of specific written proof or other objective evidence demonstrating that the plan originally intended to enter into a loan transaction with the plan sponsor. In this regard, a written loan agreement executed at the time of the loan transaction and demonstrable evidence that the plan was experiencing liquidity problems, would alleviate the uncertainty regarding whether the parties actually entered into a loan or other extension of credit. Of course, any attempt to re-characterize past payments as loans after the fact would be outside the scope of relief provided by the exemption.

With regards to the commenter's suggestion that the Department may have difficulty demonstrating that certain payments by a plan sponsor are not "loans" covered by PTE 80–26, the Department notes that the party seeking to take advantage of an administrative exemption, and not the Department, has the burden of demonstrating that the conditions of the exemption have been met. However, in light of the commenter's concern, the Department has determined to require that loans with durations that exceed sixty days be made pursuant to a written loan agreement that contains all of the material terms that are applicable to such loan. This requirement will apply prospectively to loans with durations of 60 days or longer where such loans involve the payment of a plan's ordinary operating expenses. Loans with durations of 60 days or longer that are engaged in for a purpose incidental to the ordinary operation of the plan will be subject to the requirement effective December 15, 2004.

Another commenter sought clarification regarding section IV(e) of the proposed amendment.[3] This condition provides that loans described

[3] Section IV(e) of the proposed amendment was incorrectly identified therein as section IV(3). This error has been corrected in this adopted amendment.

in section 408(b)(3) of ERISA or section 4975(d)(3) of the Code are not covered by the class exemption.[4] The commenter states that, since section IV(e) only references sections 408(b)(3) of ERISA and 4975(d)(3) of the Code which generally refer to exemptive relief for loans involving ESOPs, but not the regulations promulgated under those exemptions which more narrowly define the types of ESOP loans that are eligible for exemptive relief under those exemptions, section IV(e) may be interpreted as precluding relief for any loan from a party in interest to an ESOP.[5]

In response to the comment, the Department has revised section IV(e) of the proposed amendment to more accurately reflect the Department's intent. In this regard, the Department intended that section IV(e) of PTE 80–26 would preclude relief for loans involving ESOPs to the extent that such loans relate to the acquisition by the ESOP of employer securities. The Department is therefore revising section IV(e) of PTE 80–26 to provide that loans described in section 408(b)(3) of ERISA and the regulations promulgated thereunder, or section 4975(d)(3) of the Code and the regulations promulgated thereunder, are not covered by the class exemption.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary act prudently and discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(b)(1) and (3) of the Act or section 4975(c)(1)(E) or (F) of the Code;

(3) In accordance with section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible,

(ii) The amendment set forth herein is in the interests of the plan and its participants and beneficiaries,

(iii) The amendment set forth herein is protective of the rights of participants and beneficiaries of the plan;

(4) The amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The amendment will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), the Department amends PTE 80–26 as set forth below:

Section I. Retroactive General Exemption

Effective January 1, 1975 until December 14, 2004 the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only—

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or

(2) For a period of no more than three business days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

Section II: Temporary Exemption

Effective November 1, 1999 through December 31, 2000, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with the plan's inability to liquidate, or otherwise access its assets or access data as a result of a Y2K problem.

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan; and

(e) The loan or extension of credit begins on or after November 1, 1999 and is repaid or terminated no later than December 31, 2000.

Section III. September 11, 2001 Market Disruption Exemption

Effective September 11, 2001 through January 9, 2002, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the

[4] Section 408(b)(3) of ERISA provides a statutory exemption from the prohibitions set forth in section 406 of ERISA for "a loan to an employee stock ownership plan." Section 4975(d)(3) provides a statutory exemption from the prohibitions set forth in section 4975 of the Code for "any loan to a leveraged employee stock ownership plan" if certain conditions are met.

[5] See 29 CFR 2550.408b–3 and 26 CFR 54.4975–7(b). Among other things, the regulations limit relief under the statutory exemptions to loans that relate to the acquisition of qualifying employer securities by an ESOP.

repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with difficulties encountered by the plan in liquidating, or otherwise accessing its assets, or accessing its data in a timely manner as a direct or indirect result of the September 11, 2001 disruption;

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan; and

(e) The loan or extension of credit begins on or after September 11, 2001, and is repaid or terminated no later than January 9, 2002.

Section IV. Prospective General Exemption

Effective as of December 15, 2004, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only—

(1) for the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract, or

(2) for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan;

(e) The loan is not described in section 408(b)(3) of ERISA and the regulations promulgated thereunder (29 CFR 2550.408b–3) or section 4975(d)(3) of the Code and the regulations promulgated thereunder (26 CFR 54.4975–7(b)); and

(f)(1) Any loan described in section IV(b)(1) that is entered into on or after April 7, 2006 and that has a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

(2) Any loan described in (b)(2) of this paragraph that is entered into for a term of 60 days or longer must be made pursuant to a written loan agreement that contains all of the material terms of such loan.

Section V: Definitions

(a) For purposes of section II, a "Y2K problem" is a disruption of computer operations resulting from a computer system's inability to process data because such system recognizes years only by the last two digits, causing a "00" entry to be read as the year "1900" rather than the year "2000."

(b) For purposes of section III, the "September 11, 2001 disruption" is the disruption to the United States financial and securities markets and/or the operation of persons providing administrative services to employee benefit plans, resulting from the acts of terrorism that occurred on September 11, 2001.

(c) For purposes of this exemption, the terms "employee benefit plan" and "plan" refer to an employee benefit plan described in ERISA section 3(3) and/or a plan described in section 4975(e)(1) of the Code.

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

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor.

[FR Doc. E6–5075 Filed 4–6–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Dyna Harvest, LLC, Morgantown, Kentucky.

Principal Product: Dyna Harvest, LLC is a real estate holding company co-owned by Dynastrosi Laboratories, LLC and Harvest Wind Energy Corporation (HWEC), who plan to jointly establish a vertically integrated wind turbine generator systems manufacturing facility in Morgantown, KY. Dyna Harvest will own the fixed assets (facilities) that will be acquired, financed, and leased to Dynastrosi Laboratories and HWEC. The NAICS industry codes for this enterprise are 531120 (Lessors of Nonresidential Buildings (except Mini warehouses), and 532490 (Other Commercial and Industrial Machinery and Equipment Rental and Leasing).

DATES: All interested parties may submit comments in writing no later than April 21, 2006. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4514, Washington, DC 20210; or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases

for certification and, if possible, provide data to assist in the analysis of these issues.

Signed at Washington, DC this 29th day of March, 2006.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E6–5001 Filed 4–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection of the ETA 538, Advance Weekly Initial and Continued Claims Report and the ETA 539, Weekly Claims and Extended Benefits Trigger Data; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration, Office of Workforce Security is soliciting comments concerning the proposed extension of the collection of the ETA 538, Advance Weekly Initial and Continued Claims Report, and the ETA 539, Weekly Claims and Extended Benefits Trigger.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing this Web site: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before June 6, 2006.

ADDRESSEE: Subri Raman, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210, Phone: 202–693–3058, Fax: 202–693–3229, e-mail: *raman.subri@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The ETA 538 and ETA 539 reports are weekly reports which contain information on initial claims and continued weeks claimed. These figures are important economic indicators. The ETA 538 provides information that allows national unemployment claims information to be released to the public five days after the close of the reference period. The ETA 539 contains more refined weekly claims detail and the state's 13-week insured unemployment rate which is used to determine eligibility for the Extended Benefits program.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The ETA 538 and ETA 539 continue to be needed as they provide both timely economic indicators as well as the information needed to track the data that trigger states "on" and "off" the Extended Benefits program.

Type of Review: Extension without change.

Title: ETA 538, Advance Weekly Initial and Continued Claims Report, and the ETA 539, Weekly Claims and Extended Benefits Trigger Data.

OMB Number: 1205–0028.

Agency Number: ETA 538 and ETA 539.

Recordkeeping: Respondent is expected to maintain data which support the reported data for three years.

Affected Public: State governments.

Estimated Total Burden Hours:

ETA 538 53 States × 52 reports × 30 min. = 1378 hours

ETA 539 53 States × 52 reports × 50 min. = 2297 hours

Total Burden 3675 hours

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 29, 2006.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E6–5000 Filed 4–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Dynastrosi Laboratories, LLC, Morgantown, Kentucky.

Principal Product: The loan, guarantee, or grant applicant is the exclusive supplier of composite structures to Harvest Wind Energy Corporation (HWEC). HWEC is a developer and manufacturer of next generation wind turbine electrical generator systems. Together, Dynastrosi and HWEC will jointly manufacture wind turbine electrical generator systems that will be marketed to industrial, commercial, and residential buyers. Dynastrosi is a provider of engineering services and a manufacturer of structures fabricated from advanced composite materials such as carbon, aramid, and E-glass fiber reinforced polymers. The principal product to be manufactured by Dynastrosi at the Morgantown facility is wind turbine blades, nacelles, and other structures used in the assembly of wind turbine generator systems. Dynastrosi also plans

to design, engineer, and develop prototypes for other original equipment manufacturing customers as well at the site. The NAICS industry codes for this enterprise are 54133 (Engineering Services) and 327112 (Fine Earthenware and other Pottery Products).

DATES: All interested parties may submit comments in writing no later than April 21, 2006. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4514, Washington, DC 20210; or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

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

Emily Stover DeRocco,

Assistant Secretary for Employment and Training Administration.

[FR Doc. E6–5002 Filed 4–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Request for Certification of Compliance—Rural Industrialization Loan and Grant Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is issuing this notice to announce the receipt of a "Certification of Non-Relocation and Market and Capacity Information Report" (Form 4279–2) for the following:

Applicant/Location: Harvest Wind Energy Corporation, (HWEC) Aberdeen, Washington.

Principal Product: The loan, guarantee, or grant applicant plans to produce and advance the development of its patented, next-generation wind turbines for use in multiple applications involving wind farms and on-site environments. Utilizing existing component technology, combined in a proprietary systemized approach, HWEC will manufacture and sell a product offering that is targeted for multiple field applications requiring self-power generation or power generation offset through grid tie net metering. The NAICS industry code for this enterprise is 333611 (Turbine and Turbine Generator Set Units Manufacturing).

DATES: All interested parties may submit comments in writing no later than April 21, 2006. Copies of adverse comments received will be forwarded to the applicant noted above.

ADDRESSES: Address all comments concerning this notice to Anthony D. Dais, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4514, Washington, DC 20210; or transmit via fax 202–693–3015 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, at telephone number (202) 693–2784 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Section 188 of the Consolidated Farm and Rural Development Act of 1972, as established under 29 CFR Part 75, authorizes the United States Department of Agriculture (USDA) to make or guarantee loans or grants to finance industrial and business activities in rural areas. The Secretary of Labor must review the application for financial assistance for the purpose of certifying to the Secretary of Agriculture that the assistance is not calculated, or likely, to result in: (a) A transfer of any employment or business activity from one area to another by the loan applicant's business operation; or (b) An increase in the production of goods, materials, services, or facilities in an area where there is not sufficient demand to employ the efficient capacity of existing competitive enterprises unless the financial assistance will not have an adverse impact on existing competitive enterprises in the area. The Employment and Training Administration (ETA) within the Department of Labor is responsible for the review and certification process. Comments should address the two bases for certification and, if possible, provide data to assist in the analysis of these issues.

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

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[FR Doc. E6–5003 Filed 4–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA–PY 05–06]

Solicitation for Grant Applications (SGA); Older Americans Act—Senior Community Service Employment Program National Grants for Program Year 2006

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of extension of closing date.

SUMMARY: The Employment and Training Administration is extending the closing date of the availability to fund the national grants portion of the Senior Community Service Employment Program.

FOR FURTHER INFORMATION CONTACT: James Stockton, Grant Officer, Division of Federal Assistance, at (202) 693–3335.

Date Extension: In the **Federal Register** of March 2, 2006, in FR Doc. 06–1959, April 17, column changes the **DATES** caption to read:

"**DATES:** The closing date for receipt of the application is Friday, May 26, 2006 at 4:45 p.m. (eastern time) at the address listed."

Signed at Washington, DC, this 4th day of April, 2006.

James W. Stockton,

Grant Officer.

[FR Doc. 06–3384 Filed 4–6–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act, 1998

AGENCY: Employment and Training Administration.

ACTION: Notice on Reallotment of Workforce Investment Act (WIA) Title I Formula Allotted Funds for Dislocated Worker Activities for Program Year (PY) 2005.

SUMMARY: Section 132(c) of the Workforce Investment Act (WIA) (Pub. L. 105–220), requires the Secretary to conduct reallotment of excess unobligated WIA Adult and Dislocated Worker formula funds based on state financial reports submitted as of the end of the prior program year. The procedures the Secretary uses for recapture and reallotment of funds are described in WIA regulations at 20 CFR 667.150. This notice publishes Dislocated Worker PY 2005 funds to be recaptured and amounts reallotted to eligible states. No PY 2005 Adult funds are being recaptured.

DATES: *Effective Date:* This notice is effective April 7, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Christine D. Kulick, at telephone number (202) 693–3937 (this is not a toll free number). U.S. Department of Labor, Employment and Training Administration, Room C–4510, 200 Constitution Avenue, NW., Washington, DC 20210; or transmit via fax (202) 693–3015.

SUPPLEMENTARY INFORMATION: Training and Employment Guidance Letter (TEGL) 23–04 advised states that the reallotment of funds under WIA will occur during PY 2005 based on state obligations made in PY 2004. WIA Adult and Youth PY 2005 funds are not subject to recapture because in no case do PY 2004 unobligated funds exceed the statutory requirement of 20 percent of state allotted funds. No WIA funds were recaptured and reallotted in PY 2004.

Excess unobligated state funds in the amount of $239,605 will be recaptured from PY 2005 formula allotted funds for the Dislocated Worker program for two states and distributed by formula as PY 2005 Dislocated Worker funds for eligible states. The methodology used for the *calculation of the recapture/reallotment amounts* and distribution of changes to PY 2005 formula allotments for Dislocated Worker activities are attached.

WIA section 132 (c) requires the Governor to prescribe equitable procedures for making funds available from the state and local areas in the event that a state is required to make funds available for reallotment.

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

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

BILLING CODE 4510–30–P

ATTACHMENT A

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
WIA Dislocated Worker Activities
PY 2005 Reallotment to States

	Excess Unobligated PY 2004 Funds for Recapture in PY 2005	PY 2004 Dislocated Worker Allotments* for Eligible States	PY 2005 Reallotment Amount for Eligible States	Total PY 2005 Allotments	Total Adjustment to PY 2005 (Recapture/ Reallotment)	Revised Total PY 2005 Allotments
Alabama	0	15,823,610	3,340	18,300,995	3,340	18,304,335
Alaska	0	4,029,608	851	4,502,548	851	4,503,399
Arizona **	0	19,681,992	4,155	15,130,307	4,155	15,134,462
Arkansas	0	7,925,549	1,673	10,597,841	1,673	10,599,514
California	0	181,421,334	38,296	182,835,332	38,296	182,873,628
Colorado	0	17,286,433	3,649	17,818,464	3,649	17,822,113
Connecticut	0	8,965,540	1,893	11,067,112	1,893	11,069,005
Delaware	0	1,435,006	303	1,615,691	303	1,615,994
District of Columbia	0	3,274,168	691	4,117,569	691	4,118,260
Florida	0	53,676,965	11,331	40,851,017	11,331	40,862,348
Georgia	0	23,800,461	5,024	20,072,811	5,024	20,077,835
Hawaii	0	2,228,367	470	2,158,542	470	2,159,012
Idaho	0	4,507,976	952	3,398,915	952	3,399,867
Illinois	0	64,699,204	13,657	66,920,949	13,657	66,934,606
Indiana	0	17,457,657	3,685	20,716,584	3,685	20,720,269
Iowa	0	5,643,966	1,191	5,851,685	1,191	5,852,876
Kansas	0	7,201,568	1,520	7,651,181	1,520	7,652,701
Kentucky	0	14,351,102	3,029	15,174,784	3,029	15,177,813
Louisiana	0	17,932,921	3,785	18,229,091	3,785	18,232,876
Maine	0	2,730,919	576	3,233,868	576	3,234,444
Maryland	0	11,756,464	2,482	11,411,244	2,482	11,413,726
Massachusetts	0	25,196,177	5,319	25,629,346	5,319	25,634,665
Michigan	0	50,119,136	10,580	62,582,469	10,580	62,593,049
Minnesota	0	11,184,578	2,361	13,235,164	2,361	13,237,525
Mississippi	0	13,644,951	2,880	11,210,085	2,880	11,212,965
Missouri	0	19,248,752	4,063	19,937,612	4,063	19,941,675
Montana	0	1,612,171	340	1,920,594	340	1,920,934
Nebraska	0	2,834,983	598	3,283,747	598	3,284,345
Nevada	0	6,939,847	1,465	4,725,377	1,465	4,726,842
New Hampshire	0	2,863,937	605	2,801,408	605	2,802,013
New Jersey	0	35,835,102	7,564	31,288,708	7,564	31,296,272
New Mexico **	23,676	0	0	7,395,867	(23,676)	7,372,191
New York	0	88,300,491	18,639	95,415,077	18,639	95,433,716
North Carolina	0	40,602,414	8,571	35,655,022	8,571	35,663,593
North Dakota	0	1,109,503	234	1,012,281	234	1,012,515
Ohio	0	45,302,923	9,563	53,062,694	9,563	53,072,257
Oklahoma	0	8,928,301	1,885	9,667,175	1,885	9,669,060
Oregon	0	23,699,023	5,003	25,222,100	5,003	25,227,103
Pennsylvania	0	47,887,302	10,109	44,740,544	10,109	44,750,653
Puerto Rico	215,929	0	0	31,498,277	(215,929)	31,282,348
Rhode Island	0	3,428,956	724	3,954,620	724	3,955,344
South Carolina	0	17,959,739	3,791	23,006,992	3,791	23,010,783
South Dakota	0	990,602	209	1,158,688	209	1,158,897
Tennessee	0	15,619,959	3,297	18,722,605	3,297	18,725,902
Texas	0	99,468,242	20,997	102,134,470	20,997	102,155,467
Utah	0	7,681,918	1,622	5,903,570	1,622	5,905,192
Vermont	0	1,030,630	218	1,229,990	218	1,230,208
Virginia	0	13,059,814	2,757	13,034,020	2,757	13,036,777
Washington	0	36,823,803	7,773	35,786,962	7,773	35,794,735
West Virginia	0	6,814,187	1,438	6,216,292	1,438	6,217,730
Wisconsin	0	20,162,681	4,256	19,310,036	4,256	19,314,292
Wyoming	0	905,340	191	865,294	191	865,485
STATE TOTAL	$239,605	$1,135,086,272	$239,605	$1,193,263,616	$0	$1,193,263,616

* Including rescissions and prior year recapture/reallotment amounts
** Includes Navajo Nation

ATTACHMENT B

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
WIA Dislocated Worker Activities
PY 2005 Revised Allotments with Reallotment

	Total			Available 7/1/05			Available 10/1/05		
	Original	Recapture/ Reallotment	Revised	Original	Recapture/ Reallotment	Revised	Original	Recapture/ Reallotment	Revised
Alabama	18,300,995	3,340	18,304,335	5,295,282	-	5,295,282	13,005,713	3,340	13,009,053
Alaska	4,502,548	851	4,503,399	1,302,785	-	1,302,785	3,199,763	851	3,200,614
Arizona *	15,130,307	4,155	15,134,462	4,377,863	-	4,377,863	10,752,444	4,155	10,756,599
Arkansas	10,597,841	1,673	10,599,514	3,066,421	-	3,066,421	7,531,420	1,673	7,533,093
California	182,835,332	38,296	182,873,628	52,902,299	-	52,902,299	129,933,033	38,296	129,971,329
Colorado	17,818,464	3,649	17,822,113	5,155,665	-	5,155,665	12,662,799	3,649	12,666,448
Connecticut	11,067,112	1,893	11,069,005	3,202,202	-	3,202,202	7,864,910	1,893	7,866,803
Delaware	1,615,691	303	1,615,994	467,490	-	467,490	1,148,201	303	1,148,504
District of Columbia	4,117,569	691	4,118,260	1,191,394	-	1,191,394	2,928,175	691	2,926,866
Florida	40,851,017	11,331	40,862,348	11,819,995	-	11,819,995	29,031,022	11,331	29,042,353
Georgia	20,072,811	5,024	20,077,835	5,807,947	-	5,807,947	14,264,864	5,024	14,269,888
Hawaii	2,158,542	470	2,159,012	624,561	-	624,561	1,533,981	470	1,534,451
Idaho	3,398,915	952	3,399,867	983,456	-	983,456	2,415,459	952	2,416,411
Illinois	66,920,949	13,657	66,934,606	19,363,172	-	19,363,172	47,557,777	13,657	47,571,434
Indiana	20,716,584	3,685	20,720,269	5,994,218	-	5,994,218	14,722,366	3,685	14,726,051
Iowa	5,851,685	1,191	5,852,876	1,693,150	-	1,693,150	4,158,535	1,191	4,159,726
Kansas	7,651,181	1,520	7,652,701	2,213,823	-	2,213,823	5,437,358	1,520	5,438,878
Kentucky	15,174,784	3,029	15,177,813	4,390,732	-	4,390,732	10,784,052	3,029	10,787,081
Louisiana	18,229,091	3,785	18,232,876	5,274,477	-	5,274,477	12,954,614	3,785	12,958,399
Maine	3,233,868	576	3,234,444	935,700	-	935,700	2,298,168	576	2,298,744
Maryland	11,411,244	2,482	11,413,726	3,301,775	-	3,301,775	8,109,469	2,482	8,111,951
Massachusetts	25,629,346	5,319	25,634,665	7,415,697	-	7,415,697	18,213,649	5,319	18,218,968
Michigan	62,582,469	10,580	62,593,049	18,107,859	-	18,107,859	44,474,610	10,580	44,485,190
Minnesota	13,235,164	2,361	13,237,525	3,829,515	-	3,829,515	9,405,649	2,361	9,408,010
Mississippi	11,210,085	2,880	11,212,965	3,243,570	-	3,243,570	7,966,515	2,880	7,969,395
Missouri	19,937,612	4,063	19,941,675	5,768,828	-	5,768,828	14,168,784	4,063	14,172,847
Montana	1,920,594	340	1,920,934	555,712	-	555,712	1,364,882	340	1,365,222
Nebraska	3,283,747	598	3,284,345	950,132	-	950,132	2,333,615	598	2,334,213
Nevada	4,725,377	1,465	4,726,842	1,367,259	-	1,367,259	3,358,118	1,465	3,359,583
New Hampshire	2,801,408	605	2,802,013	810,570	-	810,570	1,990,838	605	1,991,443
New Jersey	31,288,708	7,564	31,296,272	9,053,199	-	9,053,199	22,235,509	7,564	22,243,073
New Mexico *	7,395,867	(23,676)	7,372,191	2,139,949	-	2,139,949	5,255,918	(23,676)	5,232,242
New York	95,415,077	18,639	95,433,716	27,607,776	-	27,607,776	67,807,301	18,639	67,825,940
North Carolina	35,655,022	8,571	35,663,593	10,316,565	-	10,316,565	25,338,457	8,571	25,347,028
North Dakota	1,012,281	234	1,012,515	292,897	-	292,897	719,384	234	719,618
Ohio	53,062,694	9,563	53,072,257	15,353,370	-	15,353,370	37,709,324	9,563	37,718,887
Oklahoma	9,667,175	1,885	9,669,060	2,797,139	-	2,797,139	6,870,036	1,885	6,871,921
Oregon	25,222,100	5,003	25,227,103	7,297,862	-	7,297,862	17,924,238	5,003	17,929,241
Pennsylvania	44,740,544	10,109	44,750,653	12,945,406	-	12,945,406	31,795,138	10,109	31,805,247
Puerto Rico	31,498,277	(215,929)	31,282,348	9,113,836	-	9,113,836	22,384,441	(215,929)	22,168,512
Rhode Island	3,954,620	724	3,955,344	1,144,245	-	1,144,245	2,810,375	724	2,811,099
South Carolina	23,006,992	3,791	23,010,783	6,656,934	-	6,656,934	16,350,058	3,791	16,353,849
South Dakota	1,158,688	209	1,158,897	335,259	-	335,259	823,429	209	823,638
Tennessee	18,722,605	3,297	18,725,902	5,417,273	-	5,417,273	13,305,332	3,297	13,308,629
Texas	102,134,470	20,997	102,155,467	29,551,992	-	29,551,992	72,582,478	20,997	72,603,475
Utah	5,903,570	1,622	5,905,192	1,708,162	-	1,708,162	4,195,408	1,622	4,197,030
Vermont	1,229,990	218	1,230,208	355,890	-	355,890	874,100	218	874,318
Virginia	13,034,020	2,757	13,036,777	3,771,315	-	3,771,315	9,262,705	2,757	9,265,462
Washington	35,786,962	7,773	35,794,735	10,354,741	-	10,354,741	25,432,221	7,773	25,439,994
West Virginia	6,216,292	1,438	6,217,730	1,798,647	-	1,798,647	4,417,645	1,438	4,419,083
Wisconsin	19,310,036	4,256	19,314,292	5,587,242	-	5,587,242	13,722,794	4,256	13,727,050
Wyoming	865,294	191	865,485	250,368	-	250,368	614,928	191	615,117
STATE TOTAL	1,193,263,616	-	1,193,263,616	345,263,616	-	345,263,616	848,000,000	-	848,000,000

* Includes funds allocated to the Navajo Nation

ATTACHMENT C

Dislocated Worker State Formula
PY 2005 Reallotment Methodology

Source data: State WIA 6/30/05 financial status reports
Statewide Activities (plus State Administrative breakout)
Rapid Response Activities
Local Administration
Local Dislocated Worker Program
Dislocated Worker program = sum of:
Estimated Dislocated Worker portion of Statewide Activities (less State Administrative portion)
Rapid Response Activities
Estimated Dislocated Worker portion of Local Administration
Local Dislocated Worker program

Years covered: PY 2004 and FY 2005

Methodology for disaggregating Statewide Activities/Local Admin report data by program:

	Statewide Activities – 15%	Local Administration – 10%
Auth	Fed NOO $ to State by pgm less est Local Admin Auth by pgm less rptd Local Pgm Auth by pgm less rptd Rapid Response Auth (DW only)	Prorated using reported Local Program Auth by program
Oblig	Prorated using Statewide Auth est by pgm	Considered 100% Obligated

Reallotment calculations:

(1) Each state's total amount of state obligations of PY 2004 (including FY 2005) funds for the Dislocated Worker (DW) program is calculated. State obligations are considered to be the total of the estimated DW share of statewide activities obligations, Rapid Response obligations, 100% of local DW program authorized, and 100% of estimated DW portion of local admin authorized. The DW total unobligated balance is the DW 2004 allotment amount (adjusted for rescissions) less the calculated total DW obligations. (Navajo Nation funds are added back to the New Mexico and Arizona for reallotment purposes and treated like a local area.)

(2) Section 667.150 of the regulations provides that the recapture calculations exclude the reserve for state administration. Data on state administrative amounts are not normally available on WIA financial reports. Therefore, additional data on state administrative amounts included in the PY 2004 and FY 2005 Statewide Activities amounts authorized and obligated as of 6/30/05 are requested from those states calculated to be potentially liable for recapture.

(3) In the preliminary calculation of states potentially liable for recapture, the DW portion of the state administrative amounts authorized and obligated is estimated using the DW relative share of the state allotment amounts for all programs (adjusted for rescissions). If a State provides actual DW portions in revised reports, this data is replaces the estimates. Based on the additional requested data submitted on revised reports, the DW total allotment for these states is reduced by the DW portion of the state administrative amount authorized and the DW total obligations for these states are reduced by the DW portion of the state administrative amounts obligated. These calculations are done separately for PY 2004 and FY 2005.

(4) States (including those adjusted by State administrative data) with unobligated balances for combined PY 2004/FY 2005 exceeding 20% of the combined PY2004/FY2005 DW allotment (adjusted for rescissions) will have their DW 2005 funding reduced (recaptured) by the amount of the excess.

(5) As calculated above, states with unobligated balances not exceeding 20% will receive a share of the total recaptured amount based on their share of the total PY 2004/FY2005 DW allotments amount (adjusted for rescissions) for all such states.

[FR Doc. 06–3342 Filed 4–6–06; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–023)]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described in Invention Disclosure KSC–12713 entitled "Cam and Groove Coupling Halves Safety Modification" to P–T Coupling Company, having its principal place of business in Enid, Oklahoma. The patent rights in this invention will be assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–7214; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://techtracs.nasa.gov/*.

Dated: March 31, 2006.

Keith T. Sefton,

Deputy General Counsel, Administration and Management.

[FR Doc. E6–5127 Filed 4–6–06; 8:45 am]
BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (06–024)]

Privacy Act of 1974; Privacy Act System of Records

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Privacy Act system of records.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974 to publish description of the systems of records it maintains containing personal information when a system is substantially revised, deleted, or created. In this notice, NASA provides the required information for a new system of records that will enable NASA civil servants and support contractors to evaluate education programs. The information collected is used in the administration of Federal funded Training Programs and is used to document the nomination of participants and completion of training; and it serves as the principal repository of personal, fiscal, and administrative information about participants and the programs in which they participate. In order to measure the reach of NASA's Education Programs, some requested personal information such as gender, nationality, disability, and ethnicity is only requested on a voluntary basis. Finally, in order to assess training program effectiveness and to determine necessary changes/improvements to its programs, NASA needs to be able to contact program participants and principal investigators and is collecting and maintaining personal data in order to do so.

DATES: Submit comments on or before 60 calendar days from the date of this publication.

ADDRESSES: Send comments to Patti F. Stockman, Privacy Officer, Office of the Chief Information Officer, Suite 6Q79, NASA Headquarters, 300 E Street, SW., Washington, DC 20546–0001, *NASA–PAOfficer@nasa.gov.*

FOR FURTHER INFORMATION CONTACT: NASA Privacy Act Officer Patti F. Stockman, 202–358–4787, *NASA–PAOfficer@nasa.gov.*

NASA 10EDUA

SYSTEM NAME:

NASA Education Program Evaluation System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Secure NASA and NASA contractor Servers in Locations 1 through 11 as set forth in Appendix A.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will be maintained on NASA civil servants and contractors serving as Education Program/Project Managers and Session Presenters, as well as on Program Participants and members of the public including students (K–12 and Higher Education), teachers, faculty, school administrators, and participants' parents/guardians/family members. Records are also maintained on the performance outcomes by Principal Investigators and their institutions and organizations that have been awarded grants under the Minority University Research and Education Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system include identifying information about students enrolled in and/or graduated from NASA programs and whether students are promoted to the next grade level in math and/or science. Personal data is also maintained on Program managers, Program points of contact, and Session Presenters including information that includes, but is not limited to name, work address and telephone. Information about Program participants includes, but is not limited to, name, permanent and school addresses, ethnicity, gender, school grade or college level, highest attained degree and degree field, institution type, and ratings about program/experience.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

42 U.S.C. 2473 (2003); 44 U.S.C. 3101; 5 U.S.C. 4101 et seq.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Any disclosures of information will be compatible with the purpose for which the Agency collected the information. The records and information in these records may be used to:

(1) Provide information to NASA support contractors or partners on

Education grants who have access to the information to fulfill their responsibilities of (a) providing and managing the Education programs on behalf of NASA, or of (b) maintaining the systems in which the information resides;

(2) Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual; and

(3) Standard routine uses 1 through 4 inclusive as set forth in Appendix B.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Stored on secure server as electronic records.

RETRIEVABILITY:

Records are indexed and may be searched by any one or a combination of choices by authorized users to include name, identification number, zip code, state, grade level and institution.

SAFEGUARDS:

Access to records is password controlled based on functional user roles in the program. Information system security is managed in accordance with OMB Circular A–130, "Management of Federal Information Resources."

RETENTION AND DISPOSAL:

The records in this System of Records are managed, retained and dispositioned in accordance with the guidelines defined in NASA Procedural Requirements (NPR) 1441.1, NASA Records Retention Schedules, Schedule 1, item 32.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Education, Office of Strategic Communications, Location 1 (see Appendix A).

NOTIFICATION PROCEDURE:

Contact System Manager by mail at Location 1 (See Appendix A).

RECORD ACCESS PROCEDURE:

Individuals who wish to gain access to their records should submit their request in writing to the System Manager at the addresses given above.

CONTESTING RECORD PROCEDURES:

The NASA regulations governing access to records, procedures for contesting the contents and for appealing initial determinations are set forth in 14 CFR part 1212.

RECORD SOURCE CATEGORIES:

The information is obtained directly from NASA Education Program Managers, presenters, Participants, and Principal Investigators.

Dated: March 30, 2006.

Patricia L. Dunnington,

Chief Information Officer.

Appendix A—Location Numbers and Mailing Addresses of NASA Installations at Which Records are Located

Location 1.

NASA Headquarters, National Aeronautics and Space Administration Washington, DC 20546–0001

Location 2.

Ames Research Center, National Aeronautics and Space Administration, Moffett Field, CA 94035–1000

Location 3.

Dryden Flight Research Center, National Aeronautics and Space Administration, PO Box 273, Edwards, CA 93523–0273

Location 4.

Goddard Space Flight Center, National Aeronautics and Space Administration, Greenbelt, MD 20771–0001

Location 5.

Lyndon B. Johnson Space Center, National Aeronautics and Space Administration, Houston, TX 77058–3696

Location 6.

John F. Kennedy Space Center, National Aeronautics and Space Administration, Kennedy Space Center, FL 32899–0001

Location 7.

Langley Research Center, National Aeronautics and Space Administration, Hampton, VA 23681–2199

Location 8.

John H. Glenn Research Center at Lewis Field, National Aeronautics and Space Administration, 21000 Brookpark Road, Cleveland, OH 44135–3191

Location 9.

George C. Marshall Space Flight Center, National Aeronautics and Space Administration, Marshall Space Flight Center, AL 35812–0001

Location 10.

HQ NASA Management Office-JPL, National Aeronautics and Space Administration, 4800 Oak Grove Drive, Pasadena, CA 91109–8099

Location 11.

John C. Stennis Space Center, National Aeronautics and Space Administration, Stennis Space Center, MS 39529–6000

Appendix B—Standard Routine Uses—NASA

The following routine uses of information contained in systems of records, subject to the Privacy Act of 1974, are standard for many NASA systems. They are cited by reference in the paragraph "Routine uses of records maintained in the system, including categories of users and the purpose of such uses" of the **Federal Register** Notice on those systems to which they apply.

Standard Routine Use No. 1—LAW ENFORCEMENT—In the event that this system of records indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

Standard Routine Use No. 2—DISCLOSURE WHEN REQUESTING INFORMATION—A record from this system of records may be disclosed as a 'routine use' to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

Standard Routine Use No. 3—DISCLOSURE OF REQUESTED INFORMATION—A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

Standard Routine Use No. 4—COURT OR OTHER FORMAL PROCEEDINGS—In the event there is a pending court or formal administrative proceeding, any records which are relevant to the proceeding may be disclosed to the Department of Justice or other agency for purposes of representing the Government, or in the course of presenting evidence, or they may be produced to parties or counsel involved in the proceeding in the course of pretrial discovery.

[FR Doc. E6–5128 Filed 4–6–06; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities; Proposed New Data Collection; Comment Request

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans

to establish clearance for an evaluation of the Teacher Professional Continuum (TPC) to assess how well the TPC program is meeting its intended goals. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; 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.

DATES: Written comments should be received by June 6, 2006 to be assured of consideration. Comments received after that date would be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to *splimpto@nsf.gov*.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Request for Clearance for Program Evaluation of the National Science Foundation's (NSF) Teacher Professional Continuum (TPC).

Title of Collection: Evaluation of the National Science Foundation's Teacher Professional Continuum (TPC) Program.

OMB Control No.: 3145–NEW.

Expiration Date of Approval: Not applicable.

1. Abstract

The National Science Foundation (NSF) requests a three-year clearance for research, evaluation and data collection (e.g. surveys and interviews) from stakeholders in the Teacher Professional Continuum (TPC) Program. TPC stakeholders typically are limited to faculty and administrators from universities and not-for-profit institutions (e.g., museums, non-degree granting educational or research institutions), K–12 educators, and former NSF employees and intergovernmental personnel act (IPA) appointees. This data collection will be the first time the NSF has evaluated the TPC Program.

K–12 Science, Technology, Engineering, and Mathematics (STEM) teachers and pre-service teacher candidates have inadequate content knowledge and experience high rates of teacher turnover that threaten student learning and the STEM teacher workforce. The current STEM knowledge base and infrastructure is ill equipped to respond to this crisis. In response, the TPC Program is designed to expand research on effective STEM teaching and teacher learning; develop professional resources for STEM teachers and those who educate them; and strengthen the infrastructure that supports the STEM profession. Recognizing that teacher professional development is comprised of a sequence of experiences that spans teachers' professional careers, the TPC program awards grants to researchers addressing pre-service training, new teacher induction, and in-service professional development. For specific details and the most updated information regarding TPC program operations, please visit the NSF Web site at: *http://www.nsf.gov/funding/pgm_summ.jsp?pims_id=12785=ESIE&from=home*.

Abt Associates Inc. has been awarded a three-year contract to assess how well the TPC program is meeting its intended goals and to examine the program's contribution to the knowledge base for each stage of the teacher professional continuum. This theory-based evaluation will construct a conceptual model outlining how the TPC Program is intended to work, and then use a mixed-methods approach to assess observed program implementation and outcomes against the desired model. The study will answer the questions: (1) How does the TPC program work? (2) How are TPC resources allocated and what is the relationship between allocated resources and project results? (3) To what extent is the TPC program meeting its stated outcomes of expanding research on effective STEM teaching and teacher learning, developing professional resources of STEM teachers and those who educate them, and strengthening the STEM education infrastructure? (4) What has facilitated the accomplishment or progress towards outcomes?

A series of surveys and interviews will be employed to answer these questions, along with the visits. Data sources will include a review of literature and resources, a review of grantee portfolios (including proposals, products and annual reports), surveys of TPC Principal Investigators (PIs), interviews with PIs and other grant staff, and extend grant documentation.

NSF will use the TPC program evaluation data and analyses to respond to requests from Committees of Visitors (COV), Congress and the Office of Management and Budget, particularly as related to the Government Performance and Results Act (GPRA) and the Program Effectiveness Rating Tool (PART). NSF will also use the program evaluation to improve communication with TPC stakeholders and to share the broader impacts of the TPC program with the general public.

Respondents: Individuals or households, business or other for profit, and not-for-profit institutions.

Estimated Number of Respondents: 143.

Burden on the Public: 1100 hours.

Dated: April 3, 2006.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–3334 Filed 4–6–06; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Information Collection Request; Submission for OMB Review; Comment Request

The National Transportation Safety Board intends to submit the following (see below) public information collection request (ICR) 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). OMB approval is being requested concurrently with this submission. A copy of this individual ICR, with applicable supporting documentation, may be obtained by calling the National Transportation Safety Board Records Management Officer, Ms. Melba Moye, at (202) 314–6551.

Written comments and questions about the ICR should be sent within 30 days of publication of this notice to Alex Hunt, OMB Desk Officer, FAX number (202) 395–6974, or *ahunt@omb.eop.gov.*

Agency: National Transportation Safety Board.

Title: Pilot/Operator Aircraft Accident/Incident Report.

OMB Number: 3147–0001.

Frequency: On Occasion.

Affected Public: Individuals, Businesses (for and not for profit), Governments (State, Local, and Tribal).

Number of Respondents: 2100.

Estimated time per respondent: 60 minutes.

Total Burden Hours: 2100.

Description: The National Transportation Safety Board is required to investigate aviation accidents and certain incidents as stated in the 49 Code of Federal Regulations Part 830. Entities having a reportable accident/incident are required to report the details pertaining to the event to the Safety Board. To ensure pertinent data is collected, the Board uses a standard form for reporting the accident/incident.

The National Transportation Safety Board is seeking clearance to use the Pilot/Operator Aircraft Accident/Incident Report to help determine the facts, conditions, and circumstances of aviation accidents/incidents in order to facilitate strategies and maintain statistics on aviation safety.

Dated: March 31, 2006.

Candi Bing,

Acting Federal Register Liaison Officer.

[FR Doc. 06–3345 Filed 4–6–06; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Billing Instructions for NRC Cost Type Contracts.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* Monthly and on occasion.

5. *Who will be required or asked to report:* NRC Contractors.

6. *An estimate of the number of annual responses:* 2,140.

7. *The estimated number of annual respondents:* 55.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 1,070 hours (754 hours billing and 316 hours, License Fee Recovery Cost).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* In administering its contracts, the NRC Division of Contracts provides billing instructions for its contractors to follow in preparing invoices. These instructions stipulate the level of detail in which supporting data must be submitted for NRC review. The review of this information ensures that all payments made by NRC for valid and reasonable costs are in accordance with the contract terms and conditions.

A copy of the final 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 should be directed to the OMB reviewer listed below by May 8, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John A. Asalone, Office of Information and Regulatory Affairs (3150–0109), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 29th day of March, 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 06–3363 Filed 4–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC recently has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 7, "Application for NRC Export/Import License, Amendment, or Renewal," formerly, "Application for License to Export Nuclear Equipment and Material."

3. *The form number if application:* NRC Form 7.

4. *How often is the collection required:* On occasion; for each separate export, import, amendment, or renewal license application, and for exports of incidental radioactive material using existing general licenses.

5. *Who is required or asked to report:* Any person in the U.S. who wishes to export or import (a) Nuclear material and equipment subject to the requirements of a specific license; (b) amend a license; (c) renew a license, and (d) for notification of incidental radioactive material exports that are contaminants of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

6. *An estimate of the number of responses;* 319.

7. *The number of annual respondents:* 319.

8. *The number of hours needed annually to complete the requirement or request:* 788 hours (2.4 hours per response).

9. *An indication of whether section 3507(d), Public Law 104–13 applies:* Not applicable.

10. *Abstract:* Persons in the U.S. wishing to export or import nuclear material and equipment requiring a specific authorization, amend or renew a license, or wishing to use existing . NRC general licenses for the export of incidental radioactive material over 100 kilograms must file an NRC Form 7 application. The NRC Form 7 application will be reviewed by the NRC and by the Executive Branch, and if applicable statutory, regulatory, and policy considerations are satisfied, the NRC will issue an export, import, amendment or renewal license.

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room 0–1 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 should be directed to the OMB reviewer listed below by May 8, 2006. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

John A. Asalone, Office of Information and Regulatory Affairs (3150–0027), NEOB–10202, Office of Management and Budget.

Comments also can be e-mailed to *John_A._Asalone@omb.eop.gov* or submitted by telephone at (202) 395–4650.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 30th day of March 2006.

For the Nuclear Regulatory Commission.

Brenda J. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–5079 Filed 4–6–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: 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:* NRC Form 244, Registration Certificate—Use of Depleted Uranium under General License.

2. *Current OMB approval number:* 3150–0031.

3. *How often the collection is required:* On occasion. NRC Form 244 is submitted when depleted uranium is received or transferred under general license. Information on NRC Form 244 is collected and evaluated on a continuing basis as events occur.

4. *Who is required or asked to report:* Persons receiving, possessing, using, or transferring depleted uranium under the general license established in 10 CFR 40.25(a).

5. *The estimated number of annual respondents:* 5 (2 NRC licensees and 3 Agreement State licensees).

6. *The number of hours needed annually to complete the requirement or request:* 5 (1 hour per response—2 hours for NRC licensees and 3 hours for Agreement State licensees).

7. *Abstract:* 10 CFR Part 40 establishes requirements for licenses for the receipt, possession, use and transfer of radioactive source and byproduct material. NRC Form 244 is used to report receipt and transfer of depleted uranium under general license, as required by section 40.25. The registration certification information required by NRC Form 244 is necessary to permit the NRC to make a determination on whether the possession, use, and transfer of depleted uranium source and byproduct material is in conformance with the Commission's regulations for protection of public health and safety.

Submit, by June 6, 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 31st day of March 2006.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–5080 Filed 4–6–06; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Determination of Eligibility for Retroactive Duty Treatment Under the Dominican Republic—Central America—United States Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to Section 205(b) of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (the Act), the United States Trade Representative (USTR) is providing notice of his determination that Honduras and Nicaragua are eligible countries for purposes of retroactive duty treatment as provided in Section 205 of the Act.

EFFECTIVE DATE: April 7, 2006.

ADDRESSES: Inquiries may be mailed, delivered, or faxed to Abiola Heyliger, Director of Textile Trade Policy, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, fax number, (202) 395–5639.

FOR FURTHER INFORMATION CONTACT: Abiola Heyliger, Office of the United States Trade Representative, 202–395–3026.

SUPPLEMENTARY INFORMATION: Section 205(a) of the Act (Pub. L. 109–53; 119 Stat. 462, 483; 19 U.S.C. 4034) provides that certain entries of textile or apparel goods of designated eligible countries that are parties to the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA–DR) made on or after January 1, 2004 may be liquidated or reliquidated at the applicable rate of duty for those goods established in the Schedule of the United States to Annex 3.3 of the CAFTA–DR. Section 205(b) of the Act requires the USTR to determine, in accordance with Article 3.20 of the CAFTA–DR, which CAFTA–DR countries are eligible countries for purposes of Section 205(a). Article 3.20 provides that importers may claim retroactive duty treatment for imports of certain textile or apparel goods entered on or after January 1, 2004 and before the entry into force of CAFTA–DR from those CAFTA–DR countries that will provide reciprocal retroactive duty treatment or a benefit for textile or apparel goods that is equivalent to retroactive duty treatment.

Pursuant to Section 205(b) of the Act, I have determined that Honduras and Nicaragua will each provide an equivalent benefit for textile or apparel goods of the United States within the meaning of Article 3.20 of the CAFTA–DR. I therefore determine that Honduras and Nicaragua are eligible countries for purposes of Section 205 of the Act.

Rob Portman,

U.S. Trade Representative.

[FR Doc. E6–5074 Filed 4–6–06; 8:45 am]

BILLING CODE 3190–D2–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Rule 17Ac2–1, SEC File No. 270–95, OMB Control No. 3235–0084.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for approval of extension on the following rule: Rule 17Ac2–1.

Rule 17Ac2–1 (17 CFR 240.17Ac2–1) under the Securities Exchange Act of 1934 requires transfer agents to register with the Commission, the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, or the Federal Deposit Insurance Corporation, and to amend their registration.

It is estimated that on an annual basis, the Commission will receive approximately 100 applications for registration on Form TA–1 from transfer agents required to register as such with the Commission. Included in this figure are amendments made to Form TA–1 as required by Rule 17Ac2–1(c). Based upon past submissions, the staff estimates that the average number of hours necessary to comply with the requirements of Rule 17Ac2–1 is one and one-half hours, with a total burden of 150 hours.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or by sending an e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, C/O Shirley Martinson, 6432 General Green Way, Alexandria, Virginia 22312 or send an e-mail to: *PRA_Mailbox@sec.gov.* Comments must be submitted to the Office of Management and Budget within 30 days of this notice.

Dated: March 30, 2006

Nancy M. Morris,

Secretary.

[FR Doc. E6–5082 Filed 4–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [71 FR 16350, March 31, 2006].

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

ANNOUNCEMENT OF ADDITIONAL MEETING: Additional Meeting (Week of April 3, 2006).

A Closed Meeting has been scheduled for Wednesday, April 5, 2006 at 5:15 p.m.

Commissioners and certain staff members who have an interest in the matter will attend the Closed Meeting.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B) and (10) and 17 CFR 200.402(a)(5), (7), 9(ii) and (10) permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Nazareth, as duty officer, voted to consider the item listed for the closed meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Wednesday, April 5, 2006 will be: Institution and settlement of injunctive action.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: April 4, 2006.

Nancy M. Morris,

Secretary.

[FR Doc. 06–3390 Filed 4–5–06; 11:15 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53586; File No. SR–CBOE–2006–29]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase the Class Quoting Limit in the Option Class Apple Computer

April 3, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 2006, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to increase the class quoting limit in the option class Apple Computer ("AAPL"). The text of the proposed rule change is available on CBOE's Web site (*http://www.cboe.com*), at the CBOE's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE 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

CBOE Rule 8.3A establishes class quoting limits ("CQLs") for each class traded on the Hybrid Trading System.[5] A CQL is the maximum number of quoters that may quote electronically in a given product and the current levels are established from 25–40, depending on the trading activity of the particular product.

CBOE Rule 8.3A, Interpretation .01(c) provides a procedure by which the President of the Exchange may increase the CQL for a particular product. In this regard, the President of the Exchange may increase the CQL in exceptional circumstances, which would include substantial trading volume, whether actual or expected.[6] The effect of an increase in the CQL is procompetitive in that it increases the number of market participants that may quote electronically in a product. The purpose of this filing is to increase the CQL in the option class AAPL from its current limit of 44 to 47.[7]

AAPL is one of the most active equity option classes traded on the Exchange, and consistently ranks among the top classes in national average daily trading volume. Increasing the CQL in AAPL options would enable the Exchange to enhance the liquidity offered, thereby offering deeper and more liquid markets.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of Section 6(b) of the Act.[8] Specifically, the Exchange believes the proposed rule change is consistent with the requirements of Section 6(b)(5)[9] that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither received nor solicited written comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[10] and Rule 19b–4(f)(1) thereunder,[11] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2006–29 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–29. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–29 and should be submitted on or before April 28, 2006.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] *See* CBOE Rule 8.3A.01.

[6] Any actions taken by the President of the Exchange pursuant to this paragraph must be submitted to the Commission in a rule filing pursuant to Section 19(b)(3)(A) of the Act. CBOE Rule 8.3A.01(c).

[7] CBOE previously increased the CQL in AAPL from 40 to 44 on April 21, 2005. *See* Securities Exchange Act Release No. 51720 (May 19, 2005), 70 FR 30164 (May 25, 2005).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A)(i).

[11] 17 CFR 240.19b–4(f)(1).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5084 Filed 4–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53585; File Nos. SR–NYSE–2004–43 and SR–NYSE–2005–32]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Real-Time NYSE OpenBook® Service and OpenBook® Fees and Order Approving Proposed Rule Change Relating to the Contract Terms Governing Vendor Displays of NYSE OpenBook® Data, and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 2 Thereto

March 31, 2006.

I. Introduction

On August 11, 2004, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to update NYSE OpenBook® ("OpenBook") limit order information in real time and to increase the monthly per-terminal fee for the real-time OpenBook service ("Real-Time Fee Proposal").[3] The Real-Time Fee Proposal was published for comment in the **Federal Register** on September 2, 2004.[4] The Commission received nine letters regarding the Real-Time Fee Proposal.[5] Several commenters on the Real-Time Fee Proposal argued that the existing OpenBook contractual provisions, which prohibit vendors from consolidating OpenBook data with data from other market centers, are anticompetitive and discriminatory.[6] Other commenters believed that the NYSE should file for public comment and Commission review and approval the contract terms that would govern the distribution of OpenBook data.[7]

On May 13, 2005, the NYSE filed a proposed rule change containing proposed contract terms, set forth in a revised version of Exhibit C to the "Agreement for the Receipt and Use of Market Data," that would govern the displays and dissemination of OpenBook data (the "Exhibit C Proposal").[8] The NYSE filed Amendment No. 1 to the Exhibit C Proposal on June 16, 2005.[9] The Exhibit C Proposal, as amended by Amendment No. 1 ("Original Exhibit C Proposal"), was published for comment in the **Federal Register** on July 1, 2005.[10] The Commission received six comment letters regarding the Original Exhibit C Proposal.[11] The NYSE responded to the comments regarding the Real-Time Fee Proposal and the Original Exhibit C Proposal on September 30, 2005.[12] The NYSE filed Amendment No. 2 to the Exhibit C Proposal on February 26, 2006.[13] This order approves the Real-Time Fee Proposal and the Exhibit C Proposal, as amended by Amendment No. 2. In addition, the Commission is publishing notice to solicit comment on, and is simultaneously approving, on an accelerated basis, Amendment No. 2 to the Exhibit C Proposal.

II. Background

The OpenBook service is a compilation of limit order data that the NYSE provides to market data vendors, broker-dealers, private network providers, and other entities through a data feed. The Commission approved the current fees for the OpenBook service in 2001.[14] In its 2001 OpenBook proposal, the NYSE described, but did not file with the Commission, the contractual provisions governing market data vendors' receipt and display of OpenBook data. These provisions, which are in effect today, prohibit market data vendors from providing displays that integrate OpenBook data

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[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] File No. SR–NYSE–2004–43.

[4] *See* Securities Exchange Act Release No. 50275 (August 26, 2004), 69 FR 53760.

[5] *See* letters to Jonathan G. Katz, Secretary, Commission, from Lisa M. Utasi, President, and Kimberly Unger, Executive Director, The Security Traders Association of New York, Inc. ("STANY"), dated September 22, 2004 ("STANY Letter"); Richard A. Korhammer, Chief Executive Officer, Lava Trading Inc. ("Lava"), dated September 23, 2004 ("Lava Letter"); Thomas F. Secunda, Bloomberg L.P. ("Bloomberg"), dated September 23, 2004 ("Bloomberg Letter I"); Ellen L.S. Koplow, Executive Vice President and General Counsel, Ameritrade Holding Corporation, dated September 23, 2004 ("Ameritrade Letter I"); Christopher P. Gilkerson, Vice President and Associate General Counsel, Charles Schwab ("Schwab"), dated September 23, 2004 ("Schwab Letter"); David Colker, Chief Executive Office and President, National Stock Exchange ("NSX"), dated September 24, 2004 ("NSX Letter I"); Eliot Wagner, Chair, Technology and Regulation Committee, the Securities Industry Association ("SIA"), and Christopher Gilkerson, Chair, Market Data Subcommittee, SIA, dated October 22, 2004 ("SIA Letter I"); Meyer S. Furcher, Chairman and Chief Executive Officer, Philadelphia Stock Exchange, Inc. dated October 11, 2004; and letter from R. Bruce Josten, Executive Vice President, Government Affairs, U.S. Chamber of Commerce, to the Honorable William Donaldson, Chairman, Commission, dated September 27, 2004 ("U.S. Chamber of Commerce Letter I").

[6] *See, e.g.*, Bloomberg Letter I (the OpenBook contract terms are unfairly discriminatory because some, but not all, OpenBook subscribers would be able to consolidate OpenBook information with limit order information from other markets); Schwab Letter (the current contractual provisions governing the distribution of OpenBook data discriminate against vendors and their clients, and are anticompetitive, because they restrict redistribution and consolidation with other markets' data); Ameritrade Letter I (the proposal discriminates among market participants because vendors, unlike institutions and professionals, are prohibited from enhancing OpenBook data or commingling it with data from other market centers); and SIA Letter I (some members have suggested that the existing OpenBook contractual provisions may be anticompetitive because they restrict redistribution and consolidation with other markets' data), *supra* note 5.

[7] *See, e.g.*, Schwab Letter, SIA Letter I, and U.S. Chamber of Commerce Letter I, *supra* note 5. *See also* NSX Letter I and Lava Letter, *supra* note 5 (the contract terms should be included so that the public can assess the impact of the proposal on transparency and competition among market centers).

[8] File No. SR–NYSE–2005–32. The Commission received a comment letter on June 3, 2005 from Bloomberg. *See* letter from Kim Borg, Bloomberg, to Annette L. Nazareth, Director, Division of Market Regulation, Commission, dated June 2, 2005. Bloomberg resubmitted this comment letter on July 22, 2005. *See supra* note 11.

[9] In Amendment No. 1 provided a copy of its current Exhibit C marked to indicate the changes that the NYSE proposed. NYSE did not propose any substantive changes to the proposal in Amendment No. 1.

[10] *See* Securities Exchange Act Release No. 51925 (June 24, 2005), 70 FR 38226.

[11] *See* letters to Jonathan G. Katz, Secretary, Commission, from David Colker, Chief Executive Officer and President, NSX, dated July 20, 2005 ("NSX Letter II"); Phylis M. Esposito, Executive Vice President, Chief Strategy Officer, Ameritrade, dated July 22, 2005 ("Ameritrade Letter II"); Christopher Gilkerson, Chair, SIA Technology and Regulation Committee and Andrew Wels, Chair, SIA Market Data Subcommittee, dated July 22, 2005 ("SIA Letter II"); Kim Bang, Bloomberg, dated July 22, 2005 ("Bloomberg Letter II"); Kim Bang, Bloomberg, dated October 19, 2005 ("Bloomberg Letter III"); and letter to the Honorable Cynthia Glassman, Acting Chairman, Commission, from R. Bruce Josten, Executive Vice President, Government Affairs, U.S. Chamber of Commerce, dated July 22, 2005 ("U.S. Chamber of Commerce Letter II").

[12] *See* letters from Mary Yeager, Assistant Secretary, NYSE, to Jonathan G. Katz, Secretary, Commission, dated September 30, 2005 ("NYSE Response Letters"). One of the NYSE Response Letters addresses the comments raised by Bloomberg, while the other NYSE Response Letter addresses the comments of the remaining commenters.

[13] As described more fully below, Amendment No. 2 revises Exhibit C to permit a vendor to provide a display that integrates OpenBook information with information from other markets without attributing the OpenBook information to the NYSE, provided the vendor satisfies certain requirements. Amendment No. 2 replaces and supersedes the originally proposed Exhibit C in its entirety.

[14] *See* Securities Exchange Act Release No. 45138 (December 7, 2001), 66 FR 64895 (December 14, 2001) (order approving File No. SR–NYSE–2001–42) ("OpenBook Fee Order").

with limit order data from other markets or trading systems.[15] In the OpenBook Fee Order, the Commission indicated specifically that it was not approving or disapproving the OpenBook contract terms and, in fact, signaled that the contractual provisions restricting vendor redissemination of OpenBook data, including the prohibition on providing enhanced, integrated, or consolidated data, were "on their face discriminatory and may raise fair access [issues] under the Act." [16]

In October 2002, the NYSE filed a proposal to permit the display and use of quotations in NYSE-traded stocks to show additional depth in the market for those stocks, *i.e.*, Liquidity Quotes.[17] The Commission approved the Liquidity Quote proposal on the condition that the NYSE remove from the contract terms governing the receipt of Liquidity Quote data the prohibition on data feed recipients, including vendors, integrating Liquidity Quote data with other markets' data or with the display of other markets' data.[18] However, the Commission concluded that the NYSE could require that vendors: (1) Provide the NYSE with attribution in any display that included Liquidity Quote data; and (2) make Liquidity Quote available to their customers as a separate branded package.[19]

After agreeing to the conditions in the Liquidity Quote Conditional Order, the NYSE revised the Liquidity Quote contract terms by removing the prohibition on integrating Liquidity Quote data with other markets' data. In addition, the NYSE sought to revise the contract terms to establish new display requirements for vendors. Bloomberg successfully challenged these display requirements as constituting a denial of access under Sections 19(d) and 19(f) of the Act.[20] In the Bloomberg Order, the Commission found that the contract terms governing the display of Liquidity Quote data were NYSE rules that were required to be filed and approved pursuant to Section 19(b) of the Act.[21]

The NYSE subsequently filed the Liquidity Quote contract terms with the Commission as a proposed rule change, which the Commission approved.[22] Among other things, the Liquidity Quote contract terms required that vendors: (1) Indicate the number of shares attributable to Liquidity Quote bids and offers in any display that aggregated Liquidity Quote bids and offers with interest from other markets; (2) identify each element or line of Liquidity Quote information included in an integrated display or montage with either "NYSE Liquidity Quote" or "NYLQ"; (3) offer its subscribers a Liquidity Quote product that was separate and apart from information products that included other markets' data; and (4) provide the NYSE with sample screen shots of displays that included Liquidity Quote information at the time the vendor commences to provide the display to subscribers.[23] As described more fully below, the contract terms that the NYSE filed in the Original Exhibit C Proposal were similar to the contract terms that the Commission approved for the Liquidity Quote data product.

III. Description of the Proposals

A. The Exhibit C Proposal

In the Original Exhibit C Proposal, the NYSE proposed to amend the existing OpenBook Exhibit C to eliminate the prohibition on vendors' integrating OpenBook data with data from other market centers and to require vendors to: (1) Identify as NYSE data each element or line of OpenBook information included in an integrated display of trading interest across market centers; (2) indicate at each price level the number of shares attributable to OpenBook bids and offers when the vendor aggregates bids and offers from multiple market centers in an integrated display; (3) provide customers with a stand-alone OpenBook display if the vendor provides an integrated display; and (4) provide the NYSE with a sample of each new screen shot to demonstrate the manner in which the vendor displays OpenBook information and any modification to previous displays. These OpenBook vendor display requirements would not apply to any OpenBook subscriber's internal displays of OpenBook data. Thus, an OpenBook subscriber that distributes the data internally would be able to integrate the OpenBook data with data from other markets through its own applications or software, without the attribution requirements applicable to market data vendors.

The Commission received six comment letters regarding the Original Exhibit C Proposal.[24] Several commenters argued that the attribution requirements contained in the Original Exhibit C Proposal would act as a *de facto* ban on the commingling of market data.[25] One commenter asserted that the attribution requirement would limit the visibility of competing market centers and diminish the amount of depth and analytics that could be displayed, thereby reducing transparency and market efficiency.[26] Another commenter asserted that "[t]raders need a * * * view of available prices without attribution that allows them to see a greater range of price and liquidity points than can be seen on a market monitor with attribution."[27] The commenter argued, further, that it would not be possible to build a readable market monitor of aggregated volume if market attribution were required for each market center included in the aggregated volume at each price point.[28]

In addition, this commenter maintained that the Original Exhibit C Proposal would discriminate unfairly

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[15] Specifically, the contract terms governing the receipt of OpenBook data: (1) Prohibit vendors from providing displays that integrate OpenBook data with limit order data from other markets or trading systems, although a vendor may allow its subscribers to view other entities' limit orders side-by-side with, or on the same page as, displays of OpenBook information; and (2) preclude a data feed recipient from retransmitting the OpenBook data feed. *See* OpenBook Fee Order, *supra* note 14.

[16] *See* OpenBook Fee Order, *supra* note 14.

[17] Liquidity Quote data reflected aggregated NYSE trading interest at a specific price interval below the best bid (in the case of a liquidity bid) or at a specific price interval above the best offer (in the case of a liquidity offer).

[18] *See* Securities Exchange Act Release No. 47614 (April 2, 2003), 68 FR 17140 (April 8, 2003) (order conditionally approving File No. SR–NYSE–2002–55) ("Liquidity Quote Conditional Order"). Although the NYSE had not filed the Liquidity Quote contract terms with the Commission, the Commission concluded that it was required to consider comments regarding the contract terms because they related to the manner in which the Liquidity Quote proposal would operate. *See* Liquidity Quote Conditional Order at note 39 and accompanying text.

[19] *See* Liquidity Quote Conditional Order, *supra* note 18.

[20] *See* Securities Exchange Act Release No. 49076 (January 14, 2004) (Administrative Proceeding File No. 3–11129) (In the Matter of Bloomberg L.P. for Review of Action Taken by the NYSE) ("Bloomberg Order").

[21] *See* Bloomberg Order, *supra* note 20. Because the NYSE had not filed the Liquidity Quote contract terms with the Commission, the Commission concluded that the contract terms could not provide a basis for the NYSE's denial of Bloomberg's access to Liquidity Quote data.

[22] *See* Securities Exchange Act Release No. 51438 (March 28, 2005), 70 FR 17137 (April 4, 2005) (order approving File No. SR–NYSE–2004–32) ("Liquidity Quote Order").

[23] *See* Liquidity Quote Order, *supra* note 22. In the Liquidity Quote Order, the Commission stated that the Liquidity Quote contract terms "do not apply and have not been considered or approved by the Commission as acceptable for the distribution of NYSE OpenBook data." *See* Liquidity Quote Order, *supra* note 22, at note 41 and accompanying text.

[24] *See* note 11, *supra*.

[25] *See e.g.*, NSX Letter II, SIA Letter II, and U.S. Chamber of Commerce Letter II, *supra* note 11. *See also* Bloomberg II, *supra* note 11 (proposal would prohibit the effective integration of OpenBook data with data from other market centers).

[26] *See* U.S Chamber of Commerce Letter II, *supra* note 11. *See also* NSX Letter II; SIA Letter II; Ameritrade Letter II; and Bloomberg Letter II, *supra* note 11.

[27] *See* Bloomberg Letter II, *supra* note 11.

[28] *Id.*

against small and medium-sized broker-dealers that cannot afford to maintain research or software-development departments and must rely on vendors to provide aggregated market monitors.[29] Similarly, the SIA stated that many of its members:

> Depend on vendors to provide them with market data both to use internally and to disseminate to investors. The NYSE proposal mandates that vendors provide special 'attribution' for all NYSE OpenBook data * * * This compulsory identifier would consume finite screen space, reducing the amount of trading depth vendors could display, undermining their ability to create analytics, and negatively impacting the market data ultimately made available to * * * members and clients. At the same time, the NYSE attribution requirement would crowd competing market centers off data vendor screens. These restrictions could significantly decrease the transparency of the securities markets and inhibit competition among markets.[30]

This commenter also maintained that the Original Exhibit C Proposal would impose an unnecessary burden on competition because its requirements would "impede alternative uses of data and require a particular display that gives preeminence to the NYSE's data and branding."[31]

B. Amendment No. 2 to the Exhibit C Proposal

In response to the commenters' concerns regarding the attribution requirements in the Original Exhibit C Proposal, the NYSE filed Amendment No. 2 to the Exhibit C Proposal. Amendment No. 2 replaces and supersedes the originally filed Exhibit C in its entirety.

The revised Exhibit C provided in Amendment No. 2 (the "New Exhibit C") will allow vendors to provide displays that commingle OpenBook information with information from other markets without attribution of the NYSE name or the number of shares ("Non-Attributed Integrated Displays"), so long as the vendors comply with the requirements described below.[32] The NYSE states that it is doing so primarily because the NYSE wishes to respond to the increasing demand from professional investors for a real-time OpenBook product and because the NYSE realizes that order book information is already prevalent in the marketplace and that investors have become accustomed to screen displays that aggregate the liquidity of multiple markets' books without attribution.

In the New Exhibit C, the Exchange proposes to require a vendor that makes Non-Attributed Integrated Displays available to also make available a second display that includes the "NYSE" identifier and the number of shares attributable to OpenBook bids and offers ("Attributed Integrated Displays"). The vendor must make the Attributed Integrated Displays available in a manner that allows the user to have easy and ready access to them from the Non-Attributed Integrated Display screens.

As in the Original Exhibit C Proposal, a vendor that makes Integrated Displays available must also make OpenBook information available as a product that is separate and apart from information products that include other market centers' information.

The New Exhibit C also would require the vendor:

(a) To make its subscribers aware of the availability of the Attributed Integrated Displays and the stand-alone OpenBook product in the same manner as it makes its subscribers aware of Non-Attributed Integrated Displays; and

(b) No later than at the time it first commences to provide a new or modified Attributed Integrated Display, or an OpenBook-only display, to others, to submit to the Exchange for inclusion in Exhibit A a screen shot of that Attributed Integrated Display or OpenBook-only display and a description of the means of access to that screen.

In addition, the NYSE represents that it intends to review with the industry whether there is sufficient demand for depth-of-book information among nonprofessional subscribers to justify a depth-of-book product and fee for nonprofessional subscribers. The Exchange notes that its Hybrid initiative may have an impact on the demand for such a product.

C. The Real-Time Fee Proposal

The NYSE currently updates OpenBook information every five seconds. The current fee for the OpenBook service is comprised of two components: (1) $5,000 per month for receipt of and the right to redistribute the OpenBook data feed; and (2) $50.00 per month for each terminal through which an end user displays OpenBook data. In the Real-Time Fee Proposal, the NYSE proposes to make available a second OpenBook service that would update OpenBook limit order information in real time. The $5,000 per month fee would entitle an entity to receive and redistribute the five-second delayed data feed, the real-time data feed, or both. In addition, the NYSE proposes to increase the per-terminal component of the real-time OpenBook service fee to $60.00 per month.

The Commission received nine comments regarding the Real-Time Fee Proposal.[33] Two commenters supported NYSE's proposal to make OpenBook data available on a real-time basis. However, these commenters raised concerns about the contract terms and fees associated with OpenBook.[34] Several commenters argued that the NYSE has failed to justify the amount of the proposed real-time OpenBook fee.[35] In particular, the commenters maintained that the NYSE has not provided the data necessary to determine whether the $60 per terminal fee has any relation to costs, or whether it is an equitable allocation of the costs associated with using its facilities.[36] Similarly, one commenter asserted that the NYSE's fees for market data "bear no demonstrated relation to the costs the NYSE incurs in collecting and disseminating the data," and that the Act requires that such fees "be subjected to a rigorous cost-based analysis."[37] Another commenter noted that the NYSE provided no data regarding its costs or the formula it uses to determine the equitable allocation of its costs.[38] The commenter believed that without this information, the Commission lacks

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[29] *See* Bloomberg Letters II and III, *supra* note 11.

[30] *See* SIA Letter II, *supra* note 11.

[31] *See* SIA Letter II, *supra* note 11. Another commenter contended that the NYSE lacks the authority to regulate the activities of entities that are not NYSE members, including market data vendors. *See* Bloomberg Letter III, *supra* note 11. In this regard, the commenter notes that Section 6(b)(5) of the Act prohibits a national securities exchange from regulating "by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the exchange." This commenter argues that the Original Exhibit C Proposal is inconsistent with Section 6(b)(5) of the Act because it represents an attempt by the NYSE to use its regulatory authority to further its private commercial interests.

[32] Under both the Original Exhibit C Proposal and the New Exhibit C, the display requirements do not apply to a data recipient that distributes OpenBook data to its officers, partners, and employees or to those of its affiliates.

[33] *See* note 5, *supra*.

[34] *See* Ameritrade Letter I and STANY Letter *supra* note 5.

[35] *See, e.g.*, Ameritrade Letter I; Bloomberg Letter I; U.S. Chamber of Commerce Letter I; Schwab Letter, *supra* note 5; and SIA Letter II, *supra* note 11.

[36] *See* Schwab Letter, *supra* note 5, and SIA Letter II, *supra* note 11. *See also* Ameritrade Letter I (the Commission should require the NYSE to support its OpenBook fees by detailing the costs of providing the data), *supra* note 5; and U.S. Chamber of Commerce Letters I and II (asserting that "there is no way to ascertain whether the $60 per month terminal fee bears any relationship to costs, whether those costs are reasonably allocated, [and] whether the Congressional mandate that market data fees be 'fair and reasonable' is being met"), *supra* notes 5 and 11.

[37] *See* Bloomberg Letter I, *supra* note 5.

[38] *See* Ameritrade Letter II, *supra* note 11. *See also* SIA Letter II, *supra* note 11.

a legally sufficient foundation to approve the proposed fee.[39]

Some commenters criticized the lack of a separate OpenBook fee for non-professional investors.[40] One commenter maintained that the NYSE's proposal fails to explain how the lack of a non-professional OpenBook fee meets the requirements of Section 6(b)(5) of the Act, which, among other things, requires that the rules of a national securities exchange be designed to promote a free and open market and a national market system, to protect investors and the public interest, and to prevent unfair discrimination between customers, brokers, and dealers.[41] The commenter asserted that the proposed OpenBook fee places retail investors at a disadvantage and operates as a denial of access to retail investors, including active traders.[42] Similarly, another commenter believed that the NYSE's proposal "would create a bifurcated market in which retail investors are clearly disadvantaged."[43] The commenters also noted that Nasdaq provides a non-professional fee for its similar TotalView product.[44]

In its response to the commenters, the NYSE reiterated its assertion that the $60 per month per terminal fee for the real-time OpenBook service reflects an equitable allocation of the overall costs of using the NYSE's facilities.[45] The NYSE also noted that in approving the current OpenBook fees, the Commission found that the fees were consistent with Section 6(b)(4) of the Act and were reasonable when compared to similar types of services provided by other markets.[46] In addition, the NYSE stated that the Commission has approved a monthly $70 charge for professional subscribers to Nasdaq's TotalView service, which is comparable to the OpenBook service.[47]

With respect to the lack of a non-professional fee for the OpenBook service, the NYSE asserted that it has "noted no discernible demand for OpenBook from retail investors."[48] However, the NYSE represented that it intends to review with the industry whether there is sufficient demand for depth-of-book information among non-professional subscribers to justify a depth-of-book product and fee for non-professional subscribers.[49] The NYSE also noted that its Hybrid initiative may have an impact on the demand for such a product.[50]

IV. Discussion and Commission Findings

For the reasons discussed below, the Commission finds that the Exhibit C Proposal, as amended by Amendment No. 2, and the Real-Time Fee Proposal, are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[51]

A. Exhibit C Proposal

The Commission finds that the Exhibit C Proposal, as amended by Amendment No. 2, is consistent with Section 6(b)(5) of the Act,[52] 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. In addition, the Commission finds that the Exhibit C Proposal, as amended by Amendment No. 2, is consistent with Section 6(b)(8) of the Act,[53] which requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission has considered the comments received regarding the Original Exhibit C Proposal and believes that the NYSE has addressed the commenters' concerns in the New Exhibit C. In the New Exhibit C, the NYSE has decided to allow market data vendors to provide the integrated screens that commenters state that end users desire. The Commission believes that the NYSE's New Exhibit C should allow market data vendors to provide their subscribers with useful data without imposing unnecessary restrictions, which should help to perfect the mechanism of a free and open market.

B. Real-Time Fee Proposal

The Commission finds that the Real-Time Fee Proposal is consistent with Section 6(b)(4) of the Act,[54] which requires that the rules of a national securities exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities. Specifically, the Commission believes that the NYSE's proposed monthly per-terminal fee of $60 for real-time OpenBook data is reasonable when compared to the fees for Nasdaq's TotalView service.[55]

The Commission has considered the commenters' concerns that the proposed OpenBook fee discriminates unfairly against retail investors. The Commission notes, however, that the NYSE has represented that it intends to review with the industry whether there is sufficient demand for depth-of-book information among non-professional subscribers to justify a depth-of-book product and fee for non-professional subscribers.[56] The NYSE acknowledges that its Hybrid initiative may have an impact on the demand for such a product.[57]

C. Accelerated Approval of Amendment No. 2 to the Exhibit C Proposal

The Commission finds good cause for approving Amendment No. 2 to the Exhibit C Proposal prior to 30 days after the date of publication of notice of filing thereof in the **Federal Register**. The NYSE filed Amendment No. 2 to the Exhibit C Proposal in response to the comments submitted regarding the Original Exhibit C Proposal. Because Amendment No. 2 to the Exhibit C Proposal responds to the commenters' concerns, the Commission finds good cause for approving Amendment No. 2 to the Exhibit C Proposal on an accelerated basis.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2 to the Exhibit C Proposal, including whether Amendment No. 2 to the Exhibit C Proposal is consistent with the

[39] *See* Ameritrade Letter II, *supra* note 11.

[40] *See* Schwab Letter, *supra* note 5, and SIA Letters I and II, *supra* notes 5 and 11. *See also* Ameritrade Letter I, *supra* note 5 (the Commission should require the NYSE to revise its fee structure so that OpenBook data may be "provided to retail investors at a cost reasonably related to the actual cost of providing the data feed").

[41] *See* Schwab Letter, *supra* note 5.

[42] *See* Schwab Letter, *supra* note 5.

[43] *See* Ameritrade Letter I, *supra* note 5.

[44] *See* SIA Letters I and II, *supra* notes 5 and 11, and Schwab Letter, *supra* note 5.

[45] *See* NYSE Response Letters, *supra* note 12.

[46] *See* NYSE Response Letters, *supra* note 12, citing the OpenBook Fee Order, *supra* note 14.

[47] *See* NYSE Response Letters, *supra* note 12. *See also* NASD Rule 7010(q), "Nasdaq TotalView."

[48] *See* NYSE Response Letters, *supra* note 12.

[49] *See* Amendment No. 2 to the Exhibit C Proposal.

[50] *See* Amendment No. 2 to the Exhibit C Proposal.

[51] In approving these rules, the Commission has considered their impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[52] 15 U.S.C. 78f(b)(5).

[53] 15 U.S.C. 78f(b)(8).

[54] 15 U.S.C. 78f(b)(4).

[55] *See* note 47, *supra*, and accompanying text. *See also* OpenBook Fee Order, *supra* note 14, at note 5 (discussing other markets' fees for limit order book information).

[56] *See* Amendment No. 2 to the Exhibit C proposal.

[57] *See* Amendment No. 2 to the Exhibit C proposal.

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–NYSE–2005–32 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 20549–9303.

All submissions should refer to File Number SR–NYSE–2005–32. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2005–32 and should be submitted on or before April 28, 2006.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[58] that the Real-Time Fee Proposal (SR–NYSE–2004–43) and the Exhibit C Proposal (SR–NYSE–2005–32), as amended by Amendment No. 2 to the Exhibit C Proposal, are approved, and that Amendment No. 2 to the Exhibit C Proposal is approved on an accelerated basis.

[58] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[59]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5058 Filed 4–6–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53584; File No. SR–Phlx–2006–04]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to Dissemination of Index Values

March 31, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 12, 2006, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Phlx filed Amendment No. 1 to the proposed rule change on March 23, 2006 and submitted notification of withdrawal of Amendment No. 1 on March 24, 2006. On March 24, 2006, the Phlx filed Amendment No. 2 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to continue the listing and trading of options on various stock indices upon making certain changes to the procedures for dissemination of the values of the indices. Specifically, Phlx has determined to license the current and closing index values underlying options currently listed pursuant to Commission approval pursuant to Rule 19b–4 rule filings, namely, the Phlx Gold/Silver Sector℠ ("XAU℠"), Phlx Oil Service Sector℠ ("OSX℠"), Phlx Semiconductor Sector ("SOX℠"), and the Phlx Utility Sector℠ ("UTY℠") (together, the "Approved Index Options"), as well as values of most of Phlx's other proprietary indexes, to its wholly owned subsidiary, the Philadelphia Board of Trade ("PBOT"),[4] for the purpose of selling, reproducing, and distributing the index values over PBOT's Market Data Distribution Network ("MDDN").[5] The Exchange proposes that the index values underlying the Approved Index Options will no longer be disseminated as described in their respective Rule 19b–4 filings and approval orders.[6] The Exchange is also seeking approval to cease disseminating the current and closing index values of all its proprietary indexes over the facilities of the Consolidated Tape Association ("CTA"), and to disseminate such values solely over the PBOT's MDDN.[7] Finally, the Exchange is seeking approval for the subscriber fees to be charged to market data vendors by PBOT for all the values of Phlx's proprietary indexes disseminated by PBOT's MDDN.

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 Phlx included statements concerning the purpose of and basis for the proposed rule change. The text of these

[59] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment No. 2 supersedes and replaces the original filing in its entirety.

[4] PBOT is a dormant designated contract market regulated by the Commodity Futures Trading Commission (the "CFTC"). Until November 30, 2005, when it became dormant, PBOT listed futures contracts on a number of foreign currencies. PBOT has applied to the CFTC for reinstatement for dormancy and expects to launch a new electronic trading platform, PBOT XL, in the near future.

[5] Phlx also lists and trades options on a number of other stock indices whose values will not be disseminated by PBOT. Those indices will continue to be maintained, and options thereon will continue to be listed, as they are today. PBOT has, however, secured a similar license from one other index provider, and Phlx anticipates that PBOT will enter into similar license agreements with proprietors of other indexes underlying options traded on the Phlx.

[6] *See* Securities Exchange Act Release Nos. 20437 (December 2, 1983), 48 FR 55229 (December 9, 1983) (XAU); 38207 (January 27, 1997), 62 FR 5268 (February 4, 1997) (OSX); 34546 (August 18, 1994), 59 FR 43881 (August 25, 1994) (SOX); 24889 (September 9, 1987), 52 FR 35021 (September 16, 1987) (UTY).

[7] Phlx's proprietary indexes are, in addition to the indexes underlying the Approved Index Options, the Phlx Defense Sector℠, Phlx Drug Sector℠, Phlx Europe Sector℠, Phlx Housing Sector℠, and the Phlx World Energy Index℠, all of which were listed pursuant to Phlx Rule 1009A(b), the Exchange's generic index option listing standard rule. Phlx's proprietary indexes are owned and maintained by Phlx. The Exchange has determined not to remove the Phlx World Energy Index℠ ("XWE"℠) and the Phlx Europe Sector℠ ("XEX"℠) from CTA immediately, but is requesting approval to do so when and if the Exchange determines that disseminating these indexes in the same manner as its other proprietary indexes will be appropriate.

statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to effectuate changes to index dissemination procedures whereby PBOT will be disseminating index value information, as described above. Currently, the Exchange realizes no revenues from the sale of current and closing index values disseminated over CTA that are not shared with other CTA Plan participants but wants to going forward.[8]

In anticipation of the launch of PBOT XL, the PBOT's fully electronic matching engine, PBOT has contracted with SAVVIS Communications to provide extranet services for the distribution of certain futures market data. This new internet protocol multicast network is known as the PBOT MDDN.[9] It is anticipated that PBOT's MDDN will disseminate quote and trade information regarding futures contracts executed on the PBOT, but will not disseminate quote and trade information regarding securities products. Further, as proposed herein, PBOT's MDDN will disseminate index value information.

Additionally, in order to facilitate creation of revenues from the sale of current and closing values for Phlx proprietary indexes, the Phlx will remove those values from CTA. At that time, those index values will not be available from CTA and will be available only through the PBOT's MDDN.[10] They will, however, continue to be disseminated by major market data vendors, as explained below.[11]

In contemplation of removing the index values from CTA, the Exchange has entered into a license agreement with PBOT in which the Exchange granted to PBOT, subject to the terms and conditions set forth therein, a non-exclusive, fully-paid, royalty-free, worldwide right and license to sell, offer for sale, perform, display, reproduce and distribute the current and closing index values derived from the Phlx proprietary indices to be disseminated over the MDDN.[12] Phlx or its third party designee will objectively calculate and make available to PBOT every 15 seconds real time current and closing index values on each trading day so that PBOT may market, sell, and distribute the values to third parties. The three industry leading market data vendors will be making the real time market data available to subscribers, as will several mid-tier vendors.[13] Finally, the parties acknowledged and agreed that the goodwill created from PBOT's exercise of its rights under the agreement would constitute the full consideration for the grant of licenses therein.

PBOT, in turn, will execute and has executed agreements with various vendors of market data for the right to receive, store, and retransmit the current and closing index values transmitted over the MDDN.[14] The subscriber fees payable to PBOT by vendors for the use or resale of these values are set forth in those agreements. Phlx is proposing that all vendors will be charged, based upon usage by their subscribers,[15] a monthly fee of (a) $1.00 per "Device," as defined in the agreement,[16] that is used by vendors and their subscribers to receive and re-transmit Phlx proprietary sector index current and settlement values on a real time basis and disseminated every 15 seconds, and (b) $.00025 per request for snapshot data, which is essentially market data that is refreshed no more frequently than once every 60 seconds, or $1,500 per month for unlimited snapshot data requests.[17] The fees are summarized in table format below:

Fee (per month)	Real-time continuous market data	Delayed only
Per Device/User ID/Terminal ID	$1.00 per Device*	None.
Fee (per month)	**Snapshot market data**	**Delayed only**
	$0.0025 per snapshot request*	None.
	OR	

[8] Currently, market data vendors pay a $200.00 monthly fee to CTA for the right to redistribute current and closing index values on a real time basis, together with delayed last sale data.

[9] Additional information regarding the PBOT MDDN can be found on the Exchange's Web site at *http://www.phlx.com/pbot/Market_Data/mktdata.html*.

[10] As noted above, for business reasons the Phlx World Energy Index℠ and the Phlx Europe Sector℠ will not initially be disseminated over the MDDN but will continue to be disseminated over the facilities of CTA. *See supra* note 7.

[11] PBOT has and will also enter into license agreements with one or more third party index providers to sell, reproduce, and distribute index values which underlie other Phlx traded options listed pursuant to Rule 19b–4(e) under the Act. Those index values will also be removed from CTA.

[12] The license does not include the right to sublicense, modify, improve or create derivative works of, the values or the indices.

[13] The term "vendors" as used herein includes subvendors which receive the market data feed from vendors rather than directly from PBOT, but which execute the same agreement with PBOT that vendors execute and pay the same subscriber fees.

[14] Approximately 25 vendors, including for example Bloomberg L.P., Telekurs Financial Information Ltd. and Thomson Financial, have already entered into such market data agreements with PBOT. At least three of the vendors have elected to offer only the continuous real-time market data and will not offer snapshot or delayed data. The fees described in this proposed rule change cover values of all the indexes disseminated over the MDDN.

[15] These fees will be subject to the possibility of a 15% Administrative Fee deduction as described in footnote 18.

[16] The definition of "Device" in the agreement is complex and incorporates a number of other defined terms. The agreement provides that "Device" shall mean, in case of each Subscriber and in such Subscriber's discretion, either any Terminal or any End User. For the avoidance of doubt, a Subscriber's Device may be exclusively Terminals, exclusively End Users or a combination of Terminals or End Users and shall be reported in a manner that is consistent with the way the Vendor identifies such Subscriber's access to Vendor's data.

By way of further explanation, an "End User" is an individual authorized or allowed by a vendor or a Subscriber to access and display real time market data that distributed by PBOT over the MDDN; and a "Terminal" is any type of equipment (fixed or portable) that accesses and displays such market data. For example, a vendor whose Subscribers collectively may access the index values on a real-time basis through 10,000 Devices would be assessed a monthly fee of $10,000. A vendor which makes available unlimited snapshot data to its customers would be assessed a monthly fee of $1500.00 regardless of the number of End Users or Devices involved.

[17] The index values may also be made available by vendors on a delayed basis (*i.e.*, no sooner than twenty minutes following receipt of the data by vendors) at no charge. The Exchange also notes that devices used in customer service areas or for purposes such as quality control, software programming, sales demonstrations, or promotions are not subject to any fees.

[18] All market data vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee deduction for that month, to be deducted from the monthly Subscriber Fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement. Phlx also believes that the fees to be charged by PBOT are consistent with the requirements of Commission Rule 603, *Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks*, in that the fees are fair and reasonable and not unreasonably discriminatory.

Fee (per month)	Snapshot market data	Delayed only
	$1,500 per month for unlimited snapshot requests*	None.

*Vendors which provide market data to 200,000 or more Devices in any month qualify for a 15% Administrative Fee deduction for that month.[18]

Separate charges will apply for futures market data, which is not the subject of this proposed rule change. However, the agreements will provide that PBOT may change any of the fees enumerated in the agreement by giving the vendor or subvendor advance written notice of such changes.[19] Under the agreements and consistent with industry practice, vendors will be free to assess whatever fees they agree to with subscribers.

In the various proposed rule changes filed by the Exchange seeking Commission approval for the listing and trading of the Approved Index Options, the Exchange made certain representations regarding the manner in which index values would be disseminated. The Commission's approval orders also described the index value dissemination procedures in some cases. The Exchange now proposes to continue the listing and trading of options on various stock indices upon ceasing the dissemination of index values over CTA Tape B as described above. However, current index values will continue to be disseminated as required by Phlx Rule 1100A.[20] Moreover, the current index values will be widely disseminated by one or more major market data vendors at least every 15 seconds during trading hours on the Exchange.[21] Phlx will also continue to maintain the indexes underlying the Approved Index Options as described in their respective Rule 19b–4 filings and approval orders. Phlx anticipates that it may list options on new Phlx proprietary indexes in the future, in which event the underlying current and closing values of those new indexes will also be disseminated over the PBOT MDDN and not over CTA Tape B. Further, the Exchange may determine at a later date to remove the Phlx World Energy Index℠ ("XWE" ℠) and the Phlx Europe Sector℠ ("XEX" ℠) and disseminate their values over PBOT's MDDN, like the other Phlx proprietary indexes.

2. Statutory Basis

The Exchange believes that its amended proposal is consistent with Section 6(b) of the Act[22] in general, and furthers the objectives of Section 6(b)(5) of the Act[23] in particular, in that it is 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, by permitting the Exchange to cause the dissemination of index values in a manner that will enhance the value to the Exchange of indexes which the Exchange owns, while continuing to maintain the listing and trading of options on these indices as an investment alternative available to investors. The Exchange also believes that its proposal furthers the objectives of Section 6(b)(4) of the Act[24] in particular, in that it is an equitable allocation of reasonable fees among persons using its facilities. The Exchange believes that PBOT's proposed fee structure is reasonable and equitable, as it is based on the type of data received (real-time, delayed and snapshot), which is, in turn, generally based on the timeliness of the data. As noted above, market data vendors which provide market data to 200,000 or more Devices in any given month qualify for a 15% Administrative Fee for that month, to be deducted from the monthly subscriber fees that they collect and are obligated to pay PBOT under the Vendor/Subvendor Agreement.[25] The Exchange believes that the 15% Administrative Fee is equitable because any vendor which provides market data to 200,000 or more Devices in any given month will qualify for the Administrative Fee. PBOT is offering the Administrative Fee as an incentive for large market data vendors to carry the data disseminated by the PBOT network. Phlx also believes that the fees to be charged by PBOT are consistent with the requirements of Commission Rule 603, *Distribution, consolidation, and display of information with respect to quotations for and transactions in NMS stocks,* in that the fees are fair and reasonable and not unreasonably discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition 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

Although the Exchange received no written comments on the proposed rule change to continue listing and trading the Approved Index Options following changes in the index dissemination procedures or the level of fees to be charged by PBOT, the Exchange did receive one comment on the Exchange's underlying decision to remove index values from the consolidated tape and disseminate them over the PBOT MDDN.[26] While the commenter did not specify the basis for his conclusion that the proposed changes would reduce the volume in index options to zero, the Exchange continues to believe that continued listing and trading of the Approved Index Options after underlying index values are removed from the consolidated tape is appropriate, as are the relocation of all Phlx proprietary index values from the consolidated tape to the PBOT MDDN and the fees to be assessed by PBOT, and, so long as the values continue to be widely disseminated by one or more market data vendors, is consistent with the Act.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or

[19] The Commission notes that any such fee changes would need to be submitted under Section 19(b) of the Act.

[20] Phlx Rule 1100A(a) provides that "[t]he Exchange shall disseminate or shall assure that the closing index value is disseminated after the close of business and the current index value is disseminated from time-to-time on days on which transactions in index options are made on the Exchange."

[21] Current underlying index values for narrow-based index options trading pursuant to Phlx Rule 1009A(b) and Rule 19b–4(e) under the Act are also reported at least once every 15 seconds during the time the index options are traded on the Exchange pursuant to Phlx Rule 1009A(b)(10).

[22] 15 U.S.C. 78f(b).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78f(b)(4).

[25] *See* footnote 18 above.

[26] *See* e-mail from Brian Schaer to the Exchange dated Thursday, August 25, 2005.,

(ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

The Commission is considering granting accelerated approval of the proposed rule change at the end of a 15-day comment period.[27]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the amended proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–Phlx–2006–04 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–Phlx–2006–04. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Phlx. 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–Phlx–2006–04 and should be submitted on or before April 24, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Nancy M. Morris,

Secretary.

[FR Doc. E6–5057 Filed 4–6–06; 8:45 am]

BILLING CODE 8010–01–P

[27] The Phlx has requested accelerated approval of this proposed rule change prior to the 30th day after the date of publication of the notice of the filing thereof, following the conclusion of a 15-day comment period.

[28] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10439]

Oregon Disaster #OR–00012

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 Oregon (FEMA–1632–DR), dated 03/20/2006.

Incident: Severe storms, flooding, landslides, and mudslides.

Incident Period: 12/18/2005 through 01/21/2006.

Effective Date: 03/20/2006.

Physical Loan Application Deadline Date: 05/19/2006.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 03/20/2006, 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: Benton, Coos, Gilliam, Lincoln, Tillamook, Clackamas, Crook, Jackson, Linn, Wheeler, Clatsop, Curry, Jefferson, Polk, Columbia, Douglas, Josephine, Sherman

And the Confederated Tribes of the Warm Springs Reservation

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 10439.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E6–5060 Filed 4–6–06; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #10435 and #10436]

Texas Disaster # TX–00154

AGENCY: U.S. Small Business Administration.

ACTION: Notice

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Texas dated 03/31/2006.

Incident: Hail, high winds, and a tornado.

Incident Period: 03/19/2006.

Effective Date: 03/31/2006.

Physical Loan Application Deadline Date: 05/30/2006.

Economic Injury (EIDL) Loan Application Deadline Date: 01/02/2007.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, National Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:
UVALDE

Contiguous Counties: Texas
Bandera, Kinney, Real, Edwards, Maverick, Zavala, Frio, Medina

The Interest Rates are:

	Percent
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Business with credit available elsewhere	7.408
Business and small agricultural cooperatives without credit available elsewhere	4.000
Other (including non-profit organizations) with credit available elsewhere	5.000
Business and non-profit organizations without credit available elsewhere	4.000

The States which received an EIDL Declaration # is Texas.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: March 31, 2006.

Hector V. Barreto,

Administrator.

[FR Doc. E6–5061 Filed 4–6–06; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 5370]

Culturally Significant Object Imported for Exhibition Determinations: Paul Gauguin's "Te Rerioa"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object Paul Gauguin's "Te Rerioa," imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at The J. Paul Getty Museum, Los Angeles, CA, from on or about May 11, 2006, until on or about October 1, 2006, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit object, contact Wolodymyr Sulznsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW. Room 700, Washington, DC 20547–0001.

Dated: March 27, 2006.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E6–5130 Filed 4–6–06; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 5369]

United States Climate Change Science Program

The United States Climate Change Science Program requests expert review of the Working Group I contribution ("Climate Change 2007: The Physical Science Basis") to the Intergovernmental Panel on Climate Change Fourth Assessment Report.

The Intergovernmental Panel on Climate Change (IPCC) was established by the United Nations Environment Programme (UNEP) and the World Meteorological Organization (WMO) in 1988. In accordance with its mandate and as reaffirmed in various decisions by the Panel, the major activity of the IPCC is to prepare comprehensive and up-to-date assessments of policy-relevant scientific, technical, and socio-economic information relevant for understanding the scientific basis of climate change, potential impacts, and options for mitigation and adaptation. The First Assessment Report was completed in 1990, the Second Assessment Report in 1995, and the Third Assessment Report in 2001. Three working group volumes and a synthesis report comprise the Fourth Assessment Report, with all to be finalized in 2007. Working Group I assesses the scientific aspects of the climate system and climate change; Working Group II assesses the vulnerability of socio-economic and natural systems to climate change, potential negative and positive consequences, and options for adapting to it; and Working Group III assesses options for limiting greenhouse gas emissions and otherwise mitigating climate change. These assessments are based upon the peer-reviewed literature and are characterized by an extensive and open review process involving both scientific/technical experts and governments before being accepted by the IPCC.

The IPCC Secretariat has informed the U.S. Department of State that the second-order draft of the Working Group I contribution to the Fourth Assessment Report is available for Expert and Government Review. The Climate Change Science Program Office (CCSPO) is coordinating collection of U.S. expert comments and the review of these collations by panels of Federal scientists and program managers to develop a consolidated U.S. Government submission. Instructions on how to format comments are available at *http://www.climatescience.gov/Library/ipcc/wg14ar-review.htm*, as is the document itself and other supporting materials. Comments must be sent to CCSPO by May 9, 2006 to be considered for inclusion in the U.S. Government collation. Comments submitted for potential inclusion or consideration as part of the U.S. Government Review should be reserved for that purpose, and not also sent to the IPCC Working Group I Technical Support Unit as a discrete set of expert comments.

Properly formatted comments should be sent to CCSPO at *wg14AR–USGreview@climatescience.gov* by COB Tuesday, 9 May 2006. Include report acronym and reviewer surname in e-mail subject title to facilitate processing.

For further information, please contact David Dokken, U.S. Climate Change Science Program, Suite 250, 1717 Pennsylvania Ave, NW., Washington, DC 20006 (*http://www.climatescience.gov*).

Dated: April 3, 2006.

Trigg Talley,

Office Director, Acting, Office of Global Change, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State.

[FR Doc. E6–5131 Filed 4–6–06; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Advisory Circulars, Other Policy Documents and Proposed Technical Standard Orders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: This is a recurring Notice of Availability, and request for comments, on the draft advisory circulars (ACs), other policy documents, and proposed technical standard orders (TSOs) currently offered by the Aircraft Certification Service.

SUMMARY: The FAA's Aircraft Certification Service publishes proposed

non-regulatory documents that are available for public comment on the Internet at *http://www.faa.gov/aircraft/draft_docs/.*

DATES: We must receive comments on or before the due date for each document as specified on the Web site.

ADDRESSES: Send comments on proposed documents to the Federal Aviation Administration at the address specified on the website for the document being commented on, to the attention of the individual and office identified as point of contact for the document.

FOR FURTHER INFORMATION CONTACT: See the individual or FAA office identified on the website for the specified document.

SUPPLEMENTARY INFORMATION:

Comments Invited

When commenting on draft ACs, other policy documents or proposed TSOs, you should identify the document by its number. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing a final document. You can obtain a paper copy of the draft document or proposed TSO by contacting the individual or FAA office responsible for the document as identified on the Web site. You will find the draft ACs, other policy documents and proposed TSOs on the "Aircraft Certification Draft Documents Open for Comment" Web site at *http://www.faa.gov/aircraft/draft_docs/.* For Internet retrieval assistance, contact the AIR Internet Content Program Manager at 202–267–8361,

Background

We do not publish an individual **Federal Register** Notice for each document we make available for public comment. Persons wishing to comment on our draft ACs, other policy documents and proposed TSOs can find them by using the FAA's Internet address listed above. This notice of availability and request for comments on documents produced by the Aircraft Certification Service will appear again in 30 days.

Issued in Washington, DC, on April 3, 2006.

Terry Allen,

Acting Manager, Production and Airworthiness Division, Aircraft Certification Service.

[FR Doc. 06–3360 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Space Transportation Advisory Committee Working Group—Meeting Notice

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Commercial Space Transportation Advisory Committee Launch Operations and Support Working Group Telephone Conference.

SUMMARY: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 2), and 5 U.S.C. 552b(c), notice is hereby given of a telephone conference for the Launch Operations and Support Working Group of the Commercial Space Transportation Advisory Committee (COMSTAC). The agenda will include a report by the Working Group Chairperson, discussions on the commercial space launch programs for the National Aeronautics and Space Administration, and other updates on working group activities, and will take place on Tuesday, April 18, 2006, from 4 p.m. until 5:55 p.m., eastern daylight time. For the call-in telephone number and the passcode, contact the Contact Person listed below.

FOR FURTHER INFORMATION CONTACT: Brenda Parker (AST–100), FAA Office of Commercial Space Transportation (AST), 800 Independence Avenue, SW., Room 331, Washington, DC 20591, telephone (202) 267–3674; e-mail *brenda.parker@faa.dot.gov.*

Issued in Washington, DC, March 29, 2006.

Patricia G. Smith,

Associate Administrator for Commercial Space Transportation.

[FR Doc. E6–5052 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Docket No. FMCSA–2005–22905]

Qualification of Drivers; Exemption Applications; Diabetes

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA announces its decision to exempt six individuals from its rule prohibiting persons with insulin-treated diabetes mellitus (ITDM) from operating commercial motor vehicles (CMVs) in interstate commerce. The exemptions will enable these individuals to operate CMVs in interstate commerce.

DATES: The exemptions are effective April 7, 2006. The exemptions expire on April 7, 2008.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Chief, Physical Qualifications Division, (202) 366–4001, *maggi.gunnels@fmcsa.dot.gov,* FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

You may see all the comments online through the Document Management System (DMS) at: *http://dmses.dot.gov.*

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* and/or Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, Apr. 11, 2000). This statement is also available at *http://dms.dot.gov.*

Background

Authority to Grant Exemptions

Section 4007 of the Transportation Equity Act for the 21st Century (Pub. L. 105–178, 112 Stat. 107, June 9, 1998) (TEA 21) amended 49 U.S.C. 31315 and 31136(e) to provide FMCSA with authority to grant exemptions from its safety regulations. On December 8, 1998, the Federal Highway Administration's Office of Motor Carriers, the predecessor to FMCSA, published an interim final rule implementing section 4007 (63 FR 67600). On August 20, 2004, FMCSA published a Final Rule (69 FR 51589) on this subject. By this rule, FMCSA must publish a Notice of each exemption request in the **Federal Register** (49 CFR part 381), provide the public with an opportunity to inspect the information relevant to the application to include any safety analyses that have been conducted, and provide an opportunity for public comment on the request.

The Agency must then examine the safety analyses and the public comments, and determine whether the exemption would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation (49 CFR 381.305). The Agency's decision must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the Notice must specify the person or class of persons receiving the exemption, and the regulatory provision or provisions from which an exemption is being granted. The Notice must also specify the effective period of the exemption (up to two years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Establishment of FMCSA's Diabetes Exemption Program

FMCSA published a Notice of intent to issue exemptions to drivers with ITDM on July 31, 2001 (66 FR 39548). On September 3, 2003, the agency published a Notice of final disposition announcing its decision to issue exemptions to certain insulin-using diabetic drivers of CMVs from the diabetes mellitus prohibition under 49 CFR 391.41(b)(3). [68 FR 5241] ("2003 Notice"). The 2003 Notice explained that in considering exemptions, FMCSA must ensure that the issuance of diabetes exemptions will not be contrary to the public interest and that the exemption achieves an acceptable level of safety. The agency indicated it will only grant exemptions to insulin-using diabetic drivers that meet the eligibility criteria provided in its Notice of final disposition.

Because FMCSA established eligibility criteria for use in determining whether the granting of a diabetes exemption would achieve the requisite level of safety, the agency only publishes for public comment, the names of exemption applicants that satisfy the eligibility requirements, based upon the information provided by the applicant. Applicants who do not meet the requirements are notified by letter that their applications are denied and the agency periodically publishes the names of those individuals to satisfy the statutory requirement for disclosing such information to the public.

Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)

Section 4129 of SAFETEA–LU (Pub. L. 109–59, 119 Stat.1728, August 10, 2005) required FMCSA to begin, within 90 days of enactment, to revise the 2003 Notice to allow drivers who use insulin to treat diabetes to operate CMVs in interstate commerce. The revision must provide for individual assessment of drivers with ITDM, and be consistent with the criteria described in section 4018 of TEA–21.[1] Section 4129 required two substantive changes to be made in the exemption process set out in the 2003 Notice.

In response to section 4129, FMCSA made immediate revisions to the diabetes exemption program established by the 2003 Notice. FMCSA discontinued use of the 3-year driving experience criterion and fulfilled the requirements of section 4129. The changes are: (1) The elimination of the requirement for three years of experience operating CMVs while being treated with insulin; and (2) the establishment of a specified minimum period of insulin use to demonstrate stable control of diabetes before being allowed to operate a CMV. Section 4129(d) also directed FMCSA to ensure that CMV drivers with ITDM are not held to a higher standard than other drivers, with the exception of limited operating, monitoring and medical requirements that are deemed medically necessary. FMCSA concluded that all of the operating, monitoring and medical requirements set out in the 2003 Notice, except as modified, were in compliance with section 4129(d). All of the requirements set out in the 2003 Notice, other than those modified in the November 8, 2005 (70 FR 67777) **Federal Register** Notice, remain in effect.

On December 19, 2005, FMCSA published a Notice of receipt of diabetes exemption applications from six individuals, and requested comments from the public (70 FR 75236). The six individuals are: Daryle W. Belcher, William H. Gardner, Roy G. Hill, Anthony D. Izzi, Ronald D. Paul, and Kenneth L. Pogue. The public comment period closed on January 18, 2006. One comment was received, and fully considered by FMCSA in reaching the final decision to grant the exemptions.

FMCSA has evaluated the eligibility of the six applicants and made a determination that granting the exemptions to these individuals would achieve a level of safety equivalent to, or greater than, the level that would be achieved by complying with the current regulation 49 CFR 391.41(b)(3).

[1] Section 4129(a) refers to the 2003 Notice as a "final rule." However, as indicated above, the 2003 Notice did not issue a "final rule" but did establish the procedures and standards for issuing exemptions for drivers with ITDM.

Diabetes Mellitus and Driving Experience of the Applicants

The Agency established the current standard for diabetes in 1970 because several risk studies indicated that diabetic drivers had a higher rate of crash involvement than the general population. The diabetes rule provides that "A person is physically qualified to drive a commercial motor vehicle if that person has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control" (49 CFR 391.41(b)(3)).

FMCSA established its diabetes exemption program, based on the Agency's July 2000 study entitled "A Report to Congress on the Feasibility of a Program to Qualify Individuals with Insulin-Treated Diabetes Mellitus to Operate in Interstate Commerce as Directed by the Transportation Act for the 21st Century." The report concluded that a safe and practicable protocol to allow some insulin-treated diabetic drivers to operate CMVs is feasible. The 2003 Notice in conjunction with the November 8, 2005 (70 FR 67777) **Federal Register** Notice provides the current protocol for allowing such drivers to operate CMVs in interstate commerce.

These six applicants have had ITDM over a range of 5 to 30 years. These applicants report no hypoglycemic reaction that resulted in loss of consciousness or seizure, that required the assistance of another person, or resulted in impaired cognitive function without warning symptoms in the past 5 years (with one year of stability following any such episode). In each case, an endocrinologist has verified that the driver has demonstrated willingness to properly monitor and manage their diabetes, received education related to diabetes management, and is on a stable insulin regimen. These drivers report no other disqualifying conditions, including diabetes-related complications. Each meets the vision standard at 49 CFR 391.41(b)(10).

The qualifications and medical condition of each applicant were stated and discussed in detail in the December 19, 2005, **Federal Register** Notice (70 FR 75236). Because there were no docket comments on the specific merits or qualifications of any applicant, we have not repeated the individual profiles here.

Basis for Exemption Determination

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the diabetes standard in 49 CFR 391.41(b)(3) if the exemption is likely to

achieve an equivalent or greater level of safety than would be achieved without the exemption. The exemption allows the applicants to operate CMVs in interstate commerce.

To evaluate the effect of these exemptions on safety, FMCSA considered medical reports about the applicants' ITDM and vision, and reviewed the treating endocrinologist's medical opinion related to the ability of the driver to safely operate a CMV while using insulin.

Consequently, FMCSA finds that exempting these applicants from the diabetes standard in 49 CFR 391.41(b)(3) is likely to achieve a level of safety equal to that existing without the exemption. The agency is granting the exemptions for the 2-year period allowed by 49 U.S.C. 31315 and 31136(e) to Daryle W. Belcher, William H. Gardner, Roy G. Hill, Anthony D. Izzi, Ronald D. Paul, and Kenneth L. Pogue.

Conditions and Requirements

The terms and conditions of the exemption will be provided to the applicants in the exemption document.

Discussion of Comments

FMCSA received one comment in this proceeding. The comment is considered and is discussed below.

Charles A. Johnson commented that he is an insulin dependent diabetic who wanted to obtain a Commercial Driver's License (CDL) and found out the FMCSRs include a blanket prohibition against him doing so. He is shocked that the regulation exists when the advancements in diabetes management are rapid and constant. He is of the opinion that quarterly visits to a diabetes specialist in which the review of Glycosylated hemoglobin (A1c) tests and blood glucose levels are evaluated is sufficient and that copies of A1c information should be required to be forwarded to the state of licensure.

FMCSA is responsible for the establishment and enforcement of physical qualifications standards applicable to drivers who operate CMVs in interstate commerce. The Agency is also responsible for CDL testing and licensing procedures used by the states in issuing CDLs. Drivers who operate CMVs in interstate commerce must meet the Federal physical qualifications standards to obtain a CDL. Drivers who operate exclusively in intrastate commerce are required to comply with the applicable State rules concerning physical qualifications to obtain a CDL.

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to allow drivers who are not qualified under section 391.41(b)(3) to apply for an exemption from the Federal standard. The Agency must ensure that each exemption would achieve a level of safety equivalent to, or greater than, the level achieved without the exemption. This means that drivers who intend to apply for an exemption should have sufficient medical data, to include a review of blood glucose measurements and hemoglobin A1c information by the treating endocrinologist, and any other relevant information necessary to support a determination by the Agency that granting them exemptions from 391.41(b)(3) would achieve the required level of safety.

Conclusion

After considering the comments to the docket and based upon its evaluation of the 6 exemption applications, FMCSA exempts Daryle W. Belcher, William H. Gardner, Roy G. Hill, Anthony D. Izzi, Ronald D. Paul, and Kenneth L. Pogue from the ITDM standard in 49 CFR 391.41(b)(3), subject to the conditions listed under "Conditions and Requirements" above.

In accordance with 49 U.S.C. 31315 and 31136(e), each exemption will be valid for two years unless revoked earlier by FMCSA. The exemption will be revoked if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136. If the exemption is still effective at the end of the 2-year period, the person may apply to FMCSA for a renewal under procedures in effect at that time.

Issued on: March 29, 2006.

Rose A. McMurray,

Associate Administrator, Policy and Program Development.

[FR Doc. E6–5056 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Availability of the Updated "Your Rights and Responsibilities When You Move" Pamphlet

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: FMCSA announces the availability of the 2006 version of the "Your Rights and Responsibilities When You Move" pamphlet (Publication No. FMCSA–ESA–03–006, Revised/Updated April 2006). Only those changes mandated by Subtitle B, sections 4201–4216, of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) [Pub. L. 109–59, August 10, 2005, 119 Stat. 1751] have been incorporated into this pamphlet. The Agency finds that seeking public comment before publishing changes to this pamphlet is unnecessary and contrary to the public interest. First, FMCSA is only modifying this pamphlet to incorporate requirements of SAFETEA-LU which took effect on August 10, 2005. Second, moving companies are required to provide copies of the pamphlet to household goods shippers. Thus, the pamphlet needs to accurately reflect these statutory changes without further delay.

ADDRESSES: FMCSA's "Your Rights and Responsibilities When You Move" pamphlet will be available—after April 7, 2006—on its Web site at *http://www.protectyourmove.gov/consumer/awareness/rights/Rights1.htm*. Follow the instructions for downloading this pamphlet.

FOR FURTHER INFORMATION CONTACT: Federal Motor Carrier Safety Administration, Office of Compliance and Enforcement, Commercial Enforcement Division (MC–ECC), (202) 385–2400, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday except Federal holidays.

Issued on: March 31, 2006.

Annette M. Sandberg,

Administrator.

[FR Doc. E6–5048 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these

information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than June 6, 2006.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590, or Mr. Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number _____." Alternatively, comments may be transmitted via facsimile to (202) 493–6230 or (202) 493–6170, or E-mail to Mr. Brogan at *robert.brogan@fra.dot.gov*, or to Mr. Angelo at *victor.angelo@fra.dot.gov*. Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292) or Victor Angelo, Office of Support Systems, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6470). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(I)–(iv); 5 CFR 1320.8(d)(1)(I)–(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a "user friendly" format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. *See* 44 U.S.C. 3501.

Below are brief summaries of eight currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

OMB Control Number: 2130–0006.

Type of Request: Extension of a currently approved collection.

Affected Public: Businesses.

Form Number(s): N/A.

Abstract: The regulations pertaining to railroad signal systems are contained in 49 CFR parts 233 (Signal System Reporting Requirements), 235 (Instructions Governing Applications For Approval of A Discontinuance or Material Modification of a Signal System), and 236 (Rules, Standards, and Instructions Governing the Installation, Inspection, Maintenance, and Repair of Systems, Devices, and Appliances). Section 233.5 provides that each railroad must report to FRA within 24 hours after learning of an accident or incident arising from the failure of a signal appliance, device, method, or system to function or indicate as required by part 236 of this Title that results in a more favorable aspect than intended or other condition hazardous to the movement of a train. Section 233.7 sets forth the specific requirements for reporting signal failures within 15 days in accordance with the instructions printed on Form FRA F 6180.14. Finally, Section 233.9 sets forth the specific requirements for the "Signal System Five Year Report." It requires that every five years each railroad must file a signal system status report. The report is to be prepared on a form issued by FRA in accordance with the instructions and definitions provided. Title 49, Part 235 of the Code of Federal Regulations, sets forth the specific conditions under which FRA approval of modification or discontinuance of railroad signal systems is required and prescribes the methods available to seek such approval. The application process prescribed under Part 235 provides a vehicle enabling FRA to obtain the necessary information to make logical and informed decisions concerning carrier requests to modify or discontinue signaling systems. Section 235.5 requires railroads to apply for FRA approval to discontinue or materially modify railroad signaling systems. Section 235.7 defines material modifications and identifies those changes that do not require agency approval. Section 235.8 provides that any railroad may petition FRA to seek relief from the requirements under 49 CFR part 236. Sections 235.10, 235.12, and 235.13 describe where the petition must be submitted, what information must be included, the organizational format, and the official authorized to sign the application. Section 235.20 sets forth the process for protesting the granting of a carrier application for signal changes or relief from the rules, standards, and instructions. This section provides the information that must be included in the protest, the address for filing the protest, the item limit for filing the protest, and the requirement that a person requesting a public hearing explain the need for such a forum. Section 236.110 requires that the test results of certain signaling apparatus be recorded and specifically identify the tests required under sections 236.102–109; sections 236.377–236.387; sections 236.576; 236.577; and section 236.586–589. Section 236.110 further provides that the test results must be recorded on pre-printed or computerized forms provided by the carrier and that the forms show the name of the railroad, place and date of the test conducted, equipment tested, test results, repairs, and the condition of the apparatus. This section also requires that the employee conducting the test must sign the form and that the record be retained at the office of the supervisory official having the proper authority. Results of tests made in

compliance with sections 236.587 must be retained for 92 days, and results of all other tests must be retained until the next record is filed, but in no case less than one year. Additionally, section 236.587 requires each railroad to make a departure test of cab signal, train stop, or train control devices on locomotives before that locomotive enters the equipped territory. This section further requires that whoever performs the test must certify in writing that the test was properly performed. The certification and test results must be posted in the locomotive cab with a copy of the certification and test results retained at the office of the supervisory official having the proper authority. However, if it is impractical to leave a copy of the certification and test results at the location of the test, the test results must be transmitted to either the dispatcher or one other designated official who must keep a written record of the test results and the name of the person performing the test. All records prepared under this section are required to be retained for 92 days. Finally, section 236.590 requires the carrier to clean and inspect the pneumatic apparatus of automatic train stop, train control, or cab signal devices on locomotives every 736 days, and to stencil, tag, or otherwise mark the pneumatic apparatus indicating the last cleaning date.

Reporting Burden:

CFR section	Respondent universe	Total annual respose	Average time per response	Total annual burden hours	Total annual burden cost
233.5—Reporting of accidents	685 railroads	10 phone calls	30 minutes	5 hours	$170
233.7—False proceed signal failures report	685 railroads	100 reports	15 minutes	25 hours	850
235.5—Block signal applications	80 railroads	111 applications	10 hours	1,110 hours	37,740
235.8—Applications for relief	80 railroads	24 relief requests	2.5 hours	60 hours	2,040
235.20—Protect letters	80 railroads	84 protest letters	30 minutes	42 hours	1,426
236.110—Recordkeeping	80 railroads	936,550 forms	27 minutes	427,881 hours	14.547,954
236587—Departure tests	18 railroads	730,000 tests	4 minutes	48,667 hours	1,654,678
236.590—Pneumatic values	18 railroads	6,697 stencilings	22.5 minutes	2,511 hours	85,374

Total Estimated Responses: 1,673,576.

Total Estimated Annual Burden: 480,301 hours.

Status: Regular Review.

Title: Remotely Controlled Switch Operations.

OMB Control Number: 2130–0516.

Abstract: Title 49, Section 218.30 of the Code of Federal Regulations (CFR), ensures that remotely controlled switches are lined to protect workers who are vulnerable to being struck by moving cars as they inspect or service equipment on a particular track or, alternatively, occupy camp cars. FRA believes that production of notification requests promotes safety by minimizing mental lapses of workers who are simultaneously handling several tasks. Sections 218.30 and 218.67 require the operator of remotely controlled switches to maintain a record of each notification requesting blue signal protection for 15 days. Operators of remotely controlled switches use the information as a record documenting blue signal protection of workers or camp cars. This record also serves as a valuable resource for railroad supervisors and FRA inspectors monitoring regulatory compliance.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

CFR section	Respondent universe	Total annual response	Average time per response	Total annual burden hours	Total annual burden cost
218.30—Blue signal protection of workmen	70 railroads	3,600,000 notifications	2 minutes	120,000 hours	$3,720,000
218.77—Protection of occupied camp cars	7 railroads	4,000 notfications	4 minutes	267 hours	8,2770

Total Estimated Responses: 3,604,000.

Total Estimated Annual Burden: 120,267 hours.

Status: Regular Review.

Title: Disqualification Proceedings.

OMB Control Number: 2130–0529.

Abstract: Under 49 U.S.C. 20111(c), FRA is authorized to issue orders disqualifying railroad employees, including supervisors, managers, and other agents, from performing safety-sensitive service in the rail industry for violations of safety rules, regulations, standards, orders, or laws evidencing unfitness. FRA's regulations, 49 CFR part 209, subpart D, implement the statutory provision by requiring (i) a railroad employing or formerly employing a disqualified individual to disclose the terms and conditions of a disqualification order to the individual's new or prospective employing railroad; (ii) a railroad considering employing an individual in a safety-sensitive position to ask the individual's previous employing railroad whether the individual is currently serving under a disqualification order; and (iii) a disqualified individual to inform his new or prospective employer of the disqualification order and provide a copy of the same. Additionally, the regulations prohibit a railroad from employing a person serving under a disqualification order to work in a safety-sensitive position. This information serves to inform a railroad whether an employee or prospective employee is currently disqualified from performing safety-sensitive service based on the issuance of a disqualification order by FRA. Furthermore, it prevents an individual currently serving under a disqualification order from retaining and obtaining employment in a safety-sensitive position in the rail industry.

Form Number(s): N/A.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
Respondent reply to disqualification order	40,000 Locomotive Engineers.	1 documented reply	3 hours	3 hours	$135
Informal reply to proposed disqualification order	40,000 Locomotive Engineers.	1 informal response	1 hour	1 hour	45
Provide copy of disqualification order to prospective employer.	685 Railroads	1 notification	30 minutes	1 hour	45
Request copy of disqualification order from previouis employer.	685 Railroads	Usual and customary procedure.	N/A	N/A	N/A

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on April 3, 2006.

Belinda Ashton,

Acting Director, Office of Budget, Federal Railroad Administration.

[FR Doc. 06–3361 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Canadian National Railway Company

[Waiver Petition Docket Number FRA–2006–24224]

The Canadian National Railway Company (CN) on behalf of its wholly owned subsidiaries, Illinois Central Railroad Company, Wisconsin Central, Ltd, Grand Trunk and Western Railroad Company, Chicago Central & Pacific Railroad Company, Duluth, Winnipeg & Pacific Railroad Company, Bessemer & Lake Erie Railroad Company, and the Duluth Missabe & Iron Range Railroad Company (hereinafter "CN") seeks a waiver of compliance with the Locomotive Safety Standards, 49 CFR, 229.27(a)(2), and 229.29 (a), as they pertain to the requirement to clean, repair, and test airbrake equipment associated with "Canac" remote control equipment installed on the locomotive. CN requests to change the time interval requirements for the additional Canac equipment from biennial (736 days) to every 4 years (1472 days).

The request, if granted, would allow the additional Canac equipment to receive attention at the same time as the 26 L type brake equipment previously wavered under the petition identified as docket number FRA–2005–21325. According to the petitioner, the four-year maintenance period for the remote control brake equipment is the manufacturer's recommendation, and the four-year interval has been adopted by Transport Canada, as required maintenance interval for 26 L type Canac remote control locomotives operating in Canada.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2006–24224) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on March 31, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–5055 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

East Broad Top Railroad & Coal Company

[Waiver Petition Docket Number FRA–2006–24069]

The East Broad Top Railroad & Coal Company (EBT), located in Rockhill Furnace, PA, seeks a waiver of compliance from the Steam Locomotive Inspection and Maintenance Standards [49 CFR Part 230.17(a)] for steam locomotive number EBT 14, which requires" Before any steam locomotive is initially put in service or brought out of retirement, and after every 1472 service days or 15 years, whichever is earlier, an individual competent to conduct the inspection shall inspect the entire boiler. In the case of a new locomotive or a locomotive being

brought out of retirement, the initial 15 year period shall begin on the day that the locomotive is placed in service or 365 calendar days after the first flue tube is installed in the locomotive, whichever comes first. This 1472 service day inspection shall include all annual, and 5th annual, inspection requirements, as well as any items required by the steam locomotive owner and/or operator or the FRA inspector. At this time, the locomotive owner and/or operator shall complete, update and verify the locomotive specification card (FRA Form No. 4), to reflect the condition of the boiler at the time of this inspection. See appendices A and B of this part."

EBT requests a temporary waiver for one year for steam locomotive number EBT 14. If the waiver is granted, the railroad will be able to use locomotive number 14, which has never received a 1472 service day inspection, as a replacement locomotive in the event locomotive number 15, which is in compliance with Steam Locomotive Inspection and Maintenance Standards, becomes disabled. EBT also requests the use of locomotive number EBT 14 for an additional eight special event days in 2006. Prior to 2002, locomotive number EBT 14 was maintained under the jurisdiction of the Pennsylvania State boiler inspector. Pennsylvania State regulations do not require a 1472 service day inspection .

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2006–24069) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on March 31, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–5059 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Norfolk Southern Corporation

(Waiver Petition Docket Number FRA–2006–24215)

The Norfolk Southern Corporation (NS) seeks a waiver of compliance with the *Locomotive Safety Standards,* 49 CFR 229.23, 229.27, and 229.29, as they pertain to the requirement to maintain the locomotive repair record form FRA 6180.49A, commonly referred to as the Blue Card, in the cab of their locomotives. If granted, NS would maintain locomotive inspection information in a secure database. The database would be maintained as the required office copy of form FRA 6180.49A. A computer generated form, which is similar to and contains all information currently contained on the required FRA 6180.49A, would be maintained on board the locomotive. In place of required signatures of persons performing inspections and tests, NS employees would be provided a unique login identification number and a secure password to access the system and verify performance of inspections. In place of signatures, a computer generated report would block print the name of the employee performing a required inspection and block print the employees' supervisor who is certifying that all inspections have been made and all repairs were completed. Required filing of the previous inspection record will be maintained through the database.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (FRA–2006–24215) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://dms.dot.gov.*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78). The Statement may also be found at *http://dms.dot.gov.*

Issued in Washington, DC on March 31, 2006.

Grady C. Cothen, Jr.,

Deputy Associate Administrator, for Safety Standards and Program Development.

[FR Doc. E6–5051 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From Requirements

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket Number: FRA–2006–24229.

Applicant: Union Pacific Railroad Company, Mr. W. E. Wimmer, Vice President—Engineering, 1400 Douglas Street, Mail Stop 0910, Omaha, Nebraska 68179.

The Union Pacific Railroad Company seeks approval of the proposed modification of the traffic control system, on Main Tracks No.'s 1, 2, and 3, at milepost 510.8, near Cheyenne, Wyoming, on the Laramie Subdivision, consisting of the discontinuance and removal of three power-operated derails within the limits CP W511. The reason given for the proposed changes is that the derails are no longer needed.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov*.

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on March 31, 2006.

Grady C. Cothen, Jr.

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E6–5054 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[USCG–2004–17659]

Compass Port LLC Liquefied Natural Gas Deepwater Port License; Final Environmental Impact Statement and Final Public Hearings

AGENCY: Maritime Administration, DOT.

ACTION: Notice of availability; notice of public hearing; request for comments.

SUMMARY: The Maritime Administration (MARAD) announces the availability of the Final Environmental Impact Statement (FEIS) for the Compass Port natural gas deepwater port license application. MARAD, the Coast Guard, FERC and USACE request public comments on the FEIS. The USCG and MARAD will hold public hearings, and request public comments, on matters relevant to the approval or denial of the license application. The application describes a project that would be located in the Mobile Outer Continental Shelf (OCS) and Mississippi Sound areas of the U.S. Gulf of Mexico, in lease block Mobile 910, approximately 11 miles south of Dauphin Island, Alabama.

DATES: The public hearing on Dauphin Island, Alabama will be held on April 26, 2006, from 5 p.m. to 7 p.m., and will be preceded by an informational open house from 3 p.m. to 4:30 p.m. The public hearing in Pascagoula, Mississippi will be held on April 27, 2006, from 5 p.m. to 7 p.m., and will be preceded by an informational open house from 3 p.m. to 4:30 p.m.

The public hearings may end later than the stated time, depending on the number of persons wishing to speak. Material submitted in response to the request for comments must reach the Docket Management Facility on or before May 22, 2006, ending the 45 day public comment period. Federal and State agencies may submit comments on the application, recommended conditions for licensing, or letters of no objection by June 11, 2006 (45 days after the final public hearings). Also by June 11, 2006, the Governors of the adjacent coastal states of Alabama and Mississippi may approve, disapprove, or notify MARAD of inconsistencies with State programs relating to environmental protection, land and water use, and coastal zone management for which MARAD may condition the license to make consistent. MARAD must issue a record of decision (ROD) to approve, approve with conditions, or deny the DWP license application by July 26, 2006 (90 days after the public hearings).

ADDRESSES: The public hearing and informational open house in Dauphin Island, Alabama will be held at: Dauphin Island Chamber of Commerce, 402 La Vente Street, Dauphin Island, Alabama 36528, phone: 251–861–5524.

The public hearing and informational open house in Pascagoula, Mississippi will be held at: Pascagoula High School Library, 1716 Tucker Avenue, Pascagoula, Mississippi 39567, phone: 228–938–6451.

A copy of the FEIS, license application, and associated documentation is available for viewing at the DOT's docket management Web site: *http://dms.dot.gov* under docket number 17659. Copies are also available for review at Pascagoula Public Library, Pascagoula, MS, phone: 228–769–3060; Spring Hill College Library, Mobile, AL, phone: 251–380–3870; Mose Hudson Tapia Public Library, Bayou La Batre, AL, phone: 334–824–4213; Bell/Whittington Public Library, Portland, TX, phone: 361–777–0921; and Corpus Christi Public Library, Corpus Christi, TX, phone: 361–758–5276.

Address docket submissions for USCG–2004–17659 to: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

The Docket Management Facility accepts hand-delivered submissions, and makes docket contents available for public inspection and copying, at this address, in room PL–401, between 9 a.m. and 5 p.m., Monday through

Friday, except Federal holidays. The Facility's telephone is 202–366–9329, its fax is 202–493–2251, and its Web site for electronic submissions or for electronic access to docket contents is *http://dms.dot.gov*. The docket number is USCG–2004–17659.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Martin, U.S. Coast Guard, telephone: 202–267–1683, email: *RMartin@comdt.uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone: 202–493–0402.

SUPPLEMENTARY INFORMATION:

Public Hearing and Open House

We invite you to learn about the proposed deepwater port at the informational open house, and to comment at the public hearing on the proposed action and the evaluation contained in the FEIS and on matters relevant to the approval or denial of the license application.

Speaker registration will be available at the door. In order to allow everyone a chance to speak, we may limit speaker time, or extend the meeting hours, or both. You must identify yourself, and any organization you represent, by name. Your remarks will be recorded or transcribed for inclusion in the public docket.

You may submit written material at the public meeting, either in place of or in addition to speaking. Written material must include your name and address, and will be included in the public docket. Public docket materials will be made available to the public on the Docket Management Facility's Docket Management System (DMS). See "Request for Comments" for information about DMS and your rights under the Privacy Act.

If you plan to attend either the open house or the public meeting, and need special assistance such as sign language interpretation or other reasonable accommodation, please notify the Coast Guard (see **FOR FURTHER INFORMATION CONTACT**) at least 3 business days in advance. Include your contact information as well as information about your specific needs.

Request for Comments

We request public comments or other relevant information on the FEIS or the approval or denial of the license application. The public meeting is not the only opportunity you have to comment. In addition to, or in place of, attending the meeting, you can submit material to the Docket Management Facility during the public comment period (see **DATES**). MARAD and the Coast Guard will consider all comments submitted during the public comment period.

Submissions should include:

- Docket number USCG–2004–17659.
- Your name and address.
- Your reasons for making each comment or for bringing information to our attention.

Submit comments or material using only one of the following methods:

- Electronic submission to DMS, *http://dms.dot.gov*.
- Fax, mail, or hand delivery to the Docket Management Facility (see **ADDRESSES**). Faxed or hand delivered submissions must be unbound, no larger than 8½ by 11 inches, and suitable for copying and electronic scanning. If you mail your submission and want to know when it reaches the Facility, include a stamped, self-addressed postcard or envelope.

Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the DMS website (*http://dms.dot.gov*), and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the DMS Web site, or the Department of Transportation Privacy Act Statement that appeared in the **Federal Register** on April 11, 2000 (65 FR 19477).

You may view docket submissions at the Docket Management Facility (see **ADDRESSES**), or electronically on the DMS Web site.

To submit comments to the FERC docket (CP04–114–000 and CP04–115–000), send an original and two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

- Label one copy of the comments for the attention of Gas Branch 2, PJ11.2
- Reference Docket No. CP04–114–000 and CP04–115–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 22, 2006.

Please note that FERC is continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our environmental analysis of this project. However, the FERC strongly encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the FERC's Web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments, you will need to create a free account which can be created online.

Comments will be considered by the FERC but will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the FERC's Rules of Practice and Procedures (18 CFR 385.214).

Anyone may intervene in this proceeding based on this FEIS. You must file your request to intervene as specified above. You do not need intervener status to have your comments considered.

The FEIS has been placed in the public files of the FERC and is available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426; 202–502–8371. A limited number of copies are available from the Public Reference Room identified above. In addition, copies of the FEIS have been mailed to federal, state and local agencies; public interest groups; individuals who have requested the FEIS; newspapers; and parties to this proceeding.

Additional information about the project is available from the FERC's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on "General Search" and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202)502–8659. The eLibrary link also provides access to the texts of formal documents issued by the FERC, such as orders, notices, and rulemakings.

In addition, the FERC now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm*.

The U.S. Army Corps of Engineers (USACE) is also a cooperating agency in the NEPA process for this project. If you would like to submit comments to the USACE on proposed actions in Alabama, mail them to: Mr. Chuck Sumner, U.S. Army Corps of Engineers

Regulatory Branch, CESAM–OP–SP, P.O. Box 2288, Mobile, AL 36628–0001.

If you would like to submit comments to the USACE on proposed actions in Texas, mail them to: Mr. Reagan Richter, U.S. Army Corps of Engineers, 5151 Flynn Parkway Ste. 306, Corpus Christi, TX 78411–4318. Mail your comments so that they will be received, on or before May 22, 2006.

Supplementary Information/ Background

Proposed Action

We published information about deepwater ports, the statutes and regulations governing their licensing, the receipt of the current application, and a notice of intent to prepare an EIS for the Proposed Compass Port Deepwater Port at 69 FR 35657, June 25, 2004 and we have announced the availability of the draft EIS at 70 FR 7288, February 11, 2005. The proposed action requiring environmental review is the Federal licensing of the Proposed Deepwater Port described in "Summary of the Application" below, which is reprinted from previous **Federal Register** notices in this docket.

Alternatives to the Proposed Action

The alternatives to licensing are: (1) Licensing with conditions (including conditions designed to mitigate environmental impact), and (2) denying the application, which for purposes of environmental review is the "no-action" alternative. These alternatives are more fully discussed in the FEIS.

Summary of the Application

The application plan calls for the Proposed Deepwater Port to be located in the Mobile Outer Continental Shelf (OCS) and Mississippi Sound areas of the U.S. Gulf of Mexico, approximately 11 miles off Dauphin Island, Alabama in lease block Mobile 910. Compass Port would serve as an LNG receiving, storage, and regasification facility, located in approximately 70 feet of water depth, and would incorporate docking facilities, unloading facilities, two LNG storage tanks, an offshore pipeline and support facilities.

The Proposed Deepwater Port would be able to receive LNG carriers up to 255,000 cubic meters cargo capacity. LNG carrier arrival frequency would be planned to match specified terminal gas delivery rates. LNG would be stored in two integral full-containment tanks, each with a capacity of 150,000 cubic meters, and a combined capacity of 300,000 cubic meters of LNG.

The regasification process would consist of lifting the LNG from the storage tanks, pumping the LNG to pipeline pressure, vaporizing across heat exchanging equipment, and sending out through the pipeline to custody transfer metering for ultimate delivery to downstream interstate pipeline capacity. No gas conditioning is required since the incoming LNG will meet the gas quality specifications of the downstream pipelines. The Proposed Deepwater Port would be designed for an average delivery of approximately 1.0 billion cubic feet per day (bcfd) of pipeline quality gas.

Compass Port LLC also proposes the installation of approximately 26.8 miles of 36-inch diameter natural gas transmission pipeline on the OCS. In addition, approximately 4.9 miles of 36-inch diameter pipeline would be installed onshore to connect the proposed deepwater port and offshore pipeline with existing gas distribution pipelines near Coden, Alabama.

The applicant has proposed the Kiewit Offshore Services site in Ingleside, TX for the fabrication of the concrete GBS's which would be used to contain the LNG storage tanks.

Dated: April 4, 2006.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. E6–5106 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period was published on December 28, 2005 [70 FR 76909].

DATES: Comments must be submitted on or before May 8, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Donovan Green, NHTSA Office of Crash Avoidance Standards, 400 Seventh Street, SW., Room 5307, NVS–122, Washington, DC 20590. Mr. Green's telephone number is (202) 493–0248. His fax number is (202) 493–2739.

SUPPLEMENTARY INFORMATION:

National Highway Traffic Safety Administration

Title: Tires Identification and Recordkeeping.

OMB Control Number: 2127–0050.

Type of Request: Extension of a currently approved collection.

Abstract: Each tire manufacturer and rim manufacturer must label their tire or rim with the applicable safety information. These labeling requirements ensure tires are mounted on the vehicles for which they are intended. It is estimated that this rule affects 10 million respondents annually. This group consists of approximately 8 tire manufacturers, 12,000 new tire dealers and distributors, and 10 million consumers who choose to register their tire purchases with the manufacturers.

Affected Public: Tire and rim manufacturers, new tire dealers and distributors, and consumers.

Estimated Total Annual Burden: 250,000 hours.

Estimated Number of Respondents: 10,000,000.

Comments Are Invited On

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility.
- Whether the Department's estimate for the burden of the proposed information collection is accurate.
- Ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is most effective if OMB receives it within 30 days of publication.

Issued on: April 3, 2006.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. E6–5049 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–24324; Notice 1]

American Honda Motor Company, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

American Honda Motor Company, Inc. (Honda) has determined that certain

vehicles that it produced in 2005 and 2006 do not comply with S3.1.4.1 of 49 CFR 571.102, Federal Motor Vehicle Safety Standard (FMVSS) No. 102, "Transmission shift position sequence, starter interlock, and transmission braking effect." Honda has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Honda has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Honda's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 2,641 model year 2006 Honda Ridgeline vehicles. S3.1.4.1 of FMVSS No. 102 requires,

> [I]f the transmission shift position sequence includes a park position, identification of shift positions, including the positions in relation to each other and the position selected, shall be displayed in view of the driver whenever any of the following conditions exist: (1) The ignition is in a position where the transmission can be shifted; or (b) The transmission is not in park.

Honda explains the noncompliance as follows:

> * * * American Honda offered, as an optional part, through its dealers, a wiring harness as part of a trailer towing kit. The wiring harness included a circuit to provide for back-up lights, if present on a trailer, to illuminate when the transmission was shifted into reverse gear. The Ridgeline utilizes an electronic display in the instrument panel to indicate transmission gear position. When the wiring harness in question has been installed, and the ignition key is turned to the accessory position, the electronic display indicates not only the actual position of the selected gear, but also illuminates the reverse position indicator in the display, such that there are two indicator lights lighted at the same time, unless the reverse position is the gear selected, in which case only the reverse position indicator will be lighted.

Honda has corrected the problem that caused these errors so that they will not be repeated in future production.

Honda believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Honda states that neither the actual function of the transmission nor the transmission lockout will be affected. Honda states that there is no possibility of danger from the noncompliant display while the key is in the accessory position. Honda states:

> The key cannot be removed, the vehicle cannot start, and the actual gear position would be illuminated, as well as the reverse position. There are two possible scenarios to consider.
>
> In the first and most common scenario, if the key had been removed, upon initial insertion of the key, the vehicle would have had to be in "PARK," and turning the key to the accessory position will illuminate both the "PARK" and "REVERSE" indications, but not allow the vehicle to be shifted from the "PARK" position. Then, when the key was turned to the "on" position, allowing the vehicle to be shifted from the "PARK" position, the gear position indicator would function properly.
>
> In the second scenario, if the key has been left in the ignition while in a gear other than "PARK," when the operator turns the key to the accessory position, the electronic display will indicate the correct gear, as well as reverse. This would be a highly unusual circumstance, and the vehicle would not start unless the key was turned to the "on" position, in which case the gear position indicator would function properly. Nor could the key be removed until the shift lever was placed in the "PARK" position. Even if this highly unlikely situation were to occur, movement of the shift lever would indicate the correct gear, as well as the illumination of the reverse gear. It would become readily apparent to the operator that the illumination of the reverse gear would be inappropriate and not indicative of the actual gear being engaged. Again, once the ignition is turned to the "ON" position, the gearshift indicator would function completely normally. At no time would the engine operate while in the "ACCESSORY" position.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 8, 2006.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8)

Issued on: April 4, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–5124 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–24323; Notice 1]

Volkswagen of America Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Volkswagen of America Inc. (Volkswagen) has determined that the designated seating capacity placards on certain vehicles that it produced in 2005 and 2006 do not comply with S4.3(b) of 49 CFR 571.110, Federal Motor Vehicle Safety Standard (FMVSS) No. 110, "Tire selection and rims." Volkswagen has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Volkswagen has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Volkswagen's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 39 Phaeton vehicles produced between May 22, 2005 and March 8, 2006. S4.3(b) of FMVSS No. 110 requires that a "placard, permanently affixed to the glove compartment door or an equally accessible location, shall display the * * * [d]esignated seating capacity." The noncompliant vehicles have placards stating that the seating capacity is five when in fact the seating capacity

is four. Volkswagen has corrected the problem that caused these errors so that they will not be repeated in future production.

Volkswagen believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Volkswagen states that consumers will look at the number of seats and safety belts to determine the vehicle's capacity. Volkswagen explains that although the rear seat capacity on the placard states three, the vehicles have only two rear seats, and the space that would be occupied by a middle-occupant position contains a center console.

Volkswagen further states that, because the rear seats do not accommodate three people, the seating capacity labeling error has no impact on the vehicle capacity weight, recommended cold tire inflation pressure, or recommended size designation information. Also, Volkswagen says that it is impossible to overload the rear seat by relying on the incorrect designated seating capacity information.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 8, 2006.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8).

Issued on: April 4, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–5122 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–24322; Notice 1]

Yokohama Tire Corporation, Receipt of Petition for Decision of Inconsequential Noncompliance

Yokohama Tire Corporation (Yokohama) has determined that certain tires that it produced in 2005 and 2006 do not comply with S4.3.2 of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, "New pneumatic tires." Yokohama has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports."

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Yokohama has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Yokohama's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Affected are a total of approximately 1,918 Yokohama brand T155/70D17 110M Y870B temporary-use-only tires produced from August 2005 to February 2006. S4.3.2 of FMVSS No. 109 refers to 49 CFR part 574.5, which requires ¾ inch maximum width spacing between the manufacturer's identification mark/tire size code grouping and the subsequent tire type code and date of manufacture. The subject tires have a spacing that exceeds ¾ inch. Yokohama has corrected the problem that caused these errors so that they will not be repeated in future production.

Yokohama believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Yokohama states that the noncompliant spacing "does not impair the purpose or the use of the identification number and does not pose a threat to motor vehicle safety." Yokohama says that all other aspects of the tire identification number comply with the standard.

Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on "Help" to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: May 8, 2006.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at CFR 1.50 and 501.8).

Issued on: April 4, 2006.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–5123 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2006–24310]

Notice of Receipt of Petition for Decision That Nonconforming 2005 Mini Cooper Convertible Passenger Cars Manufactured for the European Market Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2005 Mini Cooper convertible passenger cars manufactured for the European market are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2005 Mini Cooper convertible passenger cars manufactured for the European market that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is May 8, 2006.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Automobile Concepts, Inc. ("AMC"), of North Miami, Florida (Registered Importer 01–278) has petitioned NHTSA to decide whether nonconforming 2005 Mini Cooper convertible passenger cars manufactured for the European market are eligible for importation into the United States. The vehicles which AMC believes are substantially similar are 2005 Mini Cooper convertible passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2005 Mini Cooper convertible passenger cars manufactured for the European market to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

AMC submitted information with its petition intended to demonstrate that non-U.S. certified 2005 Mini Cooper convertible passenger cars manufactured for the European market, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2005 Mini Cooper convertible passenger cars manufactured for the European market are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, and 302 *Flammability of Interior Materials*.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Inscription of the word "brake" on the instrument cluster in place of the international ECE warning symbol, and (b) replacement or conversion of the speedometer to read in miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: Installation of U.S.-model headlamps, and front and rear mounted side marker lamps.

Standard No. 110 *Tire Selection and Rims:* Installation of a tire information placard.

Standard No. 111 *Rearview Mirrors:* Installation of a U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of that mirror.

Standard No. 114 *Theft Protection:* Installation of U.S. version software to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Installation of U.S. version software to ensure that the systems meet the requirements of this standard.

Standard No. 208 *Occupant Crash Protection:* (a) Installation of U.S. version software to ensure that the seat belt warning system meets the requirements of this standard, and (b) inspection of all vehicles and replacement of any non-U.S.-model components needed to achieve conformity with this standard with U.S.-model components.

Petitioner states that the vehicle's restraint system components include U.S.-model airbags and knee bolsters, and combination lap and shoulder belts

at the outboard front designated seating positions.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of any non-U.S.-model seat belts with U.S.-model components on vehicles not already so equipped.

Standard No. 210 *Seat Belt Assembly Anchorages:* Inspection of all vehicles and replacement of any non-U.S.-model seat belt anchorage components with U.S.-model components on vehicles not already so equipped.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and installation of U.S.-model components, on vehicles that are not already so equipped.

Standard No. 401 *Interior Trunk Release:* Installation of U.S.-model components on vehicles that are not already so equipped.

The petitioner also states that all vehicles will be inspected for conformity with the Bumper Standard found in 49 CFR part 581 and that any non-U.S.-model components necessary for conformity with this standard will be replaced with U.S.-model components.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR-Doc. E6–5050 Filed 4–6–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34850]

BNSF Railway Company—Temporary Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP), pursuant to a written trackage rights agreement entered into between UP and BNSF Railway Company (BNSF), has agreed to grant limited temporary overhead trackage rights to BNSF eastbound trains on: (1) UP's Dallas Subdivision from Tower 55 at Fort Worth, TX (milepost 245.3), to Longview, TX (milepost 89.6); (2) UP's Little Rock Subdivision from Longview (milepost 89.6) to North Little Rock, AR (milepost 343.6); (3) UP's Hoxie Subdivision from North Little Rock, AR (milepost 343.6), to Bald Knob, AR (milepost 287.9); and (4) UP's Memphis Subdivision from Bald Knob (milepost 287.9) to Kentucky Street, Memphis, TN, UP's (milepost 378.1), a distance of 542.2 miles. UP has also agreed to grant limited overhead trackage rights to BNSF for westbound trains on: (1) UP's Memphis Subdivision from Kentucky Street to Briark, AR (milepost 375.3); (2) UP's Brinkley Subdivision (milepost 4.1) to Brinkley, AR (milepost 70.6); (3) UP's Jonesboro Subdivision (milepost 200.5) to Pine Bluff, AR (milepost 264.2); (4) UP's Pine Bluff Subdivision (milepost 264.2) to Big Sandy, TX (milepost 525.1); and (5) UP's Dallas Subdivision (milepost 114.5), to Tower 55, at Fort Worth (milepost 245.3), a distance of 526.3 miles.

The transaction was scheduled to be consummated on March 27, 2006, the effective date of this notice, and the temporary trackage rights will expire on or about June 30, 2006. The temporary trackage rights are for the sole purpose of bridging BNSF's train service while BNSF's main lines are out of service due to certain programmed track, roadbed and structural maintenance.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34850, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Sidney L. Strickland, Jr., 3050 K Street, NW., Suite 101, Washington, DC 20007.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: April 4, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 06–3389 Filed 4–6–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34841 (Sub-No. 1)]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company

BNSF Railway Company (BNSF), pursuant to a written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to provide UP with temporary overhead trackage rights, to expire on April 30, 2006, over BNSF's line of railroad between milepost 2.0, in Lake Yard, OR, and milepost 8.1, in North Portland Junction, OR, a distance of approximately 6.1 miles. The original trackage rights granted in *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—BNSF Railway Company*, STB Finance Docket No. 34841 (STB served Mar. 20, 2006), covered the same line, but expire on March 30, 2006. The purpose of this transaction is to modify the temporary overhead trackage rights exempted in STB Finance Docket No. 34841 to extend the expiration date from March 30, 2006, to April 30, 2006.[1]

The transaction is scheduled to be consummated on March 30, 2006. The modified temporary overhead trackage

[1] Under the agreement between the parties, the temporary trackage rights will run through the date on which BNSF ceases to use temporary trackage rights granted by UP between Vallard Jct. and North Portland Jct., OR, but no later than April 30, 2006.

rights will allow UP to continue to perform maintenance work on its lines.

As a condition to this exemption, any employee affected by the acquisition of the temporary trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980), and any employee affected by the discontinuance of those trackage rights will be protected by the conditions set out in *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

This notice is filed under 49 CFR 1180.2(d)(8). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34841 (Sub-No. 1), must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert T. Opal, Union Pacific Railroad Company, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at "*http://www.stb.dot.gov.*"

Decided: March 30, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–4933 Filed 4–6–06; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 31, 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 May 8, 2006 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1678.

Type of Review: Extension.

Title: REG–161424–01 (Final) Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns; REG–105316–98 (Final) Information Reporting for Payments of Interest on Qualified Education Loans; Magnetic Media Filing Requirements for Information Returns:

Description: These regulations relate to the information reporting requirements in section 6050S of the Internal Revenue Code for payments of qualified tuition and related expenses and interest on qualified education loans. These regulations provide guidance to eligible education institutions, insurers, and payees required to file information returns and to furnish information statements under section 6050S.

Respondents: Business or other for-profit and not-for-profit institutions.

Estimated Total Burden Hours: 1 hours.

Clearance Officer: Glenn P. Kirkland (202) 622–3428, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7316, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Michael A. Robinson,

Treasury PRA Clearance Officer.

[FR Doc. E6–5099 Filed 4–6–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2006–16

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2006–16, Renewal Community Depreciation Provisions.

DATES: Written comments should be received on or before June 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Renewal Community Depreciation Provisions.

OMB Number: 1545–2001.

Revenue Procedure Number: Revenue Procedure 2006–16.

Abstract: This revenue procedure provides the time and manner for states to make retroactive allocations of commercial revitalization expenditure amounts to certain buildings placed in service in the expanded area of a renewal community pursuant to § 1400E(g) of the Internal Revenue Code.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: State, local or tribal governments and businesses or other for-profit organizations.

Estimated Number of Respondents: 60.

Estimated Average Time Per Respondent: 2 hours, 30 min.

Estimated Total Annual Burden Hours: 150.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All

comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 28, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–5134 Filed 4–6–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 7018 and 7018–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 7018, Employer's Order Blank for Forms, and Form 7018–A, Employer's Order Blank for 2003 Forms.

DATES: Written comments should be received on or before June 6, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Allan Hopkins, at (202) 622–6665, or at Internal Revenue Service, room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, or through the Internet, at *Allan.M.Hopkins@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Form 7018, Employer's Order Blank for Forms, and Form 7018–A, Employer's Order Blank for 2003 Forms.

OMB Number: 1545–1059.

Form Number: Forms 7018 and 7018–A.

Abstract: Forms 7018 and 7018–A allow taxpayers who must file information returns a systematic way to order information tax forms materials.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 1,668,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 83,400.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 31, 2006.

Glenn P. Kirkland,

IRS Reports Clearance Officer

[FR Doc. E6–5135 Filed 4–6–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Volunteer Income Tax Assistance (VITA) Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the VITA Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, May 1, 2006, 8 a.m. to 4:30 p.m., and Tuesday, May 2, 2006, 8 a.m. to 4:30 p.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: Sandy McQuin at 1–888–912–1227, or (414) 297–1604.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the VITA Issue Committee will be held Monday, May 1, 2006, 8 a.m. to 4:30 p.m., and Tuesday, May 2, 2006, 8 a.m. to 4:30 p.m., Eastern Time, in Atlanta, GA. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org*. This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Sandy McQuin at 1–888–912–1227 or (414) 297–1604 for more information.

The agenda will include the following: Various VITA issues

Dated: April 3, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–5132 Filed 4–6–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, May 4, 2006 from 11 a.m. e.t.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1–888–912–1227, or 954–423–7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Thursday, May 4, 2006, from 11 a.m. e.t. via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 954–423–7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1–888–912–1227 or 954–423–7979, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: April 3, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–5133 Filed 4–6–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee April 2006 Public Meeting.

Summary: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces a Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for April 13, 2006.

Date: April 13, 2006.

Time: 10 a.m. to 12 noon.

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 proposed design narratives for the reverses of the 2007 First Spouse coins and medals.

Interested persons should call 202–354–7502 for the latest update on meeting time, and 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: April 4, 2006.

David A. Lebryk,

Acting Director, United States Mint.

[FR Doc. 06–3372 Filed 4–6–06; 8:45 am]

BILLING CODE 4810–37–P

Corrections

Federal Register
Vol. 71, No. 67
Friday, April 7, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53522; File No. SR–ISE–2006–09]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Session/API Fees

Correction

In notice document E6–4274, beginning on page 14975 in the issue of March 24, 2006, make the following correction:

On page 14976, in the third column, in the last paragraph, in the last line, "April 17, 2006 " should read "April 14, 2006".

[FR Doc. Z6–4274 Filed 4–6–06; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Friday
April 7, 2006

Part II

Reader Aids

Cumulative List of Public Laws
109th Congress, First Session

CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for the 109th Congress, First Session. Other cumulative lists (1993–2005) are available online at *http://www.archives.gov/federal-register/laws/past/index.html*. Comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408 or send e-mail to info@nara.fedreg.gov.

The text of laws may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.gpoacess.gov/plaws/index.html.

Public Law	Title	Approved	119 Stat.
109–1	To accelerate the income tax benefits for charitable cash contributions for the relief of victims of the Indian Ocean tsunami.	Jan. 7, 2005	3
109–2	Class Action Fairness Act of 2005	Feb. 18, 2005	4
109–3	For the relief of the parents of Theresa Marie Schiavo	Mar. 21, 2005	15
109–4	Welfare Reform Extension Act of 2005	Mar. 25, 2005	17
109–5	To extend the existence of the Nazi War Crimes and Japanese Imperial Government Records Interagency Working Group for 2 years.	Mar. 25, 2005	19
109–6	To amend the Internal Revenue Code of 1986 to extend the Leaking Underground Storage Tank Trust Fund financing rate.	Mar. 31, 2005	20
109–7	To amend the Internal Revenue Code of 1986 to provide for the proper tax treatment of certain disaster mitigation payments.	Apr. 15, 2005	21
109–8	Bankruptcy Abuse Prevention and Consumer Protection Act of 2005	Apr. 20, 2005	23
109–9	Family Entertainment and Copyright Act of 2005	Apr. 27, 2005	218
109–10	To designate the United States courthouse located at 501 I Street in Sacramento, California, as the "Robert T. Matsui United States Courthouse".	Apr. 29, 2005	228
109–11	Providing for the appointment of Shirley Ann Jackson as a citizen regent of the Board of Regents of the Smithsonian Institution.	May 5, 2005	229
109–12	Providing for the appointment of Robert P. Kogod as a citizen regent of the Board of Regents of the Smithsonian Institution.	May 5, 2005	230
109–13	Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005.	May 11, 2005	231
109–14	Surface Transportation Extension Act of 2005	May 31, 2005	324
109–15	To designate the facility of the United States Postal Service located at 215 Martin Luther King, Jr. Boulevard in Madison, Wisconsin, as the "Robert M. La Follette, Sr. Post Office Building".	June 17, 2005	337
109–16	To designate a United States courthouse in Brownsville, Texas, as the "Reynaldo G. Garza and Filemon B. Vela United States Courthouse".	June 29, 2005	338
109–17	To amend the Agricultural Credit Act of 1987 to reauthorize State mediation programs	June 29, 2005	339
109–18	Patient Navigator Outreach and Chronic Disease Prevention Act of 2005	June 29, 2005	340
109–19	TANF Extension Act of 2005	July 1, 2005	344
109–20	Surface Transportation Extension Act of 2005, Part II	July 1, 2005	346
109–21	Junk Fax Prevention Act of 2005	July 9, 2005	359
109–22	To designate the facility of the United States Postal Service located at 30777 Rancho California Road in Temecula, California, as the "Dalip Singh Saund Post Office Building".	July 12, 2005	365
109–23	To designate the facility of the United States Postal Service located at 8200 South Vermont Avenue in Los Angeles, California, as the "Sergeant First Class John Marshall Post Office Building".	July 12, 2005	366
109–24	To designate the facility of the United States Postal Service located at 321 Montgomery Road in Altamonte Springs, Florida, as the "Arthur Stacey Mastrapa Post Office Building".	July 12, 2005	367
109–25	To designate the facility of the United States Postal Service located at 4960 West Washington Boulevard in Los Angeles, California, as the "Ray Charles Post Office Building".	July 12, 2005	368
109–26	To designate the facility of the United States Postal Service located at 40 Putnam Avenue in Hamden, Connecticut, as the "Linda White-Epps Post Office".	July 12, 2005	369
109–27	To designate the facility of the United States Postal Service located at 151 West End Street in Goliad, Texas, as the "Judge Emilio Vargas Post Office Building".	July 12, 2005	370
109–28	To designate the facility of the United States Postal Service located at 120 East Illinois Avenue in Vinita, Oklahoma, as the "Francis C. Goodpaster Post Office Building".	July 12, 2005	371
109–29	To designate the facility of the United States Postal Service located at 750 4th Street in Sparks, Nevada, as the "Mayor Tony Armstrong Memorial Post Office".	July 12, 2005	372
109–30	To designate the facility of the United States Postal Service located at 6200 Rolling Road in Springfield, Virginia, as the "Captain Mark Stubenhofer Post Office Building".	July 12, 2005	373
109–31	To designate the facility of the United States Postal Service located at 12433 Antioch Road in Overland Park, Kansas, as the "Ed Eilert Post Office Building".	July 12, 2005	374
109–32	To designate the facility of the United States Postal Service located at 695 Pleasant Street in New Bedford, Massachusetts, as the "Honorable Judge George N. Leighton Post Office Building".	July 12, 2005	375
109–33	To designate the facility of the United States Postal Service located at 614 West Old County Road in Belhaven, North Carolina, as the "Floyd Lupton Post Office".	July 12, 2005	376
109–34	To amend the Communications Satellite Act of 1962 to strike the privatization criteria for INTELSAT separated entities, remove certain restrictions on separated and successor entities to INTELSAT, and for other purposes.	July 12, 2005	377
109–35	Surface Transportation Extension Act of 2005, Part III	July 20, 2005	379
109–36	To designate the facility of the United States Postal Service located at 301 South Heatherwilde Boulevard in Pflugerville, Texas, as the "Sergeant Byron W. Norwood Post Office Building".	July 21, 2005	393
109–37	Surface Transportation Extension Act of 2005, Part IV	July 22, 2005	394
109–38	To permit the individuals currently serving as Executive Director, Deputy Executive Directors, and General Counsel of the Office of Compliance to serve one additional term.	July 27, 2005	408
109–39	Approving the renewal of import restrictions contained in the Burmese Freedom and Democracy Act of 2003.	July 27, 2005	409
109–40	Surface Transportation Extension Act of 2005, Part V	July 28, 2005	410

Public Law	Title	Approved	119 Stat.
109–41	Patient Safety and Quality Improvement Act of 2005	July 29, 2005	424
109–42	Surface Transportation Extension Act of 2005, Part VI	July 30, 2005	435
109–43	Medical Device User Fee Stabilization Act of 2005	Aug. 1, 2005	439
109–44	Upper White Salmon Wild and Scenic Rivers Act	Aug. 2, 2005	443
109–45	Sand Creek Massacre National Historic Site Trust Act of 2005	Aug. 2, 2005	445
109–46	To direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries.	Aug. 2, 2005	448
109–47	Colorado River Indian Reservation Boundary Correction Act	Aug. 2, 2005	451
109–48	To authorize the Secretary of the Interior to contract with the city of Cheyenne, Wyoming, for the storage of the city's water in the Kendrick Project, Wyoming.	Aug. 2, 2005	455
109–49	Expressing the sense of Congress with respect to the women suffragists who fought for and won the right of women to vote in the United States.	Aug. 2, 2005	457
109–50	To designate the facility of the United States Postal Service located at 1915 Fulton Street in Brooklyn, New York, as the "Congresswoman Shirley A. Chisholm Post Office Building".	Aug. 2, 2005	459
109–51	To designate the facility of the United States Postal Service located at 123 W. 7th Street in Holdenville, Oklahoma, as the "Boone Pickens Post Office".	Aug. 2, 2005	460
109–52	To designate the facility of the United States Postal Service located at 1560 Union Valley Road in West Milford, New Jersey, as the "Brian P. Parrello Post Office Building".	Aug. 2, 2005	461
109–53	Dominican Republic-Central America-United States Free Trade Agreement Implementation Act	Aug. 2, 2005	462
109–54	Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006	Aug. 2, 2005	499
109–55	Legislative Branch Appropriations Act, 2006	Aug. 2, 2005	565
109–56	To amend the Controlled Substances Act to lift the patient limitation on prescribing drug addiction treatments by medical practitioners in group practices, and for other purposes.	Aug. 2, 2005	591
109–57	Controlled Substances Export Reform Act of 2005	Aug. 2, 2005	592
109–58	Energy Policy Act of 2005	Aug. 8, 2005	594
109–59	Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users	Aug. 10, 2005	1144
109–60	National All Schedules Prescription Electronic Reporting Act of 2005	Aug. 11, 2005	1979
109–61	Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the Consequences of Hurricane Katrina, 2005.	Sept. 2, 2005	1988
109–62	Second Emergency Supplemental Appropriations Act to Meet Immediate Needs Arising From the Consequences of Hurricane Katrina, 2005.	Sept. 8, 2005	1990
109–63	Federal Judiciary Emergency Special Sessions Act of 2005	Sept. 9, 2005	1993
109–64	To exclude from consideration as income certain payments under the national flood insurance program.	Sept. 20, 2005	1997
109–65	National Flood Insurance Program Enhanced Borrowing Authority Act of 2005	Sept. 20, 2005	1998
109–66	Pell Grant Hurricane and Disaster Relief Act	Sept. 21, 2005	1999
109–67	Student Grant Hurricane and Disaster Relief Act	Sept. 21, 2005	2001
109–68	TANF Emergency Response and Recovery Act of 2005	Sept. 21, 2005	2003
109–69	Dandini Research Park Conveyance Act	Sept. 21, 2005	2007
109–70	Hawaii Water Resources Act of 2005	Sept. 21, 2005	2009
109–71	Wind Cave National Park Boundary Revision Act of 2005	Sept. 21, 2005	2011
109–72	Flexibility for Displaced Workers Act	Sept. 23, 2005	2013
109–73	Katrina Emergency Tax Relief Act of 2005	Sept. 23, 2005	2016
109–74	Sportfishing and Recreational Boating Safety Amendments Act of 2005	Sept. 29, 2005	2030
109–75	To amend the Pittman-Robertson Wildlife Restoration Act to extend the date after which surplus funds in the wildlife restoration fund become available for apportionment.	Sept. 29, 2005	2034
109–76	United States Parole Commission Extension and Sentencing Commission Authority Act of 2005.	Sept. 29, 2005	2035
109–77	Making continuing appropriations for the fiscal year 2006, and for other purposes	Sept. 30, 2005	2037
109–78	To extend the waiver authority of the Secretary of Education with respect to student financial assistance during a war or other military operation or national emergency.	Sept. 30, 2005	2043
109–79	To extend by 10 years the authority of the Secretary of Commerce to conduct the quarterly financial report program.	Sept. 30, 2005	2044
109–80	Servicemembers' Group Life Insurance Enhancement Act of 2005	Sept. 30, 2005	2045
109–81	Higher Education Extension Act of 2005	Sept. 30, 2005	2048
109–82	Assistance for Individuals with Disabilities Affected by Hurricane Katrina or Rita Act of 2005	Sept. 30, 2005	2050
109–83	To amend the United States Grain Standards Act to reauthorize that Act	Sept. 30, 2005	2053
109–84	To designate the facility of the United States Postal Service located at 200 South Barrington Street in Los Angeles, California, as the "Karl Malden Station".	Oct. 4, 2005	2054
109–85	To designate the facility of the United States Postal Service located at 2600 Oak Street in St. Charles, Illinois, as the "Jacob L. Frazier Post Office Building".	Oct. 4, 2005	2055
109–86	Natural Disaster Student Aid Fairness Act	Oct. 7, 2005	2056
109–87	To authorize the Secretary of Transportation to make emergency airport improvement project grants-in-aid under title 49, United States Code, for repairs and costs related to damage from Hurricanes Katrina and Rita.	Oct. 7, 2005	2059
109–88	Community Disaster Loan Act of 2005	Oct. 7, 2005	2061
109–89	To redesignate the Crowne Plaza in Kingston, Jamaica as the Colin L. Powell Residential Plaza	Oct. 13, 2005	2063
109–90	Department of Homeland Security Appropriations Act, 2006	Oct. 18, 2005	2064
109–91	QI, TMA, and Abstinence Programs Extension and Hurricane Katrina Unemployment Relief Act of 2005.	Oct. 20, 2005	2091
109–92	Protection of Lawful Commerce in Arms Act	Oct. 26, 2005	2095
109–93	Rocky Mountain National Park Boundary Adjustment Act of 2005	Oct. 26, 2005	2104
109–94	Ojito Wilderness Act	Oct. 26, 2005	2106
109–95	Assistance for Orphans and Other Vulnerable Children in Developing Countries Act of 2005	Nov. 8, 2005	2111
109–96	To amend the Federal Food, Drug, and Cosmetic Act to provide for the regulation of all contact lenses as medical devices, and for other purposes.	Nov. 9, 2005	2119
109–97	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2006.	Nov. 10, 2005	2120
109–98	To designate the Federal building located at 333 Mt. Elliott Street in Detroit, Michigan, as the "Rosa Parks Federal Building".	Nov. 11, 2005	2168

Public Law	Title	Approved	119 Stat.
109–99	To extend through March 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities and to expedite the processing of permits.	Nov. 11, 2005	2169
109–100	To extend the special postage stamp for breast cancer research for 2 years	Nov. 11, 2005	2170
109–101	To designate the Federal building located at 333 Mt. Elliott Street in Detroit, Michigan, as the "Rosa Parks Federal Building".	Nov. 11, 2005	2171
109–102	Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2006	Nov. 14, 2005	2172
109–103	Energy and Water Development Appropriations Act, 2006	Nov. 19, 2005	2247
109–104	To authorize the Secretary of the Navy to enter into a contract for the nuclear refueling and complex overhaul of the U.S.S. Carl Vinson (CVN–70).	Nov. 19, 2005	2285
109–105	Making further continuing appropriations for the fiscal year 2006, and for other purposes	Nov. 19, 2005	2287
109–106	National Flood Insurance Program Further Enhanced Borrowing Authority Act of 2005	Nov. 21, 2005	2288
109–107	To designate the facility of the United States Postal Service located at 442 West Hamilton Street, Allentown, Pennsylvania, as the "Mayor Joseph S. Daddona Memorial Post Office".	Nov. 22, 2005	2289
109–108	Science, State, Justice, Commerce, and Related Agencies Appropriations Act, 2006	Nov. 22, 2005	2290
109–109	To designate the facility of the United States Postal Service located at 2061 South Park Avenue in Buffalo, New York, as the "James T. Molloy Post Office Building".	Nov. 22, 2005	2350
109–110	Northern Arizona Land Exchange and Verde River Basin Partnership Act of 2005	Nov. 22, 2005	2351
109–111	Veterans' Compensation Cost-of-Living Adjustment Act of 2005	Nov. 22, 2005	2362
109–112	Iran Nonproliferation Amendments Act of 2005	Nov. 22, 2005	2366
109–113	Fair Access Foster Care Act of 2005	Nov. 22, 2005	2371
109–114	Military Quality of Life and Veterans Affairs Appropriations Act, 2006	Nov. 30, 2005	2372
109–115	Transportation, Treasury, Housing and Urban Development, the Judiciary, the District of Columbia, and Independent Agencies Appropriations Act, 2006.	Nov. 30, 2005	2396
109–116	To direct the Joint Committee on the Library to obtain a statue of Rosa Parks and to place the statue in the United States Capitol in National Statuary Hall, and for other purposes.	Dec. 1, 2005	2524
109–117	To amend Public Law 89–366 to allow for an adjustment in the number of free roaming horses permitted in Cape Lookout National Seashore.	Dec. 1, 2005	2526
109–118	Caribbean National Forest Act of 2005	Dec. 1, 2005	2527
109–119	Angel Island Immigration Station Restoration and Preservation Act	Dec. 1, 2005	2529
109–120	Franklin National Battlefield Study Act	Dec. 1, 2005	2531
109–121	Senator Paul Simon Water for the Poor Act of 2005	Dec. 1, 2005	2533
109–122	To designate the facility of the United States Postal Service located at 57 West Street in Newville, Pennsylvania, as the "Randall D. Shughart Post Office Building".	Dec. 1, 2005	2541
109–123	To designate the facility of the United States Postal Service located at 567 Tompkins Avenue in Staten Island, New York, as the "Vincent Palladino Post Office".	Dec. 1, 2005	2542
109–124	To designate the facility of the United States Postal Service located at 208 South Main Street in Parkdale, Arkansas, as the Willie Vaughn Post Office.	Dec. 1, 2005	2543
109–125	Department of the Interior Volunteer Recruitment Act of 2005	Dec. 7, 2005	2544
109–126	To direct the Secretary of Interior to convey certain land held in trust for the Paiute Indian Tribe of Utah to the City of Richfield, Utah, and for other purposes,	Dec. 7, 2005	2546
109–127	To revoke a Public Land Order with respect to certain lands erroneously included in the Cibola National Wildlife Refuge, California.	Dec. 7, 2005	2548
109–128	Making further continuing appropriations for the fiscal year 2006, and for other purposes	Dec. 18, 2005	2549
109–129	Stem Cell Therapeutic and Research Act of 2005	Dec. 20, 2005	2550
109–130	To direct the Secretary of the Interior to convey a parcel of real property to Beaver County, Utah.	Dec. 20, 2005	2564
109–131	To authorize the Secretary of the Interior to provide supplemental funding and other services that are necessary to assist certain local school districts in the State of California in providing educational services for students attending schools located within Yosemite National Park, to authorize the Secretary of the Interior to adjust the boundaries of the Golden Gate National Recreation Area, to adjust the boundaries of Redwood National Park, and for other purposes.	Dec. 20, 2005	2566
109–132	Valles Caldera Preservation Act of 2005	Dec. 20, 2005	2570
109–133	To amend the Act of June 7, 1924, to provide for the exercise of criminal jurisdiction	Dec. 20, 2005	2573
109–134	Naval Vessels Transfer Act of 2005	Dec. 20, 2005	2575
109–135	Gulf Opportunity Zone Act of 2005	Dec. 21, 2005	2577
109–136	Native American Housing Enhancement Act of 2005	Dec. 22, 2005	2643
109–137	To amend the Federal Water Pollution Control Act to extend the authorization of appropriations for Long Island Sound.	Dec. 22, 2005	2646
109–138	Southern Oregon Bureau of Reclamation Repayment Act of 2005	Dec. 22, 2005	2647
109–139	Predisaster Mitigation Program Reauthorization Act of 2005	Dec. 22, 2005	2649
109–140	To provide certain authorities for the Department of State, and for other purposes	Dec. 22, 2005	2650
109–141	Coast Guard Hurricane Relief Act of 2005	Dec. 22, 2005	2654
109–142	Recognizing Commodore John Barry as the first flag officer of the United States Navy	Dec. 22, 2005	2657
109–143	To reauthorize the Congressional Award Act	Dec. 22, 2005	2659
109–144	Terrorism Risk Insurance Extension Act of 2005	Dec. 22, 2005	2660
109–145	Presidential $1 Coin Act of 2005	Dec. 22, 2005	2664
109–146	Little Rock Central High School Desegregation 50th Anniversary Commemorative Coin Act	Dec. 22, 2005	2676
109–147	To allow binding arbitration clauses to be included in all contracts affecting land within the Gila River Indian Community Reservation.	Dec. 22, 2005	2679
109–148	Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006.	Dec. 30, 2005	2680
109–149	Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2006.	Dec. 30, 2005	2833
109–150	Second Higher Education Extension Act of 2005	Dec. 30, 2005	2884
109–151	To amend title I of the Employee Retirement Income Security Act of 1974, title XXVII of the Public Health Service Act, and the Internal Revenue Code of 1986 to extend by one year provisions requiring parity in the application of certain limits to mental health benefits.	Dec. 30, 2005	2886
109–152	Buffalo Soldiers Commemoration Act of 2005	Dec. 30, 2005	2887
109–153	Benjamin Franklin National Memorial Commemoration Act of 2005	Dec. 30, 2005	2889
109–154	Public Lands Corps Healthy Forests Restoration Act of 2005	Dec. 30, 2005	2890

Public Law	Title	Approved	119 Stat.
109–155	National Aeronautics and Space Administration Authorization Act of 2005	Dec. 30, 2005	2895
109–156	Delaware Water Gap National Recreation Area Improvement Act	Dec. 30, 2005	2946
109–157	Indian Land Probate Reform Technical Corrections Act of 2005	Dec. 30, 2005	2949
109–158	To amend Public Law 107–153 to modify a certain date	Dec. 30, 2005	2954
109–159	To authorize the transfer of items in the War Reserves Stockpile for Allies, Korea	Dec. 30, 2005	2955
109–160	To amend the USA PATRIOT ACT to extend the sunset of certain provisions of that Act and the lone wolf provision of the Intelligence Reform and Terrorism Prevention Act of 2004 to July 1, 2006.	Dec. 30, 2005	2957
109–161	TANF and Child Care Continuation Act of 2005	Dec. 30, 2005	2958
109–162	Violence Against Women and Department of Justice Reauthorization Act of 2005	Jan. 5, 2006	2960
109–163	National Defense Authorization Act for Fiscal Year 2006	Jan. 6, 2006	3136
109–164	Trafficking Victims Protection Reauthorization Act of 2005	Jan. 10, 2006	3558
109–165	Torture Victims Relief Reauthorization Act of 2005	Jan. 10, 2006	3574
109–166	Junior Duck Stamp Reauthorization Amendments Act of 2005	Jan. 10, 2006	3576
109–167	Passport Services Enhancement Act of 2005	Jan. 10, 2006	3578
109–168	To make certain technical corrections in amendments made by the Energy Policy Act of 2005	Jan. 10, 2006	3580
109–169*	United States-Bahrain Free Trade Agreement Implementation Act	Jan. 11, 2006	3581
109–173	Federal Deposit Insurance Reform Conforming Amendments Act of 2005	Feb. 15, 2006	3601

*Note: Public Laws 109–170 through 109–172 passed during the Second Session of the 109th Congress and will appear in that listing of Cumulative Public Laws.

Reader Aids

Federal Register

Vol. 71, No. 67

Friday, April 7, 2006

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

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FEDERAL REGISTER PAGES AND DATE, APRIL

16477–16690..... 3
16691–16972..... 4
16973–17334..... 5
17335–17690..... 6
17691–17966..... 7

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7992.....16685
7993.....16687
7994.....16689
7995.....16969
7996.....16971

6 CFR

Proposed Rules:
5.....16519

7 CFR

330.....16973
905.....16976
922.....16979
930.....16982
985.....16986

Proposed Rules:
301.....16711
1496.....17767

9 CFR

Proposed Rules:
390.....17384

12 CFR

201.....16991

14 CFR

23.....17335
39.....16477, 16691, 16992, 16994, 17691, 17694, 17696, 17698, 17700
71.....16994, 16995, 16997, 16998
97.....16999, 17342
121.....17000

Proposed Rules:
39.....16716, 16721, 16725, 17033, 17035, 17037
71.....17039, 17385, 17386, 17387, 17388, 17389
121.....16678

17 CFR

279.....17344

21 CFR

510.....17701
520.....17701
524.....16481
558.....17702

Proposed Rules:
878.....17390

22 CFR

34.....16481
62.....16696

Proposed Rules:
62.....17768

23 CFR

Proposed Rules:
773.....17040

27 CFR

1.....16918
4.....16918
5.....16918
6.....16918
7.....16918
8.....16918
9.....16918
10.....16918
11.....16918
12.....16918
13.....16918
16.....16918
17.....16918
18.....16918
19.....16918
20.....16918
21.....16918
22.....16918
24.....16918
25.....16918
26.....16918
27.....16918
28.....16918
29.....16918
30.....16918
31.....16918
40.....16918
44.....16918
45.....16918
46.....16918
53.....16918
70.....16918
71.....16918

28 CFR

Proposed Rules:
540.....16520

29 CFR

11.....16664
500.....16664
501.....16664
516.....16664
519.....16664
531.....16664
536.....16664
547.....16664
548.....16664
549.....16664
550.....16664
552.....16664
570.....16664
1910.....16669
1913.....16669
1915.....16669
1926.....16669

30 CFR

28.....16664

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 7, 2006

COMMERCE DEPARTMENT
Government owned inventions; licensing; published 3-8-06

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
- Hydrochloric acid production; published 4-7-06
- Industrial process cooling towers; published 4-7-06
- Magnetic tape manufacturing operations; published 4-7-06
- Sterilization facilities; ethylene oxide emissions; published 4-7-06

Air quality implementation plans; approval and promulgation; various States:
- Pennsylvania; published 3-8-06

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Pennsylvania; correction; published 4-7-06

Protection of human subjects:
- Intentional dosing human studies—
  - Pregnant women, fetuses, and newborns; additional protections; published 2-6-06

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
- Chlortetracycline; published 4-7-06
- Sponsor name and address changes—
  - Alpharma Inc.; published 4-7-06

HOMELAND SECURITY DEPARTMENT
Coast Guard
Regattas and marine parades:
- San Francisco Giants Fireworks Display; published 4-7-06

SECURITIES AND EXCHANGE COMMISSION
Investment advisers:
- Form ADV, etc.; technical amendments; published 4-6-06

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- General Electric Co.; published 3-3-06

RULES GOING INTO EFFECT APRIL 8, 2006

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Marine mammals:
- Commercial fishing authorizations—
  - Atlantic Large Whale Take Reduction Plan; published 4-6-06
  - Atlantic Large Whale Take Reduction Plan; published 4-6-06

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
- Mediterranean fruit fly; comments due by 4-14-06; published 2-13-06 [FR 06-01302]

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Export programs:
- Commodities procurement for foreign donation; Open for comments until further notice; published 12-16-05 [FR E5-07460]

United States Warehouse Act:
- Cotton loans; comments due by 4-14-06; published 2-13-06 [FR 06-01284]

AGRICULTURE DEPARTMENT
Forest Service
Oil and gas operations:
- Onshore Federal and Indian oil and gas leases; approval of operations (Order No.1); comments due by 4-12-06; published 3-13-06 [FR 06-02371]

AGRICULTURE DEPARTMENT
Farm Service Agency
United States Warehouse Act:
- Cotton loans; comments due by 4-14-06; published 2-13-06 [FR 06-01284]

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
- Atlantic highly migratory species—
  - Atlantic bluefin tuna; comments due by 4-11-06; published 2-24-06 [FR 06-01715]
- Northeastern United States fisheries—
  - Atlantic sea scallop; comments due by 4-14-06; published 3-30-06 [FR 06-03039]
  - Northeast multispecies; comments due by 4-12-06; published 3-13-06 [FR 06-02387]
  - Summer flounder, scup and black sea bass; comments due by 4-11-06; published 3-27-06 [FR E6-04403]

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
- Ambient air quality standards, national—
  - Particulate matter; comments due by 4-10-06; published 2-9-06 [FR E6-01798]

Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
- Arizona; comments due by 4-13-06; published 3-14-06 [FR 06-02429]

Air quality implementation plans; approval and promulgation; various States:
- Alabama; comments due by 4-10-06; published 3-9-06 [FR 06-02183]
- Texas; comments due by 4-10-06; published 3-10-06 [FR 06-02316]

Pesticides; tolerances in food, animal feeds and raw agricultural commodities:
- Boscalid; comments due by 4-10-06; published 2-8-06 [FR 06-01170]
- Imazethapyr; comments due by 4-10-06; published 2-8-06 [FR 06-01036]

Solid waste:
- State underground storage tank program approvals—
  - Indiana; comments due by 4-11-06; published 3-22-06 [FR E6-04145]

Toxic substances:
- Chemical imports and exports; export notification reporting requirements; comments due by 4-10-06; published 2-9-06 [FR E6-01797]
- Lead; renovation, repair, and painting program; hazard exposure reduction; comments due by 4-10-06; published 1-10-06 [FR 06-00071]
- Economic analysis; comments due by 4-10-06; published 3-2-06 [FR E6-02940]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
- Customer proprietary network information; comments due by 4-14-06; published 3-15-06 [FR 06-02423]

Practice and procedure:
- Regulatory fees (2006 FY); assessment and collection; comments due by 4-14-06; published 4-6-06 [FR 06-03201]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
- Direct food additives—
  - Glycerides and polyglycides; comments due by 4-12-06; published 3-13-06 [FR 06-02354]

Medical devices:
- Immunology and microbiology devices—
  - Herpes simplex virus (Types 1and 2) serological assays; reclassification; comments due by 4-10-06; published 1-9-06 [FR 06-00173]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
- Commencement Bay, Tacoma, WA; Middle Waterway EPA superfund cleanup site; comments due by 4-12-06; published 3-13-06 [FR E6-03534]

Regattas and marine parades:
- Maryland Swim for Life; comments due by 4-10-06; published 2-9-06 [FR E6-01740]

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html.*

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H.R. 4911/P.L. 109–212

Higher Education Extension Act of 2006 (Apr. 1, 2006; 120 Stat. 321)

Last List March 27, 2006

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