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

WHEN: Wednesday, January 11, 2006
9:00 a.m.–Noon

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

RESERVATIONS: (202) 741–6008

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Contents

Federal Register

Vol. 70, No. 241

Friday, December 16, 2005

Agriculture Department
See Commodity Credit Corporation
See Food Safety and Inspection Service
See Forest Service
See Natural Resources Conservation Service
See Rural Housing Service

Army Department
NOTICES
Meetings:
Army Science Board, 74780

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Medicare & Medicaid Services
See Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74817

Coast Guard
RULES
Maritime security:
Dangerous cargo definition change and electronic notification of arrival submission options, 74663–74669
Pollution:
Marine casualties; reporting requirements, 74669–74676
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Nassau County, Long Island, NY, 74676–74679

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74763–74764

Committee for Purchase From People Who Are Blind or Severely Disabled
PROPOSED RULES
Javits-Wagner-O'Day (JWOD) Program:
Nonprofit agencies and central nonprofit agencies; governance standards, 74721–74723
NOTICES
Procurement list; additions and deletions, 74762–74763

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
China, 74777–74779

Commodity Credit Corporation
PROPOSED RULES
Export programs:
Commodities procurement for foreign donation, 74717–74721

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 74779–74780

Defense Department
See Army Department

Drug Enforcement Administration
RULES
Anabolic Steroid Control Act of 2004; implementation, 74653–74658

Education Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals; correction, 74780
Grants and cooperative agreements; availability, etc.:
Limited English proficient programs—
Native American and Alaska Native Children in School Program; correction, 74780–74781
Postsecondary education—
American Indian Tribally Controlled Colleges and Universities and Alaska Native and Native Hawaiian-Serving Institutions Programs et al., 74781–74783
Special education and rehabilitative services—
National Institute on Disability and Rehabilitation Research, 74788–74792
Technology and media services for individuals with disabilities, 74783–74788
Privacy Act; systems of records, 74792–74794

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Biological and Environmental Research Advisory Committee, 74794

Environmental Protection Agency
RULES
Air pollution; standards of performance for new stationary sources:
Annual capacity factor; definition; CFR correction, 74679
Solid waste incineration units, 74870–74924
Pesticide, food, and feed additive petitions:
Syngenta Crop Protection, Inc., 74679–74688
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenazate, 74688–74696
Toxic substances:
Chemical inventory update reporting, 74696–74700
NOTICES
Environmental statements; availability, etc.:
Agency comment availability, 74809–74810
Agency weekly receipts, 74810
Meetings:
Scientific Advisory Board, 74810–74814
Superfund; response and remedial actions, proposed settlements, etc.:
Sadler Drum Site, FL, 74814

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 74639–74649
NOTICES
Advisory circulars; availability, etc.:
Compliance checklist for part 23 projects, 74862
Aeronautical land-use assurance; waivers:
Southern Illinois Airport, IL, 74862–74863
Air carriers certification and operation:
Flight and duty time; interpretation procedures; comment request, 74863
Airport noise compatibility program:
Southwest Florida International Airport, FL, 74863–74864
Environmental statements; availability, etc.:
Las Vegas McCarran International Airport, NV, 74864

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation combined filings, 74796–74801
Hydroelectric applications, 74801–74804
Meetings:
Assessment of demand response resources; technical conference, 74804–74805
Santa Felicia Hydroelectric Project, 74805
Applications, hearings, determinations, etc.:
Maritimes & Northeast Pipeline, L.L.C., 74794
Ridge Generating Station, LP, 74794–74795
Trunkline LNG Co., LLC, 74795
Vector Pipeline L.P., 74795–74796

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Lafayette Parish, LA, 74864

Federal Maritime Commission
NOTICES
Ocean transportation intermediary licenses:
Unifreight Cargo Systems, Inc., et al., 74815

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 74815
Formations, acquisitions, and mergers, 74815
Permissible nonbanking activities, 74816

Federal Trade Commission
NOTICES
Federal Credit Reporting Act:
Disclosure charges, 74816

Fish and Wildlife Service
RULES
Endangered Species Convention:
Appendices and amendments—
Alligator snapping turtle and all species of map turtles native to U.S., 74700–74712
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74842–74844

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Pyrantel tartrate, etc.; approval withdrawn, 74652–74653
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74817–74822
Animal drugs, feeds, and related products:
Pyrantel tartrate, etc.; withdrawn, 74822–74823
Meetings:
Nonprescription Drugs Advisory Committee and Endocrinologic and Metabolic Drugs Advisory Committee, 74823
Memorandums of understanding:
C-Path Institute framework for collaboration, 74823–74827

Food Safety and Inspection Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74759–74760

Forest Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74760–74761
Meetings:
Forestry Research Advisory Council, 74761
Lake Tahoe Basin Federal Advisory Committee, 74761

Health and Human Services Department
See Centers for Medicare & Medicaid Services
See Food and Drug Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health

Homeland Security Department
See Coast Guard
See Transportation Security Administration

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Homeless assistance; excess and surplus Federal properties, 74838–74840
Median family income limits and estimates (2006 FY); metropolitan area definitions, 74988–74993

Indian Affairs Bureau
NOTICES
Environmental statements; notice of intent:
Confederated Tribes of Umatilla Reservation of Oregon; Coyote Business Park project, 74844–74845

Indian Arts and Crafts Board
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74840–74841

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 74827–74829

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74841–74842

Internal Revenue Service
RULES
Income taxes:
Foreign entities; classification, 74658
NOTICES
Meetings:
Taxpayer Advocacy Panels, 74866

International Trade Administration
NOTICES
Antidumping:
Honey from—
China, 74764–74776
Committees; establishment, renewal, termination, etc.:
Industry Trade Advisory Committee on Chemicals et al., 74776–74777

International Trade Commission
NOTICES
Import investigations:
Liquid sulfur dioxide from—
Canada, 74845–74846
Solid urea from—
Russia and Ukraine, 74846

Justice Department
See Drug Enforcement Administration

Land Management Bureau
NOTICES
Meetings:
Resource Advisory Councils—
Western Montana, 74845

Merit Systems Protection Board
PROPOSED RULES
Organization and procedures:
Employee testimony and official records production; legal proceedings, 74714–74717

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Ultra-deep well drilling; suspension of operations, 74659–74663

National Institutes of Health
NOTICES
Inventions, Government owned; availability for licensing, 74829–74830
Meetings:
National Institute of Allergy and Infectious Diseases, 74830
National Institute on Alcohol Abuse and Alcoholism, 74831
National Institute on Deafness and Other Communication Disorders, 74830–74831
National Library of Medicine, 74832
National Toxicology Program—
Geinstein and soy formula expert panel; comment request, 74834–74835
Hormonally induced reproductive tumors; relevance of rodent biossays, 74835–74836
In vitro pyrogenicity testing methods; nominations of experts and submission of data, 74833–74834
Scientific Counselors Board, 74832

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna, 74712–74713
PROPOSED RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering Sea and Aleutian Islands groundfish, 74723–74739
Gulf of Alaska groundfish, 74739–74758
NOTICES
Endangered and threatened species:
Recovery plans—
Central California Coast coho salmon, 74777

Natural Resources Conservation Service
NOTICES
Reports and guidance documents; availability, etc.:
Indiana Technical Guide, 74761–74762

Nuclear Regulatory Commission
PROPOSED RULES
Practice and procedure:
Electronic submissions use in agency hearings, 74950–74986
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74846
Reports and guidance documents; availability, etc.:
Concentration averaging guidance for waste determinations, 74846–74850

Pipeline and Hazardous Materials Safety Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 74865–74866

Rural Housing Service
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74762

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 74850
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 74850–74859
International Securities Exchange LLC, 74859–74861

Small Business Administration
NOTICES
Small Business Technology Transfer Program Policy Directive; amendments, 74926–74947

Social Security Administration
RULES
Organization and procedures:
Social Security Number (SSN) Cards; replacement limitations, 74649–74652
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74861

State Department
NOTICES
Culturally significant objects imported for exhibition:
Samuel Palmer (1805-1881): Vision and Landscape, 74861–74862

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Pipeline and Hazardous Materials Safety Administration

Transportation Security Administration
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74836–74838

Treasury Department
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency information collection activities; proposals, submissions, and approvals, 74867
Meetings:
Veterans' Disability Benefits Commission, 74867

Western Area Power Administration
NOTICES
Energy planning and management program:
Parker-Davis project; post-2008 resource pool, 74805–74809

Separate Parts In This Issue

Part II
Environmental Protection Agency, 74870–74924

Part III
Small Business Administration, 74926–74947

Part IV
Nuclear Regulatory Commission, 74950–74986

Part V
Housing and Urban Development Department, 74988–74993

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.

5 CFR

Proposed Rules:
1216.....74714

7 CFR

Proposed Rules:
1496.....74717

10 CFR

Proposed Rules:
1.....74950
2.....74950
13.....74950
110.....74950

14 CFR
39 (4 documents) 74639, 74641, 74645, 74647

20 CFR
422.....74649

21 CFR
510.....74652
558.....74652
1300.....74653
1308.....74653

26 CFR
301.....74658

30 CFR
250.....74659

33 CFR
104.....74663
105.....74663
151.....74669
153.....74669
160.....74663
165.....74676

40 CFR
60 (2 documents) 74679, 74870
180 (2 documents) 74679, 74688
710.....74696

41 CFR

Proposed Rules:
51-2.....74721
51-3.....74721
51-4.....74721

46 CFR

Proposed Rules:
4.....74669

50 CFR
23.....74700
635.....74712

Proposed Rules:
679 (2 documents) 74723, 74739

Rules and Regulations

Federal Register
Vol. 70, No. 241
Friday, December 16, 2005

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

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–22437; Directorate Identifier 2005–NM–082–AD; Amendment 39–14419; AD 2005–25–26]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 747–400D, and 747–400F 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 747–400, 747–400D, and 747–400F series airplanes. This AD requires repetitive detailed inspections for damage (degraded finish; missing, lifted, peeling, or blistering paint; or signs of corrosion) of the interior skin in the forward and aft cargo compartments, and corrective actions if necessary. This AD results from reports of skin corrosion on four Boeing Model 747 series airplanes that were delivered between 1995 and 1999. We are issuing this AD to detect and correct corrosion, which can penetrate the thickness of the skin and cause cracking, and result in rapid decompression of the airplane.

DATES: This AD becomes effective January 20, 2006.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of January 20, 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: Nicholas Kusz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6432; 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 Model 747–400, 747–400D, and 747–400F series airplanes. That NPRM was published in the **Federal Register** on September 15, 2005 (70 FR 54484). That NPRM proposed to require repetitive detailed inspections for damage (degraded finish; missing, lifted, peeling, or blistering paint; or signs of corrosion) of the interior skin in the forward and aft cargo compartments, and corrective actions 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.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

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

Costs of Compliance

There are about 260 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 cost
Detailed inspection, per inspection cycle.	10	$65	N/A	$650, per inspection cycle	36	$23,400, 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):

2005–25–26 Boeing: Amendment 39–14419. Docket No. FAA–2005–22437; Directorate Identifier 2005–NM–082–AD.

Effective Date

(a) This AD becomes effective January 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–400, 747–400D, and 747–400F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–53A2505, dated March 17, 2005.

Unsafe Condition

(d) This AD was prompted by reports of skin corrosion on four Boeing Model 747 series airplanes that were delivered between 1995 and 1999. We are issuing this AD to detect and correct corrosion, which can penetrate the thickness of the skin and cause cracking, and result in rapid decompression 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.

Repetitive Inspections and Corrective Actions

(f) Within 12 months after the effective date of this AD, do a detailed inspection for damage (degraded finish; missing, lifted, peeling, or blistering paint; or signs of corrosion) of the interior skin in the forward and aft cargo compartments. Do any applicable corrective actions before further flight. Except as required by paragraphs (g) and (h) of this AD, do all actions in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2505, dated March 17, 2005. Repeat the inspection thereafter at intervals not to exceed 48 months until accomplishing task number C53–125–01 of Boeing Document Number D6–36022, ''Aging Airplane Corrosion Prevention and Control Program—Model 747,'' Revision A, dated July 28, 1989, or until accomplishing tasks S53–520 and S53–550 of Boeing Document D621U400-MRB, ''B747–400 Maintenance Review Board Report,'' Revision E, dated May 2003.

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.''

Damage That Exceeds Structural Repair Manual Limits

(g) If any corrosion damage that exceeds the limits specified in the structural repair manual is found during any action required by this AD, and Boeing Alert Service Bulletin 747–53A2505, dated March 17, 2005, specifies to contact Boeing for repair instructions: Before further flight, repair the damage using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

No Reporting Requirement

(h) Although Boeing Alert Service Bulletin 747–53A2505, dated March 17, 2005, specifies to submit to the manufacturer a report of the inspection program and details of any corrosion damage and peeling paint primer, this AD does not include those actions.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (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

(j) You must use Boeing Alert Service Bulletin 747–53A2505, dated March 17, 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 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 December 8, 2005.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24053 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21356; Directorate Identifier 2004–NM–223–AD; Amendment 39–14417; AD 2005–25–24]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 777–200 and –300 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 777–200 and –300 series airplanes. This AD requires repetitive detailed inspections of the forward lugs of the power control unit (PCU), yoke assembly, and forward attachment hardware of the left inboard, left outboard, right inboard, and right outboard flaperon PCUs; and other specified/corrective actions if necessary. For certain airplanes, this AD also requires other related concurrent actions. This AD results from reports indicating that operators have found worn, fretted, and fractured bolts that attach the yoke assembly to the flaperon PCU. We are issuing this AD to prevent damage and eventual fracture of the yoke assembly, pin assembly, and attachment bolts that connect the inboard and outboard PCUs to a flaperon, which could lead to the flaperon becoming unrestrained and consequently departing from the airplane. Loss of a flaperon could result in asymmetric lift and reduced roll control of an airplane. A departing flaperon could also cause damage to the horizontal and vertical stabilizers, which could result in loss of control of the airplane if damage is significant.

DATES: This AD becomes effective January 20, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 20, 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: Gary Oltman, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6443; 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 Model 777–200 and –300 series airplanes. That NPRM was published in the **Federal Register** on June 3, 2005 (70 FR 32524). That NPRM proposed to require repetitive detailed inspections of the forward lugs of the power control unit (PCU), yoke assembly, and forward attachment hardware of the left inboard, left outboard, right inboard, and right outboard flaperon PCUs; and other specified/corrective actions if necessary. For certain airplanes, the NPRM also proposed to require other related concurrent actions.

Comments

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

Request To Revise Compliance Time for Certain Airplanes

Two commenters request that we revise the compliance times of the initial and repetitive inspections for Model 777–200 and –300 series airplanes powered by Rolls-Royce engines. Both commenters state that the initial inspection in the third row of Table 1 of the NPRM should be specified in flight hours. One commenter, the airplane manufacturer, states that the repetitive inspections in the second and third rows of Table 1 of the NPRM should also be specified in flight hours. The commenters point out that these revisions are consistent with what is recommended in Boeing Service Bulletin 777–27A0056, Revision 1, dated July 8, 2004.

We agree. We did not intend to differ from the compliance time recommended in the service bulletin. Therefore, we have revised the compliance times of the initial inspection in the third row of Table 1 of this AD and the repetitive inspection interval in the second and third rows of Table 1 of this AD.

Request To Clarify Certain Compliance Times

One commenter requests that we clarify when the compliance time clock starts for the initial inspections of the Model 777–200 and –300 series airplanes powered by Rolls-Royce engines. These compliance times are listed in rows 2 and 3, of the second column of Table 1 of the NPRM. The commenter states that, according to Boeing Service Bulletin 777–27A0056, Revision 1, the clock for measuring flight cycles and flight hours should start from the date of airplane delivery. The commenter asserts that compliance times as written in the NPRM do not clearly state that.

We agree. We have revised the compliance times in rows 1, 2, and 3, of the second column of Table 1 of this AD to specify that the threshold of the initial inspection should be measured from ''* * * the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.''

Request To Add Line Numbers (L/Ns) to Table 1

One commenter, the manufacturer, requests that we make the following changes to Table 1 of the NPRM:

- In row 1 of the first column, add L/Ns 1 through 297 inclusive for Model 777–200 and –300 airplanes powered by General Electric or Pratt & Whitney engines.
- In row 2 of the first column, add L/Ns 1 through 297 inclusive for Model 777–200 and –300 airplanes powered by Rolls-Royce engines.
- In row 3 of the first column, add L/Ns 298 and subsequent for Model 777–200 and –300 airplanes powered by Rolls-Royce engines.
- In row 2 of the second column, add the phrase ''* * * date of this AD, whichever is later.''

For clarification we agree to add ''L/Ns 1 through 297 inclusive'' to row 1 of the first column of Table 1 of this AD. We have verified that the commenter's other proposed changes were included in the NPRM, as published in the **Federal Register** on June 3, 2005. That information is retained in this AD, so no additional change to this AD is necessary in this regard.

Request To Identify Engine Type

One commenter requests that, for the proposed initial and repetitive inspections, we clarify whether the applicable airplanes are powered by General Electric, Pratt & Whitney, or Rolls-Royce engines. The commenter states that Boeing Service Bulletin 777–27A0056, Revision 1, identifies the applicable airplanes as Group 1, 2, or 3 airplanes with the inspection details.

We agree. We have revised Table 1 of this AD to identify the affected airplanes as Group 1, 2, or 3 airplanes, in addition to including the line numbers and engine types. With the changes discussed previously, this information is consistent with what is specified in the effectivity of Boeing Service Bulletin 777–27A0056, Revision 1.

Request To Delete Compliance Time for Corrective Actions

One commenter requests that we delete the last sentence of paragraph (f) of the NPRM: ''Do the applicable corrective actions before further flight.'' The commenter states that this sentence conflicts with the compliance times in Table 1 of the NPRM.

We do not agree to delete the sentence. Table 1 of this AD specifies compliance times for doing the initial and repetitive inspections. The last sentence of paragraph (f) of this AD specifies the compliance time for doing the corrective actions if, during any inspection, any damage to the attachment hardware, PCU lug, or yoke assembly is found, or a migrated or rotated bearing is found. We defined these corrective actions in the ''Relevant Service Information'' paragraph of the NPRM. These corrective actions must be done before further flight after finding damage.

We inadvertently omitted the compliance time for the other specified action, which is tightening the attachment bolts to a higher torque value. The other specified action must also be done before further flight after accomplishing the inspections specified in paragraphs (f)(1) through (f)(5) of this AD. Therefore, we have added that action to the last sentence of paragraph (f) of this AD.

Request To Add Concurrent Requirement

One commenter requests that we delete reference to Boeing Service Bulletin 777–27–0049, dated August 30, 2001, from paragraph (h) of the NPRM, and add it to paragraph (g) of the NPRM. As justification, the commenter states that Boeing Service Bulletin 777–27A0056, Revision 1, recommends accomplishing both Boeing Service Bulletin 777–27–0009, Revision 1, dated May 8, 2003, and Boeing Service Bulletin 777–27–0049 concurrently with Boeing Service Bulletin 777–27A0056, Revision 1.

We disagree. As we stated in the difference paragraph of the NPRM, this AD does not require concurrent accomplishment of Boeing Service Bulletin 777–27–0049. Instead, paragraph (g) of this AD requires concurrent accomplishment of Boeing Service Bulletin 777–27–0009, Revision 1, with the exception to install new, improved steel yoke assemblies having improved bearing retention, part number (P/N) 251W1130–3. We have determined that installing P/N 251W1130–3 concurrently with doing the detailed inspections of the forward lugs of the PCU and of the attachment hardware for damage (required by paragraphs (f)(1) and (f)(5) of this AD), in accordance with Boeing Service Bulletin 777–27A0056, Revision 1, adequately addresses the concurrent requirements identified in Boeing Service Bulletin 777–27–0049. Therefore, no change to this AD is necessary in this regard.

Request for Credit for Group 1 Airplanes

One commenter requests that we revise paragraph (h) of the NPRM to give credit to Group 1 airplanes for the inspections specified in paragraphs (f)(1) through (f)(5) of the NPRM. The commenter points out that Note 3 in the Accomplishment Instructions of Boeing Service Bulletin 777–27A0056, Revision 1, states that Group 1 airplanes have accomplished the intent of that service bulletin if those airplanes have incorporated the modification in Boeing Service Bulletin 777–27–0049 and tightened the PCU attach bolts to the higher torque values given in Boeing Service Bulletin 777–27A0056, Revision 1. The commenter has accomplished the actions specified in Boeing Service Bulletin 777–27–0049 and has tightened the bolts in accordance with Boeing Service Letter 777–SL–27–030, dated January 4, 2001. The commenter asserts that these actions should terminate the proposed inspections for Group 1 airplanes.

We disagree. Boeing Service Bulletin 777–27–0049 does not specify doing a detailed inspection of the aft lugs of the yoke assembly for fretting damage, which is required by paragraph (f)(2) of this AD. In addition, we must ensure that the inspections specified in paragraphs (f)(1) through (f)(5) of this AD are accomplished concurrently with tightening the attachment bolts to a higher torque value (the other specified action required by paragraph (f) of this AD). Operators, who installed the new, improved yoke assembly having improved bearing retention, P/N 251W1130–3, but tightened the attachment bolts to the lower torque values specified in the Boeing 777 Airplane Maintenance Manual, have reported finding loose or fretted bolts, and at least one fractured bolt, with significant damage to the yoke and PCU. However, under the provisions of paragraph (k) of this AD, we may consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such method would provide an acceptable level of safety.

Request To Identify Airplanes by Group Number

One commenter requests that we revise paragraph (h) of the NPRM to identify the applicable airplanes by group numbers for terminating certain inspections. The commenter states that accomplishing Boeing Service Bulletin 777–27–0049 on Group 1 airplanes terminates the inspections specified in paragraphs (f)(1) through (f)(5) of the NPRM. The commenter also states that accomplishing Boeing Service Bulletin 777–27–0049 on Group 2 and 3 airplanes terminates the inspections specified in paragraphs (f)(3) and (f)(4) of the NPRM.

We disagree. As discussed in the previous comment, we have determined that, for Group 1 airplanes, accomplishing the actions in Boeing Service Bulletin 777–27–0049 terminates only the inspections required by paragraphs (f)(3) and (f)(4) of this AD. Consequently, we do not need to distinguish between airplane groups in this regard. In addition, the effectivity of Boeing Service Bulletin 777–27–0049 is different than the effectivity of Boeing Service Bulletin 777–27A0056, Revision 1. Therefore, paragraph (h) of this AD is only applicable to the airplanes identified in the effectivity of Boeing Service Bulletin 777–27–0049. No change is necessary to this AD in this regard.

Request To Revise the Difference Paragraph

One commenter requests that we revise the last sentence of the difference paragraph in the NPRM. The commenter asserts that the paragraph should state that accomplishing Boeing Service Bulletin 777–27–0049 is an optional terminating action for certain repetitive inspections '' * * * on certain Model 777–200 and –300 series airplanes.''

We do not agree to add the additional phrase. Although we agree that the commenter's statement is true, we do not publish difference paragraphs in a final rule. In addition, no change is needed to paragraph (h) of this AD in this regard, since that paragraph identifies the certain Model 777–200 and –300 series airplanes that are allowed credit for the optional terminating action.

Request To Revise ''Costs of Compliance''

One commenter, an operator, states that the cost impact of the proposed inspections for its fleet is $34,820, per inspection cycle. The commenter states it has completed the proposed inspections on 35 of 45 of its affected airplanes. The commenter has based the cost impact on a figure of 8.5 man-hours to complete the proposed inspection. We infer the commenter would like us to revise the ''Costs of Compliance'' section of this AD.

We disagree. The estimated work hours 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, we agree with the manufacturer's estimate; Boeing Service Bulletin 777–27A0056, Revision 1, estimates 4 man-hours to do the inspection. Therefore, no change is necessary to this AD in this regard.

Explanation of Changes Made to This AD

We have revised the ''Alternative Methods of Compliance (AMOCs)'' paragraph in this AD to clarify the delegation authority for Authorized Representatives for the Boeing Commercial Airplanes Delegation Option Authorization.

We have also revised this AD to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

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 483 airplanes of the affected design in the worldwide fleet. This AD affects about 131 airplanes of U.S. registry. The inspections 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 inspections for U.S. operators is $34,060, or $260 per airplane, per inspection cycle.

The concurrent actions of Boeing Service Bulletin 777–27–0009, if required, take about 7 work hours per airplane. Required parts cost about $12,758 per airplane. Based on these figures, the estimated cost of these concurrent actions is $13,213 per airplane.

The concurrent actions of Boeing Service Bulletin 777–27–0049, if required, take about 5 work hours per airplane. Required parts cost about $3,245 per airplane. Based on these figures, the estimated cost of these concurrent actions is $3,570 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):

2005–25–24 Boeing: Amendment 39–14417. Docket No. FAA–2005–21356; Directorate Identifier 2004–NM–223–AD.

Effective Date

(a) This AD becomes effective January 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 777–200 and –300 series airplanes, certificated in any category, as identified in Boeing Service Bulletin 777–27A0056, Revision 1, dated July 8, 2004.

Unsafe Condition

(d) This AD results from reports indicating that operators have found worn, fretted, and fractured bolts that attach the yoke assembly to the flaperon power control unit (PCU). We are issuing this AD to prevent damage and eventual fracture of the yoke assembly, pin assembly, and attachment bolts that connect the inboard and outboard PCUs to a flaperon, which could lead to the flaperon becoming unrestrained and consequently departing from the airplane. Loss of a flaperon could result in asymmetric lift and reduced roll control of an airplane. A departing flaperon could also cause damage to the horizontal and vertical stabilizers, which could result in loss of control of the airplane if damage is significant.

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 Inspections

(f) At the applicable compliance time(s) specified in Table 1 of this AD, do detailed inspections of the parts specified in paragraphs (f)(1) through (f)(5) of the left inboard, left outboard, right inboard, and right outboard flaperon PCUs; and do any other specified and corrective actions as applicable; by doing all of the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 777–27A0056, Revision 1, dated July 8, 2004. Do the other specified action and applicable corrective actions before further flight.

(1) Forward lugs of the PCU for nicks, gouges, and fretting damage.

(2) Aft lugs of the yoke assembly for fretting damage.

(3) Aft lugs of the yoke assembly for signs of wear on the anti-rotation lugs, unless paragraph (g) or (h) of this AD, as applicable, has been accomplished.

(4) Aft lugs of the yoke assembly bearings for signs of migration or rotation, unless paragraph (g) or (h) of this AD, as applicable, has been accomplished.

(5) Attachment hardware for the PCU to yoke assembly for damage.

TABLE 1.—COMPLIANCE TIMES

Applicable airplanes	Initial inspection	Repetitive inspections
Group 1 airplanes: Model 777–200 and –300 airplanes powered by General Electric or Pratt & Whitney engines, line numbers (L/Ns) 1 through 297 inclusive.	Before the accumulation of 5,000 total flight cycles since the date of issuance of the original standard airworthiness and certificate or the date of issuance of the original export certificate of airworthiness; or within 12 months after the effective date of this AD; whichever is later.	None.
Group 2 airplanes: Model 777–200 and –300 airplanes powered by Rolls-Royce engines, L/Ns 1 through 297 inclusive.	Before the accumulation of 1,000 total flight cycles since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 180 days after the effective date of this AD; whichever is later.	At intervals not to exceed 5,000 flight hours or 750 days, whichever is later.
Group 3 airplanes: Model 777–200 and –300 airplanes powered by Rolls-Royce engines, L/Ns 298 and subsequent.	Before the accumulation of 5,000 total flight hours since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness; or within 750 days after the effective date of this AD; whichever is later.	At intervals not to exceed 5,000 flight hours or 750 days, whichever is later.

Concurrent Actions for Certain Airplanes

(g) For Model 777–200 series airplanes identified in Boeing Service Bulletin 777–27–0009, Revision 1, dated May 8, 2003: Before or concurrently with accomplishing paragraph (f) of this AD, replace the yoke assemblies and pins of the left inboard, left outboard, right inboard, and right outboard flaperon PCUs with new, improved yoke assemblies and pins by doing all of the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 777–27–0009, Revision 1, dated May 8, 2003; except where the service bulletin specifies installing yoke assembly having part number (P/N) 251W1130–1, install yoke assembly having P/N 251W1130–3.

Optional Terminating Action for Certain Repetitive Inspections

(h) For Model 777–200 and –300 series airplanes identified in Boeing Service Bulletin 777–27–0049, dated August 30, 2001: Replacing the yoke assemblies of the left inboard, left outboard, right inboard, and right outboard flaperon PCUs with new, improved yoke assemblies having improved bearing retention, and doing any other specified and corrective actions, by doing all of the actions specified in the Accomplishment Instructions of Boeing Service Bulletin 777–27–0049, dated August 30, 2001, terminates the detailed inspections required by paragraphs (f)(3) and (f)(4) of this AD.

Credit for Pin Replacements of the Outboard Flaperon PCUs

(i) Accomplishment of the actions specified in paragraph (b) or (d) of AD 99–13–05, amendment 39–11198, before the effective date of this AD is acceptable for compliance with the pin replacements of the left and right outboard flaperon PCUs required by paragraph (g) of this AD.

Parts Installation

(j) As of the effective date of this AD, no person may install on any airplane the following parts: Yoke assembly having P/N S251W115–3 or P/N 251W1130–1; and pin having P/N S251W115–2.

Alternative Methods of Compliance (AMOCs)

(k)(1) The Manager, Seattle Aircraft Certification Office (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 14 CFR 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

(l) You must use Boeing Service Bulletin 777–27A0056, Revision 1, dated July 8, 2004; and Boeing Service Bulletin 777–27–0009, Revision 1, dated May 8, 2003, as applicable, to perform the actions that are required by this AD, unless the AD specifies otherwise. The optional terminating action provided by paragraph (h) of this AD, if accomplished, must be done in accordance with Boeing Service Bulletin 777–27–0049, dated August 30, 2001. 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, December 6, 2005.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24050 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21716; Directorate Identifier 2005–NM–080–AD; Amendment 39–14418; AD 2005–25–25]

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 replacing the aileron control override quadrant with a modified unit. This AD results from a report of the seizing of the input override mechanism bearings of the lateral central control actuator on affected airplanes. We are issuing this AD to prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral controllability of the airplane.

DATES: This AD becomes effective January 20, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 20, 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: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; 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 Model 767–200, –300, and –300F series airplanes. That NPRM was published in the **Federal Register** on July 6, 2005 (70 FR 38819). That NPRM proposed to require replacing the aileron control override quadrant with a modified unit.

Comments

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

Support for the Proposed AD

Two commenters express support for the proposed AD.

Request To Extend Compliance Time

One commenter, an airplane operator, requests that the proposed compliance time for replacing the aileron control override quadrant be extended from 18 months after the effective date of the AD to 21 months after the effective date of the AD. The commenter states that the 18-month compliance time will create undue economic hardship because it's ''C'' check interval has been extended to 21 months.

We do not agree with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action we considered the urgency associated with the subject unsafe condition, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. Since maintenance schedules vary from operator to operator, it is not possible to guarantee that all affected airplanes could be modified during scheduled maintenance, even if we extended the compliance time to 21 months. We find that an 18-month compliance time represents the maximum time in which the affected airplanes may continue to operate without compromising safety. We also note that economic hardship is not sufficient rationale for demonstrating that an extended compliance time would provide an acceptable level of safety. However, according to the provisions of paragraph (h) of the final rule, we may approve requests to adjust the compliance time if the request includes data to substantiate that the new compliance time would provide an acceptable level of safety. No change to the final rule is necessary.

Request To Correct Wording in ''Relevant Service Information'' Section

One commenter notes that the ''Relevant Service Information'' section of the proposed AD should be corrected to state that Revision 1 of Boeing Alert Service Bulletin 767–27A0175, dated June 3, 2004, increased the effectivity rather than Revision 2, of Boeing Service Bulletin 767–27A0175, dated August 5, 2004, as is currently stated in that section. The commenter points out that Revision 1 of the alert service bulletin increased the applicability and that this applicability was continued in Revision 2 of the service bulletin.

We partially agree with the commenter. We agree that the additional airplanes (line number 837 through 918) were added to Revision 1 rather than Revision 2 of the service bulletin, and we have revised paragraphs (f) and (i) of the final rule accordingly. However, since the ''Relevant Service Information'' section of the preamble does not reappear in the final rule, we have not revised that section.

Request To Revise Cost Estimate

One commenter disagrees with the projected costs to accomplish the proposed replacement of the aileron control override quadrant. The commenter states that its actual costs to do the replacement have been $1,068 per airplane rather than $796, which was the cost proposed in the NPRM.

We infer that the commenter would like the cost estimate to be revised to closer reflect its actual costs. We acknowledge the commenter's concerns, but disagree with revising the cost estimate. Although the operator has tracked its own costs based on data it kept when accomplishing related AD 2003–15–03, amendment 39–13245 (68 FR 44197, July 28, 2003), the commenter does not state how the additional costs were accrued (e.g., additional labor, parts, etc.). We acknowledge that the costs associated with doing the required actions can vary depending on if the

operator chooses to replace the existing override quadrant assembly, or if it chooses to overhaul the existing override quadrant by installing new corrosion resistant steel bearings. In addition, we recognize that in accomplishing the requirements of any AD, operators may incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs, but only the costs of the specific actions required by the AD action.

We have not revised the final rule in this regard.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Explanation of Editorial Change

We have revised the cost estimate to correct the number of airplanes in the worldwide fleet. The NPRM stated that the number is 127 airplanes; the final rule states that the number is 82 airplanes.

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 82 airplanes of the affected design in the worldwide fleet. This proposed AD affects about 45 airplanes of U.S. registry. The actions will take about 10 work hours per airplane, at an average labor rate of $65 per work hour. Required parts cost about $146 per airplane. Based on these figures, the estimated cost of this AD for U.S. operators is $35,820, or $796 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):

2005–25–25 Boeing: Amendment 39–14418. Docket No. FAA–2005–21716; Directorate Identifier 2005–NM–080–AD.

Effective Date

(a) This AD becomes effective January 20, 2006.

Affected ADs

(b) This AD is related to AD 2003–15–03, amendment 39–13245. AD 2003–15–03 is applicable to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category, line numbers (L/Ns) 1 through 836 inclusive.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category, L/Ns 837 through 918 inclusive.

Unsafe Condition

(d) This AD was prompted by a report of the seizing of the input override mechanism bearings of the lateral central control actuator on affected airplanes. We are issuing this AD to prevent corrosion of the input override mechanism bearings of the lateral central control actuator, which, in the event of a subsequent jam in the pilot's aileron control system, could result in failure of the aileron override system and consequent reduced lateral 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.

Replacement

(f) Within 18 months after the effective date of this AD, replace the aileron control override quadrant with a modified unit, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767–27A0175, Revision 1, dated June 3, 2004; or Boeing Service Bulletin 767–27A0175, Revision 2, dated August 5, 2004.

Note 1: This AD does not require accomplishing the actions specified by Step 5 of Figure 2 of Boeing Alert Service Bulletin 767–27A0175, Revision 1, or Boeing Service Bulletin 767–27A0175, Revision 2.

Part Installation

(g) As of the effective date of this AD, no person may install, on any airplane, an aileron control quadrant override assembly that has not been modified in accordance with the requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (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.

Material Incorporated by Reference

(i) You must use Boeing Alert Service Bulletin 767–27A0175, Revision 1, dated June 3, 2004; or Boeing Service Bulletin 767–27A0175, Revision 2, dated August 5, 2004; 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 December 8, 2005.

Michael Zielinski,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24054 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–21712; Directorate Identifier 2005–NM–070–AD; Amendment 39–14424; AD 2005–26–03]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737 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 737 airplanes. This AD requires modifying the elevator input torque tube assembly. This AD results from a report of a restriction in the pilot's elevator input control system. A design review performed on the elevator input torque tube assembly in the course of the investigation discovered possible failure modes that could lead to a jam of the elevator control system. We are issuing this AD to prevent loss of elevator control and consequent reduced controllability of the airplane.

DATES: This AD becomes effective January 20, 2006.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 20, 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: Douglas Tsuji, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6487; 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 Model 737–100, –200, –200C, –300, –400, –500, –600, –700, –700C, –800 and –900 series airplanes. That NPRM was published in the **Federal Register** on July 5, 2005 (70 FR 38630). That NPRM proposed to require modifying the elevator input torque tube assembly.

Comments

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

Support for the Proposed AD

One commenter states that although the proposed AD does not affect any airplane in its fleet, it supports the actions in the AD.

Request To Clarify Summary

The airplane manufacturer requests that we revise the third sentence in the Summary section of the proposed AD from, ''This proposed AD is prompted by a report of a restriction in the pilot's elevator control system,'' to ''This proposed AD is prompted by the results of a design review performed on the input torque tube assembly, which discovered possible failure modes that could lead to a jam of the elevator control system.'' The commenter explains that the sentence, as proposed, may be misleading by connecting the pilots' reported condition to the hypothetical jam that is addressed by the proposed AD.

We partially agree with the commenter. We agree that the wording in the Summary section could lead to an interpretation that the cause of the reported incident was restrictions in the pilot's elevator input control system. We disagree with revising the section as proposed, because, as stated in the Discussion section of the proposed AD, the design review was conducted as part of an intensive investigation. The investigation was conducted by the National Transportation Safety Board, the FAA, and Boeing. We have revised the Summary section and paragraph (d) of the final rule to state, ''This AD results from a report of a restriction in the pilot's elevator input control system. A design review performed on the elevator input torque tube assembly in the course of the investigation discovered possible failure modes that could lead to a jam of the elevator control system.''

Request To Allow Different Procedures for Re-Identification

The commenter, an airplane operator, requests that paragraph (f) be revised to allow alternate methods for re-identifying the modified elevator torque tube assemblies. The commenter explains that the service bulletins referenced in the proposed AD specify the use of a rubber ink stamp method to re-identify the modified assemblies. The commenter points out that operators of a single airplane would have to fabricate or acquire a stamp for a one-time use, and operators of many airplanes would have to acquire dozens of rubber stamps to support the various overhaul facility locations. The commenter requests that the final rule allow for use of either the rubber stamp method, or the use of a pen with indelible ink. The commenter states that the component number could then be covered with protective covering.

We agree with the commenter. The intent of the procedures in the proposed AD and in the service bulletins is to signify that the modification has been accomplished, not to specify the method of re-identification. We have revised paragraph (f) of the final rule to allow alternate permanent part marking in lieu of rubber stamping.

Clarification of Alternative Method of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

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 2,971 airplanes of the affected design in the worldwide fleet. This AD will affect about 1,573 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Modification	Work hours	Average labor rate per hour	Parts	Cost per airplane	U.S. registered airplanes	Fleet cost
For airplanes identified in Boeing Alert Service Bulletin 737–27A1271 as Group 1	5	$65	$701	$1,026	249	$255,474
For airplanes identified in Boeing Alert Service Bulletin 737–27A1271 as Group 2	7	65	1,290	1,745	311	542,695
For all airplanes identified in Boeing Alert Service Bulletin 737–27A1274	3	65	50	245	1,013	248,185

In addition, a special tool is necessary to do the modification required by this AD. Boeing will provide one tool at no charge to each customer regardless of warranty status.

Based on these figures, the estimated total cost of this AD for U.S. operators is about $1,046,354, or between $1,271 and $1,990 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):

2005–26–03 Boeing: Amendment 39–14424. Docket No. FAA–2005–21712; Directorate Identifier 2005–NM–070–AD.

Effective Date

(a) This AD becomes effective January 20, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the airplanes identified in Table 1 of this AD, certificated in any category.

TABLE 1.—AIRPLANES AFFECTED BY THIS AD

Boeing airplane models—	As identified in Boeing Alert Service Bulletin—
737–100, –200, –200C, –300, –400, and –500 series airplanes	737–27A1274, dated February 17, 2005.
737–600, –700, –700C, –800 and –900 series airplanes	737–27A1271, dated December 16, 2004.

Unsafe Condition

(d) This AD results from a report of a restriction in the pilot's elevator input control system. Although the cause of the incident was indeterminate, a design review performed on the elevator input torque tube assembly in the course of the investigation discovered possible failure modes that could lead to a jam of the elevator control system. We are issuing this AD to prevent loss of elevator control 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.

Modification

(f) Within 60 months after the effective date of this AD: Modify the elevator input torque tube assembly by doing all the actions in accordance with the Accomplishment Instructions of the applicable service bulletin in Table 1 of this AD. Where the applicable service bulletin specifies to re-identify the modified elevator torque tube assemblies using a rubber stamp, the part may be re-identified using a permanent method that is acceptable to the appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

Alternative Methods of Compliance (AMOCs)

(g)(1) The Manager, Seattle Aircraft Certification Office (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.

Material Incorporated by Reference

(h) You must use Boeing Alert Service Bulletin 737–27A1274, dated February 17, 2005; or Boeing Alert Service Bulletin 737–27A1271, dated December 16, 2004; 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 November 25, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 05–24151 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–13–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

RIN 0960–AG25

Social Security Number (SSN) Cards; Limiting Replacement Cards

AGENCY: Social Security Administration (SSA).

ACTION: Interim final rule with request for comments.

SUMMARY: These regulations reflect and implement amendments to the Social Security Act (the Act) made by part of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA). Section 7213(a)(1)(A) of the IRTPA requires that we limit individuals to three replacement SSN cards per year and ten replacement SSN cards during a lifetime. The provision permits us to allow for reasonable exceptions from these limits on a case-by-case basis in compelling circumstances. This provision also helps us to further strengthen the security and integrity of the SSN issuance process. The limits on replacement SSN cards will be established prospectively, effective no later than December 17, 2005, regardless of the date we issue final rules in the **Federal Register**.

DATES: These final rules with request for comment are effective December 16, 2005. To be sure that your comments are considered, we must receive them no later than February 14, 2006.

ADDRESSES: You may give us your comments by: using our Internet facility (*i.e.*, Social Security Online) at *http://policy.ssa.gov/erm/rules.nsf/Rules+Open+To+Comment* or the Federal eRulemaking Portal at *http://www.regulations.gov;* e-mail to *regulations@ssa.gov;* telefax to (410) 966–2830; or letter to the Commissioner of Social Security, P.O. Box 17703, Baltimore, MD 21235–7703. You may also deliver them to the Office of Regulations, Social Security Administration, 100 Altmeyer Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, between 8 a.m. and 4:30 p.m. on regular business days. Comments are posted on our Internet site, or you may inspect them physically on regular business days by making arrangements with the contact person shown in this preamble.

Electronic Version. The electronic file of this document is available on the date of publication in the **Federal Register** at *http://www.gpoaccess.gov/fr/index.html.*

FOR FURTHER INFORMATION CONTACT: Robert J. Augustine, Social Insurance Specialist, Office of Regulations, 100 Altmeyer Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020, or TTY (410) 966–5609. For information on eligibility or filing for benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778, or visit our Internet Web site, Social Security Online, at *http://www.socialsecurity.gov*.

SUPPLEMENTARY INFORMATION:

Background

Our current regulations at 20 CFR 422.103(e), *Replacement of social security number card, state that*:

- In the case of lost or damaged SSN card, a duplicate card bearing the same name and number may be issued, and
- In the case of a need to change the name on the card, a corrected card bearing the same number and the new name may be issued.

Furthermore, our regulations at 20 CFR 422.110(a) currently state that an individual who wishes to change his or her name or other personal identifying information must prove his or her identity and may be required to provide other evidence. If a completed request and all applicable evidence are received for a change in name, a new SSN card with the new name and bearing the same number previously assigned will be issued to the person making the request.

Our current regulations do not put any numerical limits on the number of replacement SSN cards an individual may obtain. Prior to the new statutory replacement SSN card limit, the only limitation on the number of cards has been a protocol in our electronic records that prevents the issuance of a replacement SSN card within seven days of a previous issuance.

Section 7213(a)(1)(A) of Public Law 108–458 (the Intelligence Reform and Terrorism Prevention Act of 2004), enacted on December 17, 2004, requires that we restrict the issuance of multiple replacement SSN cards to any individual to three replacement SSN cards per year and ten replacement cards for the life of the individual. The statute mandates enforcement of the limits not later than one year after December 17, 2004. In applying these

limits, we will not consider replacement social security number cards issued prior to December 17, 2005. The provision also states that we may allow for reasonable exceptions from the limits on a case-by-case basis in compelling circumstances. In order to comply with this provision of Public Law 108–458, we are revising §§ 422.103 and 422.110 of our regulations.

We are also making nonsubstantive changes to § 422.107 to streamline the wording in this section.

Explanation of Changes

Section 422.103 Social Security Numbers

We are revising § 422.103(e) of our regulations by restricting the number of replacement cards an individual may obtain both during a year and over a lifetime. These limits are set at three replacement SSN cards in a year and ten per lifetime. However, as permitted by section 7213(a)(1)(A) of Public Law 108–458, we may allow for reasonable exceptions to these limits on a case-by-case basis in compelling circumstances. We are allowing exceptions for name changes (*i.e.*, verified changes to first name and/or surname) and for changes in alien status that result in a necessary change to a restrictive legend on the SSN card, because we believe these situations satisfy the compelling circumstances test. We want to ensure the accuracy of our records by encouraging number holders to report name changes and changes in alien status. Consequently, every change in name or alien status, where the restrictive legend must change, presents compelling circumstances for not applying the replacement card limits. Since we investigate the validity of documents submitted when individuals change their name or alien status (see 20 CFR 422.107(c) and (e)), we believe these are reasonable exceptions to the limitations in light of our compelling need for accurate records. Therefore, we will not count toward the annual and lifetime limits those SSN replacement cards for name and restrictive legend changes. We will grant an exception to the limits on a case-by-case basis if the individual provides evidence of hardship, such as a referral letter from a governmental social services agency indicating that the SSN card must be shown in order to obtain benefits or services. Finally, in an effort to streamline our definition of a replacement SSN card, we are eliminating language regarding the sub-categories of duplicate and corrected SSN cards from the language heretofore incorporated in this regulation.

Section 422.107 Evidence Requirements

To conform to the changes we are proposing in § 422.103 regarding streamlining the definition of a replacement SSN card, we are replacing the words ''duplicate'' or ''corrected'' with ''replacement'' in paragraphs (a) through (e) and (g) of this section.

Section 422.110 Individual's Request for Change in Record

We are revising § 422.110 to add cross-references to new paragraph (e)(2) in § 422.103, which describes the new limits on replacement SSN cards and the exceptions to those limits. We are making a minor revision to paragraph (b) to reflect that the Immigration and Naturalization Service has been abolished and its functions and units incorporated into the Department of Homeland Security. We have also made other clarifying language changes.

We anticipate that the three-card per year limit will impact fewer than 10,000 individuals in any given year. For example, of the nearly 12.4 million replacement SSN cards we issued in 2004, the number of individuals who requested more than three replacement cards was 3,818. However, we do not have any data available for those individuals who requested replacement cards exceeding the ten-card per lifetime limit. These changes will be effective prospectively, and we will not consider replacement SSN cards that were issued prior to the rule change when applying either limit.

Clarity of These Regulations

Executive Order 12866, as amended by Executive Order 13258, requires each agency to write all rules in plain language. In addition to your substantive comments on these rules, we invite your comments on how to make these rules easier to understand. For example:

- Have we organized the material to suit your needs?
- Are the requirements in the rules clearly stated?
- Do the rules contain technical language or jargon that is unclear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rules easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists or diagrams?
- What else could we do to make the rules easier to understand?

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act, 42 U.S.C. 902(a)(5), as amended by section 102 of Public Law 103–296, SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest.

In the case of these rules, we have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures. Application of the notice and comment provisions is impracticable because section 7213(a)(1)(A) of Public Law 108–458 must be implemented no later than December 17, 2005 . In addition, section 7213(a)(1)(A) serves important anti-terrorism and fraud prevention goals, which would be frustrated by any implementation delays. Thus, the public interest will be best served by immediate implementation of section 7213(a)(1)(A), which will deter and prevent SSN misuse and fraud.

In addition, we find good cause for dispensing with the 30-day delay in the effective date of a substantive rule, provided for by 5 U.S.C. 553(d). As explained above, SSA is responding to the public need to deter and prevent SSN misuse and fraud under the requirements of the IRTPA. Therefore, we find that it is in the public interest to make these rules effective upon publication, with a request for comments so that the rules can be revised as necessary or appropriate after public review. We intend to publish final rules within 120 days of the close of the comment period.

Executive Order 12866, as Amended by Executive Order 13258

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, the rules have been reviewed by OMB.

Regulatory Flexibility Act

We certify that these rules would not have a significant economic impact on a substantial number of small entities because they would affect only individuals. Thus, a regulatory flexibility analysis as provided in the

Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

These rules contain reporting requirements as shown in the following table. Where the public reporting burden is accounted for in Information Collection Requests for the various forms that the public uses to submit the information to SSA, a 1-hour placeholder burden is being assigned to the specific reporting requirement(s) contained in these rules; we are seeking clearance of these burdens because they were not considered during the clearance of the forms.

Section	Annual number of responses	Frequency of response	Average burden per response (hours)	Estimated annual burden (hours)
422.103(b), and 422.110(a)	.....	.....	.....	1
422.103(e)(2)	4,000	1	1	4,000
Total	.....	.....	.....	4,001

An Information Collection Request has been submitted to the Office of Management and Budget (OMB) for clearance. We are soliciting comments on the burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize the burden on respondents, including the use of automated collection techniques or other forms of information technology. Comments should be submitted and/or faxed to OMB at the following address/number: Office of Management and Budget, Attn: Desk Officer for SSA, Fax Number: 202–395–6974.

Social Security Administration, Attn: SSA Reports Clearance Officer, Rm. 1338 Annex Building, 6401 Security Boulevard, Baltimore, MD 21235–6401, Fax Number: 410–965–6400.

We will accept comments for 60 days after this notice is published, but comments would be most useful if we receive them within 30 days. To receive a copy of the OMB clearance package, you may call the SSA Reports Clearance Officer on 410–965–0454.

(Catalog of Federal Domestic Assistance Programs Nos. 96.001, Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.004, Social Security—Survivors Insurance; 96.006, Supplemental Security Income)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies) Reporting and recordkeeping requirements, Social Security.

Dated: November 8, 2005.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending part 422, subpart B, chapter III of title 20, Code of Federal Regulations as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

■ 1. The authority citation for subpart B of part 422 is revised to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13), and sec. 7213(a)(1)(A) of Pub. L. 108–458.

■ 2. Section 422.103 is amended by revising paragraph (e) to read as follows:

§ 422.103 Social security numbers.

* * * * *

(e) *Replacement of social security number card.* (1) *When we may issue you a replacement card.* We may issue you a replacement social security number card, subject to the limitations in paragraph (e)(2) of this section. In all cases, you must complete a Form SS–5 to receive a replacement social security number card. You may obtain a Form SS–5 from any Social Security office or from one of the sources noted in paragraph (b) of this section. For evidence requirements, see § 422.107.

(2) *Limits on the number of replacement cards.* There are limits on the number of replacement social security number cards we will issue to you. You may receive no more than three replacement social security number cards in a year and ten replacement social security number cards per lifetime. We may allow for reasonable exceptions to these limits on a case-by-case basis in compelling circumstances. We also will consider name changes (*i.e.*, verified changes to the first name and/or surname) and changes in alien status which result in a necessary change to a restrictive legend on the SSN card (see paragraph (e)(3) of this section) to be compelling circumstances, and will not include either of these changes when determining the yearly or lifetime limits. We may grant an exception if you provide evidence establishing that you would experience significant hardship if the card were not issued. An example of significant hardship includes, but is not limited to, providing SSA with a referral letter from a governmental social services agency indicating that the social security number card must be shown in order to obtain benefits or services.

(3) *Restrictive legend change defined.* Based on a person's immigration status, a restrictive legend may appear on the face of an SSN card to indicate that work is either not authorized or that work may be performed only with Department of Homeland Security (DHS) authorization. This restrictive legend appears on the card above the individual's name and SSN. Individuals without work authorization in the U.S. receive SSN cards showing the restrictive legend, ''Not Valid for Employment;'' and SSN cards for those individuals who have temporary work authorization in the U.S. show the restrictive legend, ''Valid For Work Only With DHS Authorization.'' U.S. citizens and individuals who are permanent residents receive SSN cards without a restrictive legend. For the purpose of determining a change in restrictive legend, the individual must have a change in immigration status or citizenship which results in a change to or the removal of a restrictive legend when compared to the prior SSN card data. An SSN card request based upon a change in immigration status or citizenship which does not affect the restrictive legend will count toward the yearly and lifetime limits, as in the case of Permanent Resident Aliens who attain U.S. citizenship.

§ 422.107 [Amended]

■ 3. Section 422.107 is revised as follows:

■ a. In the second sentence of paragraph (a), the second sentence of paragraph (b), the first sentence of paragraph (c), the second sentence of paragraph (d)

introductory text, and the first sentence of paragraph (e)(i), remove ''duplicate or corrected'' and add in its place ''replacement.''

■ b. In the third and fourth sentences of paragraph (a), the first sentence of paragraph (d) introductory text, and the first sentence of paragraph (g), remove '',duplicate, or corrected'' and add in its place ''or replacement.''

■ 4. Section 422.110 is revised to read as follows:

§ 422.110 Individual's request for change in record.

(a) *Form SS–5.* If you wish to change the name or other personal identifying information you previously submitted in connection with an application for a social security number card, you must complete and sign a Form SS–5 except as provided in paragraph (b) of this section. You must prove your identity, and you may be required to provide other evidence. (See § 422.107 for evidence requirements.) You may obtain a Form SS–5 from any local Social Security office or from one of the sources noted in § 422.103(b). You may submit a completed request for change in records to any Social Security office, or, if you are outside the U.S., to the Department of Veterans Affairs Regional Office, Manila, Philippines, or to any U.S. Foreign Service post or U.S. military post. If your request is for a change of name on the card, we may issue you a replacement card bearing the same number and the new name. We will grant an exception from the limitations specified in § 422.103(e)(2) for replacement social security number cards representing a change in name or, if you are an alien, a change to a restrictive legend shown on the card. (See § 422.103(e)(3) for the definition of a change to a restrictive legend.)

(b) *Assisting in enumeration.* We may enter into an agreement with officials of the Department of State and the Department of Homeland Security to assist us by collecting, as part of the immigration process, information to change the name or other personal identifying information you previously submitted in connection with an application or request for a social security number card. If your request is to change a name on the card or to correct the restrictive legend on the card to reflect a change in alien status, we may issue you a replacement card bearing the same number and the new name or legend. We will grant an exception from the limitations specified in § 422.103(e)(2) for replacement social security number cards representing a change of name or, if you are an alien, a change to a restrictive legend shown on the card. (See § 422.103(e)(3) for the definition of a change to a restrictive legend.)

[FR Doc. 05–23962 Filed 12–15–05; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 558

Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations by removing those portions that reflect approval of 15 new animal drug applications (NADAs) because the products are no longer manufactured or marketed. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADAs.

DATES: This rule is effective December 27, 2005.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–212), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9067, e-mail: *pesposit@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the 15 NADAs listed in table 1 of this document because the products are no longer manufactured or marketed:

TABLE 1.

Sponsor	NADA Number, Product (Drug)	21 CFR Section Affected (Sponsor Drug Labeler Code)
Bioproducts, Inc., 320 Springside Dr., Suite 300, Fairlawn, OH 44333–2435	NADA 119–063, Pyrantel Tartrate Ton Pack (pyrantel tartrate)	558.485 (051359)
Farmland Industries, Inc., Kansas City, MO 64116	NADA 138–656, BN Wormer—19.2 BANMINTH Premix (pyrantel tartrate)	558.485 (021676)
I.M.S. Inc., 13619 Industrial Rd., Omaha, NE 68137	NADA 129–395, HYGROMIX 0.6 Premix (hygromycin B)	558.274 (050639)
	NADA 129–646, TYLAN 10 Sulfa-G (tylosin, sulfamethazine)	558.630 (050639)
	NADA 136–601, Swine Guard BN (pyrantel tartrate)	558.485 (050639)
J. & R. Specialty Supply Co., 310 Second Ave., SW., P.O. Box 506, Waseca, MN 56093	NADA 96–780, TYLAN 10; TYLAN 40 (tylosin)	n/a (049768)
Kerber Milling Co., Box 152, 1817 E. Main St., Emmetsburg, IA 50536	NADA 98–687, Hy-Test Hy-Boost TY 5 Medicated (tylosin)	558.625 (029341)
M & M Livestock Products Co., Eagle Grove, IA 50533	NADA 96–837, M & M Tylosin Premix (tylosin)	558.625 (026282)
Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850	NADA 129–161, Nutra-Blend TYLAN 10 Sulfa Premix (tylosin, sulfamethazine)	558.630 (050568)
	NADA 136–384, Swine Wormer-BN BANMINTH (pyrantel tartrate)	558.485 (050568)

TABLE 1.—Continued

Sponsor	NADA Number, Product (Drug)	21 CFR Section Affected (Sponsor Drug Labeler Code)
South St. Paul Feeds, Inc., 500 Farwell Ave., South St. Paul, MN 55075	NADA 136–369, Custom Ban Wormer 9.6 (pyrantel tartrate)	558.485 (001800)
Stockton Hay & Grain Co.	NADA 49–462, Rainbrook Broiler Premix No. 1 (ampolium, arsanilic acid, ethopabate, penicillin G procaine, streptomycin) NADA 91–646, Rainbow Broiler Base Concentrate (ampolium, bacitracin zinc, ethopabate) NADA 91–647, Rainbow Broiler Base Concentrate (ampolium, chlortetracycline, ethopabate)	n/a (036541) n/a (036541) n/a (036541)
Triple ''F'', Inc., 10104 Douglas Ave., Des Moines, IA 50322	NADA 131–146, FLAVOMYCIN 0.4 (bambermycins)	558.95 (011490)

Following the withdrawal of approval of these NADAs, Kerber Milling Co., M & M Livestock Products Co., Nutra-Blend Corp., and South St. Paul Feeds, Inc., are no longer sponsors of an approved application. Therefore, we are removing entries for these four sponsors from 21 CFR 510.600(c).

As provided below, the animal drug regulations are amended to reflect the withdrawal of approvals.

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 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 parts 510 and 558 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.

§ 510.600 [Amended]

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entries for ''Kerber Milling Co.'', ''M & M Livestock Products Co.'', ''Nutra-Blend Corp.'', and ''South St. Paul Feeds, Inc.''; and in the table in paragraph (c)(2) by removing the entries for ''001800'', ''026282'', ''029341'', and ''050568''.

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

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

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

§ 558.95 [Amended]

■ 4. Section 558.95 is amended by removing and reserving paragraph (a)(3).

§ 558.274 [Amended]

■ 5. Section 558.274 is amended in paragraph (a)(4) by removing '', 043733, and 050639'' and by adding in its place ''and 043733''; and in the table in paragraphs (c)(1)(i) and (c)(1)(ii) in the ''Sponsor'' column by removing '', 050639''.

§ 558.485 [Amended]

■ 6. Section 558.485 is amended by removing and reserving paragraphs (b)(2) and (b)(4); and in paragraph (b)(3) by removing '', 049685, 050568, 050639, and 051359'' and by adding in its place ''and 049685''.

§ 558.625 [Amended]

■ 7. Section 558.625 is amended by removing and reserving paragraphs (b)(22), (b)(31), (b)(52), and (b)(79).

§ 558.630 [Amended]

■ 8. Section 558.630 is amended in paragraph (b)(10) by removing '', 050568, 050639''.

Dated: December 7, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–24104 Filed 12–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1300 and 1308

[Docket No. DEA–264]

RIN 1117–AA95

Implementation of the Anabolic Steroid Control Act of 2004

AGENCY: Drug Enforcement Administration (DEA), Department of Justice.

ACTION: Final rule.

SUMMARY: The purpose of this rulemaking is to conform the Drug Enforcement Administration's (DEA) regulations to the provisions of the Anabolic Steroid Control Act of 2004. Effective January 20, 2005, the Act amended the Controlled Substances Act (CSA) and replaced the existing definition of ''anabolic steroid'' with a new definition. This new definition altered the basis for all future administrative scheduling actions relating to the control of anabolic steroids as Schedule III controlled substances by eliminating the requirement to prove muscle growth. Additionally, the Act lists 59 specific substances as being anabolic steroids. As such, these substances and their salts, esters and ethers are Schedule III controlled substances. This rulemaking amends 21 CFR Parts 1300 and 1308 to reflect these changes.

The Act also amends the CSA by revising the language requiring exclusion of certain over the counter products from regulation as controlled substances. The Act clarifies that the exclusionary language in 21 U.S.C. 811(g)(1) pertains only to non-narcotic ''drugs'' that may, under the Federal Food, Drug, and Cosmetic Act (FDCA),

be lawfully sold over the counter without a prescription.

The statute is self-implementing with the changes that became effective on January 20, 2005. DEA has no authority to revise the changes and is simply modifying its regulations to conform to the statute. Consequently, public comments are not being solicited since they could not alter this rule.

DATES: The rule is effective January 17, 2006.

FOR FURTHER INFORMATION CONTACT: Christine A. Sannerud, Ph.D., Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537. Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION:

DEA's Legal Authority

DEA is the primary agency responsible for implementing the provisions of the federal Controlled Substances Act and the Controlled Substances Import and Export Act (21 U.S.C. 801–971) (CSA). DEA publishes the implementing regulations for the CSA in Title 21 of the Code of Federal Regulations (CFR), §§ 1300.01 to 1316.99. The statutory scheme is designed to ensure that there is a sufficient supply of controlled substances for legitimate medical purposes and deter the diversion of controlled substances for illegal purposes. The CSA mandates that DEA establish a closed system of control for manufacturing, distributing, and dispensing controlled substances. Any person who manufactures, distributes, dispenses, imports, exports, or conducts research or chemical analysis with controlled substances must register with DEA (unless exempt) and comply with the applicable CSA requirements for the activity.

Drugs controlled under the CSA include opiates, hallucinogens and central nervous system stimulants and depressants. In addition, as a result of the passage of the Anabolic Steroid Control Act of 1990, anabolic steroids, as a class of drugs, were placed under the CSA effective February 27, 1991.

On October 22, 2004, the President signed into law the Anabolic Steroid Control Act of 2004, Public Law 108–358 (118 Stat. 1661). Section 2(a) amended the Controlled Substances Act (21 U.S.C. 802) by replacing the existing definition of ''anabolic steroid'' with a new definition for use in the future to administratively classify new steroids as Schedule III anabolic steroids. In addition, the Act listed 59 specific substances as being Schedule III anabolic steroids. Ethers of these listed steroids were also, for the first time, controlled in Schedule III, while the isomers of these steroids were removed from Schedule III controls. Additionally, section 2(b) amended the Controlled Substances Act (21 U.S.C. 811(g)) by revising the language excluding certain over the counter products from regulation as controlled substances. The statute is self-implementing with changes that became effective January 20, 2005.

DEA is promulgating this rule as a final rule rather than a proposed rule because the changes are being made to correspond to statutory revisions. DEA has no authority to revise the changes and is simply amending its regulations to conform to the statute. Since DEA could not revise the rule based on public comments, DEA finds that notice and opportunity for public comment are unnecessary under the Administrative Procedure Act, 5 U.S.C. 553(b)(B).

Congressional Action

Congress enacted the Anabolic Steroid Control Act of 2004, Public Law 108–358 (118 Stat. 1661), which the President signed on October 22, 2004. The House Report (108–461) stated that the purpose of the Act is ''to prevent the abuse of steroids by professional athletes. It will also address the widespread use of steroids and steroid precursors by college, high school, and even middle school students.'' The House Report also noted that steroid precursors ''are as dangerous to the body as those banned under the original Act.''

The Act does two things of relevance to this rulemaking. It replaces the existing definition of ''anabolic steroid'' in 21 U.S.C. 802 and revises the language exempting certain over the counter products from regulation as controlled substances. The changes to the definition include the following:

- Elimination of the need to prove that a steroid promotes muscle growth in order to administratively place the steroid into Schedule III of the CSA.
- Correction of the listing of steroid names resulting from the passage of the Anabolic Steroid Control Act of 1990.
- Replacement of the list of 23 steroids with a list of 59 steroids, including both intrinsically active steroids as well as steroid metabolic precursors.
- Automatic scheduling of the salts, esters and ethers of Schedule III anabolic steroids without the need to prove that these salts, esters or ethers promote muscle growth.
- Removal of the automatic scheduling of isomers of steroids listed as Schedule III anabolic steroids.
- Addition of dehydroepiandrosterone (DHEA) to the list of excluded substances.

Changes to Exclusionary Language of 21 U.S.C. 811(g)

In addition to revising the definition of anabolic steroid, the Act also amends the CSA by revising the language requiring exclusion of certain over the counter products from regulation as controlled substances. The Act clarifies that the exclusionary language in 21 U.S.C. 811 (g)(1) pertains only to nonnarcotic ''drugs'' that may, under the Federal Food, Drug, and Cosmetic Act (FDCA), be lawfully sold over the counter without a prescription.

Congress modified 21 U.S.C. 811(g) by changing the language in paragraphs (1) and (3). Paragraph (g)(1) previously read:

> The Attorney General shall by regulation exclude any nonnarcotic substance from a schedule if such substance may, under the Federal Food, Drug, and Cosmetic Act [21 U.S.C.A. § 301 *et seq.*], be lawfully sold over the counter without a prescription.

The revised paragraph reads:

> The Attorney General shall by regulation exclude any non-narcotic drug which contains a controlled substance from the application of titles II and III of the Comprehensive Drug Abuse Prevention and Control Act (21 U.S.C. 802 *et seq.*) if such drug may, under the Federal Food, Drug, and Cosmetic Act [21 U.S.C.A. § 301 *et seq.*], be lawfully sold over the counter without a prescription.

The change from ''substance'' to ''drug'' clarifies that only those over the counter (OTC) non-narcotic products containing controlled substances that are regulated as drugs under the Federal Food, Drug, and Cosmetic Act (FDCA) will be excluded from CSA regulatory requirements. Many of these steroids have previously been marketed as dietary supplements. Such dietary supplements (which are subject to requirements implemented pursuant to the Dietary Supplement Health and Education Act of 1994) are subject to different regulatory requirements than OTC non-prescription drugs under FDCA provisions.

This statutory change serves to clarify this distinction. The exclusion provided under 21 U.S.C. 811(g)(1) pertains only to nonnarcotic ''drugs'' that may, under the FDCA, be lawfully sold over the counter without a prescription.

The second revision to paragraph (g) specifies that the Attorney General may exclude by regulation, any compound, mixture, or preparation containing an

anabolic steroid and which is intended for administration to a human being or animal, if the Secretary of Health and Human Services recommends the exemption because its concentration, preparation, formulation, or delivery system means it does not present any significant potential for abuse. DEA has already incorporated this provision in its regulations (21 CFR 1308.33). In contrast, DEA can, without seeking a recommendation from the Secretary of Health and Human Services, exempt any chemical preparation or mixture containing a controlled substance which is not intended for human or veterinary use and which is determined not to have a significant abuse potential because of its concentration, preparation or formulation. This latter provision is incorporated into 21 CFR 1308.23.

Impact of the Changes

The impact of the revisions is to make all of the listed steroids and any of their salts, esters, or ethers, Schedule III controlled substances and subject to CSA requirements. Any person who manufactures, distributes, dispenses, imports or exports a substance defined as an anabolic steroid or who engages in research or conducts instructional activities with respect to substances defined as anabolic steroids must obtain a Schedule III registration in accordance with the CSA and its implementing regulations. Manufacturers and importers of the listed steroids must register with DEA and are permitted to distribute the steroids only to other DEA registrants. Only persons registered as dispensers are allowed to dispense the steroids to end users. Registered dispensers, however, are limited to practitioners, who are defined in the CSA as physicians, dentists, veterinarians, scientific investigators, pharmacies, hospitals, or other persons licensed, registered, or otherwise permitted by the U.S. or the jurisdiction in which they practice or conduct research, to distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical analysis, a controlled substance in the course of professional practice or research, 21 U.S.C. 802(21).

As of January 20, 2005, manufacture, import, export, distribution, or sale of the listed steroids except by DEA registrants has been a violation of the CSA that may result in imprisonment and fines (21 U.S.C. 841, 960). Possession of the steroids unless legally obtained is also subject to criminal penalties (21 U.S.C. 844).

In addition, under the CSA, a nonnarcotic Schedule III substance may be imported only if it is imported for medical, scientific, or other legitimate uses (21 U.S.C. 952(b)) under an import declaration filed with DEA (21 CFR 1312.18). Importation of these Schedule III steroids will be illegal unless the person importing the steroids is registered with DEA as an importer or researcher and files the required declaration for each shipment. An individual who purchases these substances directly from foreign companies and has them shipped to the U.S. is considered to be importing even if the steroids are intended for personal use. Illegal importation of a Schedule III anabolic steroid is a violation of the CSA that may result in imprisonment and fines(21 U.S.C. 960).

Requirements for Handling Substances Defined as Anabolic Steroids

Effective January 20, 2005, those substances defined as anabolic steroids became subject to CSA regulatory controls and administrative, civil and criminal sanctions applicable to the manufacture, distribution, dispensing, importing and exporting of a Schedule III controlled substance, including the following:

Registration. Any person who manufactures, distributes, dispenses, imports or exports a substance defined as an anabolic steroid or who engages in research or conducts instructional activities with respect to substances defined as anabolic steroids or who proposes to engage in such activities must be registered to conduct such activities with Schedule III controlled substances in accordance with 21 CFR part 1301.

Security. Substances defined as anabolic steroids are subject to Schedule III-V security requirements and must be manufactured, distributed and stored in accordance with 21 CFR 1301.71, 1301.72(b), (c), and (d), 1301.73, 1301.74, 1301.75(b) and (c), 1301.76 and 1301.77.

Labeling and Packaging. All labels and labeling for commercial containers of substances defined as anabolic steroids which are distributed on or after January 17, 2006, shall comply with requirements of 21 CFR 1302.03–1302.07.

Inventory. Every registrant required to keep records and who possesses any quantity of any substance defined as an anabolic steroid is required to keep an inventory of all stocks of the substances on hand pursuant to 21 CFR 1304.03, 1304.04 and 1304.11. Every registrant who desires registration in Schedule III for any substance defined as an anabolic steroid shall conduct an inventory of all stocks of the substances on hand at time of registration.

Records. All registrants are required to keep records pursuant to 21 CFR 1304.03, 1304.04, 1304.05, 1304.21, 1304.22, 1304.23 and 1304.26.

Prescriptions. All prescriptions for these Schedule III compounds or for products containing these Schedule III compounds would be required to be issued pursuant to 21 CFR 1306.03–1306.06 and 1306.21–1306.27. All prescriptions for these Schedule III compounds or for products containing these Schedule III compounds, if authorized for refilling, would be limited to five refills.

Importation and Exportation. All importation and exportation of any substance defined as an anabolic steroid must be in compliance with 21 CFR part 1312.

Criminal Liability. Any activity with any substance defined as an anabolic steroid not authorized by, or in violation of, the Controlled Substances Act or the Controlled Substances Import and Export Act occurring on or after January 20, 2005, is unlawful.

Disposal of Anabolic Steroids

Persons who possess substances defined as anabolic steroids and who wish to dispose of them rather than becoming registered to handle them should contact their local DEA Diversion field office for assistance in disposing of these substances legally. The DEA Diversion field office will provide the person with instructions regarding the disposal. A list of local DEA Diversion field offices may be found at *http://www.deadiversion.usdoj.gov.*

Required Certifications

Executive Order 12866

The Deputy Administrator certifies that this rulemaking has been drafted in accordance with the principles in Executive Order 12866 section 1(b). DEA has determined that this is a significant regulatory action. Therefore, this action has been reviewed by the Office of Management and Budget. DEA does not have any discretion in the implementation of the Anabolic Steroid Control Act of 2004, and this rule merely codifies those statutory changes.

DEA did, however, analyze the economic impacts of the changes in recognition of the market that exists for these products. DEA was not able to determine the size of the market for these substances with any degree of certainty. The National Nutritional Foods Association indicates that the nutritional supplement market in 2003 had sales of $19.8 billion. The sports nutrition part of the market had sales of

$2 billion. Steroid precursors make up some fraction of the sports nutrition market. DEA believes that most steroids sold in dietary supplements in the U.S. are imported in bulk, primarily from China. According to U.S. International Trade Commission data, in the first nine months of 2004, China was the source of 3,900 kilograms of the 4,145 kg of the anabolic agents and androgens imported. The import value of the Chinese product is about $0.27 per gram. The price per gram for pure steroid products, as listed on Internet sites, ranges from $1.39 to $73 (omitting Methyl D, which sells for $150 to more than $500/gram). Most pure products sell for between $2.50 per gram and $32.00/gram. Extrapolating the Chinese imports to a full year and applying the per gram markup, DEA estimates the steroid retail market to range from $13 million to $166 million. Because most steroids have per gram prices of less than $8, DEA estimates that the market is probably in the middle of the range.

DEA also looked at the firms that market steroid containing supplement products. Based on Internet searches, DEA identified 64 firms that sell these products under their brand name. Besides the marketers' websites, the products were available from more than 150 Internet sites that cater to the body building and nutritional supplement market. These products may also be available from some retail store outlets and gyms.

The 64 firms identified as marketing the products under their brand name represent a variety of sectors. DEA was able to locate some industrial sector and financial information for 45 of the firms. Of those whose business category was available, five categorize themselves as food processors who manufacture dry condensed and evaporated dairy products (NAICS 311514) (whey products are widely sold as high protein supplements). Five classified themselves as manufacturers of pharmaceuticals (NAICS 325412) or botanicals (NAICS 325411). Seventeen listed themselves as drug (NAICS 424210) or food wholesalers (NAICS 424490). Twelve listed themselves as store retailers (NAICS 446191, 445299), and two as mail order houses (NAICS 454113). The others for which information was available categorized themselves as a book publisher, a research lab, a radio station, and a doctor's office. There were 19 firms for whom DEA could find no information in U.S. business databases; one of these is British. Of the 18 remaining, DEA was unable to locate any information (web site, address, phone number) on four firms whose products are being sold. Two others had web sites, but no location information, and three had web sites and telephone numbers, but no addresses.

All of the firms identified are small entities under the Small Business Administration standards. Only two of the firms reported revenues above $20 million; one of these filed for Chapter 11 protection in 2003 and has since sold all of its assets. Only three firms had revenues between $10 million and $20 million; all of these listed themselves as drug wholesalers. The 16 firms with revenues between $1 million and $10 million were also mainly wholesalers or manufacturers. Eighteen firms reported revenues of $100,000 to $1 million. Four reported revenues of less than $100,000. Of the firms for which data were found, the majority had fewer than ten employees. It is likely that the firms for which data were not available are very small. Given the size of the firms, it is also likely that these firms are, at most, repackaging or relabeling products manufactured elsewhere.

DEA was not able to identify any firm that appeared to market only the steroid precursors although they may be the main product line for a few firms. Removing these products from the market will undoubtedly have a negative effect on many of the firms. Similarly, the 160 Internet sites identified as selling these products offer a variety of other nutritional products; some also sell sporting equipment, clothing, books, and videos. Because there is no legal substitute that produces the effects claimed for these products, it is likely that both the producers and the Internet sites will experience a loss of revenue. Without information on the percentage of revenues derived from the product lines, DEA is not able to determine whether the removal of these products alone will result in the closure of any of the firms.

Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act (5 U.S.C. 605(b)), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, applies only to regulations subject to notice and comment. Because DEA is simply promulgating a final rule to conform to statutory provisions, the Regulatory Flexibility Act does not apply to this action.

Administrative Procedure Act

An agency may find good cause to exempt a rule from certain provisions of the Administrative Procedure Act, including notice of proposed rulemaking and the opportunity for public comment, if it is determined to be unnecessary, impracticable, or contrary to the public interest (5 U.S.C. 553). The provisions of the Anabolic Steroid Control Act of 2004, Public Law 108–358, are self-implementing. DEA has no discretion in this matter. The changes in this rulemaking provide conforming amendments to make the language of the regulations consistent with that of the law. Hence, DEA finds it unnecessary to publish for public notice and comment.

Executive Order 12988

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

Executive Order 13132

This rulemaking does not preempt or modify any provision of state law; nor does it impose enforcement responsibilities on any state; nor does it diminish the power of any state to enforce its own laws. Accordingly, this rulemaking does not have federalism implications warranting the application of Executive Order 13132.

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 $115,000,000 or more in any one year, and 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.

List of Subjects

21 CFR Part 1300

Chemicals; Drug traffic control.

21 CFR Part 1308

Administrative practice and procedure; Drug traffic control; Reporting and recordkeeping requirements.

■ For the reasons set forth above, 21 CFR parts 1300 and 1308 are amended as follows:

PART 1300—DEFINITIONS

■ 1. The authority citation for part 1300 continues to read as follows:

Authority: 21 U.S.C. 802, 871(b), 951, 958(f).

■ 2. In § 1300.01(b), paragraph (4) is revised to read as follows:

§ 1300.01 Definitions relating to controlled substances.

* * * * *

(b) * * *

(4) The term anabolic steroid means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, corticosteroids, and dehydroepiandrosterone), and includes:

(i) 3β,17-dihydroxy-5a-androstane
(ii) 3α,17β-dihydroxy-5a-androstane
(iii) 5α-androstan-3,17-dione
(iv) 1-androstenediol (3β,17β-dihydroxy-5α-androst-1-ene)
(v) 1-androstenediol (3α,17β-dihydroxy-5α-androst-1-ene)
(vi) 4-androstenediol (3β,17β-dihydroxy-androst-4-ene)
(vii) 5-androstenediol (3β,17β-dihydroxy-androst-5-ene)
(viii) 1-androstenedione ([5α]-androst-1-en-3,17-dione)
(ix) 4-androstenedione (androst-4-en-3,17-dione)
(x) 5-androstenedione (androst-5-en-3,17-dione)
(xi) bolasterone (7α,17α-dimethyl-17β-hydroxyandrost-4-en-3-one)
(xii) boldenone (17β-hydroxyandrost-1,4,-diene-3-one)
(xiii) calusterone (7β,17α-dimethyl-17β-hydroxyandrost-4-en-3-one)
(xiv) clostebol (4-chloro-17β-hydroxyandrost-4-en-3-one)
(xv) dehydrochloromethyltestosterone (4-chloro-17β-hydroxy-17α-methyl-androst-1,4-dien-3-one)
(xvi) Δ1-dihydrotestosterone (a.k.a. '1-testosterone') (17β-hydroxy-5α-androst-1-en-3-one)
(xvii) 4-dihydrotestosterone (17β-hydroxy-androstan-3-one)
(xviii) drostanolone (17β-hydroxy-2α-methyl-5α-androstan-3-one)
(xix) ethylestrenol (17α-ethyl-17β-hydroxyestr-4-ene)
(xx) fluoxymesterone (9-fluoro-17α-methyl-11β,17β-dihydroxyandrost-4-en-3-one)
(xxi) formebolone (2-formyl-17α-methyl-11α,17β-dihydroxyandrost-1,4-dien-3-one)
(xxii) furazabol (17α-methyl-17β-hydroxyandrostano[2,3-c]-furazan)
(xxiii) 13β-ethyl-17α-hydroxygon-4-en-3-one
(xxiv) 4-hydroxytestosterone (4,17β-dihydroxy-androst-4-en-3-one)
(xxv) 4-hydroxy-19-nortestosterone (4,17β-dihydroxy-estr-4-en-3-one)
(xxvi) mestanolone (17α-methyl-17β-hydroxy-5-androstan-3-one)
(xxvii) mesterolone (1αmethyl-17β-hydroxy-[5α]-androstan-3-one)
(xxviii) methandienone (17α-methyl-17β-hydroxyandrost-1,4-dien-3-one)
(xxix) methandriol (17α-methyl-3β,17β-dihydroxyandrost-5-ene)
(xxx) methenolone (1-methyl-17β-hydroxy-5α-androst-1-en-3-one)
(xxxi) 17α-methyl-3β, 17β-dihydroxy-5a-androstane
(xxxii) 17α-methyl-3α,17β-dihydroxy-5a-androstane
(xxxiii) 17α-methyl-3β,17β-dihydroxyandrost-4-ene
(xxxiv) 17α-methyl-4-hydroxynandrolone (17α-methyl-4-hydroxy-17β-hydroxyestr-4-en-3-one)
(xxxv) methyldienolone (17α-methyl-17β-hydroxyestra-4,9(10)-dien-3-one)
(xxxvi) methyltrienolone (17α-methyl-17β-hydroxyestra-4,9-11-trien-3-one)
(xxxvii) methyltestosterone (17α-methyl-17β-hydroxyandrost-4-en-3-one)
(xxxviii) mibolerone (7α,17α-dimethyl-17β-hydroxyestr-4-en-3-one)
(xxxix) 17α-methyl-Δ1-dihydrotestosterone (17bβ-hydroxy-17α-methyl-5α-androst-1-en-3-one) (a.k.a. '17-α-methyl-1-testosterone')
(xl) nandrolone (17β-hydroxyestr-4-en-3-one)
(xli) 19-nor-4-androstenediol (3β, 17β-dihydroxyestr-4-ene)
(xlii) 19-nor-4-androstenediol (3α, 17β-dihydroxyestr-4-ene)
(xliii) 19-nor-5-androstenediol (3β, 17β-dihydroxyestr-5-ene)
(xliv) 19-nor-5-androstenediol (3α, 17β-dihydroxyestr-5-ene)
(xlv) 19-nor-4-androstenedione (estr-4-en-3,17-dione)
(xlvi) 19-nor-5-androstenedione (estr-5-en-3,17-dione
(xlvii) norbolethone (13β, 17α-diethyl-17β-hydroxygon-4-en-3-one)
(xlviii) norclostebol (4-chloro-17β-hydroxyestr-4-en-3-one)
(xlix) norethandrolone (17α-ethyl-17β-hydroxyestr-4-en-3-one)
(l) normethandrolone (17α-methyl-17β-hydroxyestr-4-en-3-one)
(li) oxandrolone (17α-methyl-17β-hydroxy-2-oxa-[5α]-androstan-3-one)
(lii) oxymesterone (17α-methyl-4,17β-dihydroxyandrost-4-en-3-one)
(liii) oxymetholone (17α-methyl-2-hydroxymethylene-17β-hydroxy-[5α]-androstan-3-one)
(liv) stanozolol (17α-methyl-17β-hydroxy-[5α]-androst-2-eno[3,2-c]-pyrazole)
(lv) stenbolone (17β-hydroxy-2-methyl-[5α]-androst-1-en-3-one)
(lvi) testolactone (13-hydroxy-3-oxo-13,17-secoandrosta-1,4-dien-17-oic acid lactone)
(lvii) testosterone (17β-hydroxyandrost-4-en-3-one)
(lviii) tetrahydrogestrinone (13β, 17α-diethyl-17β-hydroxygon-4,9,11-trien-3-one)
(lix) trenbolone (17β-hydroxyestr-4,9,11-trien-3-one)
(lx) Any salt, ester, or ether of a drug or substance described in this paragraph. Except such term does not include an anabolic steroid that is expressly intended for administration through implants to cattle or other nonhuman species and that has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, the person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this paragraph.

* * * * *

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

■ 3. The authority citation for part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

■ 4. In § 1308.13, paragraph (f) is revised to read as follows:

§ 1308.13 Schedule III.

* * * * *

(f) *Anabolic Steroids.* Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any quantity of the following substances, including its salts, esters and ethers:

(1) Anabolic steroids (see § 1300.01 of this chapter)—4000

(2) [Reserved]

* * * * *

■ 5. In § 1308.21, paragraph (a) is revised to read as follows:

§ 1308.21 Application for exclusion of a non-narcotic drug.

(a) Any person seeking to have any nonnarcotic drug that may, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301), be lawfully sold over the counter without a prescription, excluded from any schedule, pursuant to section 201(g)(1) of the Act (21 U.S.C. 811(g)(1)), may apply to the Administrator, Drug Enforcement Administration, Department of Justice, Washington, DC 20537.

* * * * *

■ 6. In § 1308.33, paragraph (a) is revised to read as follows:

§ 1308.33 Exemption of certain anabolic steroid products; application.

(a) The Administrator, upon the recommendation of Secretary of Health and Human Services, may, by regulation, exempt from the application of all or any part of the Act any compound, mixture, or preparation containing an anabolic steroid as defined in part 1300 of this chapter, which is intended for administration to

a human being or animal, if, because of its concentration, preparation, formulation, or delivery system, it has no significant potential for abuse.

* * * * *

Dated: November 23, 2005.

Michele M. Leonhart,

Deputy Administrator.

[FR Doc. 05–23907 Filed 12–15–05; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9235]

RIN 1545–BD77

Classification of Certain Foreign Entities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to certain business entities included on the list of foreign business entities that are always classified as corporations for Federal tax purposes.

DATES: *Effective Date:* These regulations are effective on December 16, 2005.

Applicability Date: For the dates of applicability of these regulations, see § 301.7701–2(e)(4).

FOR FURTHER INFORMATION CONTACT: Ronald M. Gootzeit, (202) 622–3860 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On April 14, 2005, the IRS and Treasury Department published in the **Federal Register** temporary regulations (TD 9197, 2005–18 I.R.B. 985 [70 FR 19697]) and a notice of proposed rulemaking (REG–148521–04, 2005–18 I.R.B. 995 [70 FR 19722]) under section 7701 of the Internal Revenue Code (Code). The regulations added certain foreign business entities to the list of entities in § 301.7701–2(b)(8) (the per se corporation list) in response to the adoption by the Council of the European Union of a Council Regulation (2157/2001 2001 O.J. (L 294)) permitting a new business entity, the European public limited liability company (Societas Europaea or SE). Specifically, the temporary and proposed regulations added the SE, Estonian Aktsiaselts, Latvian Akciju Sabiedriba, Lithuanian Akcine Bendroves, Slovenian Delniska Druzba, and Liechtenstein Aktiengesellschaft to the per se list of corporations. For further background see TD 9197 (2005–18 I.R.B. 985; 70 FR 19697) and Notice 2004–68 (2004–2 CB 706).

Explanation of Provisions

No substantive comments were received regarding the temporary and proposed regulations. Accordingly, these regulations finalize the proposed regulations without modification and revise the temporary regulations to cross reference to the new provisions.

Special Analyses

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

Drafting Information

The principal author of these regulations is Ronald M. Gootzeit of the Office of Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and Recordkeeping requirements.

Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read, in part, as follows:

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

■ **Par. 2.** Section 301.7701–2 is amended by:

■ 1. Adding six entries in alphabetical order to paragraph (b)(8)(i).

■ 2. Removing paragraph (b)(8)(vi).

■ 3. Adding paragraphs (e)(3) and (4).

The additions read as follows:

§ 301.7701–2 Business entities; definitions.

* * * * *

(b) * * *

(8) * * *

(i) * * *

Estonia, Aktsiaselts

European Economic Area/European Union, Societas Europaea

* * * * *

Latvia, Akciju Sabiedriba

* * * * *

Liechtenstein, Aktiengesellschaft

Lithuania, Akcine Bendroves

* * * * *

Slovenia, Delniska Druzba.

* * * * *

(e) * * *

(3) [Reserved]. For further guidance, see § 301.7701–2T(f).

(4) The reference to the Estonian, Latvian, Liechtenstein, Lithuanian, and Slovenian entities in paragraph (b)(8)(i) of this section applies to such entities formed on or after October 7, 2004, and to any such entity formed before such date from the date any person or persons, who were not owners of the entity as of October 7, 2004, own in the aggregate a 50 percent or greater interest in the entity. The reference to the European Economic Area/European Union entity in paragraph (b)(8)(i) of this section applies to such entities formed on or after October 8, 2004.

■ **Par. 3.** Section 301.7701–2T is amended by:

■ 1. Removing paragraph (b)(8)(vi).

■ 2. Revising paragraph (e)(3).

The revision reads as follows:

§ 301.7701–2T Business entities; definitions (temporary).

* * * * *

(e) * * *

(3) [Reserved]. For further guidance, see § 301.7701–2(e)(4).

* * * * *

Approved: December 8, 2005.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Erin Solomon,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 05–24107 Filed 12–15–05; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AD09

Oil and Gas and Sulphur Operations on the Outer Continental Shelf (OCS)—Suspension of Operations (SOO) for Ultra-Deep Drilling

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: MMS is modifying its regulations which govern Suspensions of Operations (SOOs) for oil and gas leases on the OCS. The revision will allow MMS to grant an SOO a to lessee or operator to encourage the drilling of ultra-deep wells (*i.e.,* wells below 25,000 feet true vertical depth below the datum at mean sea level). MMS is making this revision because of the added complexity and costs associated with planning and drilling an ultra-deep well. MMS expects that this revision will lead to increased drilling of ultra-deep wells and increased domestic production.

EFFECTIVE DATE: This rule becomes effective on January 17, 2006.

FOR FURTHER INFORMATION CONTACT: Amy C. White, Regulations and Standards Branch at (703) 787–1665.

SUPPLEMENTARY INFORMATION:

Background

When an oil and gas lease is issued on the OCS, the lessee has flexibility to schedule activities during the primary term, the prescribed term of years for which the lease was issued. At the end of the primary term, the lease can continue in force by production, drilling, or well-reworking operations as approved by the Regional Supervisor. When leaseholding operations (production, drilling, or well-reworking operations) are not maintaining the lease at the end of the primary term, if oil or gas was discovered, and if there is a commitment to produce, the operator may request a Suspension of Production (SOP), which stops the running of the lease term and prevents the lease from expiring. Before the discovery of oil or gas on a lease, MMS regulations at 30 CFR 250.172, 250.173, and 250.175 authorize suspensions of operations, but only in limited circumstances. An SOO stops the running of the lease term and prevents the lease from expiring.

Most leases have a primary term of 5 years, although a longer period (10 years) is provided in deep water. Some leases in intermediate depths have primary terms of 8 years, with a requirement to drill an initial well in the first 5 years. Under most circumstances, the primary lease term provides sufficient time to acquire and interpret geophysical information needed to determine the presence of oil or natural gas, drill a well, and for the operator to determine whether or not to continue with development and production. However, there are cases when a company recognizes that there is a potential hydrocarbon reservoir that is below 25,000 feet true vertical depth below the datum at mean sea level (TVD SS). The high cost of drilling an ultra-deep (below 25,000 feet TVD SS) well, along with the associated geologic and mechanical risks, warrants completing additional data analysis before drilling.

In 2002, MMS amended the regulation at 30 CFR 250.175 to provide for an SOO if additional time was needed to allow a lessee to analyze areas beneath or adjacent to salt sheets. MMS added this provision in the belief that when a lessee conducts significant work, additional time may be warranted to allow the lessee to benefit from the work conducted. Lessees used the change to expand their exploration in areas affected by salt sheets. The rule included well-defined, specific criteria for determining when a lease is eligible for a suspension. Vertical depth is not a criteria under the existing rule.

While the rule issued in 2002 encouraged drilling under salt sheets, that rule does not address situations where salt does not exist. Information from industry indicates that large accumulations of hydrocarbons may exist at depths greater than 25,000 feet TVD SS in water depths less than 800 meters. Many companies are reluctant to drill to these depths without additional data analysis.

The current regulations (see 30 CFR 250.175(b)) allow the lessee or operator to request an SOO if: (1) By the end of the third year of the primary term, geophysical information was gathered that indicated the presence of a salt sheet; (2) all or a portion of a hydrocarbon-bearing formation may lie beneath or adjacent to the salt sheet; and (3) the salt sheet interferes with identifying the potential hydrocarbon-bearing formation. In August 2004, MMS issued Notice to Lessee (NTL) No. 2004–G16, providing additional guidance for granting an SOO to lessees or operators who planned to drill a well beneath or adjacent to a salt sheet. The NTL allowed the lessee or operator planning to drill an ultra-deep well to request the SOO if this geophysical information was gathered by the end of the fifth year of the primary term, instead of at the end of the third year. In addition, the operator had to submit a reasonable working schedule leading to the commencement of drilling. This final rule will replace the NTL, and also allow the lessee or operator to request an SOO for ultra-deep exploration in areas where a salt sheet does not exist.

Allowing a lessee additional time for this data analysis encourages companies to consider ultra-deep exploration. A successful development will generate more activity at lease sales and increase drilling on existing leases.

MMS recognizes that a lessee knows the length of the lease term when it obtains a lease. When a lease expires, another lessee can acquire a new lease on the same tract. MMS considered these factors, and believes that the need to encourage drilling to significantly deeper depths warrants the final rule change. Successful wells benefit not only the companies that drilled the wells, but also the public by increasing domestic energy sources. In addition, the drilling of successful wells will encourage other companies to acquire leases and to pursue ultra-deep exploration in United States (U.S.) waters.

Comments on the Rule

MMS published a proposed rule on February 14, 2005 (70 FR 7451). The public comment period ended on March 16, 2005. MMS received ten sets of comments on the proposed rule. The comments came from two private citizens, five oil and natural gas production companies (ExxonMobil, Chevron, Newfield, Murphy, and Shell), and three sets of comments that represent various aspects of the offshore oil and natural gas industry. The International Association of Drilling Contractors (IADC) and the International Association of Geophysical Contractors (IAGC) sent separate comments. The American Petroleum Institute (API), Domestic Petroleum Council (DPC), Independent Petroleum Association of America (IPAA), Offshore Operators Committee (OOC), and U.S. Oil and Gas Association (USOGA) sent one set of comments. Some commenters agreed with the need to encourage ultra-deep drilling and supported the change. Some commenters did not support the proposed change. Some commenters made recommendations about the rule and its implementation. You may view these comments on MMS' Public Connect on-line commenting system at: *https://ocsconnect.mms.gov.*

General Comments

Comment: A private citizen wanted to know how we decided to use 25,000 feet TVD SS as the threshold, and why 20,000 feet TVD SS was not used.

Response: Approximately 4½ times as many wells are drilled to 20,000 feet or greater TVD SS than are drilled to depths of 25,000 feet or greater TVD SS. The drilling of wells to depths of 25,000 feet TVD SS or greater presents a myriad of technological drilling challenges to the operator warranting an SOO.

Comment: A private citizen expressed concern that the rule would allow for lease extensions off the coast of California. The commenter stated that the documentation provided was legally inadequate to determine the location and extent of the proposed activities. The commenter stated opposition to the rule if it involves the California coast.

Response: The rule meets all of the necessary legal requirements. The purpose of this rule is to allow an SOO in very limited circumstances. Currently, the conditions for applying for an SOO under this rule exist only in the Gulf of Mexico (GOM) Region; but the rule is applicable to all areas of the OCS.

Comment: Two of the oil and natural gas production companies suggested that MMS consider longer primary lease terms. One of these comments suggested 10-year lease terms on all new GOM leases. The other suggested that MMS grant an extension to the primary lease term for ultra-deep exploration. This would be done by a process similar to the request for the SOO.

Response: The issue of longer primary lease terms is beyond the scope of this rule. MMS considered issuing longer primary lease terms for ultra-deep exploration, and discussed this option in the preamble of the proposed rule. However, it is not feasible because when leases are issued it is difficult to know which ones may be suitable for ultra-deep drilling. MMS believes that allowing lessees and operators to apply for an SOO adequately addresses the issue.

Comment: Two of the oil and natural gas production companies suggested changes to the wording of the rule to ensure that it is clear that the rule covers hydrocarbon bearing formations when only a portion of the formation lies below 25,000 feet TVD SS. Also, they suggested that the wording is inconsistent between § 250.175(c)(2) and (3).

Response: MMS considered this comment, but we did not change the wording in the final rule. We recognize that a hydrocarbon-bearing formation may lie below 25,000 feet TVD SS and extend to a depth less than 25,000 feet TVD SS. However, the primary focus of this rule is to encourage the drilling of ultra-deep wells below 25,000 feet TVD SS by granting an SOO for additional geological or geophysical analysis before drilling such wells. Although § 250.175(c)(2) allows the required initial seismic work to indicate that ''all or a portion of'' the potential hydrocarbon-bearing formation is below 25,000 feet TVD SS, the objective of granting a suspension is to identify a potential hydrocarbon-bearing geologic structure or stratigraphic trap with a target drilling depth below 25,000 feet TVD SS. New § 250.175(c)(3) states that the objective of additional data processing or interpretation of geophysical information must be to identify a potential hydrocarbon-bearing geologic structure or stratigraphic trap below 25,000 ft. TVDSS. The lessee must demonstrate that it has conducted additional data processing or interpretation with that objective.

Comment: A commenter asked if the rule would allow MMS to grant an SOO on multiple leases that share an individual prospect, geological structure, or stratigraphic trap, without forming units.

Response: MMS may grant an SOO on multiple leases without the leases being unitized if the leases share a common geological structure or stratigraphic trap. Lessees or operators may also request an SOO for units. The lessee or operator must file a separate request for an SOO on each lease or unit, and must meet all other conditions of the regulations.

Comment: One commenter suggested that MMS add the following activities to § 250.175(c)(4) for further clarification: (1) Allow additional time to properly design and plan the well and (2) acquire a suitable drilling rig.

Response: The regulations already allow a reasonable time to begin drilling operations, including time for designing and planning the well and acquiring a drilling rig. We did not make the suggested change.

Comment: One commenter discussed the possible need for additional suspensions after the well is drilled. Additional time would be needed to evaluate these wells before an operator would commit to develop the well as required for an SOP.

Response: Section 250.175(c)(4)(ii), as proposed, allows for an SOO to be granted to ''acquire, process, or interpret new geophysical or geologic data or information.'' Therefore, under this rule additional suspensions could be granted for a reasonable time period to allow geologic well data to be evaluated.

Comment: Two commenters expressed concern about the impact the rule will have on industries that support drilling operations in the GOM. Some support industries rely on regular drilling and lease turnovers. These industries have made investments based on the current regulatory scheme, and by changing these regulations MMS will be impacting drilling activities and lease turnover rates. They contend that MMS should reconsider the rulemaking because of these impacts.

Response: MMS did not change the rule because we do not believe that this rule will have a substantial impact on drilling activities or lease turnover rates. The rule will impact a very small percentage of leases. In the preamble of the proposed rule, MMS estimated that it would receive less than 10 requests for suspensions each year. There are more than 4,300 active leases in the areas that are eligible for suspensions under this rule. This change is expected to affect less than 0.23 percent of leases in the eligible areas. This rule change, combined with any applicable deep-gas royalty relief, is expected to gradually increase drilling activities into areas deeper than 25,000 feet TVD SS.

Comment: There was one suggestion that the rule apply only to leases issued after the effective date of the rule.

Response: In order for the rule to have the maximum impact and help meet current energy demands, the rule will apply to existing and new leases.

Comment: One commenter expressed concern about the length of time for which the SOO would be issued. The commenter suggested that MMS include provisions to ensure that the SOO is issued for the minimum amount of time needed for the lessee or operator to complete the activities.

Response: MMS will require the lessee or operator to submit measurable ''milestones'' to verify that it is completing the work within a reasonable timeframe. We did not change the rule.

Comment: One industry group requested that MMS modify the rule to ''Provide assurance that MMS will rigorously pursue the execution of 30 CFR 250.170(e)'' which sets the terms and condition for terminating suspensions.

Response: MMS did not incorporate the suggested change. We have an effective mechanism in place to monitor all lease suspensions and may terminate any suspension if it determines that the circumstances which justified the suspension no longer exist.

Comment: A commenter requested that MMS ''[E]nsure that the lessee or operator has bona fide plans to drill an

ultra-deep well, by specifying in the rule requirements for evidence such as signed AFEs, signed and binding contracts for drilling rigs or ships capable of drilling to such depths, etc.''

Response: MMS will require specific information, as determined by the Regional Supervisor, which supports the lessee or operator's exploration plans, including any plans to drill an ultra deep well, on a case-by-case basis.

Comment: A commenter requested that MMS limit the number of suspensions of operations that would be available under a given lease or prospect to one extension regardless of the various expiration dates of the adjacent leases covered by the prospect.

Response: MMS does not agree with this suggestion and will not limit the number of suspensions available under a given lease or prospect. However, the lessee or operator must file a separate request for each SOO, and each request must meet all of the criteria to receive approval.

Comment: One commenter suggested that MMS should limit the extent of the area that is subject to the SOO where possible.

Response: The Regional Supervisor will determine the area subject to the SOO on a case-by-case basis.

Comment: One commenter suggested that MMS require the lessee/operator to sever their rights above 25,000 feet TVD to secure the SOO.

Response: The lessee was awarded the lease through a competitive bidding process. Each lessee acquired an interest in the entire property. The lessee or operator may pursue the right to explore, develop, and produce, without waste, anywhere on the lease. MMS will not jeopardize this right.

Comment: One commenter suggested that this rule is in violation of Executive Order 12630—Takings, because of the possible economic impact the rule could have on some businesses associated with the offshore oil and natural gas industry. These companies invested money based on the MMS's regulatory program and this rule represents a change to that program that may slow some activities.

Response: MMS reviewed Executive Order 12630—Takings, and determined that the rule does not violate that order.

Comment: One commenter requested that MMS define the ''SS'' in ''TVD SS'' as ''sub-seafloor,'' so that the water column would not be included in the depth.

Response: TVD SS is ''the true vertical depth below the datum at mean sea level,'' (see regulations at § 203.0). MMS will continue to use the term ''datum at mean sea level'' in this rule, to be consistent with other provisions of existing regulations and common practices of depth measurement.

Comment: One commenter suggested that the wording of the rule is inconsistent and that § 250.175(c)(3) should use ''structure or trap'' instead of ''formation.'' This section requires that the lessee or operator either has conducted or is conducting additional data processing or interpretation of the geophysical information to identify the potential ultra-deep hydrocarbon-bearing formation. The commenter contends that § 250.175(c)(2) already requires that the operator or lessee have the information that indicates there is a potential formation already established.

Response: MMS agrees and changed § 250.175(c)(3) to read ''geophysical information with the objective of identifying a potential hydrocarbon-bearing geologic structure or stratigraphic trap lying below 25,000 feet TVD SS.'' While § 250.175(c)(2) focuses on the type of data required and the initial interpretation of that data, new § 250.175(c)(3) refers to additional information and a more complete interpretation that may lead to the drilling of a well below 25,000 feet TVD SS.

Comment: An industry group expressed concern because drilling contractors must finance their fleets on the basis of reliable government drilling programs which by finite license terms afford the certainty that leases either will be drilled or dropped and re-offered to operators with the appetite and resources to develop them.

Response: Granting an SOO under this rule is only one very small part of the overall scenario. Fleet financing is largely dependent and driven by global competition, market demands, and the aggressiveness of the industry to explore and develop leases. There are more than 4,300 active leases in the areas that are eligible for suspensions under this rule. In any given year, MMS estimates that it will receive no more than 10 requests for suspensions under this rule. This change is expected to affect less than 0.23 percent of leases in the eligible areas.

Comment: A comment from an industry group stated that MMS seems to be accelerating the transformation of OCS leases into virtual long-term purchases. They urged MMS to reconsider this proposal, and to take note of its implications for the economic viability of the offshore contractor infrastructure put at risk by increasingly unreliable primary lease terms.

Response: This is not the case. As appropriate drilling rigs become available and drilling technology advances, the need for this type of suspension will decline. The exploration and development of leases is actively monitored by MMS, and mechanisms are in place to urge the lease operator to either develop the lease or it will expire. There are more than 4,300 active leases in the areas that are eligible for suspensions under this rule. In any given year, MMS estimates it will receive no more than 10 requests for suspensions under this rule. This change is expected to affect less than 0.23 percent of leases in the eligible areas.

Changes Between the Proposed and Final Regulation

MMS made only minor wording changes to the final rule, based on the comments received. In § 250.175(c), the wording was changed from ''for drilling'' to ''conduct additional geological and geophysical (G&G) data analysis which may lead to the drilling.'' This was done to clarify that the SOO can be used for the additional data analysis needed to prepare for the drilling of a well below 25,000 feet TVD SS.

In § 250.175(c)(3) and (4)(iii), MMS changed the word ''formation'' to ''geologic structure or stratigraphic trap.'' Section 250.175(c)(2) requires an initial interpretation of the data that indicates a potential hydrocarbon-bearing formation. Section 250.175(c)(3) requires additional data processing and information interpretation that may lead to drilling a well below 25,000 feet TVD SS. MMS changed the wording in § 250.175(c)(4)(iii) for consistency.

Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This is not a significant rule as determined and is not subject to review under Executive Order 12866.

The major economic effect of the final rule will involve business decisions made by oil and gas producers. MMS expects that a project to drill an ultra-deep well will need to compete with other high-risk projects in deep water or in other countries. By increasing the potential benefits resulting from drilling high-risk, ultra-deep wells, lessees will be more likely to drill these wells in the U.S. instead of drilling in other high-risk areas.

These decisions are based on marginal cost and benefit differences among projects, and are driven by many factors. This final rule is only one of the factors. Lessees or operators will not request a suspension unless it is in their financial interest. Therefore, this final rule

change will not impose a net cost on the lessee or operator.

There are other financial considerations that will result directly from this final rule. Drilling a well to 25,000 or more feet TVD SS is a significant occurrence, and MMS does not anticipate an immediate drastic increase in drilling to that depth. This rule change, combined with any applicable deep-gas royalty relief, is expected to gradually increase drilling activities into areas deeper than 25,000 feet TVD SS.

MMS estimates that this rule will result in 10 suspension requests per year, averaged over the 5 years following the effective date of a final rule; and that most of the requests will be in water depths of less than 200 meters. MMS' economic analysis assumes that a suspension will result, on average, in each suspended lease remaining active for 2 years longer than without the suspension. Of the leases in water depths of less than 200 meters that expired in 2000, approximately half received new bids within 2 years, with an average high bid of approximately $556,000. The delayed expiration of the leases for which suspensions are requested under this rule will result in a delay in reoffering the tracts. If the anticipated 10 leases that would have expired without a suspension were to be offered in a lease sale, MMS estimates that five would receive bids at an average of $556,000 per lease, for a total of $2,780,000. This final rule is estimated to result in a 2-year delay in the receipt of that $2,780,000 in bonus revenues.

However, this delay in receiving re-leasing revenues will be partially offset by increased government revenue due to the continued collection of rents. The extra rent generated by the anticipated suspended leases will be $500,000 ($5.00 rent per acre × 5,000 acres × 10 leases × 2 years). The greater potential effect of this final rule is the additional royalties collected if large reservoirs of hydrocarbons are discovered in ultra-deep areas, as well as the effect of success on bonuses and rents in future lease sales.

The presently quantifiable effects of this final rule are small compared to the potential for an increase in energy production. There are more than 4,300 active leases in the areas that are eligible for suspensions under this rule. In any given year, MMS estimates that it will receive no more than 10 requests for suspensions under this rule. This change is expected to affect less than 0.23 percent of leases in the eligible areas. The main effect of this final rule is the potential impact on energy and domestic production if a large reservoir of hydrocarbons is discovered.

(1) This final rule will not have an annual 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.

(2) This final rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. Issuance of a suspension for a lease does not interfere with the ability of other agencies to exercise their authority.

(3) This final rule would not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. This change will have no effect on the rights of the recipients of entitlements, grants, user fees, or loan programs.

(4) This final rule will not raise novel legal or policy issues.

Regulatory Flexibility Act (RFA)

The Department certifies that this final rule will not have a significant economic effect on a substantial number of small entities under the RFA (5 U.S.C. 601 *et seq.*).

This change will affect lessees and operators of leases in the OCS. This includes about 130 different companies. These companies are generally classified under the North American Industry Classification System (NAICS) code 211111, which includes companies that extract crude petroleum and natural gas. For this NAICS code classification, a small company is one with fewer than 500 employees. Based on these criteria, an estimated 70 percent of these companies are considered small. This final rule, therefore, will affect a substantial number of small entities.

This final rule will not create a cost to small companies since it provides a suspension only when one is requested. Small companies could be affected by the delay in the expiration of leases and the availability of the tract to be leased again. As discussed earlier, this is a very small portion of the available leases. The final rule will not affect the ability of a small company to participate in OCS exploration, development, and production.

Comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the actions of MMS, call 1–888–734–3247. You may comment to the Small Business Administration without fear of retaliation. Disciplinary action for retaliation by an MMS employee may include suspension or termination from employment with the Department of the Interior.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This is not a major rule under the SBREFA (5 U.S.C. 804(2)). This final rule:

(a) Will 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) Will 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 (UMRA) of 1995

This final 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 final rule will not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the UMRA (2 U.S.C. 1531 *et seq.*) is not required. This is because the proposal will not affect State, local, or tribal governments, and the effect on the private sector is small.

Takings (Executive Order 12630)

With respect to Executive Order 12630, the final rule will not have takings implications. A Takings Implication Assessment is not required. The rulemaking is not a governmental action capable of interfering with constitutionally protected property rights.

Federalism (Executive Order 13132)

With respect to Executive Order 13132, the final rule will not have federalism implications. It will not substantially and directly affect the relationship between the Federal and state governments. To the extent that state and local governments have a role in OCS activities, this final change will not affect that role.

Civil Justice Reform (Executive Order 12988)

With respect to Executive Order 12988, the Office of the Solicitor has determined that this final rule will not unduly burden the judicial system, and meets the requirements of Sections 3(a) and 3(b)(2) of the Executive Order.

Consultation with Indian tribes (E.O. 13175).

Under the criteria in Executive Order 13175, we have evaluated this rule and determined that it has no potential effects on federally recognized Indian tribes because OCS operations do not take place on or near Indian lands.

Paperwork Reduction Act (PRA) of 1995

The PRA provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information and assigns a control number, you are not required to respond. The revisions to 30 CFR part 250 subpart A refer to, but do not change, information collection requirements in current regulations. OMB has approved the referenced information collection requirements under OMB control number 1010–0114, current expiration date of October 31, 2007. The final rule will impose no new paperwork requirements, and an OMB form 83–I submission to OMB under the PRA is not required.

Clarity of This Regulation

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) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the rule? What else can 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.*

National Environmental Policy Act (NEPA) of 1969

MMS analyzed this rule using the criteria of the NEPA and 516 Departmental Manual, Chapter 2, and concluded that the preparation of an environmental analysis is not required.

Energy Supply, Distribution, or Use (Executive Order 13211)

This is not a significant rule and is not subject to review by OMB under Executive Order 13211. The final rule may potentially increase energy supplies, but given the uncertainty associated with the drilling of successful wells, the effect on energy supply, distribution, or use is not considered to be significant at this time. Thus, a Statement of Energy Effects is not required.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands-mineral resources, Public lands—right-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: December 2, 2005.

Chad Calvert,

Acting Assistant Secretary—Land and Minerals Management.

■ For the reasons stated in the preamble, MMS amends 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for Part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

■ 2. In § 250.175, add a new paragraph (c) to read as follows:

§ 250.175 When may the Regional Supervisor grant an SOO?

* * * * *

(c) The Regional Supervisor may grant an SOO to conduct additional geological and geophysical data analysis that may lead to the drilling of a well below 25,000 feet true vertical depth below the datum at mean sea level (TVD SS) when all of the following conditions are met:

(1) The lease was issued with a primary lease term of:

(i) 5 years; or

(ii) 8 years with a requirement to drill within 5 years.

(2) Before the end of the fifth year of the primary term, you or your predecessor in interest must have acquired and interpreted geophysical information that:

(i) Indicates that all or a portion of a potential hydrocarbon-bearing formation lies below 25,000 feet TVD SS; and

(ii) Includes full 3–D depth migration over the entire lease area.

(3) Before requesting the suspension, you have conducted or are conducting additional data processing or interpretation of the geophysical information with the objective of identifying a potential hydrocarbon-bearing geologic structure or stratigraphic trap lying below 25,000 feet TVD SS.

(4) You demonstrate that additional time is necessary to:

(i) Complete current processing or interpretation of existing geophysical data or information;

(ii) Acquire, process, or interpret new geophysical or geological data or information that would affect the decision to drill the same geologic structure or stratigraphic trap, as determined by the Regional Supervisor, identified in paragraphs (c)(2) and (c)(3) of this section; or

(iii) Drill a well below 25,000 feet TVD SS into the geologic structure or stratigraphic trap identified as a result of the activities conducted in paragraphs (c)(2), (c)(3), and (c)(4)(i) and (ii) of this section.

[FR Doc. 05–24109 Filed 12–15–05; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 104, 105 and 160

[USCG–2004–19963]

RIN 1625–AA93

Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission

AGENCY: Coast Guard, Department of Homeland Security.

ACTION: Interim rule; request for comments.

SUMMARY: On August 18, 2004, the Coast Guard published a temporary rule entitled ''Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission.'' 69 FR 51176. This temporary rule, which expires March 20, 2006, added ammonium

nitrate and ammonium nitrate based fertilizers, in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of Certain Dangerous Cargoes (CDCs) for which a notice of arrival (NOA) is required.

The Coast Guard is now permanently changing the definition of ''certain dangerous cargo'' to include (1) ammonium nitrate, in bulk; (2) ammonium nitrate based fertilizers, in bulk; and (3) propylene oxide, alone or mixed with ethylene oxide, in bulk. This rule also adds an option for vessels to submit notices of arrival electronically. These changes are necessary to promote maritime safety and security and to facilitate the uninterrupted flow of commerce by providing the Coast Guard with information on these cargoes.

DATES: This interim rule is effective January 17, 2006. Comments and related material must reach the Docket Management Facility on or before March 16, 2006. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before March 16, 2006.

ADDRESSES: You may submit comments identified by Coast Guard docket number [USCG–2004–19963] to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Web site: *http://dms.dot.gov.*

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

(4) Delivery: Room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. This is not a toll free call.

(5) Federal eRulemaking Portal: *http://www.regulations.gov.*

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call ENS Joseph Azzata, Office of Port Security Planning and Readiness (G–MPP), Coast Guard, telephone 202–267–0069. If you are interested in creating your own application or modifying your existing business systems to submit Extensible Markup Language (XML) formatted data to the National Vessel Movement Center (NVMC), please contact the NVMC by e-mail at *sans@nvmc.uscg.gov* or by telephone at 1–800–708–9823 or 304–264–2502 for more information. If you have questions related to security plans, call LCDR Rob McLellan, Office of Port and Vessel Security (G–MPS), telephone (202) 267–4129. This is not a toll free call. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402. This is not a toll free call.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Public Participation and Request for Comments
II. Acronyms
III. Background and Purpose
IV. Discussion of Comments to the Temporary Rule
  A. Adding Propylene Oxide
  B. CDC Residue
  C. Beyond the Scope of This Rulemaking
V. Discussion of Rule
  A. Temporary Rule Changes Adopted
  B. Additional Changes
VI. Regulatory Analysis
  A. Administrative Procedure Act
  B. Regulatory Evaluation
  C. Small Entities
  D. Assistance for Small Entities
  E. Collection of Information
  F. Executive Order 13132 (Federalism)
  G. Unfunded Mandates Reform Act
  H. Taking of Private Property
  I. Civil Justice Reform
  J. Protection of Children
  K. Indian Tribal Governments
  L. Energy Effects
  M. Technical Standards
  N. Environment
List of Subjects

I. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

A. *Submitting comments:* If you submit a comment, please include your name and address, identify the docket number for this rulemaking [USCG–2004–19963], indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this interim rule in view of them.

B. *Viewing comments and documents:* To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://dms.dot.gov* at any time and conduct a ''simple search'' using the last five digits of the docket number. You also may visit the Docket Management Facility in room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. *Public meeting:* We do not now plan to hold a public meeting. However, you may submit a request for one to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a public meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

D. *Privacy Act:* Anyone can 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 the Department of Transportation's Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://dms.dot.gov.*

II. Acronyms

CDC Certain Dangerous Cargo
CFR Code of Federal Regulations
COI Collection of Information
CTAC Chemical Transportation Advisory Committee
DHS U.S. Department of Homeland Security
eNOAD Electronic Notice of Arrival and Departure
FR **Federal Register**
G–MPP USCG Office of Port Security Planning and Readiness
G–MPS USCG Office of Port and Vessel Security
IR Interim Rule
MTSA Maritime Transportation Security Act of 2002
NOA Notice of Arrival
NPRM Notice of Proposed Rulemaking
NVMC National Vessel Movement Center

OMB Office of Management and Budget
POX Propylene Oxide
PV Present Value
TSAC Towing Safety Advisory Committee
U.S.C. United States Code
USCG United States Coast Guard
XML Extensible Markup Language

III. Background and Purpose

On August 18, 2004, the Coast Guard published a temporary rule entitled ''Notification of Arrival in U.S. Ports; Certain Dangerous Cargoes; Electronic Submission.'' 69 FR 51176. This temporary rule, which expires March 20, 2006, added ammonium nitrate and ammonium nitrate based fertilizers, in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of Certain Dangerous Cargoes (CDCs) for which a notice of arrival (NOA) is required under 33 CFR part 160.

CDCs are specifically defined in 33 CFR 160.204, but may generally be described as substances or materials that pose an unreasonable risk to health, safety, and property if improperly handled. The notice of arrival is the process in which a vessel submits required information—including data about the vessel, cargo, crew and others on board before the vessel arrives at a port or place in the United States. The required information contained in the notice of arrival allows the Coast Guard to properly screen the vessel for safety and security purposes.

The temporary rule was issued in large part because of information the Coast Guard had received from other federal agencies in late 2003 on the dangers of ammonium nitrate and ammonium nitrate based fertilizers, in bulk. While considering adding these cargoes to the CDC list, the Coast Guard requested comments from the Towing Safety Advisory Committee (TSAC) and the Chemical Transportation Advisory Committee (CTAC). Those committees were asked to advise the Coast Guard on the anticipated impact to their respective industries if solid ammonium nitrate and ammonium nitrate fertilizers, in bulk, were added to the CDC definition in 33 CFR part 160. The Coast Guard received recommendations from TSAC on September 10, 2003, and from CTAC on October 23, 2003. Neither committee specifically recommended adding forms of ammonium nitrate to the CDC list. Both committees acknowledged, however, the security hazards associated with forms of ammonium nitrate and agreed that additional security measures were warranted.

The temporary rule also added propylene oxide, alone or mixed with ethylene oxide, in bulk, to the list of CDCs for the following reasons—

- It is chemically similar to ethylene oxide, which is already on the list of CDCs;
- It is extremely reactive to acids, bases, oxidizers, peroxides, and many other chemicals;
- When exposed to heat, it polymerizes, or reacts with itself, and gives off large amounts of heat;
- It has a wide flammability range, meaning that it can mix with air to form an explosive mixture at low (2.3 percent) or high (37 percent) concentrations; and,
- It has a high vapor pressure, meaning that it generates large amounts of flammable and reactive vapor at room temperature.

The temporary rule also provided one new option, consisting of two separate formats, for electronically submitting an NOA to the Coast Guard's National Vessel Movement Center (NVMC). Finally, the temporary rule clarified that vessel security regulations in 33 CFR part 104 apply to the owner or operator of any (1) barge carrying CDC in bulk or (2) barge subject to 46 CFR chapter I, subchapter I, that is engaged on an international voyage.

IV. Discussion of Comments to the Temporary Rule

The Coast Guard received four letters commenting on the temporary rule. The letters were from a national trade association, an advisory committee, a barge transportation company, and a science and technology company. All of the comments addressed issues relating to CDC generally. There were no comments addressing electronic submission of NOAs.

A. *Adding Propylene Oxide:* One commenter agreed with the addition of propylene oxide to the list of CDCs, stating ''The addition of Propylene Oxide (POX) as a Certain Dangerous Cargo is an appropriate action, as it is a high risk cargo by any measurement.''

B. *CDC Residue:* One comment discussed CDC liquid residue (''slops'') remaining on a vessel after the CDC has been discharged from the vessel. The comment stated that vessels carrying only small quantities of CDC liquid residue are still subject to NOA reporting requirements until that material is discharged from the vessel. As an example, it stated that the Coast Guard classifies a vessel that has carried a liquid CDC as a CDC vessel until it is totally free from dangerous concentrations of flammable or toxic gases (''gas free''). It also stated, ''as a result, both the Coast Guard and industry are forced to utilize time, money, and resources to implement the additional requirements even when no particular hazard exists.''

The Coast Guard disagrees with the commenter's assertion that residue from liquid CDCs present no particular hazard. The residue of bulk liquid and bulk liquefied gas CDCs continues to retain its physical properties of flammability and toxicity despite the reduction in quantity of the CDC, and these physical properties are what make certain cargoes CDCs. Therefore, this rule does not modify current requirements for bulk liquid and bulk liquefied gas CDCs, regardless of amount.

However, the Coast Guard agrees that some non-liquid residues should not be included in the definition of CDC. Coast Guard discussed with the Office of Naval Intelligence and the Bureau of Alcohol, Tobacco, Firearms, and Explosives, the safety and security concerns related to the residue of ammonium nitrate and the residue of ammonium nitrate based fertilizers, in bulk. We conclude that it is not necessary to require an NOA when a vessel is carrying only residue of ammonium nitrate or residue of ammonium nitrate based fertilizers, in bulk, under certain circumstances. For example, a barge carrying dry bulk ammonium nitrate delivers to, and discharges its cargo at, a facility. Small quantities of residue may remain scattered around the edges and the rest of the floor area of the barge. In this instance, the Coast Guard agrees that it would be unnecessary for a company to clean all residue from the barge completely so that the Part 160 requirements no longer apply to that barge.

C. *Beyond the Scope of this Rulemaking:* All four commenters raised a number of issues that were outside the narrow scope of the temporary rule. Those issues generally relate to implementation of the vessel and facility security regulations in 33 CFR parts 104 and 105. The issues included concerns about segregation of barges carrying ammonium nitrate or ammonium nitrate fertilizers from other dry cargo barges at fleeting facilities—a commercial area for the making up, breaking down, or staging of barge tows; requests to make the Inland River Vessel Movement Center and NVMC reporting requirements the same; suggestions to allow vessel operators to ''turn on'' and ''turn off'' the vessel security plans of uninspected barges depending on whether they are carrying CDCs; and

storage of security plan documentation onboard dry cargo barges.

Because the only purpose of this rulemaking is to make permanent the changes from the temporary rule with minor modifications, the aforementioned issues are not within the narrow scope of this rulemaking and we do not address them in this rule. However, we have forwarded these comments to the appropriate program staff for further consideration and appropriate action.

In addition, these comments asked questions about when and how owners and operators with approved security plans or Alternative Security Plans should proceed with security plan changes relating to the new CDCs as well as questions about completing the required Declarations of Security. Such questions should be addressed to LCDR Rob McLellan, G–MPS, Coast Guard, 202–267–4129.

V. Discussion of Rule

A. Temporary Rule Changes Adopted

This interim rule makes permanent the changes to 33 CFR parts 104 and 160 introduced by the August 18, 2004 temporary rule. These permanent changes are necessary to promote maritime safety and security and to facilitate the uninterrupted flow of commerce. This rule permanently adds to the definition of CDC, in 33 CFR 160.204, ammonium nitrate and ammonium nitrate based fertilizers, in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk.

This interim rule also makes permanent one new option, consisting of two separate formats, for electronically submitting a NOA to the Coast Guard's National Vessel Movement Center (NVMC). Finally, this rule adopts the change the temporary rule made to the applicability of vessel security regulations in 33 CFR part 104, which limited applicability to barges that are carrying CDC in bulk to those engaged on international voyages.

B. Additional Changes

This interim rule also contains editorial revisions and clarifications to the NOA regulation that are not in the temporary rule. One of the changes is a revision to the definition of certain dangerous cargo which eliminates the reporting requirement for vessels that retain only a non-liquid residue of ammonium nitrate or ammonium nitrate based fertilizer, in bulk. The second change is that this rule adds an option for vessels to submit notices of arrival electronically. The third change is only an editorial clarification that has no substantive effect, clarifying that U.S. recreational vessels are not subject to part 160 requirements.

This interim rule defines ammonium nitrate and ammonium nitrate based fertilizers, in bulk, to exclude non-liquid residue of ammonium nitrate and residue of ammonium nitrate based fertilizer after discharging saleable cargo. The definition for ''Certain dangerous cargo residue (CDC residue)'' in § 160.204 now excludes from the NOA reporting requirements ammonium nitrate, in bulk, and ammonium nitrate based fertilizer, in bulk, remaining after all saleable cargo is discharged, not exceeding 1,000 pounds in total and not individually accumulated in quantities exceeding two cubic feet.

This interim rule updates the electronic submission options by adding the new eNOAD Microsoft InfoPath template as another electronic submission format. This rule also permanently adds an optional method, the Electronic Notice of Arrival and Departure (eNOAD) system, for electronically submitting a NOA to the Coast Guard's NVMC. On January 31, 2005, the Coast Guard replaced its electronic NOA (e-NOA) system with the newer eNOAD system. The new eNOAD has Microsoft InfoPath as a third optional electronic format for submittal. The Coast Guard has worked with the Bureau of Customs and Border Protection (CBP) in developing the eNOAD so that it may be used to meet both the Coast Guard's notice of arrival requirements and CBP's Sea Advance Passenger Information System (APIS) requirements. This will eliminate duplicative reporting. On April 7, 2005, CBP published a final rule concerning the use of eNOAD. 70 FR 17819.

The eNOAD system, available on the NVMC Web site at *http://www.nvmc.uscg.gov,* consists of the following three submission formats:

1. An online web format that can be used to submit NOA information directly to the NVMC;

2. Raw Extensible Markup Language (XML) formatted documents that conform to the eNOAD schema, provided for those interested in creating their own application. This format would allow offline data input and would allow users to draw information from their existing systems to submit, via web service, XML formatted data to comply with NOA requirements; and

3. A new Microsoft InfoPath template, designed for those wanting to input NOA data offline (when not connected to the Internet) for submission later via their Internet connection or as an e-mail attachment to the NVMC.

For more information on any of these formats, please contact the NVMC at *sans@nvmc.uscg.gov* or by telephone at 1–800–708–9823 or 304–264–2502, or visit the NVMC Web site listed above and click on ''FAQ'' or ''Downloads.''

The rule clarifies that the notice of arrival provisions in part 160 do not apply to U.S. recreational vessels. Based on queries from industry and local USCG assets, we have revised the language to clearly state that part 160 does not apply to U.S. recreational vessels under 46 U.S.C 4301. However, this part does apply to foreign recreational vessels. This change does not substantively alter the scope of the applicability in part 160.

Finally, this interim rule also removes the temporary provisions that are in parts 104 and 105 that are no longer needed. The paragraphs being removed are § 104.115(d), § 104.410(g), § 105.115(c), and § 105.410(g).

VI. Regulatory Analysis

A. Administrative Procedure Act

Implementation of this rule as an interim rule is based upon the ''good cause'' exception found under the Administrative Procedure Act (APA) at 5 U.S.C. 553(b)(B). Delaying implementation of this rule to await public notice and comment is unnecessary and contrary to the public interest.

This interim rule adopts changes made by the temporary rule. There was a 90-day post-promulgation comment period for that temporary rule and the Coast Guard received only four comments. The Coast Guard considered those comments when drafting this interim rule and addressed them above.

In addition to adopting changes introduced by the temporary rule that were subject to notice and comment, this interim rule makes only three changes: one change relieves a burden, another clarifies that the rule does not apply to certain vessels, and the third offers an additional option for submitting a notice of arrival. These changes either have no effect on the public, or ease a public burden by relaxing the regulatory requirement or providing more options in the reporting requirement. For these reasons, the Coast Guard finds good cause to publish this interim rule without first publishing an NPRM.

Although we have good cause to publish this rule without prior notice and comment, we value public comments. As a result, we are soliciting public comments on this interim rule and may revise the final rule in response to those comments.

B. Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review,'' 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This rule has been identified as significant under Executive Order 12866 and has been reviewed by OMB. A Regulatory Assessment is available in the docket as indicated under the ''Public Participation and Request for Comments'' section of this preamble. A summary of the analysis follows.

As in the temporary rule, the two cost elements in the interim rule are the NOA requirements and the vessel and facility security requirements associated with the Maritime Transportation Security Act of 2002 (''MTSA'', Public Law 107–295, 116 Stat. 2064). Vessels that transport CDC materials already are required to submit NOAs to the Coast Guard. 33 CFR 160.202 and 160.212. Vessels and facilities that carry and handle CDC materials are required to implement security measures to comply with MTSA regulations (Vessel Security Plans, 33 CFR part 104; Facility Security Plans, 33 CFR part 105).

For our analysis of the costs of this interim rule, we have retained the estimate from the Regulatory Assessment conducted for the August 2004 temporary rule of about 9,200 barges that can potentially transport ammonium nitrate and propylene oxide. In addition, we retained from the same Regulatory Assessment an estimate of 50 as the average number of fleeting facilities that can potentially receive these two cargoes and the estimate of approximately 11,400 port calls made by about 2,220 vessels that can potentially carry CDC materials.

The initial cost of the interim rule for the NOA and the security requirements is approximately $6.8 million (non-discounted), which covers the preparation of NOAs, the security requirements for vessels and facilities, and the installation, operation and maintenance of equipment that may be required to upgrade facility security. The annual cost of the interim rule for the NOA and the security requirements is approximately $4.9 million (non-discounted).

We estimate the discounted total cost of the interim rule to vessel owners and facilities to range from $38.9 million to $45.1 million (2005–2014, seven percent and three percent discount rates, respectively). We estimate that fleeting facilities will incur approximately 88 percent of the discounted total cost ($34.3 to $39.8 million). Table 1 presents the discounted total cost of the interim rule by element of compliance.

TABLE 1.—SUMMARY OF DISCOUNTED COSTS OF INTERIM RULE FOR NOA AND FACILITY AND VESSEL SECURITY REQUIREMENTS (2005–2014, THREE AND SEVEN PERCENT DISCOUNT RATES)

[Cost by Element* ($ Millions)]

Increase	Vessels not previously in NOA sub-mittals	Covered by NOA	Vessel security	Facility security	Total PV cost of IR
Seven Percent Discount Rate	$0.062	$0.35	$4.1	$34.3	$38.9
Three Percent Discount Rate	0.072	0.41	4.8	39.8	45.1

* Totals may not sum due to rounding.

As shown in Table 1, using the seven percent discount rate, we estimate the cost associated with the increase in NOA submittals for vessels that only carry ammonium nitrate or propylene oxide to be $0.35 million of the total discounted cost of this interim rule. The cost associated with the vessel and facility security requirements is $38.4 million at a seven percent discount rate ($4.1 for vessel security + $34.3 for facility security). Using three percent as the discount rate, we estimated the cost associated with an increase in NOA submittals for vessels that only carry ammonium nitrate or propylene oxide to be $0.41 million, and the cost associated with the vessel and facility security requirements is $44.6 million ($4.8 for vessel security + $39.8 for facility security).

The qualitative benefits in this interim rule are security-related. By adding ammonium nitrate and propylene oxide to the list of CDCs, society will benefit, as the whereabouts of these two dangerous cargoes are tracked and become known. Furthermore, the revision of the CDC definition to include ammonium nitrate and propylene oxide, will provide relevant information about an applicable vessel's cargo and the threat that cargo may pose.

This interim rule will provide security standards for fleeting facilities that handle these two dangerous cargoes. These security standards will increase awareness, communication, and surveillance to reduce the likelihood of theft and unlawful access to fleeting facilities that handle these volatile and dangerous cargoes.

Lastly, this interim rule will allow the Coast Guard to provide greater flexibility for NOA submissions by allowing vessel owners and operators three additional electronic means of NOA submittal.

C. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the requirements of the Regulatory Flexibility Act. Although this rule is exempt, we have reviewed it for potential economic impacts on small entities.

We expect that this interim rule may have an economic impact on some small entities, as defined by the Small Business Administration. Small entities affected by this rule fall into two groups: (1) Those small entities that currently carry or handle CDCs in addition to ammonium nitrate and ammonium nitrate based fertilizers, in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk; and (2) those small entities that currently carry or handle only ammonium nitrate and ammonium nitrate based fertilizers in bulk, and propylene oxide, alone or mixed with ethylene oxide, in bulk.

Small entities in the first category currently submit NOAs and comply with the security measures and planning requirements. These entities will have to submit a greater number of NOAs for the newly covered cargoes. They may have to revise existing security plans and change security measures to cover these cargoes.

Small entities in the second category were affected for the first time by the temporary rule and will continue to comply with NOA requirements in 33 CFR part 160 for shipments of these cargoes and with the security measures and planning requirements in 33 CFR parts 104 and 105.

The Coast Guard is particularly interested in the impact of this rule on small entities. If you are a small entity, we specifically request comments regarding the economic impact of this rule on you.

D. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If you think this interim rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult ENS Joseph Azzata, Office of Port Security Planning and Readiness (G–MPP), Coast Guard, telephone 202–267–0069. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

E. Collection of Information

This interim rule does not require a new collection of information (COI) or change to the two existing OMB-approved collections, 1625–0100 and 1625–0077. The current approval for 1625–0100 expires on March 31, 2008. The approval for 1625–0077 expires July 31, 2008.

F. Executive Order 13132 (Federalism)

This rule 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, the Coast Guard certifies that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA) (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. UMRA does not require an assessment in the case of an interim rule issued without prior notice and comment. Nevertheless, the Coast Guard does not expect this interim rule to result in such an expenditure. We discuss this interim rule's effects elsewhere in this preamble.

H. Taking of Private Property

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

I. Civil Justice Reform

This interim 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.

J. Protection of Children

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

K. Indian Tribal Governments

This interim 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.

L. Energy Effects

We have analyzed this interim 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. Although it is a ''significant regulatory action'' under Executive Order 12866, it 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.

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

N. Environment

We have analyzed this interim rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, we believe that this rule should be categorically excluded, under figure 2–1, paragraphs (34)(a) and (d), of the Instruction from further environmental documentation. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' is available in

the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 104

Maritime security, Reporting and recordkeeping requirements, Security measures, Vessels.

33 CFR Part 105

Maritime security, Reporting and recordkeeping requirements, Security measures.

33 CFR Part 160

Administrative practice and procedure; Harbors; Hazardous materials transportation; Marine safety; Navigation (water); Reporting and recordkeeping requirements; Vessels; Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 104, 105, and 160 as follows:

PART 104—MARITIME SECURITY: VESSELS

■ 1. The authority citation for part 104 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 104.105, remove temporary paragraph (a)(12); reinstate temporarily suspended paragraph (a)(9); and revise paragraph (a)(9) to read as follows:

§ 104.105 Applicability.

(a) * * *

(9) Barge carrying certain dangerous cargo in bulk or barge that is subject to 46 CFR Chapter I, subchapter I, that is engaged on an international voyage.

* * * * *

§ 104.115 [Amended]

■ 3. In § 104.115, remove temporary paragraph (d).

§ 104.410 [Amended]

■ 4. In § 104.410, remove temporary paragraph (g).

PART 105—MARITIME SECURITY: FACILITIES

■ 5. The authority citation for part 105 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. 70103; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–11, 6.14, 6.16, and 6.19; Department of Homeland Security Delegation No. 0170.1.

§ 105.115 [Amended]

■ 6. In § 105.115, remove temporary paragraph (c).

§ 105.410 [Amended]

■ 7. In § 105.410, remove temporary paragraph (g).

PART 160—PORTS AND WATERWAYS SAFETY-GENERAL

■ 8. The authority citation for part 160 is revised to read as follows:

Authority: 33 U.S.C. 1223, 1231; 46 U.S.C. Chapter 701; Department of Homeland Security Delegation No. 0170.1. Subpart C is also issued under the authority of 33 U.S.C. 1225 and 46 U.S.C. 3715.

■ 9. In § 160.202, revise paragraph (b) to read as follows:

§ 160.202 Applicability.

* * * * *

(b) This subpart does not apply to U.S. recreational vessels under 46 U.S.C. 4301 *et seq.*, but does apply to foreign recreational vessels.

* * * * *

■ 10. In § 160.204, in the definition for ''Certain dangerous cargo (CDC)'', remove temporary paragraphs (9) and (10); in the definition for ''Certain dangerous cargo (CDC)'', add new paragraphs (8)(ix) and (9); and add a new definition for ''Certain dangerous cargo residue (CDC residue)'' in alphabetical order to read as follows:

§ 160.204 Definitions.

* * * * *

Certain dangerous cargo (CDC)

* * * * *

(8) The following bulk liquids:

* * * * *

(ix) Propylene oxide, alone or mixed with ethylene oxide.

(9) The following bulk solids:

(i) Ammonium nitrate listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 that is not certain dangerous cargo residue (CDC residue).

(ii) Ammonium nitrate based fertilizer listed as a Division 5.1 (oxidizing) material in 49 CFR 172.101 that is not CDC residue.

Certain dangerous cargo residue (CDC residue) means ammonium nitrate in bulk or ammonium nitrate based fertilizer in bulk remaining after all saleable cargo is discharged, not exceeding 1,000 pounds in total and not individually accumulated in quantities exceeding two cubic feet.

* * * * *

■ 11. In § 160.210, remove temporary paragraph (e), reinstate temporarily suspended paragraph (a) and revise paragraph (a) to read as follows:

§ 160.210 Methods for submitting an NOA.

(a) *Submission to the National Vessel Movement Center (NVMC).* Except as provided in paragraphs (b) and (c) of this section, vessels must submit NOA information required by § 160.206 (entries 1 through 9 in Table 160.206) to the NVMC, United States Coast Guard, 408 Coast Guard Drive, Kearneysville, WV 25430, by:

(1) Electronic submission via the electronic Notice of Arrival and Departure (eNOAD) and consisting of the following three formats:

(i) A Web site that can be used to submit NOA information directly to the NVMC, accessible from the NVMC web site at *http://www.nvmc.uscg.gov;*

(ii) Electronic submission of Extensible Markup Language (XML) formatted documents via web service;

(iii) Electronic submission via Microsoft InfoPath; contact the NVMC at *sans@nvmc.uscg.gov* or by telephone at 1–800–708–9823 or 304–264–2502 for more information;

(2) E-mail at *sans@nvmc.uscg.gov.* Workbook available at *http://www.nvmc.uscg.gov;*

(3) Fax at 1–800–547–8724 or 304–264–2684. Workbook available at *http://www.nvmc.uscg.gov;* or,

(4) Telephone at 1–800–708–9823 or 304–264–2502.

* * * * *

Dated: December 8, 2005.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 05–24126 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Parts 151 and 153

46 CFR Part 4

[USCG–2000–6927]

RIN 1625–AA04 (Formerly RIN 2115–AD98)

Reporting Marine Casualties

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations governing marine casualty reporting requirements by adding ''significant harm to the environment'' as a reportable marine casualty, and by requiring certain foreign flag vessels, such as oil tankers, to report marine casualties that occur in waters subject to U.S. jurisdiction, but beyond U.S. navigable waters, when those casualties involve material damage affecting the seaworthiness or efficiency of the vessel, or significant

harm to the environment. These changes are required by the Oil Pollution Act of 1990.

DATES: This final rule is effective January 17, 2006.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2000–6927 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Lieutenant Commander Kelly Post, Project Manager, Office of Investigation and Analysis (G–MOA), Coast Guard, telephone 202–267–1418. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–493–0402.

SUPPLEMENTARY INFORMATION:

Background and Purpose

Pursuant to 46 U.S.C. 6101 and Coast Guard regulations, U.S. vessel owners are required to report marine casualties to the Coast Guard. Initially there were four categories of marine casualties that required reporting to the Coast Guard: (1) Death of an individual, (2) serious injury to an individual, (3) material loss of property, and (4) material damage affecting the seaworthiness of the vessel. Section 4106 of the Oil Pollution Act of 1990, Public Law 101–380 (OPA 90), amended 46 U.S.C. 6101 to add ''significant harm to the environment'' to the list of reportable marine casualties. Additionally, section 4106 extended the requirements for reporting a marine casualty involving ''material damage affecting the seaworthiness or efficiency of the vessel'' or ''significant harm to the environment'' to any foreign-flag vessel ''constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue'' and operating beyond U.S. navigable waters, but within waters subject to the jurisdiction of the United States (principally, the U.S. Exclusive Economic Zone, or EEZ).

The Coast Guard held a public meeting on January 20, 1995, to solicit public comments regarding the requirements of OPA 90. See 59 FR 65522 (December 20, 1994). Subsequently, the Coast Guard published a notice of proposed rulemaking (NPRM) on November 2, 2000 (65 FR 65808) to solicit comments on amendments to Coast Guard regulations to implement the requirements of OPA 90. The Coast Guard also published a supplemental notice of proposed rulemaking (SNPRM) on July 12, 2001 (66 FR 36530) to solicit comments on federalism issues raised by commenters on the NPRM.

This rule amends Coast Guard regulations as necessary to finalize implementation of the requirements of section 4106 of OPA 90.

Discussion of Comments and Changes

The Coast Guard received 25 letters commenting on the NPRM. Nine letters commented on the Federalism analysis set forth in the NPRM. The comments relating to the Federalism analysis of the NPRM have been discussed in the SNPRM and therefore will not be discussed again in this final rule.

General: Nine commenters expressed general support for the NPRM. One commenter said the basic premise that vessels be subject to reporting requirements for incidents through all navigable waters, including the EEZ, is commendable and should improve the government's ability to respond to incidents, and further our understanding of vessel navigation safety. Another commenter ''applauded'' our regulation of foreign tank vessels operating within U.S. jurisdiction because such regulation would level the playing field for U.S. marine interests. Five other commenters said foreign vessels plying U.S. waters should have to comply with all the same notification requirements as U.S.-flag vessels.

Ballast water: One commenter asked the Coast Guard to revise the proposed text of 33 CFR 151.15(c)(1) by adding the statement that ''this provision does not require reporting of normal or emergency discharges of ballast water during shipping operations.'' The commenter said such discharges are already covered by 33 CFR part 151, subpart D, and are not normally considered marine casualties. We agree with the commenter that ballast water discharges normally do not constitute marine casualties. However, because nothing in 33 CFR 151.15 amends 33 CFR part 151, subpart D, we see no need to add the requested language.

Industry costs: One commenter said that our estimated burden of response (one hour per form) is not realistic, particularly when the number of people involved in confecting and administering the report form is considered. The estimate of the paperwork burden is an average of the time and resources likely needed to complete and process report forms currently used by industry to collect information about a wide range of casualties with various impacts. In some cases, the form will take longer to complete and involve more than one person, particularly for casualties with extensive impacts. In other cases, it will take less time and involve only one person, particularly for casualties with small or no impacts.

One commenter said that neither the NPRM's discussion of costs generally, nor of small entity costs in particular, addressed the implied new reporting mandates of 46 CFR 4.03–1(b). Title 46 CFR 4.03–1 does not establish new reporting mandates; rather reporting requirements are provided in 46 CFR 4.05. The NPRM proposed new reporting requirements for occurrences involving significant harm to the environment and material damage to foreign tank vessels operating within the EEZ. The NPRM describes the total industry cost and the impact on small entities as the increase in paperwork burden due to the proposed new reporting requirements.

Duplicative reporting: Eleven commenters remarked on what they considered to be duplicative reporting requirements in the NPRM. One commenter saw our proposal as adding to the paperwork burden affecting U.S. waters generally and the Mississippi River system in particular. Four said that submission of casualty reports is a process that needs to be simplified and streamlined, and that our proposal goes in the wrong direction. Two said they had been advised of Coast Guard plans to initiate a rulemaking to reduce the number of written reports required, while a third said that a comprehensive approach to reforming marine casualty reporting standards is long overdue and that tacking additional requirements onto an antiquated reporting regimen distracts the Coast Guard and responsible industry members from efficiently exchanging information needed to protect the marine environment. All three of these commenters asked us to move quickly with these reform efforts. We consider the streamlining of the marine casualty reporting process to be a continuing project that exceeds the scope of the present rulemaking. We disagree that the present rulemaking goes in the wrong direction. Instead, this final rule extends well-established procedures for reporting marine casualties to events involving significant harm to the environment, in line with statutory requirements.

Four commenters said that Coast Guard pollution investigators already record comprehensive amounts of information when executing their response and investigation responsibilities, and asked what possible benefit the Coast Guard could derive from having the responsible party give this information again via a ''one size fits all'' marine casualty report form like Form CG–2692. We believe the public, the Coast Guard, and the responsible party all benefit from the marine casualty report. The report gives the marine industry a nationally consistent tool for describing an incident accurately and quickly, and in the responsible party's own words. The report is an important and unique component of the investigative file, not a redundancy.

One commenter was concerned that by creating dual reporting and investigative requirements for oil spills under both 33 CFR 151.15 and 153.203 and 46 CFR part 4, we have set up a situation where operators may comply with one of the reporting requirements but not the other, exposing themselves to potential civil penalties. This commenter said we should put the reporting requirements in one section or another, but not in both. We have embedded cross-references in 33 CFR 151.15(g), 33 CFR 153.203, and 46 CFR 4.05–1(c). Notification reports made under 33 CFR 151.15 and 153.203 will satisfy the reporting requirements in 46 CFR 4.05. However, reports made under 46 CFR 4.05 will not satisfy the notification requirements in 33 CFR 151.15 and 153.203, but, if a discharge is reported to us under 46 CFR 4.05, we will notify the party of its reporting responsibilities under 33 CFR 151.15 and 153.203.

One commenter asked us to revise 46 CFR 4.05–1(c) by inserting ''and the written requirements specified in 46 CFR 4.05–10'' after ''immediate notification requirement of this section,'' and by adding ''and does not involve any other marine casualty as defined in 46 CFR 4.03–1.'' The commenter said these changes would more clearly state the intent of the regulation and would eliminate the possibility of redundant initial verbal notification and the unnecessary submission of Form CG–2692. We agree with the commenter that paragraph (c) should apply only if the marine casualty exclusively involves significant harm to the environment, and we have revised paragraph (c) accordingly. We do not agree that a report made under 33 CFR 153.203, 40 CFR 117.21, or 40 CFR 302.6 should satisfy 46 CFR 4.05–10 as well as 4.05–1, because 46 CFR 4.05–10(a) provides for a situation in which immediate notice is given under § 4.05–1, but complete information for the marine casualty report (and its addenda) is not available until later. We want to preserve that two-tiered approach. The existing language of 46 CFR 4.05–10(b) states that, if filed without delay after the occurrence of the marine casualty, the report required by 46 CFR 4.05–10 also suffices as the immediate notification required by 46 CFR 4.05–1.

Existing authority: Two commenters said the Coast Guard already has authority allowing us to require immediate notification of incidents that could threaten the environment. One commenter said that 33 U.S.C. 1321 (b)(5) and (d)(2)(D) provide the Coast Guard with that authority and therefore we do not need to adopt a new rule that raises federalism issues. The other said that OPA 90 does not mandate a redundant, unnecessary, and speculative requirement that overlaps with existing reporting requirements contained in 46 CFR 4.05–1, 49 CFR 176.48, 33 CFR 151.26, 33 CFR 153.203, and 33 CFR 155.1040. We addressed the federalism issues raised by the first commenter in our SNPRM. With respect to 33 U.S.C. 1321, while it does contain requirements similar to those contained in OPA 90 (explaining the overlap with existing regulations noted by the second commenter), this section does not apply to foreign vessels that operate in ''waters under U.S. jurisdiction'' that are not ''navigable waters of the United States.'' OPA 90 extends coverage to such vessels.

Great Lakes and internal waters: One commenter asked the Coast Guard to address two questions. First, is a vessel that generally operates on the ocean, but occasionally operates in the Great Lakes or U.S. internal waters, subject to 33 CFR 151.15 on those occasions? Second, is a vessel operating under a foreign authority subject to 33 CFR 151.15 when it operates in the Great Lakes (presumably on the U.S. side of the international boundary) or in U.S. internal waters? We consider the answer to be ''yes'' in both cases, provided the vessel is not specifically exempted by 33 CFR 151.09(b).

Highways: Two commenters compared the regulation of marine commerce with highway regulations, saying it seems odd that the ''most environmentally friendly'' transportation system is held under microscopic examination while highway runoff from land based transportation is not. The Coast Guard notes that these comments are outside of the scope of the present rulemaking and beyond the jurisdiction of the Coast Guard's authority. We consider the required report on marine casualties to be essential to the Coast Guard's performance of its statutory duties for the protection of marine safety and the environment.

Inconsistent application: Four commenters complained that inconsistencies among Coast Guard officials in applying the reporting criteria are rampant. These comments are beyond the scope of this rulemaking; however, you can address comments or complaints about how reporting criteria are applied to United States Coast Guard Headquarters (G–MOA), 2100 Second Street, SW., Washington, DC 20593 or by e-mail at *fldr-G-MOA@comdt.uscg.mil.*

Procedure: One commenter said our proposed changes to 46 CFR 4.03–1(b) added or changed reporting requirements that were not identified in the original meeting notice or in the NPRM, and that were not justified by any discussion of need, goals, or alternatives considered. No reporting requirements were proposed in 46 CFR 4.03–1(b); the new proposed reporting requirements in 46 CFR 4.05 were discussed fully in the NPRM preamble. The NPRM proposed only one substantive change to 46 CFR 4.03–1(b): the addition of paragraph (b)(1)(xii), which adds any incident involving significant harm to the environment. That change also was amply discussed in the NPRM preamble. We also rewrote the section and changed some of the illustrations of events that would constitute a marine casualty or accident, but neither in the former 46 CFR 4.03–1 nor in the new version are these illustrations intended to limit the definition of a marine casualty or accident. It is true that former section 4.03–1 defined a marine casualty or accident to ''mean any casualty or accident involving any vessel * * *'' while the new version says that the term ''applies to events caused by or involving a vessel'' * * * However, dictionary definitions of ''involving'' include ''to have an effect on,'' so we do not think there is, and did not intend there to be, any substantive difference between the two versions of section 4.03–1 on this count. See Merriam-Webster Online, *http://www.m-w.com*, last checked on Aug. 19, 2005.

Recreational boaters: Two commenters complained that the regulatory burden imposed on industry by rulemakings like this one is not imposed on recreational boaters who, according to the commenters, do not need to be licensed, do not understand the rules of the road, and have nothing to lose from noncompliance with

standards that apply to industry. The present rulemaking applies only to vessels covered by 33 CFR parts 151 and 153, and 46 CFR part 4. To the extent those parts do not apply to recreational boaters, those boaters remain subject to other Federal and State statutory and regulatory controls, including the casualty and accident reporting provisions of 33 CFR part 173.

Requiring other casualties: One commenter said we should amend the rule so that a written report is not required for any actual or potential discharge that does not involve some other marine casualty required to be reported under 46 CFR 4.05–1. We decline to adopt this recommendation because we think it would weaken the apparent intent of OPA 90 to equate ''significant harm to the environment'' with the other marine casualties listed in 46 U.S.C. 6101(a). In our view, the statute requires a report to be filed when any one of the listed casualties occurs. The requirement is not conditioned upon the presence of multiple events or aggravating factors.

Significant harm: Eight commenters asked for or suggested clarification on the meaning of ''significant harm to the environment.'' Five said that the Environmental Protection Agency's definition of significant harm (40 CFR 110.3) is neither reasonable nor appropriate for marine casualty considerations. These five said it is unreasonable that sheen coming from a properly greased but broken rudder stock would meet our proposed definition, as would an eyedropper discharge of diesel fuel or a drop of oil from a $20 hydraulic steering hose rupture, or any small amount of oil from a commercial source, but that the release of 4,999 lbs. of ammonium sulfate would not meet the definition. We believe 46 CFR 4.03–65 adequately and appropriately defines significant harm to the environment by referencing 40 CFR 110.3 and other existing regulations. The significance of an environmental marine casualty is not necessarily a function of the quantities discharged or of the reasons for the discharge. Information about the causes of a discharge, or measures taken to prevent or abate the discharge, can be given in the marine casualty report itself. Whether discharge of small amounts of ammonium sulfate should also constitute an environmental marine casualty is beyond the scope of this rulemaking.

Three commenters said the NPRM was directly inconsistent with recent Coast Guard initiatives to better align marine casualty investigation and reporting procedures with legitimate marine safety goals and with a Coast Guard policy against investigating minor incidents where reports provide little or no useful information for improving marine safety. We see no inconsistency. This rule aligns existing regulations with OPA 90's inclusion of significant harm to the environment in the list of reportable marine casualties under 46 U.S.C. 6101(a). This rule does not alter the Coast Guard's processing of marine casualty reports or our procedures for determining which reported marine casualties will be investigated.

One commenter said it will report all discharges or probable discharges, but that to require written reports for minor matters will be counterproductive to practical considerations and will not result in any meaningful protection of the environment. It may be that not all marine casualty reports will result in meaningful safety improvements, but reporting requirements are well established and help insure the timely availability of information that may prove critical, either to immediate response efforts or to longer term marine safety programs. This final rule simply extends those established requirements to environmental marine casualties.

One commenter said the Coast Guard should align the definition of ''significant harm to the environment'' with our existing definition of a major oil spill or chemical release, in lieu of any violation of the Clean Water Act. We note that amended 46 CFR 4.03–65 is aligned with several existing definitions of prohibited discharge. The amended regulation refers to the definition of harmful oil discharges in 40 CFR 110.3, to rules for determining reportable quantities of hazardous substances in 40 CFR part 117, to oil discharge limitations in 33 CFR 151.10 and 33 CFR 151.13, and to noxious liquid substance discharge limitations in 46 CFR 153.1126 and 153.1128.

One commenter suggested amending proposed 33 CFR 151.15(c)(1) by inserting ''as set forth in 40 CFR 110.3'' after ''[a] discharge of oil,'' and by inserting ''in quantities equal to or exceeding, in any 24-hour period, the reportable quantity determined in 40 CFR part 117'' after ''hazardous substances.'' Reports under § 151.15(c)(1) are required only when a discharge results from damage to the vessel (or its equipment), or from efforts to secure vessel safety or save a life at sea. The Coast Guard understands that under such emergency conditions, which may pose an imminent risk to vessel safety and human life, vessel personnel may be unable to devote their primary attention to avoidance or mitigation of environmental damage. However, precisely because these circumstances can give way to unintended environmental consequences, we think it is important to require reports even though the discharge may not rise to the levels specified in 40 CFR 110.3 or 40 CFR part 117.

Regulatory Evaluation

Executive Order 12866, ''Regulatory Planning and Review'', 58 FR 51735, October 4, 1993, requires a determination whether a regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget (OMB) and subject to the requirements of the Executive Order. This final rule is considered to be a ''significant regulatory action'' under Executive Order 12866. Accordingly, this final rule has been reviewed by OMB.

The following is a discussion of the expected costs and benefits of the rule.

Costs

We estimate that the rule imposes an additional 1,570 hours per year of annual paperwork requirements on the domestic industry. These paperwork requirements are further discussed under the collection-of-information section. Assuming one hour of staff time has a value of $45, an additional 1,570 hours equates to an aggregate domestic industry cost of $70,650 per year. Additionally, this rule will require an estimated 186 hours of annual paperwork requirements on foreign industry equating to $8,370. The total cost to industry, domestic and foreign, is estimated to be $79,020 annually for a total of 1,756 hours per year.

Benefits

The measures in this rule are mandated by OPA 90. The primary benefit of this rule is the establishment of standardized reporting requirements that address the Coast Guard's need to track and investigate events that cause ''significant harm to the environment.''

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 estimated annual impact to U.S. industry of this rule is $70,650. The measures included in this proposed rule are mandated by OPA 90. Small entities involved in ''significant harm to the environment'' incidents will be required to prepare a form which will take approximately one hour of staff time to complete. One hour of staff time is valued at $45. Therefore, the cost per incident of this rule is $45. If a small entity is not involved in a ''significant harm to the environment'' incident, this rule will have zero cost.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under § 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. The NPRM provided small businesses, organizations or governmental jurisdictions a Coast Guard contact to ask questions concerning this rule's provisions or options for compliance. We received no public comments in response to the NPRM regarding any impact on small entities. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Commander Kelly Post, Project Manager, Office of Investigation and Analysis (G–MOA), Coast Guard, telephone 202–267–1418. The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

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

Collection of Information

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), ''collection of information'' comprises reporting, recordkeeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This rule modifies an existing OMB-approved collection 1625–0001. A summary of the revised collection follows.

OMB Control Number: 1625–0001 [formerly 2115–0003].

Title: Marine Casualty Information & Periodic Chemical Drug and Alcohol Testing of Commercial Vessel Personnel.

Summary of the Collection of Information: The Marine Casualty Information portion of this Collection of Information requires foreign-flag tank vessels operating in the U.S. EEZ to report a marine casualty involving either ''significant harm to the environment'' or material damage affecting the seaworthiness or efficiency of a vessel. This collection also requires U.S.-flag vessels operating anywhere to report a marine casualty involving ''significant harm to the environment''.

Need for Information: To help the Coast Guard track and investigate marine casualties that may result in significant harm to the environment, and lessen the effects by requiring timely notification needed to ensure a timely and appropriate pollution response clean-up.

Proposed Use of Information: Assist the Coast Guard's efforts to track and help determine the level of investigation needed for reportable marine casualties that may result in significant harm to the environment.

Description of the Respondents: All U.S.-flag vessel operators anywhere, or foreign-flag vessels in the navigable waters of the U.S., involved in a marine casualty involving an actual or probable discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances, as well as foreign-flag tank vessels operating within the EEZ that are involved in a marine casualty resulting in either material damage affecting the seaworthiness or efficiency of the vessel or ''significant harm to the environment'' within the EEZ.

Number of Respondents: The total number of casualty events used to determine the change in annual paperwork requirements for this rule for both U.S.-flag vessels and foreign-flag tank vessels is 1,756. This number represents the 5-year average of U.S. flag-vessels pollution events (1,570) during the years 1993 through 1997 plus the 5-year average of marine casualty events for foreign-flag tank vessels operating in U.S. navigable waters, including the EEZ, of 186 events. The information was retrieved from the U.S. Coast Guard Marine Safety Management System Data Base. The existing OMB-approved number of respondents is 33,189. This rule will increase the number by 1,756. With this rule's submission we are also taking into account a program change of removing the Management Information System (MIS) respondents of 830 (See Chemical Testing final rule; USCG 2003–16414; February 11, 2004; 69 FR 6575). The total number of respondents is 34,115.

Frequency of Response: This rule will change existing reporting requirements by adding reports of ''significant harm to the environment'' incidents involving U.S.-flag vessels or marine casualty incidents involving foreign-flag tank vessels involved in a marine casualty resulting in material damage affecting the seaworthiness of the vessel or significant harm to the environment in waters subject to the jurisdiction of the U.S. including the EEZ. The existing OMB-approved number of responses is 181,089. This rule will increase the number by 1,756. With this rule's submission we are also taking into account a program change of removing the MIS responses of 830. The total number of responses is 182,015.

Burden of Response: Approximately one hour per form.

Estimated Total Annual Burden: The existing OMB-approved annual burden is 19,195 hours. This rule will increase the number by 1,756 hours. With this rule's submission we are also taking into account a program change of removing the MIS annual burden of 2,075 hours. The total annual burden is 18,876 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has approved the collection. The section numbers are 33 CFR 151.15, 153.203 and 46 CFR 4.05–1. The corresponding approval number from OMB is OMB Control Number 1625–0001 [formerly 2115–0003].

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

A rule has implications for federalism under Executive Order 13132 if the rule 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. The law is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. The law also is well settled that all of the categories covered in 46 U.S.C. 3306, 3703, 6101, 7101 and 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel certification, manning and the reporting of marine casualties on vessels), and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. See *United States* v. *Locke and Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (2000)). This final rule concerns the reporting of marine casualties, including the reporting of casualties causing significant harm to the marine environment. Because States may not regulate within this category, preemption under Executive Order 13132 is not an issue.

However, the determination that States are precluded from regulating in the category of marine casualty reporting does not impact the ability of a State to require reports of the discharge, or the substantial threat of a discharge of oil. Pursuant to Section 1018 of OPA 90, States retain their rights to impose additional requirements regarding reports of the discharge or substantial threat of a discharge of oil for the purpose of responding to the discharge or substantial threat of a discharge and instituting liability and compensation proceedings, providing those requirements do not touch on preempted categories described in the Locke decision. Therefore, present and future State discharge reporting requirements that do not touch on the preemptive marine casualty reporting category are unaffected by the Locke decision and this rule, so in that regard, this rule likewise has no implications for federalism.

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, 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 (adjusted for inflation with 1995 base year). Before promulgating a rule for which a written statement is needed, section 205 of UMRA requires an agency to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome option that achieves the objective of the rule. Section 205 allows an agency to adopt an alternative, other than the least costly, most cost-effective, or least burdensome option if the agency publishes an explanation with the final rule.

This final rule will not 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. Therefore, the Coast Guard has not prepared a written assessment under UMRA.

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This final 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 final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that this final rule is not a ''significant energy action'' under that Order. Although this final rule is a ''significant regulatory action'' under Executive Order 12866, the rule only affects the issuance of credentials to merchant mariners and therefore 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 this final rule 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 OMB, 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 final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We considered the environmental impact of this final rule and concluded that, under figure 2–1, paragraph (34)(a), of Commandant Instruction M16475.1D, this final rule is categorically excluded from further environmental documentation. This rule will add a requirement to report marine casualties involving ''significant harm to the environment'' and for foreign flag tank vessels operating in waters subject to U.S. jurisdiction but beyond U.S. navigable waters to report material damage affecting the seaworthiness or efficiency of the vessel. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

33 CFR Part 153

Hazardous substances, Oil pollution, Reporting and recordkeeping requirements, Water pollution control.

46 CFR Part 4

Administrative practice and procedure, Drug testing, Investigations, Marine safety, National Transportation Safety Board, Nuclear vessels, Radiation protection, Reporting and recordkeeping requirements, Safety, Transportation.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 151 and 153, and 46 CFR part 4 as follows:

Title 33—Navigation and Navigable Waters

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

■ 1. Revise the authority citation for subpart A of part 151 to read as follows:

Authority: 33 U.S.C. 1321, 1903, 1908; 46 U.S.C. 6101; Pub. L. 104–227 (110 Stat. 3034); E.O. 12777, 3 CFR, 1991 Comp. p. 351; Department of Homeland Security Delegation No. 170.1.

■ 2. In § 151.05, add the definition of ''marine pollutant'', in alphabetical order, to read as follows:

§ 151.05 Definitions.

* * * * *

Marine pollutant means a harmful substance in packaged form, as it appears in Appendix B of 49 CFR 172.101.

* * * * *

■ 3. Revise § 151.15 to read as follows:

§ 151.15 Reporting requirements.

(a) The master, person in charge, owner, charterer, manager, or operator of a vessel involved in any incident described in paragraph (c) of this section must report the particulars of the incident without delay to the fullest extent possible under the provisions of this section.

(b) If a vessel involved in an incident is abandoned, or if a report from that vessel is incomplete or unattainable, the owner, charterer, manager, operator, or their agent must assume the obligations placed upon the master or other person having charge of the vessel under provisions of this section.

(c) The report must be made whenever an incident involves—

(1) A discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances (NLS) resulting from damage to the vessel or its equipment, or for the purpose of securing the safety of a vessel or saving a life at sea;

(2) A discharge of oil in excess of the quantities or instantaneous rate permitted in §§ 151.10 or 151.13 of this chapter, or NLS in bulk, in 46 CFR 153.1126 or 153.1128, during the operation of the vessel;

(3) A discharge of marine pollutants in packaged form; or

(4) A probable discharge resulting from damage to the vessel or its equipment. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

(i) Ship location and proximity to land or other navigational hazards;

(ii) Weather;

(iii) Tide current;

(iv) Sea state;

(v) Traffic density;

(vi) The nature of damage to the vessel; and

(vii) Failure or breakdown aboard the vessel of its machinery or equipment. Such damage may be caused by collision, grounding, fire, explosion, structural failure, flooding or cargo shifting or a failure or breakdown of steering gear, propulsion, electrical generating system or essential shipboard navigational aids.

(d) Each report must be made by radio whenever possible, or by the fastest telecommunications channels available with the highest possible priority at the time the report is made to—

(1) The appropriate officer or agency of the government of the country in whose waters the incident occurs; and

(2) The nearest Captain of the Port (COTP) or the National Response Center (NRC), toll free number 800–424–8802 (in Washington, DC, metropolitan area, 202–267–2675), fax number 202–479–7165, telex number 892427 for incidents involving U.S. vessels in any body of water; or incidents involving foreign flag vessels in the navigable waters of the United States; or incidents involving foreign-flag tank vessels within waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ).

(e) Each report must contain—

(1) The identity of the ship;

(2) The type of harmful substance involved;

(3) The time and date of the incident;

(4) The geographic position of the vessel when the incident occurred;

(5) The wind and the sea condition prevailing at the time of the incident;

(6) Relevant details respecting the condition of the vessel;

(7) A statement or estimate of the quantity of the harmful substance discharged or likely to be discharged into the sea; and

(8) Assistance and salvage measures.

(f) A person who is obligated under the provisions of this section to send a report must—

(1) Supplement the initial report, as necessary, with information concerning further developments; and

(2) Comply as fully as possible with requests from affected countries for additional information concerning the incident.

(g) A report made under this section satisfies the reporting requirements of § 153.203 of this chapter and of 46 CFR 4.05–1 and 4.05–2, if required under those provisions.

§ 151.45 [Removed]

■ 4. Remove § 151.45.

PART 153—CONTROL OF POLLUTION BY OIL AND HAZARDOUS SUBSTANCES, DISCHARGE REMOVAL

■ 5. Revise the authority citation for part 153 to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 1321, 1903, 1908; 42 U.S.C. 9615; 46 U.S.C. 6101; E.O. 12580, 3 CFR, 1987 Comp., p. 193; E.O. 12777, 3 CFR, 1991 Comp., p. 351; Department of Homeland Security Delegation No. 0170.1.

§ 153.203 [Amended]

■ 6. In § 153.203, after the words ''notifies the NRC as soon as possible.'' add the words ''A report made under this section satisfies the reporting requirements of § 151.15 of this chapter and of 46 CFR 4.05–1, if required under that provision.''

Title 46—Shipping

PART 4—MARINE CASUALTIES AND INVESTIGATIONS

■ 7. Revise the authority citation for part 4 to read as follows:

Authority: 33 U.S.C. 1231, 1321; 43 U.S.C. 1333; 46 U.S.C. 2103, 2306, 6101, 6301, 6305; 50 U.S.C. 198; Department of Homeland Security Delegation No. 170.1. Authority for subpart 4.40: 49 U.S.C. 1903(a)(1)(E); Department of Homeland Security Delegation No. 0170.1.

■ 8. Revise § 4.03–1 to read as follows:

§ 4.03–1 Marine casualty or accident.

Marine casualty or accident means—

(a) Any casualty or accident involving any vessel other than a public vessel that—

(1) Occurs upon the navigable waters of the United States, its territories or possessions;

(2) Involves any United States vessel wherever such casualty or accident occurs; or

(3) With respect to a foreign tank vessel operating in waters subject to the jurisdiction of the United States, including the Exclusive Economic Zone (EEZ), involves significant harm to the environment or material damage affecting the seaworthiness or efficiency of the vessel.

(b) The term ''marine casualty or accident'' applies to events caused by or involving a vessel and includes, but is not limited to, the following:

(1) Any fall overboard, injury, or loss of life of any person.

(2) Any occurrence involving a vessel that results in—

(i) Grounding;

(ii) Stranding;

(iii) Foundering;

(iv) Flooding;

(v) Collision;

(vi) Allision;

(vii) Explosion;

(viii) Fire;

(ix) Reduction or loss of a vessel's electrical power, propulsion, or steering capabilities;

(x) Failures or occurrences, regardless of cause, which impair any aspect of a vessel's operation, components, or cargo;

(xi) Any other circumstance that might affect or impair a vessel's seaworthiness, efficiency, or fitness for service or route; or

(xii) Any incident involving significant harm to the environment.

(3) Any occurrences of injury or loss of life to any person while diving from a vessel and using underwater breathing apparatus.

(4) Any incident described in § 4.05–1(a).

■ 9. Add § 4.03–60 to read as follows:

§ 4.03–60 Noxious liquid substance (NLS).

Noxious liquid substance (NLS) means—

(a) Each substance listed in 33 CFR 151.47 or 151.49;

(b) Each substance having an ''A,'' ''B,'' ''C,'' or ''D'' beside its name in the column headed ''IMO Annex II pollution category'' in table 1 of part 153 of this chapter; and

(c) Each substance that is identified as an NLS in a written permission issued under § 153.900(d) of this chapter.

■ 10. Add § 4.03–65 to read as follows:

§ 4.03–65 Significant harm to the environment.

Significant harm to the environment means—

(a) In the navigable waters of the United States, a discharge of oil as set forth in 40 CFR 110.3 or a discharge of hazardous substances in quantities equal to or exceeding, in any 24-hour period, the reportable quantity determined in 40 CFR part 117;

(b) In other waters subject to the jurisdiction of the United States, including the EEZ—

(1) A discharge of oil in excess of the quantities or instantaneous rate permitted in 33 CFR 151.10 or 151.13 during operation of the ship; or

(2) A discharge of noxious liquid substances in bulk in violation of §§ 153.1126 or 153.1128 of this chapter during the operation of the ship; and

(c) In waters subject to the jurisdiction of the United States, including the EEZ, a probable discharge of oil, hazardous substances, marine pollutants, or noxious liquid substances. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

(1) Ship location and proximity to land or other navigational hazards;

(2) Weather;

(3) Tide current;

(4) Sea state;

(5) Traffic density;

(6) The nature of damage to the vessel; and

(7) Failure or breakdown aboard the vessel, its machinery, or equipment.

■ 11. Add § 4.03–70 to read as follows:

§ 4.03–70 Tank vessel.

Tank vessel means a vessel that is constructed or adapted to carry, or that carries, oil, hazardous substances, marine pollutants, or noxious liquid substances, in bulk as cargo or cargo residue.

§ 4.05–1 [Amended]

■ 12. In § 4.05–1, in paragraph (a)(2), remove the number ''(7)'' and add, in its place, the number ''(8)''; and add paragraphs (a)(8) and (c) to read as follows:

§ 4.05–1 Notice of marine casualty.

(a) * * *

(8) An occurrence involving significant harm to the environment as defined in § 4.03–65.

* * * * *

(c) Except as otherwise required under this subpart, if the marine casualty exclusively involves an occurrence or occurrences described by paragraph (a)(8) of this section, a report made pursuant to 33 CFR 153.203, 40 CFR 117.21, or 40 CFR 302.6 satisfies the immediate notification requirement of this section.

■ 13. Add § 4.05–2 to read as follows:

§ 4.05–2 Incidents involving foreign tank vessels.

(a) *Within the navigable waters of the United States, its territories, or possessions.* The marine casualty reporting and investigation criteria of this part apply to foreign tank vessels operating on the navigable waters of the United States, its territories, or possessions. A written marine casualty report must be submitted under § 4.05–10 of this chapter.

(b) *Outside the U.S. navigable waters and within the Exclusive Economic Zone (EEZ).* The owner, agent, master, operator, or person in charge of a foreign tank vessel involved in a marine casualty must report under procedures detailed in 33 CFR 151.15, immediately after addressing resultant safety concerns, whenever the marine casualty involves, or results in—

(1) Material damage affecting the seaworthiness or efficiency of the vessel; or

(2) An occurrence involving significant harm to the environment as a result of a discharge, or probable discharge, resulting from damage to the vessel or its equipment. The factors you must consider to determine whether a discharge is probable include, but are not limited to—

(i) Ship location and proximity to land or other navigational hazards;

(ii) Weather;

(iii) Tide current;

(iv) Sea state;

(v) Traffic density;

(vi) The nature of damage to the vessel; and

(vii) Failure or breakdown aboard the vessel, its machinery, or equipment.

Dated: December 8, 2005.

Thomas H. Collins,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 05–24125 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01–05–106]

RIN 1625–AA11

Regulated Navigation Area; East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary regulated

navigation area from the entrance of East Rockaway Inlet to the Atlantic Beach Bridge, Nassau County, New York. This regulated navigation area restricts passage of commercial vessels carrying petroleum products with a loaded draft in excess of five feet. Significant shoaling in this area has reduced the depths of the navigable channel and has increased the risk of vessels with drafts of greater than five feet carrying petroleum products as cargo grounding in the channel, and the potential for a significant oil spill.

DATES: This rule is effective from 6 a.m. on November 29, 2005 until 11:59 p.m., on May 31, 2006.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CGD01–05–106 and will be available for inspection or copying at Sector Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant A. Logman, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound at (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the immediate need for the protection of the maritime public, it is impracticable to publish a NPRM in advance. Thus, 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 implementing this rule would be contrary to public interest since immediate action is needed to prevent vessels carrying petroleum products as cargo with a loaded draft of greater than five feet from transiting the area so as to avoid the potential hazards associated with a grounding of a vessel.

East Rockaway Inlet has experienced significant shoaling causing the channel to migrate towards the west. Water depths in the federal navigation channel have been reduced in some areas to as low as 5 feet. This channel was last dredged by the Army Corps of Engineers during the winter of 2004/2005. However, the shoaling in this area has reduced depths to a point where transit for vessels drawing greater than five feet increases the immediate risk of grounding. Therefore, the Coast Guard is relocating the channel buoys to the west to account for channel migration. The delay inherent in the NPRM process is contrary to the public interest and impracticable, as urgent action is needed to minimize the potential danger posed by the possibility of groundings of tankers and the potential resultant oil spills in and around this regulated navigation area. The effective period of this regulation will provide the Coast Guard with the necessary time to conduct notice and comment rulemaking in order to establish a permanent regulated navigation area in East Rockaway Inlet.

Background and Purpose

East Rockaway Inlet is on the South Shore of Long Island, in Nassau County, New York. The Inlet has experienced significant shoaling since dredging was completed in the late winter of 2004/2005, causing the channel to migrate towards the west. Water depths in the federal navigation channel have been reduced in some areas to as low as 5 feet. This channel was last dredged by the Army Corps of Engineers during the winter of 2004/2005. The channel buoys are being relocated to the west to account for channel migration. East Rockaway Inlet is frequented by small coastal tankers and tugs towing oil barges supplying two facilities: Sprague Energy Oceanside, located in Oceanside, Long Island, New York, a supplier of home heating oil for Long Island, New York, and Keyspan E.S. Barrett, an electrical power generation facility, located in Island Park, Long Island, New York. The shoaling in this area has reduced depths to a point where transit for vessels drawing greater than five feet increases the risk of immediate grounding, and the potential for a significant oil spill. Similar shoaling led to the grounding in late 2003 and in 2004 of small coastal tankers carrying home heating oil.

Discussion of Rule

This rule will provide for the safety of vessel traffic in and around East Rockaway Inlet, Long Island, New York. This regulation establishes a temporary regulated navigation area (RNA) on the navigable waters of the East Rockaway Inlet in an area bounded by lines drawn from the approximate position of the Silver Point breakwater buoy (LLN 31500) at 40°34′56″ N, 073°45′19″ W, running north to a point of land on the northwest side of the inlet at position 40°35′28″ N, 073°46′12″ W, thence easterly along the shore to the east side of the Atlantic Beach Bridge, State Route 878, over East Rockaway Inlet, thence across said bridge to the south side of East Rockaway Inlet, thence westerly along the shore and across the water to the beginning. The rule described herein prohibits the transit of vessels carrying petroleum products as cargo with a loaded draft greater than five feet through the RNA. Operators of vessels carrying petroleum products as cargo with a loaded draft greater than five feet may submit a request to transit the regulated navigation area. The request must consist of a voyage plan that identifies acceptable parameters for transiting the RNA to the Captain of the Port, Long Island Sound. Parameters addressed shall include: Weather conditions for transit, restrictions due to state of tide, the loaded draft of the vessel, and minimum under keel clearance. The required general voyage plan must be submitted at least 48 hours prior to the vessel's first transit through the RNA. Vessels may only transit the RNA after receiving approval of the submitted voyage plan. This request and voyage plan need only be submitted one time for vessels operating in accordance with the approved plan. Vessel operators must submit any modifications, and receive approval thereof, from the Captain of the Port, Long Island Sound of any modifications to the approved voyage plan prior to transiting the RNA. Modifications to approved plans must be submitted to the COTP LIS at least 24 hours prior to the transit to which the modification applies. This RNA is in effect from 6 a.m. on November 29, 2005 until 11:59 p.m. on May 31, 2006.

Any violation of the RNA described herein, is punishable by, among others, civil and criminal penalties, *in rem* liability against the offending vessel, and license sanctions.

The Captain of the Port Long Island Sound will notify the maritime community of the requirements of this regulated navigation area via broadcast notifications and notifications in the local notice to mariners.

Regulatory Evaluation

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

We expect the economic impact of this rule will be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation

may have some impact on the public, but the potential impact will be minimized for the following reasons: The regulated navigation area limits only vessels carrying petroleum products as cargo with a loaded draft of greater than five feet; operators of vessels with a loaded draft of greater than five feet may request permission to transit the regulated navigation area from the Captain of the Port, Long Island Sound. Recreational and other maritime traffic is not prohibited from transiting this area.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities, some of which may be small entities: The owners or operators of vessels carrying petroleum products intending to transit or anchor in those portions of the East Rockaway Inlet covered by the regulated navigation area; and Sprague Energy Oceanside, located in Oceanside, Long Island, New York, a supplier of home heating oil, and Keyspan E.S. Barrett, an electrical power generation facility, located in Island Park, Long Island, New York, which receive the vessels affected by this regulated navigation area. For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Pub. L. 104–121], the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Chief, Waterways Management Division, Coast Guard Sector Long Island Sound, at (203) 468–4429.

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

This rule will not 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 will not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

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

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

Energy Effects

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

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are

technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

The Coast Guard 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)(g) from further environmental documentation. This rule fits the category selected from paragraph (34)(g), as it establishes a safety zone. An Environmental Analysis Checklist and Categorical Exclusion Determination are available for review at the location listed under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. From 6 a.m. on November 29, 2005 until 11:59 p.m. on May 31, 2006, add temporary § 165.T01–106 to read as follows:

§ 165.T01–106 Regulated Navigation Area, East Rockaway Inlet to Atlantic Beach Bridge, Nassau County, Long Island, New York.

(a) *Location.* The following area is established as a Regulated Navigation Area: All waters of East Rockaway Inlet in an area bounded by lines drawn from the approximate position of the Silver Point breakwater buoy (LLN 31500) at 40°34′56″ N, 073°45′19″ W, running north to a point of land on the northwest side of the inlet at position 40°35′28″ N, 073°46′12″ W, thence easterly along the shore to the east side of the Atlantic Beach Bridge, State Route 878, over East Rockaway Inlet, thence across the bridge to the south side of East Rockaway Inlet, thence westerly along the shore and across the water to the beginning.

(b) *Regulations.* (1) Vessels carrying petroleum products as cargo, with a loaded draft greater than five feet, are prohibited from transiting within the regulated navigation area.

(2) Operators of vessels carrying petroleum products as cargo with a loaded draft greater than five feet must submit a request to transit the regulated navigation area to the Captain of the Port, Long Island Sound, at least 48 hours prior to transiting the area. Requests to transit the area shall consist of a general voyage plan identifying parameters for transit, to include the following: Weather conditions for transit, restrictions due to state of tide, the loaded draft of the vessel, and minimum acceptable under keel clearance. Once approved, vessels may transit the area in accordance with the approved voyage plan. Any modification or deviation from approved voyage plans must be submitted to the Captain of the Port, Long Island Sound at least 24 hours prior to the transit to which the modification applies.

(c) *Effective period.* This rule is effective from 6 a.m. on November 29, 2005 until 11:59 p.m. on May 31, 2006.

Dated: November 28, 2005.

David P. Pekoske,

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

[FR Doc. 05–24135 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources

CFR Correction

In title 40 of the Code of Federal Regulations, Part 60 (§ 60.1 to End), revised as of July 1, 2005, on page 167, in § 60.41c, correct the definition of ''Annual capacity factor'' to read as follows:

§ 60.41c Definitions.

* * * * *

Annual capacity factor means the ratio between the actual heat input to a steam generating unit from an individual fuel or combination of fuels during a period of 12 consecutive calendar months and the potential heat input to the steam generating unit from all fuels had the steam generating unit been operated for 8,760 hours during that 12-month period at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations of the affected facility during a period of 12 consecutive calendar months.

* * * * *

[FR Doc. 05–55521 Filed 12–15–05; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0234; FRL–7753–4]

Acetic acid, [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester (Cloquintocet-mexyl); Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting in part, and denying in part, pesticide petition PP 4E6831 submitted by Syngenta Crop Protection, Inc. that requested certain amendments to 40 CFR 180.560 for acetic acid [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester; cloquintocet-mexyl; CAS Reg. No. 99607–70–2] and its acid metabolite (5-chloro-8-quinolinoxyacetic acid). EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3) in the **Federal Register** of June 2, 2004 (69 FR 31116) (FRL–7357–8) announcing the filing of this petition requesting that the tolerance expressions under § 180.560 for wheat forage and hay be increased, the addition of tolerances for barley commodities (grain, hay, and straw), and the inclusion of a reference to the active ingredient pinoxaden. Although EPA finds it is safe to add a reference to pinoxaden and tolerances for barley (grain, hay, and straw) to this tolerance regulation, EPA does not agree that grounds exist to increase the tolerance expressions for wheat forage and hay. Thus, EPA is granting Syngenta's petition in as far as it seeks to add the reference pinoxaden and tolerances for barley (grain, hay, and straw) but is denying the request to increase the tolerance expressions for wheat forage and hay.

DATES: This final rule is effective December 16, 2005. Objections and requests for hearings must be received on or before February 14, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION**. EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0234. All documents in the docket are listed on the *http://www.regulations.gov* Web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov*. Follow the on-line instructions.) 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 in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: R. Tracy Ward, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: 703 308–9361; e-mail address: *ward.tracyh@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*. To access the OPPTS Harmonized Guidelines referenced in this document, go directly to the guidelines at *http://www.epa.gpo/opptsfrs/home/guidelin.htm/*.

II. Background and Statutory Findings

In the **Federal Register** of June 22, 2004 (69 FR 31116) (FRL–7357–8), EPA issued a notice pursuant to section 408(d)(3) of FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 4E6831) by Syngenta Crop Protection, Inc., P.O. Box 18300, Greensboro, North Carolina, 27419–8300. This notice included a summary of the petition prepared by Syngenta Crop Protection, Inc., the petitioner. The petition requested that 40 CFR 180.560 for combined residues of the inert ingredient herbicide safener acetic acid, [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester and its acid metabolite (5-chloro-8-quinolinoxyacetic acid) be amended by:

1. Increasing the tolerance expressions in or on wheat, forage to 0.20 ppm and wheat, hay to 0.50 ppm,
2. Adding tolerance expressions for barley, grain, hay and straw at 0.10 ppm, and
3. By adding a reference to the active ingredient pinoxaden.

For ease of reading this document, acetic acid, [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester will be referred to as cloquintocet-mexyl. The Chemical Abstracts Service (CAS) Registry Number of cloquintocet-mexyl is 99607–70–2 and the CAS name is acetic acid, [(5-chloro-8-quinolinyl) oxy]-, 1-methylhexyl ester (9 CI).

One comment was received on the notice of filing from a private citizen questioning whether the Agency was going to use the most current and up-to-date information and data available when writing the final rule. In developing the final rule, EPA did evaluate the information and data submitted by the petitioner as well as more recent information that was available to the Agency.

In the final rule that EPA used to establish the existing tolerances under 40 CFR 180.560 (**Federal Register** of June 22, 2000 (65 FR 38757; FRL–6592-4; PP7E4920), EPA determined that additional data (for plant and livestock metabolism, plant analytical methods, multiresidue methods, storage stability, crop field trials, processing studies, and rotational crops) were required before a permanent registration for cloquintocet-mexyl in or on wheat commodities could be established. Syngenta submitted data in response to the previous risk assessment. Assessments of human exposures and risks were conducted for acute and chronic dietary risk, exposure and risk to cloquintocet-mexyl residues in water, residential exposure and risk, aggregate risk, and exposure and risk to workers.

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

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

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other

relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2) of FFDCA, for a tolerance for combined residues of cloquintocet-mexyl and its acid metabolite on wheat, grain and straw at 0.10 ppm; wheat, forage at 0.20 ppm; wheat, hay at 0.50 ppm; barley, grain at 0.01 ppm; and barley, hay and straw at 0.10 ppm. EPA's assessment of exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Specific information on the studies received and the nature of the toxic effects caused by cloquintocet-mexyl as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies are described in this section.

1. *Acute toxicity*. The acute toxicity data (see Table 1) indicated that cloquintocet-mexyl (CGA 185072) has low acute oral, dermal, and inhalation toxicity (Acute Toxicity Category III) and is slightly irritating to eyes. It is not a skin irritant. However, it is a skin sensitizer.

TABLE 1.—ACUTE TOXICITY DATA ON CLOQUINTOCET-MEXYL

GDLN	Study Type	Results
81–1	Acute Oral-Rat	LD_{50}>2,000 mg/kg (M&F)
81–1	Acute Oral-Mouse	LD_{50}>2,000 mg/kg (M&F)
81–2	Acute Dermal-Rat	LD_{50}> 2,000 mg/kg
81–3	Acute Inhalation-Rat	LC_{50}>0.935 µg/L
81–4	Primary Eye Irritation-Rabbit	Slight eye irritant
81–5	Primary Skin Irritation-Rabbit	Non-irritant
81–6	Dermal Sensitization-Guinea pig	Skin sensitizer

2. *Subchronic and chronic toxicity*. Available toxicity studies are described in Table 2.

i. *Systemic toxicity*. The primary target organs for subchronic exposure of cloquintocet-mexyl (CGA 185072) are the liver and the renal system. In a 90-day feeding study in rats, increased incidence of urinary bladder hyperplasia and increased serum bilirubin were observed in males at doses ≥ 1,000 ppm (equivalent to 64 mg/kg/day). This observation was supported by a 28-day oral gavage study in rats where renal papillary necrosis and inflammation with fibrosis were observed at doses ≥ 100 mg/kg/day. In a 28-day dermal toxicity study in rats, mottled or reddish livers accompanied by histopathological changes including necrosis and fibrosis were observed in two of five females exposed to 1,000 mg/kg/day of cloquintocet-mexyl (CGA 185072). In a 90-day feeding study in dogs, liver toxicity was evidenced by observations of liver necrosis and perivascular inflammatory cell infiltration. In the one-year dog study, increased relative liver weight and increased chronic interstitial nephritis were observed. It is notable that in the two-year chronic toxicity study in rats, no renal or liver toxicity was reported; however, there was an increase in lymphoid hyperplasia of the thymus in male rats and an increase in thyroid follicular epithelial hyperplasia in female rats at 73 mg/kg/day.

ii. *Developmental/reproductive toxicity*. There was no evidence of developmental or reproductive toxicity for cloquintocet-mexyl. The data demonstrate no increased sensitivity of rats or rabbits to in utero or early post-natal exposure to cloquintocet-mexyl (CGA 185072). NOAELs for maternal/parental toxicity were either less than or equal to the NOAELs for fetal or reproductive toxicity.

iii. *Carcinogenicity*. In accordance with the EPA *Proposed EPA Weight-of-the-Evidence Categories*, August 1999 cloquintocet-mexyl was classified as not likely to be a human carcinogen. Carcinogenicity studies in rats and mice did not show increased incidence of spontaneous tumor formation. With negative mutagenic test battery, it is suggested that cloquintocet-mexyl (CGA 185072) is not likely to be a human carcinogen.

iv. *Mutagenicity*. Studies indicate that cloquintocet-mexyl is not mutagenic in bacteria (*Salmonella typhimurium* or *Escherichia coli*) or cultured mammalian cells (Chinese hamster V79 lung fibroblasts). There is also no evidence of clastogenicity either *in vitro* or *in vivo*. Similarly, cloquintocet-mexyl did not induce unscheduled DNA synthesis (UDS) in primary rat hepatocytes.

v. *Neurotoxicity*. There is no evidence of neurotoxicity based on observations in toxicity studies. Acute and subchronic neurotoxicity studies are not available for cloquintocet-mexyl; additional neurotoxicity testing is not being required at this time.

vi. *Metabolism*. Metabolism studies in rats indicated that approximately 40% of the administered dose of cloquintocet-mexyl was absorbed through the gastrointestinal tract and subsequently excreted via the urine. Fecal excretion accounted for approximately 60% of the administered dose. The chemical was rapidly eliminated (more than 80% of the administered dose) via feces and urine within 48 hours post-dosing. Sex, dosing regime, and dose levels had little effect on the excretion pattern. Excretion patterns were similar between the biliary cannulated and non-cannulated animals indicating that there was no enterohepatic circulation of the chemical. Three days after administration, tissue radioactivity accounted for less than 0.3% of the administered dose (or was non-detectable) and was not detectable in the expired air. At day three post-dosing, most tissue residues of radioactivity were below the limit of detection. The major metabolic pathway of cloquintocet-mexyl was ester hydrolysis to yield 5-chloro-8-quinolinoxy acetic acid, the major metabolite in the fecal and urinary pools.

TABLE 2.—TOXICITY PROFILE SUMMARY TABLE FOR CLOQUINTOCET-MEXYL

Guideline No.	Study Type	Results
870.3100	28-Day oral in rodents	NOAEL = 10 mg/kg/day LOAEL = 100 mg/kg/day based on microscopic kidney lesions
870.3100	28-Day oral in rodents.	NOAEL = 10 mg/kg/day (females only) LOAEL = 400 mg/kg/day based on transient decrease in body weight gain, microscopic alterations of the pituitary and thyroid and possibly increased SGPT.
870.3100	13 week oral in rodents	NOAEL = M: 150 ppm (9.7 mg/kg), F= 6,000 ppm (=407 mg/kg/day). LOAEL = M - 1,000 ppm (6.9 mg/kg); F ≥ 6,000 ppm (≥ 407 mg/kg/day), based on urinary bladder hyperplasia, kidney hydronephrosis and increased serum bilirubin in males.
870.3150	90-Day oral in non-rodent	NOAEL = 100 ppm (M: 2.9 mg/kg/day; F: 3.3 mg/kg/day). LOAEL = 1,000 ppm (M and F: 30.2 mg /kg/day) based on perivascular mixed inflammatory cell infiltrates and multicellular multifocal necrosis of the liver and thymic atrophy
870.3200	28-Day dermal toxicity	NOAEL = 200 mg/kg/day LOAEL = 1,000 mg/kg/day based on mottled or reddish livers accompanied by histopathological changes including necrosis and fibrosis
870.3700	Prenatal developmental in rodent	Maternal NOAEL = 100 mg/kg/day LOAEL = 400 mg/kg/day based on clinical signs and decrease in body weight gain and food consumption. Developmental NOAEL = 100 mg/kg/day LOAEL = 400 mg/kg/day based on the higher incidence of skeletal variants and decrease in fetal body weights in the high dose group.
870.3700	Prenatal developmental in non-rodent	Maternal NOAEL = 60 mg/kg/day Maternal LOAEL = 300 mg/kg/day based on maternal toxicity (death) in the high dose group only. Developmental NOAEL = 300 mg/kg/day Developmental LOAEL ≥ 300 mg/kg/day
870.3800	2 Generation Reproduction	Parental/Systemic NOAEL = 5,000 ppm (M: 370.7; F: 442.8 mg/kg/day) Parental/Systemic LOAEL =10,000 ppm (M: 721.7 ; F: 846.9 mg/kg/day), based on decreased body weight, deceased food consumption, and pathological changes in the kidney (dilated renal pelvis, nephrolith, hydronephrosis, urethral constrictions) and urinary bladder (cytoliths, hyperemia, cystitis and urothelial hyperplasia). Reproductive NOAEL = 10,000 ppm (721.7 mg/kg/day). Reproductive LOAEL ≥ 10,000 ppm (721.7 mg/kg/day) Developmental NOAEL = 5,000 ppm (442.8 mg/kg/day) Developmental LOAEL = 10,000 (846.9 mg/kg/day) based on decreased pup weight and dilated renal pelvis.
870.4100	Chronic toxicity in nonrodent	NOAEL = 1500 ppm (M: 43, F: 45 mg/kg/day) LOAEL = 15,000/10,000 ppm (M: 196 F:216 mg/kg/day) based on decreased body weight/weight gain and food consumption, anemia, increased serum iron, protein alterations, bone marrow hypoplasia and possibly decreased testes/prostate weights and interstitial nephritis.
870.4200	Carcinogenicity in mice	NOAEL = 1,000 ppm (M: 111; F: 102 mg/kg/day) LOAEL = 5,000 ppm (M: 583; F: 520 mg/kg/day) based on decreased body weight/weight gain in both sexes, urinary bladder lesions (chronic inflammation, ulceration, calculus and submucosa edema) in males and possibly slightly increased water consumption in both sexes. Negative for oncogenicity.
870.4300	Combined chronic/oncogenicity in rat	NOAEL = F: 100 ppm (4.3 mg/kg/day) M: 1,000 ppm (36.4 mg/kg/day) LOAEL = F: 1,000 ppm (41.2 mg/kg/day); M: 2,000 ppm (81.5 mg/kg/day) based on increased incidence of thyroid follicular epithelial hyperplasia in females and based on lymphoid hyperplasia of the thymus in males.

TABLE 2.—TOXICITY PROFILE SUMMARY TABLE FOR CLOQUINTOCET-MEXYL—Continued

Guideline No.	Study Type	Results
870.5100	Gene Mutation	Testing up to 5,000 μg/plate with or without S9 microsomes produced no evidence that CGA 185072 technical induced a mutagenic effect in any strain. Negative mutagen
870.5200	Gene Mutation	There was no evidence mutagenic effect at any dose (up to 500 μg/plate) with or without S9 activation. Negative mutagen.
870.5315	Human Lymphocytes *in vitro*	Human lymphocytes were exposed in vitro up to 75 μg/mL with or without S9 activation showed no evidence that CGA 185072 induced a cytogenetic effects. at any dose. Negative mutagen.
870.5395	Micronucleus Test	Chinese hamsters dosed from 625 to 2,500 mg/kg showed no evidence that CGA 185072 induced a clastogenic or aneugenic effect in either sex at any dose or sacrifice time. Negative mutagen.
870.5550	DNA Repair Human Fibroblasts	Cultured human fibrocytes were exposed *in vitro* to up to 60 μg/mL for 5 hrs. and scored for silver grains in the nucleus. There was no evidence that CGA 185072 technical in the absence of S9 activation induced a genotoxic response.
870.5550	DNA Repair Rat Hepatocytes	Primary rat hepatocytes expose to 200 μg/mL for 16-18 hour and scored for nuclear grains showed no evidence that CGA 185072 technical induced a genotoxic response. Negative mutagen.
870.7485	Metabolism and pharmacokinetics	Absorption after a single low oral dose (50 mg/kg bw), was between 40.2% (males) and 35.6% (females). The major metabolite in the 0 to 24 hour fecal and urinary pools was determined to be quinolinoxy acetic acid, reference material CGA 153433, accounting for approximately 95% of the recovered radioactivity.
870.7485	Metabolism and pharmacokinetics	The major metabolic pathway of CGA 185072 was determined to be hydrolysis of the ester group, resulting in the formation of 5-chloro-8-quinolinoxy acetic acid. The major metabolic pathway was not significantly affected by sex, dose level or dosing regime.

B. Toxicological Endpoints

A summary of the toxicological endpoints for cloquintocet-mexyl used for human risk assessment is shown below in Table 3.

1. *Acute dietary exposure.* An acute reference dose (RfD) was selected for the subpopulation of females 13-50 years old. This acute RfD of 1 mg/kg/day is based on the no-observable-adverse-effect-level (NOAEL) of 100 mg/kg/day selected from a developmental toxicity in rats (MRID 44387429) where an increased incidence of skeletal variants and decreased fetal body weight was observed at 400 mg/kg/day. [The NOAEL of 100 mg/kg/day is divided by uncertainty factors (UF) for inter-species extrapolation (10x) and intra-species variability (10x).] Based on the conservative assumption that developmental toxicity could occur following a single exposure to a pregnant female, this endpoint is appropriate for acute risk assessment for females 13-50 years old.

An acute RfD for the general population was not identified. Based on the available toxicology data, toxic effects observed in oral toxicity studies could not be attributed to a single dose (exposure) for population subgroups other than females 13-50 years old. No acute or subchronic neurotoxicity studies are available for cloquintocet-mexyl at this time. No other neurotoxic effects were observed in available toxicity studies. It is also noteworthy that the acute oral LD_{50} for male and female rats for technical grade cloquintocet-mexyl (98% a.i.) is <2,000 mg/kg (Toxicity Category III).

2. *Chronic dietary exposure.* The Agency selected a chronic RfD of 0.04 mg/kg/day (NOAEL = 4.3 mg/kg/day; Uncertainty Factor = 100). This chronic RfD is based on a two year combined chronic/oncogenicity study in rats (MRID 44387431). In this study, the NOAEL of 4.3 mg/kg/day was based on increased incidence of thyroid follicular epithelial hyperplasia in females at 41.2 mg/kg/day (lowest-observable-adverse-effect-level; LOAEL). The Uncertainty Factor accounts for both interspecies extrapolation (10X) and intraspecies variability (10X). This study is considered an appropriate study for assessment of chronic dietary risk because the endpoint is based on chronic effects observed in thyroid pathology.

TABLE 3.—SUMMARY OF TOXICOLOGY ENDPOINT SELECTIONS FOR CLOQUINTOCET-MEXYL

EXPOSURE SCENARIO/STUDY	DOSE (mg/kg/day)	ENDPOINT
Acute Dietary(For females 13+)/Developmental toxicity study in rats	NOAEL=100 (UF=100)	Higher incidence of skeletal variants and decrease in fetal body weights in the high dose group at 400 mg/kg/day (LOAEL). Acute RfD (females 13+) = 1.0 mg/kg/day
Acute Dietary(For general population)	Based on available data, a suitable endpoint was not identified for general population because there were no effects observed in oral toxicity studies appropriate to this population that could be attributed to a single dose exposure.	Acute RfD (general population) = Not applicable
Chronic Dietary/Chronic/Oncogenicity Toxicity -Rat	NOAEL=4.3 (UF=100)	Observation of thyroid hyperplasia in females at 41.2 mg/kg/day (LOAEL). Chronic RfD = Chronic PAD = 0.04 mg/kg/day

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Acute and chronic dietary exposure assessments were conducted using the Dietary Exposure Evaluation Model software with the Food Commodity Intake Database (DEEM-FCID™, Version 2.02), which incorporates consumption data from USDA's Continuing Surveys of Food Intakes by Individuals (CSFII), 1994–1996 and 1998. The 1994–96, and 98 data are based on the reported consumption of more than 20,000 individuals over two non-consecutive survey days. Foods as consumed (e.g., apple pie) are linked to EPA-defined food commodities (e.g. apples, peeled fruit - cooked; fresh or N/S; baked; or wheat flour - cooked; fresh or N/S, baked) using publicly available recipe translation files developed jointly by USDA/ARS and EPA. For chronic exposure assessment, consumption data are averaged for the entire U.S. population and within population subgroups, but for acute exposure assessment are retained as individual consumption events. Based on analysis of the 1994–96, and 98 CSFII consumption data, which took into account dietary patterns and survey respondents, the Agency concluded that it is most appropriate to report risk for the following population subgroups: the general U.S. population, all infants (<1 year old), children 1-2, children 3-5, children 6-12, youth 13-19, adults 20-49, females 13-49, and adults 50+ years old.

Established and recommended tolerances were used in acute and chronic dietary assessments. Percent crop treated data were not applied. DEEM™ default concentration factors were used.

i. *Acute exposure.* The acute food exposure analysis for cloquintocet-mexyl is a Tier 1 assessment because no additional data were used to refine the analysis. One hundred percent of proposed and registered crops are assumed treated with cloquintocet-mexyl (100% CT) and tolerance-level residues were used in the analysis. The acute dietary endpoint (incidence of skeletal variants and decrease in fetal body weights) is only applicable to the population subgroup females 13-49 years old. An acute dietary endpoint for the general population including infants and children was not identified. The highest estimate for acute drinking water exposure, 0.186 ppb, was used in the analysis. The estimated dietary exposure for females 13-49 years old is 0.000347 mg/kg/day, which occupies less than 1% of the aPAD and does not exceed EPA's level of concern.

ii. *Chronic exposure.* The chronic dietary exposure analysis for cloquintocet-mexyl is a Tier 1 assessment because no additional data were used to refine the analysis. One hundred percent of proposed and registered crops are assumed treated with cloquintocet-mexyl (100% CT) and tolerance-level residues were used in the analysis. The chronic dietary endpoint applies to all population subgroups including infants and children. The highest estimate for chronic drinking water exposure, 0.005 ppb, was used in the analysis. A listing of the subgroups are reported below in Table 4.

The results of the chronic dietary analysis estimates exposure for the general U.S. population, all infants < 1 year, children 6-12 years, youths 13-19 years, and adults 20+ years to be < 1% of the cPAD. The estimated dietary exposure for children 1-2 and 3-5 years occupies 1% of the cPAD. Risk estimates for all population subgroups are below EPA's level of concern (100% of the cPAD).

TABLE 4.—RESULTS OF CHRONIC DIETARY EXPOSURE ANALYSIS

Population Subgroup	cPAD (mg/kg/day)	Exposure (mg/kg/day)	% cPAD
General U.S. Population	0.04	0.000180	<1
All Infants (< 1 year old)	0.04	0.000077	<1
Children 1-2 years old	0.04	0.000403	1
Children 3-5 years old	0.04	0.000411	1
Children 6-12 years old	0.04	0.000289	<1
Youth 13-19 years old	0.04	0.000176	<1

TABLE 4.—RESULTS OF CHRONIC DIETARY EXPOSURE ANALYSIS—Continued

Population Subgroup	cPAD (mg/kg/day)	Exposure (mg/kg/day)	% cPAD
Adults 20-49 years old	0.04	0.000153	<1
Adults 50+ years old	0.04	0.000120	<1
Females 13-49 years old	0.04	0.000137	<1

iii. *Cancer*. In August 1999, EPA classified cloquintocet-mexyl as not likely to be a human carcinogen. Due to the classification, no quantitative cancer exposure assessment was performed.

2. *Dietary exposure from drinking water*. The mobility of cloquintocet-mexyl (as measured by its binding to soils) varies from low in a moderate organic soil to essentially immobile in a high organic soil. The persistence of cloquintocet-mexyl in soil is very low. Therefore, based upon the its low persistence and low mobility, the leaching potential of cloquintocet-mexyl should be negligible. The results of the aerobic aquatic metabolism studies indicate that cloquintocet-mexyl will rapidly degrade in aerobic ground and surface waters that have adequate microbial activity. The results of the direct photolysis (DT50 of several hours) indicate that cloquintocet-mexyl is also susceptible to rapid rates of direct photolysis in clear shallow water. However, based on the results of the abiotic hydrolysis study (half-lives of 4.4 yr. at pH 5, 134 days at pH 7 and 6.6 days at pH 9), it may be substantially more persistent in aerobic waters with low microbial activity. Data are not currently available to assess its persistence in anaerobic waters.

The Agency currently lacks sufficient water-related exposure data from monitoring to complete a quantitative drinking water exposure analysis and risk assessment for cloquintocet-mexyl. Therefore, the Agency is presently relying on computer-generated estimated environmental concentrations (EECs). GENEEC is a model used to generate EECs for surface water based on estimates of safener concentration in a farm pond. SCI-GROW is an empirical model based upon actual monitoring data collected for a number of pesticides which serve as benchmarks and has been used to predict EECs in ground water. The highest EECs from the current and proposed uses were the GENEEC estimates acute (peak) and chronic (56-year mean) concentrations of cloquintocet-mexyl and CGA–153433 in water at 0.186 ppb and 0.005 ppb, respectively.

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

Residential uses are not proposed in this petition and there are no residential uses registered for products in which cloquintocet-mexyl serves as a safener, and therefore, a residential exposure assessment is not required.

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

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

D. Safety Factor for Infants and Children

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

2. *Conclusions*. EPA concluded that the FQPA safety factor could be removed for cloquintocet-mexyl for the following reasons. The toxicology database is complete for cloquintocet-mexyl. There is no indication of quantitative or qualitative increased susceptibility of rats or rabbits to in utero and/or postnatal exposure to cloquintocet-mexyl in the available toxicity data, and EPA determined that a developmental neurotoxicity study is not required for cloquintocet-mexyl. The dietary (food and drinking water) exposure assessments will not underestimate the potential exposures for infants and children from the use of cloquintocet-mexyl (currently there are no proposed residential uses and therefore non-occupational exposure is not expected).

E. Aggregate Risks and Determination of Safety

1. *Acute risk*. The aggregate acute risk estimates include exposure to residues of cloquintocet-mexyl in food and water, and does not include dermal, inhalation or incidental oral exposure. Since the dietary exposure assessment already includes the highest acute exposure from the drinking water modeling data, no further calculations are necessary. The food and water exposure estimates for females 13-49 yrs old is <1% aPAD. The acute risk estimate for females 13-49 years, resulting from aggregate exposure to cloquintocet-mexyl in food and drinking water is below EPA's level of concern.

2. *Short- and intermediate-term aggregate risk (food + drinking water + residential)*. These aggregate risk assessments take into account chronic dietary exposure from food and water (considered to be a background exposure level) plus (short- and/or intermediate-term, as applicable) indoor and outdoor residential exposures.

EPA selected doses and toxicological endpoints for assessments of short- and intermediate-term dermal and inhalation risk. However, since there are no residential uses for cloquintocet-mexyl (either established or pending) at this time, these risk assessments are not needed.

3. *Chronic aggregate risk*. The aggregate chronic risk assessment takes into account average exposure estimates from dietary consumption of cloquintocet-mexyl (food and drinking water) and residential uses. Since there are no residential uses for cloquintocet-mexyl (either established or pending) at this time, the aggregate chronic assessment included exposures from food and drinking water only. Since the dietary exposure assessment already includes the highest chronic exposure from the drinking water modeling data, no further calculations are necessary. The general U.S. population and all population subgroups have exposure and risk estimates which are below the Agency's level of concern (i.e., the percentages of the chronic population adjusted doses (cPADs) are all below 100%). The exposure to the U.S. population is <1% cPAD and the most highly exposed subgroup, children 3-5 yrs old is 1% cPAD. Therefore, chronic risk estimates resulting from aggregate exposure to cloquintocet-mexyl in food and drinking water are below the Agency's level of concern from all population subgroups.

4. *Cancer aggregate risk*. EPA has concluded cloquintocet-mexyl is unlikely to pose a cancer risk.

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

IV. Other Considerations

A. Analytical Enforcement Methodology

1. *Residue Analytical Methods*. Adequate enforcement methods are available for enforcement of the proposed/existing tolerances on wheat and barley. The two enforcement methods are the HPLC/UV method REM 138.01 for determination of cloquintocet-mexyl (parent) and the HPLC/UV Method REM 138.10 for determination of the metabolite CGA–153433. Adequate EPA petition method validations have been conducted on wheat grain, straw, and forage for the two enforcement methods. Both methods have been forwarded to FDA for publication in *Pesticide Analytical Manual*, Vol. II. The validated LOQs for Method REM 138.01 are 0.05 ppm for wheat forage, hay, and straw, and 0.02 ppm for wheat grain, processed commodities, and aspirated grain fractions. The validated LOQ for Method REM 138.10 is 0.05 ppm for all wheat commodities.

Syngenta submitted analytical Methods REM 199.02, REM 199.03, and 117-01 for analysis of residues of CGA–153433, the metabolite of cloquintocet-mexyl, in cereal grain matrices. Method REM 199.02 was used to determine residues of CGA–153433 in barley grain, hay, and straw in one barley field trial study (MRID 46203205) and in wheat field trials conducted in Canada (MRID 46302206). Method 117–01 was used to determine residues of CGA–153433 in barley grain, hay, and straw in one barley field trial study (MRID 46203204) and in the barley grain and processed commodities in the processing study (MRID 46203204). All three methods possessed the same extraction procedure consisting of acid hydrolysis (1N HCl) by boiling under reflux for two hours. The acid hydrolysis is intended to convert the parent cloquintocet-mexyl (CGA–185072) to the acid metabolite, CGA–153433; however, validation/recovery data for CGA–185072 was not provided. The three methods are adequate for data gathering methods for cloquintocet-mexyl in cereal grain commodities.

Method REM 117–01 (MRID 46203138) is also proposed as an enforcement method. To be an enforcement method for cloquintocet-mexyl, EPA's analytical chemistry laboratory (ACB/BEAD) would have to validate the Method 117–01 for cloquintocet-mexyl (CGA–185072) and its metabolite CGA–153433 in cereal matrices and radiovalidation data for the method would have to be submitted. This is not a deficiency for these actions.

2. *Multiresidue Methods*. Cloquintocet-mexyl and CGA–153433 were tested through the FDA multiresidue methods according to the decision tree and protocols in the *Pesticide Analytical Manual*, Volume I, Appendix II. Cloquintocet-mexyl was tested per Protocols C, D, and E; recovery was variable using protocol D, and the test substance was not recovered using Protocol E. CGA-153433 was tested per Protocols B and C; the compound was not recovered using Protocol B, and based on the results of Protocol C testing, no further testing was required for this compound. The submitted multiresidue methods data have been forwarded to FDA.

B. International Residue Limits

There are no Codex tolerances established for cloquintocet mexyl. Australia has established maximum residue limits (MRLs) for cloquintocet-mexyl on wheat and barley at 0.1 ppm.

V. Conclusion

EPA has reviewed the data and information submitted by the petitioner in support of the establishment of tolerances for the combined residues of cloquintocet-mexyl and its acid metabolite (5-chloro-8-quinolinoxyacetic acid) in or on wheat (grain, straw, forage, and hay) and barley (grain, hay, and straw) as required in the **Federal Register** of June 22, 2000 (65 FR 38757; FRL–6592–4).

The residue data show that residues are not expected to exceed 0.01 ppm in barley grain (LOQ) and 0.05 ppm in barley hay and straw. The Agency will establish permanent tolerances for the combined residues of cloquintocet-mexyl (acetic acid, [(5-chloro-8-quniolinyl)oxy]-, 1-methylhexyl ester)(CAS Reg. No. 99607–70–2) and its acid metabolite (5-chloro-8-quinlinoxyacetic acid), in/on barley (straw, hay and grain) at 0.1 ppm.

The available data indicate that no revisions to the current tolerance levels of 0.1 ppm on wheat, forage and wheat, hay are needed. EPA does not agree that grounds exist to increase the tolerance expressions for wheat forage and hay because residues of cloquintocet-mexyl will not exceed 0.1 ppm.

EPA established tolerances for the combined residues of pinoxaden in or on barley and wheat in the **Federal Register** on July 27, 2005 (70 FR 43313) (FRL–7725–5). Therefore, EPA is granting Syngenta's petition to allow the use of the safener cloquintocet-mexyl with pinoxaden in a 1:4 ratio of safener to active ingredient in or on wheat (grain, straw, forage, and hay) and barley (grain, hay, and straw).

VI. Objections and Hearing Requests

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

regulations require some modification to reflect the amendments made to FFDCA by FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of FFDCA, as was provided in the old sections 408 and 409 of FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0234 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 14, 2006.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number EPA–HQ–OPP–2005–0234, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Statutory and Executive Order Reviews

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

does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 6, 2005.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.560 is amended by revising paragraph (a) to read as follows:

§ 180.560 Cloquintocet-mexyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of cloquintocet-mexyl (acetic acid, [(5-chloro-8-quniolinyl)oxy]-, 1-methylhexyl ester)(CAS No. 99607–70–2) and its acid metabolite (5-chloro-8-quinlinoxyacetic acid) when used as an inert ingredient (safener) in pesticide formulations containing the active ingredients pinoxaden (wheat or barley) or clodinafop-propargyl (wheat only) in a 1:4 ratio of safener to active ingredient in or on the following food commodities:

Commodity	Parts per million
Barley, grain	0.1
Barley, hay	0.1
Barley, straw	0.1
Wheat, forage	0.1
Wheat, grain	0.1
Wheat, hay	0.1
Wheat, straw	0.1

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2005–0276; FRL–7746–5]

Bifenazate; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for combined residues of bifenazate in or on tart cherries and soybeans. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on tart cherries and soybeans. This regulation establishes maximum permissible levels for residues of bifenazate in these food commodities. The tolerance will expire and is revoked on December 31, 2009.

DATES: This regulation is effective December 16, 2005. Objections and requests for hearings must be received on or before February 14, 2006.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under Docket identification (ID) number EPA–HQ–OPP–2005–0276. All documents in the docket are listed on the www.regulations.gov web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Marcel Howard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–6784; e-mail address:*howard.marcel@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to

certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET *(http://www.epa.gov/edocket/)*, you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 180 is available on E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

II. Background and Statutory Findings

EPA, on its own initiative, in accordance with sections 408(e) and 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, is establishing tolerances for combined residues of the miticide bifenazate, 1-methylethyl-2-(4-methoxy[1,1'-biphenyl]-3-yl hydrazinecarboxylate) and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester, expressed as bifenazate, in or on tart cherries at 5.0 parts per million (ppm); soybean seed at 1.5 ppm; soybean hulls at 20 ppm; soybean meal at 3.5 ppm; and soybean refined oil at 20 ppm. These tolerances will expire and are revoked on December 31, 2009. EPA will publish a document in the **Federal Register** to remove the revoked tolerances from the Code of Federal Regulations.

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

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

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

III. Emergency Exemption for Bifenazate on Tart Cherries and Soybeans and FFDCA Tolerances

The state of Utah petitioned EPA to allow use of bifenazate on tart cherries to control phytophagous spider mites. EPA has determined that Utah tart cherry growers are likely to suffer significant economic losses due to pest infestation without use of bifenazate. Data submitted indicate that effective control has not been achieved using current registered products. In addition, the primary pesticide used for mite control in the past, propargite, has been relabeled for post-harvest use only. Bifenazate is necessary to prevent crop losses in the current year and to ensure tree vitality in the next year.

In a separate action, the state of Delaware petitioned EPA to allow use of bifenazate on soybeans to control two spotted spider mites. According to the applicant, there are two registered products, dimethoate and chlorpyrifos, which have some miticidal activity and are recommended for spider mite control in Delaware soybeans. EPA has determined that, in the event of hot, dry weather, mite populations could cause significant economic losses to soybean growers in Delaware, even in light of these alternatives.

EPA determined that bifenazate can be used with a reasonable certainty of no harm to humans or to the environment. Thus, EPA has authorized under FIFRA section 18 the use of bifenazate on tart cherries for control of phytophagous spider mites in Utah, and on soybeans for control of two spotted spider mites in Delaware. After having reviewed the submission, EPA concurs that emergency conditions exist for this State.

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

Because these tolerances are being approved under emergency conditions, EPA has not made any decisions about whether bifenazate meets EPA's registration requirements for use on tart cherries and soybeans or whether a permanent tolerance for these uses would be appropriate. Under these circumstances, EPA does not believe that these tolerances serve as a basis for registration of bifenazate by a State for special local needs under FIFRA section 24(c). Nor do these tolerances serve as the basis for any State other than Utah and Delaware to use this pesticide on these crops under section 18 of FIFRA without following all provisions of EPA's regulations implementing FIFRA section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for bifenazate, contact the Agency's Registration Division at the address

provided under **FOR FURTHER INFORMATION CONTACT**.

IV. Aggregate Risk Assessment and Determination of Safety

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 of the FFDCA and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of bifenazate and to make a determination on aggregate exposure, consistent with section 408(b)(2) of the FFDCA, for a time-limited tolerance for combined residues of bifenazate in or on tart cherries at 5.0 ppm; soybean seed at 1.5 ppm; soybean hulls at 20 ppm; soybean meal at 3.5 ppm; and soybean refined oil at 20 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Endpoints

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

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

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

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

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Acute Dietary (General population including infants, children, and females 13-50 years old)	An acute dietary endpoint was not selected based on the absence of an endpoint of concern attributed to a single dose		
Chronic Dietary (All populations)	NOAEL = 1.0 mg/kg/day UF = 100 Chronic RfD = 0.01 mg/kg/day	FQPA SF = 1X cPAD = chronic RfD/FQPA SF = 0.01 mg/kg/day	1–Year Dog Feeding Study LOAEL = 8.9/10.4 mg/kg/day [M/F] based on changes in hematological and clinical chemistry parameters, and histopathology in bone marrow, liver, and kidney
Incidental Oral, Short-Term (1 to 30 days) (Residential)	Oral study NOAEL = 10 mg/kg/day	LOC for MOE ≤ 100 (Residential)	Rat Developmental Study maternal LOAEL = 100 mg/kg/day based on clinical signs, decreased body weight and food consumption during the dosing period
Incidental Oral, Intermediate-Term (30 days to 6 months) (Residential)	Oral study NOAEL = 0.9 mg/kg/day	LOC for MOE ≤ 100 (Residential)	90–Day Subchronic Dog Study LOAEL = 10.4/10.7 mg/kg/day [M/F] based on changes in hematologic parameters
Short-, Intermediate-, and Long-Term Dermal (1 to 30 days, 30 days to 6 months, and 6 months to lifetime) (Residential)	Dermal study NOAEL = 80 mg/kg/day	LOC for MOE ≤ 100 (Residential)	21–Day Dermal Toxicity Study in Rats LOAEL = 400 mg/kg/day based on decreased body weight and food consumption, hematologic effects, increased spleen weight, and extramedullary hemapoiesis in the spleen

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

Exposure Scenario	Dose Used in Risk Assessment, UF	FQPA SF* and Level of Concern for Risk Assessment	Study and Toxicological Effects
Short-Term Inhalation (1 to 30 days) (Residential)	Oral study NOAEL = 10 mg/kg/day(inhalation absorption rate = 100%)	LOC for MOE ≤ 100 (Residential)	Rat Developmental Study LOAEL = 100 mg/kg/day based on decreased body weight andfood consumption
Intermediate-Term Inhalation (30 days to 6 months) (Residential)	Oral study NOAEL = 0.9 mg/kg/day (inhalationabsorption rate = 100%)	LOC for MOE ≤ 100 (Residential)	90 Day Dog Feeding Study LOAEL = 10.4/10.7 mg/kg/day [M/F] based on changes in hematologic parameters
Long-Term Inhalation (6 months tolifetime) (Residential)	Oral study NOAEL = 1.0 mg/kg/day (inhalation absorption rate = 100%)	LOC for MOE ≤ 100 (Residential)	1–Year Dog Feeding Study LOAEL = 8.9/10.4 mg/kg/day [M/F] based on changes in hematological and clinical chemistry parameters, and histopathology in bone marrow, liver, and kidney
Cancer (oral, dermal, inhalation)	Bifenazate is classified as ‘‘not likely’’ to be a human carcinogen		

*The reference to the FQPA SF refers to any additional SF retained due to concerns of FQPA.

B. Exposure Assessment

1. *Dietary exposure from food and feed uses.* Tolerances have been established (40 CFR 180.572) for the combined residues of bifenazate, in or on a variety of raw agricultural commodities. Tolerances on primary crops range from 0.1 ppm to 35 ppm on pome fruit, fruiting vegetable, cucurbit vegetable, tree nut, nectarine, peach, plum, grape, strawberry, cotton, hops, okra, peppermint, and spearmint. Tolerances have also been established in milk, ruminant meat, and ruminant meat byproducts at 0.02 ppm. Bifenazate is a selective miticide which controls the motile stage of mites either by direct contact or through contact with foliar residues. Risk assessments were conducted by EPA to assess dietary exposures from bifenazate in food as follows:

i. *Acute exposure.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. As indicated in Table 1 above, toxicological data for bifenazate do not identify any dose to the chemical which triggers a toxic effect based on an acute dose. As there were no toxic effects attributable to a single dose, an endpoint of concern was not identified to quantitate acute-dietary risk to the general population, to infants, to children or to the subpopulation females 13-50 years old. Therefore, there is no acute reference dose (aRfD) or acute population-adjusted dose (aPAD) for the general population or females 13-50 years old. An acute aggregate risk assessment was not performed because no acute risk is expected.

ii. *Chronic exposure.* In conducting this chronic dietary risk assessment the Dietary Exposure Evaluation Model (DEEM™) analysis evaluated the individual food consumption as reported by respondents in the USDA 1994–1996 and 1998 nationwide Continuing Surveys of Food Intake by Individuals (CSFII) and accumulated exposure to the chemical for each commodity.

The chronic dietary exposure analysis was based on tolerance level residues excluding tomato and soybean (average field trial residues was assumed for these crops) and average percent crop treated information. DEEM™ (Version 7.76) default processing factors were used for some commodities. The analyses also included the chronic surface water point estimate generated using the Tier 1 model First Index Reservoir Screening Tool (FIRST) which assumed that 87% of the basin is cropped and 100% of the cropped area treated at the maximum rate (surface water chronic point estimate was greater than the ground water point estimate).

iii. *Cancer.* Bifenazate has been classified as ‘‘not likely’’ to be a human carcinogen.

iv. *Anticipated residue and percent crop treated (PCT) information.* Section 408(b)(2)(E) of the FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must pursuant to section 408(f)(1) require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. For the present action, EPA will issue such Data Call-Ins for information relating to anticipated residues as is required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Such Data Call-Ins will be required to be submitted no later than 5 years from the date of issuance of this tolerance.

Section 408(b)(2)(F) of the FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if the Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue; Condition 2, that the exposure estimate does not underestimate exposure for any significant subpopulation group; and Condition 3, if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by

section 408(b)(2)(F) of the FFDCA, EPA may require registrants to submit data on PCT.

The Agency used average PCT information for several commodities.

The Agency believes that the three conditions listed above have been met. With respect to Condition 1, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average PCT for chronic dietary exposure estimates. This weighted average PCT figure is derived by averaging State-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the PCT reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average PCT over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum PCT. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions 2 and 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which bifenazate may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency lacks sufficient monitoring exposure data to complete a comprehensive dietary exposure analysis and risk assessment for bifenazate in drinking water. Because the Agency does not have comprehensive monitoring data, drinking water concentration estimates are made by reliance on simulation or modeling taking into account data on the physical characteristics of bifenazate.

The Agency uses the FIRST or the Pesticide Root Zone/Exposure Analysis Modeling System (PRZM/EXAMS) to produce estimates of pesticide concentrations in an index reservoir. The Screening Concentrations in Groundwater (SCI-GROW) model is used to predict pesticide concentrations in shallow ground water. For a screening-level assessment for surface water EPA will generally use FIRST (a Tier 1 model) before using PRZM/EXAMS (a Tier 2 model). The FIRST model is a subset of the PRZM/EXAMS model that uses a specific high-end runoff scenario for pesticides. While both FIRST and PRZM/EXAMS incorporate an index reservoir environment, the PRZM/EXAMS model includes a percent crop area factor as an adjustment to account for the maximum percent crop coverage within a watershed or drainage basin.

None of these models include consideration of the impact processing (mixing, dilution, or treatment) of raw water for distribution as drinking water would likely have on the removal of pesticides from the source water. The primary use of these models by the Agency at this stage is to provide a coarse screen for sorting out pesticides for which it is highly unlikely that drinking water concentrations would ever exceed human health levels of concern.

Since the models used are considered to be screening tools in the risk assessment process, the Agency does not use estimated environmental concentrations (EECs) from these models to quantify drinking water exposure and risk as a %RfD or %PAD. Instead, drinking water levels of comparison (DWLOCs) are calculated and used as a point of comparison against the model estimates of a pesticide's concentration in water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food, and from residential uses. Since DWLOCs address total aggregate exposure to bifenazate they are further discussed in the aggregate risk sections below.

Based on the FIRST and SCI-GROW models the EECs of bifenazate for chronic exposures are estimated to be 6.4 parts per billion (ppb) for surface water and <0.001 ppb for ground water.

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

Bifenazate is currently registered for use on the following residential non-dietary sites: Ornamentals and non-bearing fruit trees. The risk assessment was conducted using the following exposure assumptions: Only short-term dermal and short-term inhalation exposure are expected for homeowner applicators. Post-application exposure is anticipated to be negligible and was not assessed.

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

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

C. Safety Factor for Infants and Children

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

2. *Prenatal and postnatal sensitivity.* Developmental toxicity and reproductive toxicity studies performed with bifenazate yield no qualitative or quantitative toxicity evidence of increased susceptibility among rats and rabbits during *in utero* exposure or during postnatal exposure.

3. *Conclusion.* There is a complete toxicity data base for bifenazate and exposure data are complete or are estimated based on data that reasonably accounts for potential exposures. Based on the lack of increased susceptibility and the completeness of the toxicity and exposure databases, EPA has concluded that the additional 10X safety factor for childrens' health can be reduced to 1X.

D. Aggregate Risks and Determination of Safety

To estimate total aggregate exposure to a pesticide from food, drinking water, and residential uses, the Agency calculates DWLOCs which are used as a point of comparison against the model estimates of a pesticide's concentration in water EECs. DWLOC values are not regulatory standards for drinking water. DWLOCs are theoretical upper limits on a pesticide's concentration in drinking water in light of total aggregate exposure to a pesticide in food and residential uses. In calculating a DWLOC, the Agency determines how much of the acceptable exposure (i.e., the PAD) is available for exposure through drinking water (e.g., allowable chronic water exposure (mg/kg/day) = cPAD - (average food + chronic non-dietary, non-occupational exposure)). This allowable exposure through drinking water is used to calculate a DWLOC.

A DWLOC will vary depending on the toxic endpoint, drinking water consumption, and body weights. Default body weights and consumption values as used by the USEPA Office of Water are used to calculate DWLOCs: 2 liter (L)/70 kg (adult male), 2L/60 kg (adult female), and 1L/10 kg (child). Default body weights and drinking water consumption values vary on an individual basis. This variation will be taken into account in more refined screening-level and quantitative drinking water exposure assessments. Different populations will have different DWLOCs. Generally, a DWLOC is calculated for each type of risk assessment used: Acute, short-term, intermediate-term, chronic, and cancer.

When EECs for surface water and ground water are less than the calculated DWLOCs, EPA concludes with reasonable certainty that exposures to bifenazate in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of comparison in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of bifenazate on drinking water as a part of the aggregate risk assessment process.

1. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that exposure to bifenazate from food will utilize 36% of the cPAD for the U.S. population, 72% of the cPAD for all infants (< 1 year old) and 84% of the cPAD for children 1–2 years old. Based on the use pattern, chronic residential exposure to residues of bifenazate is not expected. In addition, despite the potential for chronic dietary exposure to bifenazate in drinking water, after calculating DWLOCs and comparing them to conservative model EECs of bifenazate in surface water and ground water, EPA does not expect the aggregate exposure to exceed 100% of the cPAD, as shown in Table 2 of this unit:

TABLE 2.—AGGREGATE RISK ASSESSMENT FOR CHRONIC (NON-CANCER) EXPOSURE TO BIFENAZATE

Population Subgroup	cPAD mg/kg/day	%cPAD (Food)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Chronic DWLOC (ppb)
U.S. Population	0.01	36	6.4	<0.001	230
All infants (<1 year old)	0.01	72	6.4	<0.001	26
Children (1-2 years old)	0.01	84	6.4	<0.001	21
Children (3-5 years old)	0.01	78	6.4	<0.001	25
Children (6-12 years old)	0.01	52	6.4	<0.001	47
Youth (13-19 years old)	0.01	33	6.4	<0.001	200
Adults (20-49 years old)	0.01	31	6.4	<0.001	250
Adults (50 + years old)	0.01	30	6.4	<0.001	270
Females (13-49)	0.01	35	6.4	<0.001	260

2. *Short-term risk.* Short-term aggregate exposure takes into account residential exposure plus chronic exposure to food and water (considered to be a background exposure level).

Bifenazate is currently registered for use(s) that could result in short-term residential exposure and the Agency has determined that it is appropriate to aggregate chronic food and water and short-term exposures for bifenazate.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded that food and residential exposures aggregated result in aggregate MOEs of 1,672 for U.S. population, 1,741 for youth 13-19 years old, 1,820 for adults 20-49 years old, 1,849 for adults 50+ years old, and 1,684 for females 13-49 years old. These aggregate MOEs do not exceed the Agency's level of concern for aggregate exposure to food and residential uses. In addition, short-term DWLOCs were calculated and compared to the EECs for chronic exposure of bifenazate in ground water and surface water. After calculating DWLOCs and comparing them to the EECs for surface water and ground water, EPA does not expect short-term aggregate exposure to exceed the Agency's level of concern, as shown in Table 3 of this unit:

TABLE 3.—AGGREGATE RISK ASSESSMENT FOR SHORT-TERM EXPOSURE TO BIFENAZATE

Population Subgroup	Aggregate MOE (Food + Residential)	Aggregate Level of Concern (LOC)	Surface Water EEC (ppb)	Ground Water EEC (ppb)	Short-Term DWLOC (ppb)
U.S. population	1,672	100	6.4	<0.001	3,200
Youth (13-19 years old)	1,741	100	6.4	<0.001	3,000
Adults (20-49 years old)	1,820	100	6.4	<0.001	3,300
Adults (50 + years old)	1,849	100	6.4	<0.001	3,500
Females (13-49 years old)	1,684	100	6.4	<0.001	2,700

3. *Intermediate-term risk*. Intermediate-term aggregate exposure takes into account non-dietary, non-occupational exposure plus chronic exposure to food and water (considered to be a background exposure level). Though residential exposure could occur with the use of bifenazate, only short-term exposures are expected for homeowner applicators. Therefore, the aggregate risk is the sum of the risk from food and water, which were previously addressed.

4. *Aggregate cancer risk for U.S. population*. Bifenazate is classified as ''not likely'' to be a human carcinogen. Thus, a quantification of human cancer risk has not been performed.

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

V. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology (example—gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; e-mail address: *residuemethods@epa.gov*.

B. International Residue Limits

Canada, Codex, and Mexico do not have maximum residue limits for residues of bifenazate in or on the proposed crops. Therefore, harmonization is not an issue.

VI. Conclusion

Therefore, time-limited tolerances are established for combined residues of bifenazate, 1-methylethyl-2-(4-methoxy[1,1'-biphenyl]-3-yl hydrazinecarboxylate and diazinecarboxylic acid, 2-(4-methoxy-[1,1'-biphenyl]-3-yl), 1-methylethyl ester, expressed as bifenazate, in or on tart cherries at 5.0 ppm; soybean seed at 1.5 ppm; soybean hulls at 20 ppm; soybean meal at 3.5 ppm; and soybean refined oil at 20 ppm.

VII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) of the FFDCA provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) of the FFDCA, as was provided in the old sections 408 and 409 of the FFDCA. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2005–0276 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before February 14, 2006.

1. *Filing the request*. Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900L), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Suite 350, 1099 14th St., NW., Washington, DC 20005. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VII.A.1., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by the docket ID number EPA–HQ–OPP–2005–0276, to: Public Information and Records Integrity Branch, Information Technology and Resource Management Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an

electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VIII. Statutory and Executive Order Reviews

This final rule establishes time-limited tolerances under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a FIFRA section 18 exemption under section 408 of the FFDCA, such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

IX. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: December 1, 2005.

Donald R. Stubbs,

Acting Director, Registration Division, Office of Pesticide Programs.

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

PART 180—AMENDED

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

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

■ 2. Section 180.572 is amended by alphabetically adding commodities in the table in paragraph (b) to read as follows:

§ 180.572 Bifenazate; tolerance for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ revocation date
Cherry, tart	5.0	12/31/09
* *	* *	*
Soybean, hulls ..	20	12/31/09
Soybean, meal ..	3.5	12/31/09

Commodity	Parts per million	Expiration/ revocation date
Soybean, refined oil	20	12/31/09
Soybean, seed	1.5	12/31/09
* *	* *	*

* * * * *

[FR Doc. 05–24137 Filed 12–15–05; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 710

[EPA–HQ–OPPT–2005–0047; FRL–7732–6]

RIN 2070 AC61

TSCA Inventory Update Reporting Partially Exempted Chemicals List Addition of Certain Aluminum Alkyl Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend the Toxic Substances Control Act (TSCA) section 8(a) Inventory Update Reporting (IUR) regulations by adding 10 aluminum alkyl chemicals to the list of chemical substances in § 710.46(b)(2)(iv) which are exempt from reporting processing and use information required by § 710.52(c)(4). EPA has determined that the IUR processing and use information for these chemicals is of low current interest. Manufacturers and importers of the chemicals listed in § 710.46(b)(2)(iv) must continue to report manufacturing information.

DATES: This direct final rule is effective on February 14, 2006 without further notice, unless EPA receives adverse comment by January 17, 2006. If, however, EPA receives adverse comment, EPA will publish a **Federal Register** document to withdraw the direct final rule before the effective date.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPPT–2005–0047, by one of the following methods:

- *Federal eRulemaking Portal*:*http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website*:*http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail*: *oppt.ncic@epa.gov*.
- *Mail*: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery*: OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID number EPA–HQ–OPPT–2005–0047. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA–HQ–OPPT–2005–0047. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.epa.gov/edocket/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites are ''anonymous access'' systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through EDOCKET or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit EDOCKET on-line or see the**Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: All documents in the docket are listed on the www.regulations.gov web site. (EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at*http://www.regulations.gov/*. Follow the on-line instructions.) Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the OPPT Docket, EPA Docket Center, EPA West, Rm. 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 EPA Docket Center Reading Room telephone number is (202) 566–1744, and the telephone number for the OPPT Docket, which is located in the EPA Docket Center, is (202) 566–0280.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address:*TSCA-Hotline@epa.gov*.

For technical information contact: Susan Sharkey, Project Manager, Economics, Exposure and Technology Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number:(202) 564–8789; e-mail address: *sharkey.susan@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you manufacture (defined by statute at 15 U.S.C. 2602(7) to include import) chemical substances, including inorganic chemical substances, subject to reporting under the Inventory Update Rule (IUR) at 40 CFR part 710. Any use of the term ''manufacture'' in this document will encompass import, unless otherwise stated.

Potentially affected entities may include, but are not limited to:

Chemical manufacturers and importers subject to IUR reporting, including chemical manufacturers and importers of inorganic chemical substances (NAICS codes 325, 32411).

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions at 40 CFR 710.48. If you have any questions regarding the applicability of this action to a particular entity, consult the technical contact person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

In addition to using EDOCKET (*http://www.epa.gov/edocket/*), you may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at*http://www.epa.gov/fedrgstr/*. A frequently updated electronic version of 40 CFR part 710 is available at E-CFR Beta Site Two at*http://www.gpoaccess.gov/ecfr/*.

C. What Should I Consider as I Prepare My Comments for EPA?

1. *Submitting CBI.* Do not submit confidential business information (CBI) to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the rulemaking by docket ID number and other identifying information (subject heading, **Federal Register** date, and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives, and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns, and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What is the Agency's Authority for Taking this Action?

EPA is required under TSCA section 8(b), 15 U.S.C. 2607(b), to compile and keep current an inventory of chemical substances manufactured or processed in the United States. This inventory is known as the TSCA Chemical Substances Inventory (the TSCA Inventory). In 1977, EPA promulgated a rule (42 FR 64572, December 23, 1977) under TSCA section 8(a), 15 U.S.C. 2607(a), to compile an inventory of chemical substances in commerce at that time. In 1986, EPA promulgated the initial IUR regulation under TSCA section 8(a) at 40 CFR part 710 (51 FR 21438, June 12, 1986) to facilitate the periodic updating of the TSCA Inventory and to support activities associated with the implementation of TSCA. In 2003, EPA promulgated extensive amendments to the IUR regulation (68 FR 848, January 7, 2003) (FRL–6767–4) (2003 Amendments) to collect manufacturing, processing, and use exposure-related information, and to make certain other changes. Minor corrections to the IUR regulation were made in July of 2004 (69 FR 40787, July 7, 2004) (FRL–7332–3).

TSCA section 8(a)(1) authorizes the EPA Administrator to promulgate rules under which manufacturers and processors of chemical substances and mixtures (referred to hereinafter as chemical substances) must maintain such records and submit such information as the Administrator may reasonably require. TSCA section 8(a) generally excludes small manufacturers and processors of chemical substances from the reporting requirements established in TSCA section 8(a). However, EPA is authorized by TSCA section 8(a)(3) to require TSCA section 8(a) reporting from small manufacturers and processors with respect to any chemical substance that is the subject of a rule proposed or promulgated under TSCA section 4, 5(b)(4), or 6, or that is the subject of an order under TSCA section 5(e), or that is the subject of relief that has been granted pursuant to a civil action under TSCA section 5 or 7. The standard for determining whether an entity qualifies as a small manufacturer for purposes of 40 CFR part 710 generally is defined in 40 CFR 704.3. Processors are not currently subject to the regulations at 40 CFR part 710.

B. What is the Inventory Update Reporting (IUR) Regulation?

The data reported under the IUR regulation are used to update the information maintained on the TSCA Inventory. EPA uses the TSCA Inventory and data reported under the IUR regulation to support many TSCA-related activities and to provide overall support for a number of EPA and other Federal health, safety, and environmental protection activities. The IUR regulation, as amended by the 2003 Amendments, requires U.S. manufacturers (including importers) of chemicals listed on the TSCA Inventory to report to EPA every 4 years the identity of chemical substances manufactured for a commercial purpose during the reporting year in quantities of 25,000 pounds or more at any single site they own or control. The IUR regulation generally excludes several categories of substances from its reporting requirements, i.e., polymers, microorganisms, naturally occurring chemical substances, and certain natural gas substances. Sites are required to report information such as company name, site location and other identifying information, identity and production volume of the reportable chemical substance, and manufacturing exposure-related information associated with each reportable chemical substance, including the physical form and maximum concentration of the chemical substance and the number of potentially exposed workers.

Manufacturers (including importers) of larger volume chemicals (i.e., 300,000 lbs. or more manufactured during the reporting year at any site) are additionally required to report certain processing and use information (40 CFR 710.52(c)(4)). This information includes process or use category, NAICS code, industrial function category, percent production volume associated with each process or use category, number of use sites, number of potentially exposed

workers, and consumer/commercial information such as use category, use in or on products intended for use by children, and maximum concentration.

For the 2006 submission period, inorganic chemicals, regardless of production volume, are partially exempt (i.e., submitters do not report the processing and use information listed in 40 CFR 710.52(c)(4)). After the 2006 reporting period, the partial exemption for inorganic chemicals will no longer be applicable and submitters will report all information on inorganic chemical substances. In addition, specifically listed petroleum process streams and other specifically listed chemical substances are partially exempt, and manufacturers of such substances are not required to report processing and use information during the 2006 submission period as well as subsequent submission periods.

C. What is the ''Low Current Interest'' Partial Exemption and Petition Process?

The 2003 Amendments established a partial exemption in 40 CFR 710.46(b)(2) for certain chemicals for which EPA has determined that the IUR processing and use information is of ''low current interest.'' The current list of chemical substances which are subject to the low current interest exemption are identified at 40 CFR 710.46(b)(2)(iv). Persons who manufacture or import chemical substances listed in 40 CFR 710.46(b)(2)(iv) are not required to report the processing and use information specified in 40 CFR 710.52(c)(4), but are required to comply with all other reporting obligations. The public may petition EPA to add a substance to, or delete a substance from, the list of chemicals partially exempt from reporting under 40 CFR 710.46(b)(2).

In determining whether the partial exemption should apply to a particular chemical substance, EPA will consider the totality of information available for the chemical substance in question, including but not limited to information associated with one or more of the following considerations (see 40 CFR 710.46(b)(2)(ii)):

(A) Whether the chemical qualifies or has qualified in past IUR collections for the reporting of the information described in 40 CFR 710.52(c)(4) (i.e., at least one site manufactures 300,000 pounds or more of the chemical).

(B) The chemical substance's chemical and physical properties or potential for persistence, bioaccumulation, health effects, or environmental effects (considered independently or together).

(C) The information needs of EPA, other federal agencies, tribes, states, and local governments, as well as members of the public.

(D) The availability of other complementary risk screening information.

(E) The availability of comparable processing and use information.

(F) Whether the potential risks of the chemical substance are adequately managed by EPA or another agency or authority.

It is important to note that the addition of a chemical substance to the partial exemption list will not necessarily be based on the potential risks of the chemical, but on the Agency's current assessment of the need for collecting IUR processing and use information for that chemical, based upon the totality of information considered during the petition review process. Additionally, interest in a chemical or a chemical's processing and use information may increase in the future, at which time EPA will reconsider the applicability of this partial exemption for those chemicals.

A petition to amend the list of chemicals partially exempt from reporting under 40 CFR 710.46(b)(2) (whether by adding or removing a chemical to or from the list) must be in writing, must identify the chemical in question, including a chemical identification number, and should provide sufficient information for EPA to determine whether collection of the information in § 710.52(c)(4) for the chemical in question is of low interest. In an earlier **Federal Register** document (70 FR 3658, January 26, 2005) (FRL–7332–2), EPA proposed to further amend the IUR regulations to clarify the petition requirements. In that document, EPA explained that a petition must include a written rationale or justification to support the assertion that collecting processing and use information for the chemical substance is of low current interest. In addition, the proposal clarifies that the petition must be accompanied by relevant documents, and include specific citations to information in those documents. The proposed amendments also provide that the petitioner's rationale must include sufficient information upon which the Agency can assess the current need for IUR processing and use information and can make a decision concerning the reporting of that information for the subject chemical. Finally, the proposal clarifies that the burden of proof is on the petitioner to demonstrate why a given chemical substance should be considered of low current interest. The proposed rule has not yet been finalized.

D. What Action is the Agency Taking?

Through this action, EPA is amending the list of chemical substances that are partially exempt from reporting requirements under the IUR regulation. EPA received a petition requesting the addition of the following chemicals to the list of substances in § 710.46(b)(2)(iv) (Ref. 1):

- Aluminum, chlorodiethyl- (CASRN 96–10–6)
- Aluminum, triethyl- (CASRN 97–93–8)
- Aluminum, tris(2-methylpropyl)- (CASRN 100–99–2)
- Aluminum, dichloroethyl- (CASRN 563–43–9)
- Aluminum, trioctyl- (CASRN 1070–00–4)
- Aluminum, tributyl- (CASRN 1116–70–7)
- Aluminum, trihexyl- (CASRN 1116–73–0)
- Aluminum, hydrobis(2-methylpropyl)- (CASRN 1191–15–7)
- Aluminum, di-.mu.-chlorochlorotriethyldi- (CASRN 12075–68–2)
- Aluminum, trichlorotrimethyldi- (CASRN 12542–85–7)

The original petition submission was supplemented by additional information submitted by the petitioner in response to clarifying questions asked by the Agency (Ref. 2). The petitioner supplied sufficient information for EPA to identify a low current interest in the processing and use information associated with the 10 aluminum alkyl chemicals.

EPA considered the information provided by the petitioner and determined that there is a low current interest in IUR processing and use information because exposure to these substances is not likely to occur due to their high and apparent reactivities, which require the use of preventive measures when handling the substances in order to eliminate the possibility of exposure or release. The reaction of these pyrophoric substances upon contact with air or water is very fast; the nature of the reaction is readily observable (i.e., flames); and the reaction results in a transformation of the aluminum alkyl into another chemical substance once exposed to water or air. Furthermore, use of these substances is very limited as intermediates in chemical synthesis. For all of these reasons, EPA determined that, at this time, collecting IUR processing and use information on these chemicals would not likely further our understanding of potential risks associated with them (Ref. 3).

EPA received 23 non-CBI reports for these 10 chemicals in the 2002 IUR

submission period. Since the 23 reports represent only a portion of the total number of reports received, EPA is estimating that 25 reports over 300,000 lbs for these 10 chemicals will be received. Removing the requirement to report processing and use information for 25 reports results in a cost savings of $135,776 to $146,546 in the first reporting cycle and $108,621 to $117,237 in future reporting cycles (Ref. 5).

The Agency acknowledges that additional, unidentified information may exist. If you are in possession of information which is relevant to the Agency's decision to partially exempt the 10 substances listed in Unit II.D., please provide comments following the procedure listed in the**ADDRESSES** unit.

III. Direct Final Rule Procedures

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. This final rule will be effective on February 14, 2006 without further notice unless the Agency receives adverse comment by January 17, 2006. If EPA receives adverse comment on this rulemaking, the Agency will publish a timely withdrawal in the **Federal Register** and will publish a notice of proposed rulemaking in a future issue of the **Federal Register**. The Agency will address the comments as part of that proposed rulemaking.

IV. Materials in the Rulemaking Record

The public version of the official record for this rulemaking is contained in two separate dockets that can be accessed as described in the**ADDRESSES** unit. Docket ID number EPA–HQ–OPPT–2005–0047 contains the main rulemaking record. Additionally, certain supporting records are contained in docket ID number EPA–HQ–OPPT–2004–0048, as identified in the listing contained in this unit. This record includes the documents located in the docket as well as the documents that are referenced in those documents.

1. Letter from Kim Boudreaux, Albemarle Corporation, to OPPT Document Control Officer, EPA, December 24, 2003. Docket document number EPA–HQ–OPPT–2004–0048–0002.

2. Letter from Kim Boudreaux, Albemarle Corporation, to OPPT Document Control Officer, EPA, April 1, 2005. Docket document number EPA–HQ–OPPT–2004–0048–0005.

3. USEPA, ''IUR Petition Review Report for aluminum, chlorodiethyl- (CASRN 96-10-6); aluminum, triethyl- (CASRN 97-93-8); aluminum,tris(2-methylpropyl)- (CASRN 100-99-2); aluminum, dichloroethyl- (CASRN 563-43-9); aluminum, trioctyl- (CASRN 1070-00-4); aluminum, tributyl- (CASRN 1116-70-7); aluminum, trihexyl- (CASRN 1116-73-0); aluminum,hydrobis(2-methylpropyl)- (CASRN 1191-15-7); aluminum,di-.mu.-chlorochlorotriethyldi- (CASRN 12075-68-2); aluminum, trichlorotrimethyldi- (CASRN 12542-85-7),'' April 25, 2005. Docket document number EPA–HQ–2004–0048–0007.

4. USEPA, ''Cost Savings Estimate of Adding 10 Aluminum Alkyls to the 40 CFR 710.46(b)(2) Chemical Substance List,'' OPPT, April 28, 2005.

V. Statutory and Executive Order Reviews

A. Executive Order 12866

This direct final rule implements minor changes to 40 CFR part 710, resulting in burden and cost reduction. Since this direct final rule does not impose any new requirements, it is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled*Regulatory Planning and Review* (58 FR 51735, October 4, 1993).

B. Paperwork Reduction Act

This direct final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501*et seq*.

C. Regulatory Flexibility Act

Since this action makes minor changes to 40 CFR part 710, resulting in burden reduction, EPA certifies this action will not have significant economic impact on a substantial number of small entities. There will be no adverse impact on small entities resulting from this action.

D. Unfunded Mandates Reform Act

This action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Executive Order 13132

The Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled*Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not alter the relationships or distribution of power and responsibilities established by Congress.

F. Executive Order 13175

The Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled*Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This direct final rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

G. Executive Order 13045

This action does not require OMB review or any other Agency action under Executive Order 13045, entitled*Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

H. Executive Order 13211

Because this direct final rule is exempt from review under Executive Order 12866 due to its lack of significance, this direct final rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001).

I. National Technology Transfer Advancement Act

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995

(NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

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 the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 710

Environmental protection, Aluminum alkyl chemicals, Chemicals, Hazardous materials, Pyrophoric, Reporting and recordkeeping requirements.

Dated: November 25, 2005.

Chareles M. Auer,

Director, Office of Pollution Prevention and Toxics.

Therefore, 40 CFR chapter I is amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for part 710 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

■ 2. Section 710.46 is amended by adding the following entries in ascending order to the table in paragraph (b)(2)(iv) to read as follows:

§ 710.46 Chemical substances for which information is not required.

* * * * *

(b) * * *

(2) * * *

(iv) * * *

CAS No.	Chemical
96–10–6	Aluminum, chlorodiethyl-
97–93–8	Aluminum, triethyl-
100–99–2	Aluminum, tris(2-methylpropyl)-
* *	* * *
563–43–9	Aluminum, dichloroethyl-
1070–00–4	Aluminum, trioctyl-
1116–70–7	Aluminum, tributyl-
1116–73–0	Aluminum, trihexyl-
1191–15–7	Aluminum, hydrobis(2-methylpropyl)-
* *	* * *
12075–68–2	Aluminum, di-.mu.-chlorochlorotriethyldi-
12542–85–7	Aluminum, trichlorotrimethyldi-
* *	* * *

[FR Doc. 05–24138 Filed 12–15–05; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 23

RIN 1018–AF69

Inclusion of Alligator Snapping Turtle (Macroclemys [=Macrochelys] temminckii) and All Species of Map Turtle (Graptemys spp.) in Appendix III to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the Fish and Wildlife Service (Service), are listing the alligator snapping turtle (*Macroclemys* [=*Macrochelys*] *temminckii*) and all species of map turtle (*Graptemys* spp.) in Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora (Convention, or CITES). Appendix III of CITES includes species that a CITES Party identifies as being subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and as needing the cooperation of other Parties in the control of trade. International trade in alligator snapping turtles is largely focused on pet markets and meat for human consumption. Map turtles are popular in the pet trade and may also be sold for human consumption. Map and alligator snapping turtles are protected to varying degrees by State laws within the United States. Listing these native turtles in Appendix III is necessary to allow us to adequately monitor international trade in the taxa; to determine whether exports are occurring legally, with respect to State law; and to determine whether further measures under CITES or other laws are required to conserve these species. Appendix-III listings will lend additional support to State wildlife agencies in their efforts to regulate and manage these species, improve data gathering to increase our knowledge of trade in these species, and strengthen State and Federal wildlife enforcement activities to prevent poaching and illegal trade. Furthermore, listing alligator snapping turtles and all species of map turtles in Appendix III enlists the assistance of other Parties in our efforts to monitor and control trade in these species.

DATES: This listing will become effective June 14, 2006.

ADDRESSES: You may obtain information about permits for international trade in these species by contacting Mr. Tim Van Norman, Chief, Branch of Permits—International, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; telephone: 703–358–2104, or 800–358–2104; fax: 703–358–2281; e-mail: *ManagementAuthority@fws.gov;* Web site: *http://international.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert R. Gabel, Chief, Division of Scientific Authority; U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 750, Arlington, Virginia 22203; telephone: 703–358–1708; fax: 703–358–2276; e-mail: *ScientificAuthority@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

This listing was proposed in the **Federal Register** of January 26, 2000 (65 FR 4217). Since that time, with the assistance of the International Association of Fish and Wildlife Agencies (IAFWA), we have conducted extensive discussions with the range States for alligator snapping turtle and map turtles, and have reviewed and considered all public comments received on the proposed rule. Our final decision reflects consideration of the information and opinions we have received.

Alligator Snapping Turtle

The alligator snapping turtle (*Macroclemys* [=*Macrochelys*] *temminckii*), the largest freshwater turtle in North America, is a member of the Family Chelydridae, Order Testudinata, Class Reptilia. This North American family includes two monotypic genera. The second genus is *Chelydra,* represented by the common snapping turtle (*Chelydra serpentina*). The nomenclatural history of the alligator snapping turtle is complex and continues to evolve. The species was first described in 1789 as *Testudo planitia,* but was placed in the genus *Macrochelys* by Gray in 1855. Although subsequent authors referred to the genus as *Macrochelys,* Smith (1955 in Ernst and Barbour 1972) refuted this placement and believed the alligator snapping turtle should be included in the genus *Macroclemys.* Lovich (1993)

supported this approach. In 1995, Webb demonstrated that the genus *Macrochelys* has precedence over *Macroclemys,* and the Society for the Study of Amphibians and Reptiles adopted this revision in 2000 (Reed et al. 2002). However, for the purpose of this listing, we have decided to use *Macroclemys* as the primary genus name because most States and individuals know the species as *Macroclemys* and continue to use this nomenclature.

The alligator snapping turtle inhabits freshwater river systems and associated fluvial habitats such as lakes, canals, oxbows, swamps, ponds, and bayous throughout the Mississippi River Valley. It also occurs in the rivers and associated habitats of several drainage basins that flow into the Gulf of Mexico, from the Suwanee River, Florida, in the east to the western limits of the species' range in eastern Texas. The current distribution of *M. temminckii* includes the following States: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas (Ernst and Barbour 1972).

Current research indicates significant range-wide genetic divergence of populations of the species among river drainages. Three genetically distinct subpopulations have been identified: the greater Mississippi River watershed, the Gulf Coastal rivers east of the Mississippi River, and the Suwanee River drainage system (Roman *et al.* 1999). Extirpation of any local population in one of the three drainage basins may lead to loss of genetic variability and vigor, the increased vulnerability of remaining populations to disease and predation, difficulties in obtaining appropriate founder stock for possible use in future recovery efforts, if needed, and loss of the species' unique function and role in the ecosystem.

Alligator snapping turtles are protected in some form by the majority of States within the species' distribution. However, levels of protection and conservation measures are not consistent from State to State. Regulatory programs for the alligator snapping turtle may include: prohibitions against take from the wild for both commercial and personal purposes; restrictions that ban only commercial harvest from the wild; regulations that prohibit possession, purchase, sale, transport, or export; inclusion on several State lists of endangered and threatened wildlife; and regulated commercial captive production (''farming'').

The alligator snapping turtle is believed to be significantly reduced in abundance throughout a substantial portion of its northern range (Roman *et al.* 1999). Previously, the species was considered for candidate status under the Endangered Species Act of 1973, as amended (Act). The World Conservation Union (IUCN) classifies the alligator snapping turtle as Vulnerable; according to IUCN criteria, this species will likely become Endangered in the future if the factors leading to its decline continue (IUCN 2000).

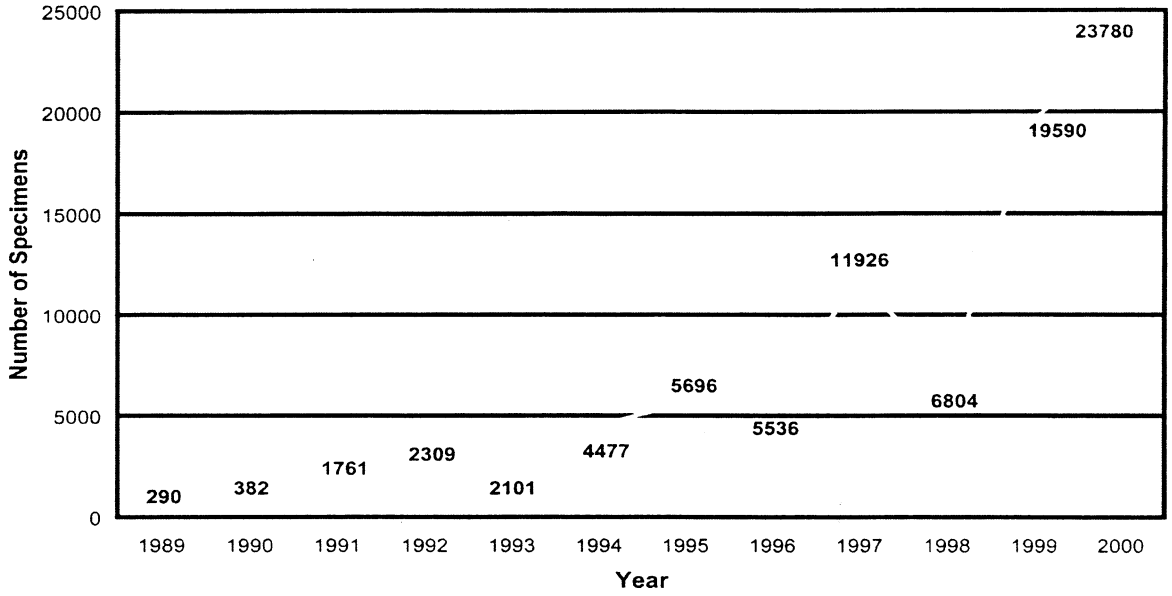
The alligator snapping turtle is declining throughout its range as a consequence of several known factors. Two of the leading factors contributing to loss of the species' native habitat are commercial and agricultural development of former bottomland hardwood forest and associated freshwater streams, as well as river and bankside modifications that alter or eliminate crucial nesting sites (Reed *et al.* 2002). Another major threat is over-collection of live adult turtles from the wild for human consumption and for export of live animals destined for the pet trade (Figure 1). Alligator snapping turtle hatchlings are sold in the domestic and international pet trade, whereas adult specimens are harvested for local human consumption and for use in the specialty meat trade within the United States. Based on the rapid rise in exports of alligator snapping turtles (Figure 1), we believe that a portion of the exports may be for the meat trade. Harvest and trade of mature, breeding adults can rapidly become unsustainable because of the alligator snapping turtle's life history and reproductive strategy. Intense collection over several decades has severely depleted many local populations and/or altered their demographic structure (Roman *et al.* 1999). Other threats to the alligator snapping turtle include water pollution that often results in the reduction of key prey species and bioaccumulation of industrial and agricultural toxins (Reed *et al.* 2002).

The alligator snapping turtle cannot sustain significant collection from the wild because of its life history traits (Galbraith *et al.* 1997). The species does not reach sexual maturity until 11–13 years of age in the wild, and a typical mature female only produces one clutch of eggs per year. A single clutch may comprise 8–52 eggs (Ernst and Barbour 1989). The alligator snapping turtle is characterized by low survivorship in early life stages, and delayed maturation, but surviving individuals may live many decades once they reach maturity. Therefore, the population dynamics of this species are extremely sensitive to the harvest of adult females. An adult female harvest rate of less than 2 percent per year is considered unsustainable, and harvest of this magnitude or greater will result in significant local population declines (Reed *et al.* 2002).

As noted above, harvest controls for the species vary by State agencies. Commercial harvest and trade are prohibited in most range States, although individual turtles may be taken from the wild for personal use in many States. The State of Louisiana now prohibits commercial harvest of alligator snapping turtles and limits recreational take to one turtle per day per licensed fisher under recent changes in state harvest regulations (Louisiana Department of Wildlife and Fisheries 2004). In addition, Louisiana closely regulates all captive breeding of alligator snapping turtles for domestic and international trade. The State of Mississippi permits trade in farm-reared alligator snapping turtles. Hatchling alligator snapping turtles offered for sale in the pet trade are often advertised as ''captive-bred.'' During the comment period, the State of Louisiana confirmed that many of the animals in trade are indeed captive-bred in the State. Louisiana turtle farms operate under strict statutes that require sanitary conditions, including testing for *Salmonella* prior to export (James H. Jenkins, Jr., Secretary, Louisiana Department of Wildlife and Fisheries, in litt. to the Service 2000).

We formerly believed that many exported hatchlings were derived from wild-collected eggs; however, recent information indicates that this practice is not as common as previously supposed (James H. Jenkins, Jr., Secretary, Louisiana Department of Wildlife and Fisheries, in litt. to the Service 2000). Prices for alligator snapping turtles vary greatly based on size, market demand, age, coloration, origin (wild-caught versus captive-bred), and condition. TRAFFIC-North America, the wildlife trade monitoring network, notes that most live adult alligator snapping turtles are exported to Japan and Hong Kong (Simon Habel, Director, TRAFFIC-North America, in litt. to the Service 2000).

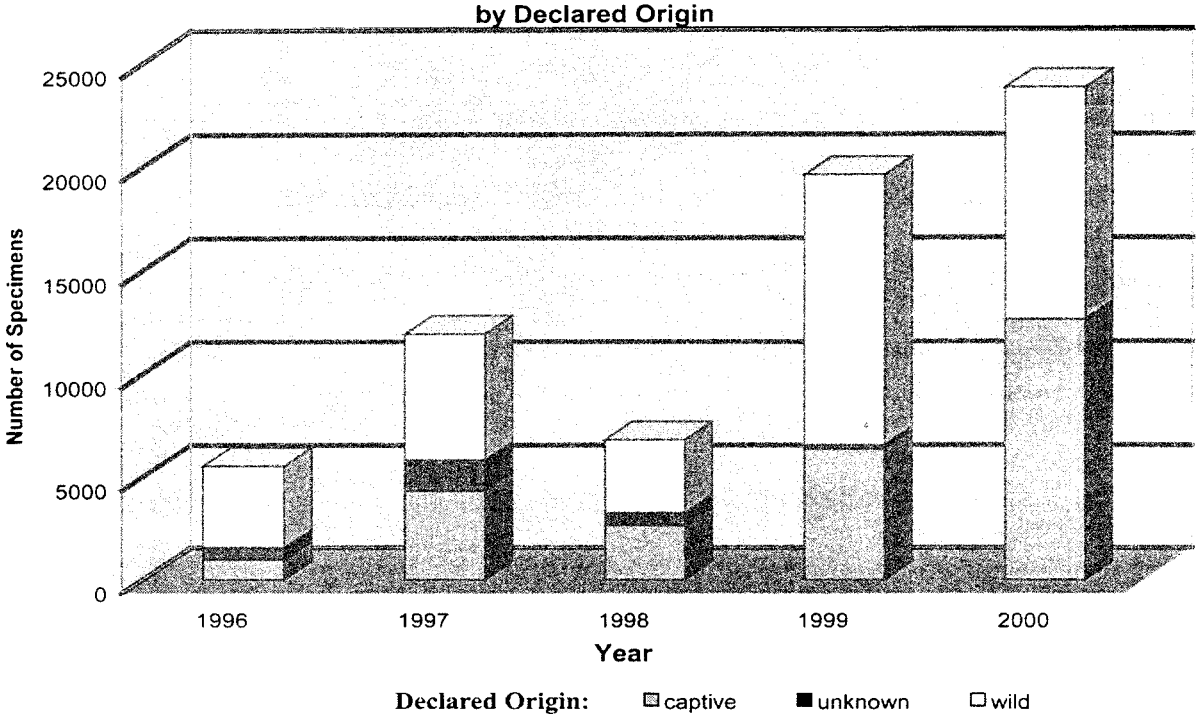
Figure 1. Minimum Number of Exports of Live Alligator Snapping Turtles from the United States, 1989 – 2000



Data collected by the Service's Office of Law Enforcement (OLE) indicate that the volume of trade in alligator snapping turtles has increased substantially in the past decade, from 290 specimens in 1989 to 23,780 specimens in 2000 (Figure 1). These data were obtained from OLE's database containing Declaration Forms 3–177, a declaration that must be filed by individuals and commercial businesses upon international importation or exportation of wildlife, including parts and products. We believe these data are minimum figures, because not all shipments that were exported were declared or recorded to the species level, particularly in the earlier years of the decade, and the data do not include illegal trade.

The declared origin of exported alligator snapping turtles began to shift during the late 1990s (Figure 2). In 1996, the majority of alligator snapping turtles presented for export were declared as having been harvested from the wild. As the turtle-farming industry has increased, so too have exports of farm-raised turtles, although dependence on wild-caught turtles has not

Figure 2. Export of Alligator Snapping Turtles from the United States by Declared Origin



decreased, possibly due to increased demand for the species and the resulting increased volume of trade. By 2000, the number of farm-raised alligator snapping turtles exported was nearly equal to the number of wild-caught specimens exported. The number of exported alligator snapping turtles of unknown origin decreased. However, as evident in Figure 2, the volume of trade in the species increased substantially over the years 1996–2000.

During our review of the OLE declaration data, we discovered that the largest number of alligator snapping turtles was exported from wildlife ports in the State of California. More than 25,000 animals were shipped from California between 1996 and 2000. However, most if not all alligator snapping turtles exported from California originated from other States, since California is not a range State; therefore, these data do not reflect the true origin of all exported alligator snapping turtles. The other major exporting States, reflected by declaration data, were Arkansas, with shipments of more than 14,000 alligator snapping turtles; Missouri, with more than 6,000 specimens exported; and Louisiana, with total exports of just over 5,000 animals.

Map Turtles

There are 12 species of North American map turtles: the common map turtle (*Graptemys geographica*), Barbour's map turtle (*G. barbouri*), Alabama map turtle (*G. pulchra*), Escambia map turtle (*G. ernsti*), Pascagoula map turtle (*G. gibbonsi*), Cagle's map turtle (*G. caglei*), false map turtle (*G. pseudogeographica*), Ouachita map turtle (*G. ouachitensis*), Texas map turtle (*G. versa*), ringed map turtle (*G. oculifera*), yellow-blotched map turtle (*G. flavimaculata*), and black-knobbed map turtle (*G. nigrinoda*). Map turtles are subject to legal protection in one or more States where they occur, although State regulations for harvest, possession, and trade vary. In addition, the ringed map turtle and the yellow-blotched map turtle are Federally listed as threatened species under the Endangered Species Act. Cagle's map turtle is a Candidate species under the Endangered Species Candidate Conservation Program. Collection, possession, and trade in certain *Graptemys* species are prohibited in the States that include them in their endangered and threatened species lists. States that prohibit take, possession, and/or sale of map turtles include: Indiana, Kansas, Maine, Missouri, North Dakota, and South Dakota. Some States allow harvest and trade of wild map turtles with specific provisions. Alabama allows trade in *G. geographica* and *G. pseudographica,* but protects *G. pulchra, G. barbouri, G. ernsti,* and *G. nigrinoda* from all commercial activity. Map turtles are not native to Colorado; however, sales are legal, provided specimens are greater than 4 inches in carapace length. Wild-caught specimens in Illinois may be taken by dip nets, hand, or hook and line, provided the collector possesses a valid State fishing license. Map turtles may be sold in licensed pet stores in Illinois, provided the dealer can document that the turtles were legally obtained. Minnesota does not allow take, possession, transport, or purchase of any turtle species without a State turtle seller's license. There are currently no controls on the sale of map turtles in Ohio. Wisconsin requires a valid State license and limits possession to five specimens of each map turtle species.

Trade in *Graptemys* species increased substantially from 1989 to 2000 (U.S. Fish and Wildlife Service, Office of Law Enforcement 2000). In 1989, fewer than 600 map turtles were exported from the United States. The volume of trade rapidly increased during the 1990s; by the year 2000, more than 200,000 map turtles were exported (U.S. Fish and Wildlife Service, Office of Law Enforcement 2000). The rise in demand for map turtles is primarily the result of the increasing popularity of reptiles for the international pet trade. Supply has kept pace with demand through the expansion of large-scale international commercial trade in many turtle species. Map turtles are produced in the United States by farms that specialize in propagating captive-bred hatchlings specifically for commercial trade, but turtles are also entering trade through collection from the wild. The closure of many countries to imports of the popular red-eared slider (*Trachemys scripta elegans*) because of invasive concerns may have led to a surge in demand for map turtles, and particularly for farm-raised hatchlings. Based on OLE's declaration data, it appears that the majority of shipments depart from the United States between the months of August and October.

Common Map Turtle

The common map turtle (*Graptemys geographica*) was first described by Le Sueur in 1817 (Ernst and Barbour 1989). The species occurs in the St. Lawrence River drainage, extending from southern Quebec, Canada, to Lake Ontario, and into northwest Vermont (Ernst and Barbour 1989). It also occurs in the southern portion of Ontario. The species is widely distributed in the Midwestern United States. *G. geographica* occurs in the Great Lakes region of lower Michigan, Wisconsin, and southeastern Minnesota. The species occurs west of the Appalachian Mountains, from Ohio, Kentucky, and Tennessee west to Iowa, Kansas, and northeastern Oklahoma and south to Arkansas, Alabama (above the fall line), and northwest Georgia. Common map turtles are also found within suitable habitat in the Susquehanna River drainage of Pennsylvania and Maryland, and in the Delaware River system of Pennsylvania and New Jersey, although the Pennsylvania and New Jersey Delaware River populations are not contiguous with one another or with the larger occupied range of the species. Finally, an additional geographically isolated population exists within the Hudson River area of New York, which contains one of the world's most biologically diverse ecosystems based on numbers of species present. The common map turtle is the only species of map turtle that inhabits watersheds discharging into the Atlantic Ocean. In the past, substantial populations inhabited most waterways that harbored sufficient mollusk populations (Ernst and Barbour 1989). Common map turtles typically inhabit large rivers and lakes that offer plentiful basking sites (Ernst et al. 1994). Habitat preferences, measured by capture frequency, have been studied in the Susquehanna River system flowing through Pennsylvania. Preferred sites were found to be those that contained deep, slow-moving currents, stream riffles, and shallow bankside areas. Large common map turtles were typically captured in rivers and streams with deep, slow-moving currents, whereas smaller turtles were collected more often than expected in slow-moving, less turbulent shallows. Pluto and Bellis (1986) found that large adult common map turtles generally avoid areas of emergent vegetation and congregate in areas that can accommodate numerous downed tree limbs and branches that can be used as basking sites.

Wild common map turtles may live longer than 20 years (Ernst et al. 1994). The species generally does not acclimate well to captive conditions; however, one adult specimen survived more than 18 years in Chicago's Brookfield Zoo (Snider and Bowler 1992). Preferred prey items include freshwater snails, clams, insects (particularly immature stages), crayfish, water mites, fish, and aquatic vegetation (Ernst and Barbour 1989).

Similar to those of other turtle species, the eggs and hatchlings of *G. geographica* are preyed upon by a wide

variety of vertebrate species, including rice rats (*Oryzomys palustris;* Goodpaster and Hoffmeister 1952). Adult female common map turtles are most vulnerable to predation when they leave the water to lay their eggs on shore.

Population declines in portions of the species' range can be directly attributed to human activities. Water pollution and over-harvest have resulted in the decline or elimination of this map turtle's preferred mollusk prey base. Expanding waterfront development has increased encroachment on, and the destruction of, traditional nesting sites. Mortalities of adult map turtles are common during the nesting season, particularly when females cross roads to reach nesting sites.

Barbour's Map Turtle

Barbour's map turtle (*Graptemys barbouri*) was first described by Carr and Marchand in 1942 (Ernst and Barbour 1989). This species is closely related to *G. pulchra, G. ernsti,* and *G. gibbonsi* (discussed below). It shares characteristics of these species, including large mature female size, extreme sexual size dimorphism, morphological differences between the sexes, the presence of prominent vertebral spines, and a diploid chromosome number of 52 (Lovich and McCoy 1992).

This species' range is restricted to large tributaries of the Apalachicola River, including the Chipola, Chattahoochee, and Flint Rivers in eastern Alabama, western Georgia, and western Florida; three discontinuous populations are known to exist (Ernst et al. 1994). Barbour's map turtles prefer clear streams with a limestone substrate, and large rivers that support abundant basking sites in the form of snags, fallen trees, and limbs (Ernst and Barbour 1972). Large Barbour's map turtles, particularly females, feed primarily on freshwater mollusks, including snails and select clam species (Cagle 1952). The longest-lived captive-held *G. barbouri* survived more than 31 years in the National Zoological Park in Washington, D.C. (Snider and Bowler 1992).

Similar to those of other turtle species, the eggs and hatchlings of Barbour's map turtle are preyed upon by many vertebrate predators. This species has occasionally been harvested for human consumption. For example, Newman (1970) reported the collection of 50 Barbour's map turtles from a 1-mile section of the Chipola River by three individuals in a single afternoon, thus providing us with a small measure of species abundance in a localized area during past decades. Such anecdotal information may serve as a baseline for determining changes in species composition or declines in abundance when compared to current stock-assessment data. Several authors note that *G. barbouri* populations are in decline as the result of water pollution and over-collecting for the pet trade (Ernst et al. 1994), whereas others cite river channelization, dredging, and pollution that affect both turtles and their molluscan prey base, combined with excessive collection for the pet trade (Buhlmann and Gibbons, in Benz and Collins, ed. 1997).

Alabama Map Turtle

The Alabama map turtle (*Graptemys pulchra*), Escambia map turtle (*G. ernsti*), and Pascagoula map turtle (*G. gibbonsi*) were first described as *G. pulchra* by Baur in 1893 (Ernst and Barbour 1989). Lovich and McCoy (1992) examined morphological variation in the *G. pulchra* species complex in three separate drainage basins and determined that each drainage basin supports a separate and distinct species. Populations of the species from the Escambia-Conecuh River system and the Pascagoula and Pearl river systems represent distinct species, *G. ernsti* and *G. gibbonsi,* respectively (NatureServe 2003), whereas the Alabama map turtle, *G. pulchra,* inhabits the Mobile Bay drainage basin. MtDNA studies have verified differences among these taxa (Lamb et al. 1994).

The range of *G. pulchra* is restricted to those rivers in Alabama and Georgia that flow into Alabama's Mobile Bay (Ernst et al. 1994). Individuals have been collected in the Alabama, Cahaba, Tombigbee, Coosa, and Black Warrior Rivers; however, the species has not been detected in the Tallapoosa River above the fall line in Alabama (Mount 1975). The Alabama map turtle likely inhabits the Tombigbee River system in the State of Mississippi, because the range of *G. nigrinoda* generally overlaps that of *G. pulchra,* and *G. nigrinoda* has been collected within this system. However, the presence of *G. pulchra* has not been verified (Shoop 1967; NatureServe 2003).

The Alabama map turtle inhabits large, swiftly flowing creeks and rivers that can accommodate plentiful basking sites comprised of fallen trees, limbs, and brush. In rocky Piedmont habitats, males are often found in shallow stream reaches, but females appear to favor deep pools and impoundments (Ernst et al. 1994).

The introduced Asian mussel *Corbicula* sp. is believed to have become an important food source for *G. pulchra;* female Alabama map turtles are particularly partial to this prey item (Marion 1986; Ernst et al. 1994). Longevity records are based on captive-held specimens, which have survived in captivity more than 15 years (Snider and Bowler 1992).

The eggs and hatchlings of the Alabama map turtle, consistent with those of other turtle species, are preyed upon by a wide variety of vertebrate species. Water pollution adversely affects the species' molluscan prey base; in addition, waterway modification projects and associated habitat degradation are all considered factors in the decline of *G. pulchra* populations (Ernst et al. 1994).

Escambia Map Turtle

The Escambia map turtle (*Graptemys ernsti*) was first described in 1992 by Lovich and McCoy. This species was formerly considered a variant of *G. pulchra.* However, Lovich and McCoy demonstrated that map turtles that were previously considered to be *G. pulchra* actually comprise three distinct species, as previously noted.

The species' range is limited to rivers in Alabama and Florida that flow into Pensacola Bay, Florida (Lovich and McCoy 1992). These drainage systems include the Yellow, Escambia, Conecuh, and Shoal Rivers. The Escambia map turtle prefers large, rapidly flowing streams and rivers with sand or gravel substrates (NatureServe 2003). Similar to those of most turtle species, favored basking sites include streamside locations with profuse snags, fallen trees, limbs, and other brush. The species is absent from streams that lack freshwater mollusks (Buhlman and Gibbons 1997).

The diet of *G. ernsti* is varied and opportunistic. Female Escambia map turtles prefer mollusks, including gastropods and the introduced Asian *Corbicula* mussel, but also consume native mussels, aquatic snails, and occasional crayfish. The prey base for this species is largely molluscan; however, *G. ernsti* (particularly adult males and juveniles) are opportunistic feeders, and insects and small fish are often included in the species' diet.

Nest predation by an array of vertebrate species can exceed 90 percent in a given year (NatureServe 2003). Fish crows (*Corvus ossifragus*) prey on map turtle nests by day. Raccoons (*Procyon lotor*) feed on eggs nocturnally, and also prey on nesting females (Shealy 1976). Humans have the greatest impact on the continued survival of this species. Collection of adults, which are slow to mature, and eggs, which are also

vulnerable to extremely high rates of nest predation by other vertebrate species, decreases the survival potential of wild populations. Incidences of hunters using basking Escambia map turtles for target practice have also been documented (Shealy 1976; NatureServe 2003). The species, similar to other aquatic species, is believed to be threatened by water pollution, including heavy metal contamination, and river channelization (Florida Natural Areas Investigation, unpub., as cited in Bulmann and Gibbons 1997).

Pascagoula Map Turtle

The Pascagoula map turtle *(Graptemys gibbonsi)* was formerly considered a variant of G. pulchra. Lovich and McCoy determined that *G. gibbonsi* was a separate, distinct species in 1992. This species is found in the deep, swift main channels and associated tributaries of the Pascagoula and Pearl Rivers, including the Chickasawhay, Leaf, and Bouge Chitto rivers in Mississippi and Louisiana (Ernst *et al.* 1994). Sand or gravel substrates and an abundance of basking sites consisting of fallen logs and brush are considered ideal habitat for the Pascagoula map turtle. Similar to other map turtles, the Pascagoula map turtle eats insects, snails, and clams (Ernst *et al.* 1994).

Raccoons and other vertebrate predators prey on the eggs and hatchlings of *G. gibbonsi,* as they do those of other turtle species. Habitat destruction, however, is considered the greatest threat to the survival of the species (NatureServe 2003). Sections of the species' range, including the Pearl River and portions of the Pascagoula River, have been degraded by channelization for navigation and inflows of industrial pollutants. The decline of Pearl River populations was documented in 1989 by Dundee and Rossman (as cited in Buhlmann and Gibbons 1997). In 1986, an extended section of Mississippi's Leaf River, downstream from a pulp-processing plant, was found to be devoid of *G. gibbonsi,* although it was previously known to occur there. In contrast, upstream waters contained healthy map turtle populations (Ernst *et al.* 1994).

Cagle's Map Turtle

The Cagle's map turtle *(Graptemys caglei)* was first classified by Haynes and McKown in 1974. *G. caglei* is morphologically intermediate between *G. versa* and *G. pseudogeographica kohnii* (Haynes and McKown 1974). Bertl and Killebrew (1983) concluded that *G. ouachitensis, G. p. psuedographica,* and *G. p. kohnii* are its closest biogeographical relatives. Cagle's map turtle was designated as a Candidate Species under the Service's Endangered Species Candidate Conservation Program in 1993 (58 FR 5701).

This species' range formerly encompassed the watersheds of the Guadalupe and San Antonio Rivers of south-central Texas (Dixon 1987; Conant and Collins 1991). Historical population status and abundance data are not available. Vermersch (1992) found that the Cagle's map turtle was considered the dominant turtle species in certain sections of the Guadalupe River watershed; however, the species is probably extirpated from the San Antonio River drainage system. Recent mark-recapture studies estimate that no more than 400 individuals remain in the upper Guadalupe river system. Downstream estimates based on 10 years of data collection indicate abundance levels of 1,354–2,184 individuals. Below Canyon Dam, a large population of some 11,300 individuals inhabits the middle Guadalupe River and lower San Marco River (U.S. Fish and Wildlife Service, Endangered Species Program 2002).

Cagle's map turtle habitat in the Guadalupe River drainage consists of streams with a moderate flow and a limestone or mud substrate. These streams include reaches containing numerous pools of varying depths. The Cagle's map turtle also resides in sluggish waters behind stream impoundments that vary in depth from 1 to 3 meters (Vermersch 1992).

This species prefers a diet of fallen bark, algae, grass, insects, and aquatic snails (Ernst and Barbour 1989). Longevity records for the species have been compiled from captive-held individuals and indicate that an adult male *G. caglei* survived more than 14 years in captivity (Snider and Bowler 1992).

The primary threat to Cagle's map turtle is loss and degradation of riverine habitat resulting from construction of dams and reservoirs (Killebrew 1991 in U.S. Fish and Wildlife Service, Endangered Species Program 2002). Recently described as a Texas endemic, the species is of interest to collectors and is vulnerable to over-collecting for the pet trade, zoos, museums, and scientific research (Killebrew 1991 in U.S. Fish and Wildlife Service, Endangered Species Program 2002). Even modest levels of collecting would severely impact populations, reducing numbers to unsustainable levels (Warwick *et al.* 1990). The naturally limited distribution of Cagle's map turtle makes the species more vulnerable to extinction than other wider-ranging species. Location and suitability of nesting sites may be affected by alteration of a single river system and, consequently, affect hatch rates and sex ratios (Wibbels *et al.* 1991).

False Map Turtle

The false map turtle *(Graptemys pseudogeographica)* was first identified by Gray in 1831 (Ernst and Barbour 1989). *G. pseudogeographica* inhabits large tributaries of the Missouri and Mississippi rivers that flow within the States of Illinois, Indiana, Minnesota, North Dakota, Ohio, South Dakota, and Wisconsin (Ernst and Barbour 1989). The species' southern range may extend as far as southwest Alabama, southern and western Mississippi, Louisiana, and eastern Texas. Cagle (1953) originally described *G. ouachitensis ouachitensis* and *G. o. sabinensis* as subspecies of *G. pseudogeographica.* However, studies by Vogt (1993) demonstrated that *G. ouachitensis* and *G. pseudogeographica* are separate species. Differentiation of these species is based largely on differing head stripe patterns. However, Ewert (1979) and Vogt (1980) noted that contrasting head patterns may be the result of different incubation temperatures, and a single clutch may exhibit variations among clutch mates. Recent molecular studies, however, confirm the arrangement of *G. pseudogeographica,* with subspecific forms *G. p. pseudogeographica* and *G. p. kohnii* (Lamb *et al.* 1994).

Two subspecies of the false map turtle are currently recognized (Vogt 1993), as discussed above. *G. p. pseudogeographica,* the false map turtle first noted by Gray in 1831 (Ernst and Barbour 1989), occurs from Ohio through Indiana, Illinois, Wisconsin, Minnesota, and the Dakotas, and continues south to western Kentucky, Tennessee, and Missouri. *G. p. kohnii,* the Mississippi map turtle described by Baur in 1890 (Ernst and Barbour 1989), differs morphologically from the nominate race. This species is found in the Mississippi River watershed, from west Tennessee, central Missouri, and possibly southeast Nebraska, and extends south to eastern Texas, Louisiana, and southern and western Mississippi. Although most of the subspecies' range lies west of the Mississippi River, there is an unsubstantiated record of an individual *G. p. kohnii* from the vicinity of Mobile, Alabama (Mount 1975). Specimens of *G. p. kohnii* recently discovered in the Pearl River, Mississippi, are believed to have been captive-held individuals that were later released. McCoy and Vogt

(1992), however, suggested these individuals may have been introduced into the Pearl River during the Mississippi River floods of 1979.

Although *G. pseudogeographica* primarily lives in large rivers and associated backwaters, the species is also found in lakes, ponds, sloughs, bayous, oxbows, and occasionally freshwater marshes (Ernst and Barbour 1989). Habitats containing abundant aquatic vegetation, adequate basking sites, and slow-moving currents are preferred by the false map turtle, although Ernst and Barbour (1989) noted the species occasionally inhabits the swiftly flowing main channel of the Mississippi River. Throughout the northern portion of the species' range, the false map turtle is considered an opportunistic omnivore due to overlapping ranges and habitat shared with other *Graptemys* species that consume similar prey items (Ernst *et al.* 1994). The false map turtle consumes most available plant and animal materials in the species' northern range (Ernst and Barbour 1989). *G. geographica* and *G. ouachitensis* are absent in the southern portion of *G. pseudogeographica*'s range, where the false map turtle feeds primarily on mollusks due to the lack of competitors (Ernst *et al.* 1994). Juvenile and male *G. p. kohnii* are considered omnivorous, whereas adult females prefer a diet largely composed of mollusks.

Predators of false map turtle nests and eggs include the red fox *(Vulpes vulpes)*, raccoon, and river otter *(Lontra canadensis)* (Ernst *et al.* 1994). Destruction of new nests often occurs within the first 24 hours after laying; over 90 percent of newly laid nests may be vulnerable to predation (Ernst *et al.* 1994). Emerging hatchlings are subject to a wide range of avian predators (Vogt 1980). Largemouth bass *(Micropterus salmoides),* catfish (*Ictalurus* spp.), pickerel (*Esox* spp.), and other game fish are potential predators of hatchlings after they reach water bodies (Thompson 1985). Human-related mortality of adult false map turtles is often attributed to drowning in gill nets, shooting, and set lines for commercial fishing (Vogt 1980).

Commercial fishermen noted that the species was abundant at least 25 years earlier in the Missouri and Mississippi rivers, but had become uncommon. The subspecies *G. p. kohnii* is known to be declining in Missouri (Ernst *et al.* 1994; NatureServe 2003). Threats to survival include destruction of nesting habitat and nests, agricultural practices, and pollution. In Missouri and South Dakota, numbers are decreasing, possibly due to several factors including water pollution, river channelization, impoundments, reduction of suitable nesting sites, siltation, and unlawful shooting (Ernst *et al.* 1994; CITES Proposal 1996).

Anderson (1965) asserted that the increasing amount of pollutants discharged throughout the Mississippi River drainage basin had virtually eradicated turtles for many miles below St. Louis.

Ouachita Map Turtle

The Ouachita map turtle (*Graptemys ouachitensis*) inhabits a range extending from Texas, Louisiana, and western and northern Alabama in the south, through eastern Iowa and Kansas, and the States of Illinois, Indiana, Kentucky, Minnesota, Tennessee, and Wisconsin (Ernst and Barbour 1989). Additionally, in an area more than 200 km west of the normal range of the species, disjunct populations of Ouachita map turtles have been found in Mitchell and Pawnee Counties, Kansas (Taggart 1992). Another separate, distinct population also exists in south-central Ohio (Ernst et al. 1994).

The two subspecies of *G. ouachitensis* were initially believed to be subspecies of *G. pseudogeographica* (Cagle 1953); however, Vogt (1980, 1993) demonstrated that the northern subspecies, *G. o. ouachitensis,* was taxonomically distinct from *G. pseudogeographica*. The range of *G. o. ouachitensis* extends from the Ouachita River system in Louisiana west to Oklahoma, and north through the States of Illinois, Indiana, Iowa, Kansas, Minnesota, Ohio, and Wisconsin. The range of the Sabine map turtle, *G. o. sabinensis,* is restricted to Texas and Louisiana's Sabine River system (Vogt 1993, 1995; Ernst et al. 1994).

Primarily a riverine species, the Ouachita map turtle inhabits freshwater streams characterized by swift currents, sand and silt substrates, and plentiful submerged aquatic vegetation (Ewert 1979; Vogt 1980). However, similar to other map turtle species, this species also resides in man-made impoundments, such as farm ponds, and natural stream features, such as lakes, oxbows, and river-bottom wetlands (Ernst and Barbour 1989). Comparable to other map turtle species, *G. ouachitensis* is considered omnivorous, although the species' diet is believed to be somewhat restricted due to the narrow crushing surfaces of its jaws (Ernst et al. 1994). Very little information is currently available regarding the ecology and behavior of the species throughout the southern portion of its range.

Threats to the species include bycatch and tangling in nets of commercial fisheries, human consumption (NatureServe 2003), and collection for the pet trade (Dundee and Rossman 1989). Human activity and intrusion may interfere with nesting and normal basking behavior.

Texas Map Turtle

The Texas map turtle (*Graptemys versa*) was first described by Stejneger in 1925 (Ernst and Barbour 1989). *G. versa*'s range is restricted to a small section of the Edwards Plateau region in central Texas, which occurs within the Colorado River drainage basin (Dixon 1987). Although limited life-history information is available for this endemic species, the restricted range of the species likely increases its value for collectors, zoos, museums, and scientific researchers.

Ringed Map Turtle

Distribution of the ringed map turtle (*Graptemys oculifera*) is restricted to a small range within the Pearl River system of Mississippi and Louisiana (Ernst and Barbour 1989). The habitat preferred by this species includes rapidly flowing rivers with a clay or sand substrate and plentiful basking sites (Ernst et al. 1994). The ringed map turtle basks on logs, brush, and other woody debris, but will quickly disappear when disturbed. *G. oculifera* favors a diet of insects and mollusks that are easily consumed with the animal's strong, scissor-like jaws (Ernst and Barbour 1989).

G. oculifera population declines were confirmed during the 1980s, leading to Federal protection in 1986, when the species was listed as threatened under the Act (51 FR 45907). The decline of the ringed map turtle is attributed primarily to habitat modification, such as stream channelization for flood control and navigational purposes. Within the Pearl River System, 21 percent of the turtle's range has been modified. Human alteration of stream flow eliminates basking and nesting sites, adversely impacts the species' prey base, and increases turbidity and siltation (Matthews and Moseley 1990). Impoundments inundate the turtle's shallow water habitat. Shooting basking turtles and collecting also pose serious threats, particularly as populations decline from other factors. Collection of ringed map turtles poses a serious threat to species abundance and composition, because local populations can be extirpated rapidly when collectors target a specific site within the species' limited range.

Yellow-blotched Map Turtle

The yellow-blotched map turtle (*Graptemys flavimaculata*) is restricted to the Pascagoula River drainage, which includes the Pascagoula, Leaf, and Chickasawhay rivers (Ernst and Barbour 1989). It may also occur in the lower stretches of larger tributary streams within the drainage basin. The species' range in the Pascagoula River extends downstream to tidal-influenced, brackish marshes in southern Jackson County, Mississippi. The species has also been located in major tributaries of the Leaf and Chickasawhay rivers. Similar to other map turtle species, this species prefers riverine habitats with a moderate to rapid current, and sand and clay substrates. *G. flavimaculata* spends a large amount of time basking on brush piles and other woody debris, and uses tangled riverbank roots for shelter from predators (Ernst et al. 1994).

The yellow-blotched map turtle was once regarded as the dominant turtle species of the Pascagoula River system (Ernst and Barbour 1989), but due to population declines documented during the 1980s, received protected status over a decade ago in the State of Mississippi (U.S. Fish and Wildlife Service 1992). *G. flavimaculata* has been Federally protected since 1991, when the species was listed as threatened under the Act (56 FR 1459). Similar to other map turtle species, the decline of yellow-blotched map turtle populations was attributed to habitat modification, water pollution, and unsustainable collection for commercial trade. Channel dredging and alteration for flood control and navigation purposes eliminates shallow water and bankside basking and nesting sites, alters water flow regimes, negatively impacts the species' prey base, and increases turbidity and siltation, thus resulting in water quality degradation (U.S. Fish and Wildlife Service 1990). Currently authorized and planned river control and modification projects, sand and gravel dredging, and the implementation of flood control studies could modify most, if not all, of the species' remaining habitat. Collection for commercial purposes, prior to listing of the species under the Act, also contributed to declines in its abundance. Because of the species' diminished population status, local *G. flavimaculata* populations could be extirpated within a short period of time if targeted for collection.

Black-knobbed Map Turtle

The black-knobbed map turtle *(Graptemys nigrinoda)* is generally found in river habitats below the fall line in the Alabama, Tombigbee, and Black Warrior rivers in Alabama and Mississippi (Ernst *et al.* 1994). There are two recognized subspecies: *Graptemys nigrinoda nigrinoda* is found in the upper Tombigbee and Alabama river systems in Alabama and Mississippi, and *G. n. delticola* is restricted to the streams and lakes of the Mobile Bay delta drainage in Alabama's Baldwin and Mobile counties (Ernst *et al.* 1994). Both subspecies prefer streams with a fairly rapid current and sand and/or clay substrates. Similar to other *Graptemys* species, black-knobbed map turtles favor abundant basking sites that include areas where brush, woody debris, and logs accumulate (Ernst and Barbour 1989). *G. nigrinoda* prefers deeper water than *G. oculifera* and *G. flavimaculata* (Ernst *et al.* 1994).

Human activities present the most serious risks to *G. nigrinoda* populations. Large numbers of turtle eggs were previously collected and eaten by delta residents. Additionally, a thriving market in live adult turtles intended for human consumption was sustained well into the early 1980s (Lahanas 1982, in Ernst *et al.* 1994). Collection for the pet trade poses a serious threat to the survival of the species because it occupies such a limited range (NatureServe 2003). Habitat modifications that include removal of logs and snags, stream channelization for navigational improvements, and water impoundment for flood control purposes, impact the species by eliminating essential habitats, such as basking sites and nesting beaches (McCoy and Lovich 1993). Adult black-knobbed map turtles are often found drowned in gill nets set for commercial fisheries, and picnickers and hikers have been known to disrupt and destroy nests (Ernst *et al.* 1994).

Description and Application of CITES Appendix III

CITES is an international treaty to which the United States is a signatory country, or Party. CITES regulates import, export, re-export, and introduction from the sea of certain animal and plant species listed in one of the Convention's three Appendices. Appendix I includes species threatened with extinction that are or may be affected by international trade. Commercial trade in Appendix-I species is prohibited. Appendix II includes species that, although not necessarily threatened with extinction at the present time, may become so unless their trade is strictly controlled through a system of export permits. Appendix II also includes species that CITES must regulate so that trade in other listed species may be brought under effective control (*i.e.*, because of similarity of appearance between listed species and other species).

Appendix III includes species that any Party may identify as subject to regulation within its jurisdiction for the purpose of preventing or restricting exploitation, and for which the listing Party is seeking the cooperation of other Parties in the control of trade. Any country may unilaterally list a species in Appendix III if it is a species native to that country. When a Party requests the CITES Secretariat to include a species in Appendix III, the Secretariat notifies all of the Parties, who are then required to monitor and control trade in the species. An Appendix-III listing becomes effective 90 days after the Secretariat notifies the CITES Parties of the listing. The effective date of this rule has been extended by 30 days, to give the CITES Secretariat sufficient time to notify all Parties of the listing. For further information about CITES, the listing process, and the advantages of an Appendix-III listing, you may refer to our proposed rule published in the **Federal Register** on January 26, 2000 (65 FR 4217).

When a species is listed in Appendix III, the Management Authority of the listing country must issue a CITES export permit for the export of specimens of that species, or a CITES re-export certificate for re-exports. Any other country must issue a CITES certificate of origin for the export of specimens of that species. In the United States, the Service's Division of Management Authority (DMA) issues permits and certificates for Appendix-III species. To issue a permit or certificate, DMA must be satisfied that: (1) specimens were legally acquired (*i.e.*, not obtained in contravention of any Federal, State, Tribal, or local laws), and (2) any living specimen will be prepared and shipped so as to minimize the risk of injury, damage to health, or cruel treatment. Export may take place at any of the Service's Authorized Ports for export of wildlife and wildlife products, during normal business hours, when accompanied by an export permit and a completed Office of Law Enforcement Form 3–177, Declaration for Importation or Exportation of Fish or Wildlife (available for download at: *http://www.le.fws.gov/*).

Individuals that transport or sell map turtles, or alligator snapping turtles, across State lines in contravention of State laws may be subject to Federal Lacey Act violations. The Lacey Act is a Federal statute that makes it unlawful to sell, receive, or purchase in interstate or foreign commerce any wildlife taken, possessed, transported, or sold in

violation of any law or regulation of any State. A CITES Appendix-III listing will complement existing Federal and State laws enacted for the conservation of map turtles and alligator snapping turtles by authorizing all CITES party members to enforce Appendix-III requirements for international trade of listed species. These requirements involve presentation of an export permit, or Certificate of origin, upon import, to ensure that all specimens were legally acquired.

An Appendix-III listing will also allow the Service to collect valuable trade data that can be used by the States for development and revision of species management plans for these turtles. For example, an Appendix-III listing will require identification of every specimen to the species level on each export permit, or Certificate of origin, rather than continuing the current practice of combining different map turtle species intended for international trade into one category, denoted as *Graptemys* spp., on export documents. Species-level identification will provide us with specific data that can be used to illustrate which species are preferred in trade, thereby allowing us to determine if local wild populations are being over-harvested. This sort of information will prove invaluable to State wildlife conservation agencies for management purposes. Finally, listing will afford additional protection to turtle farmers and dealers engaged in legitimate business, by ensuring that all animals in international trade are legally acquired.

Summary of Comments

In our proposed rule (January 26, 2000; 65 FR 4217), we asked all interested parties to submit factual reports or information that could assist us in the decision-making process for development of a final rule. The comment period ended on March 13, 2000. State agencies, scientific organizations, and other parties known to have a particular interest in or knowledge of the alligator snapping turtle or map turtles were contacted and requested to comment. We received a total of 106 comments during the comment period. Of these comments, 99 supported the proposal, 6 were opposed, and 1 comment was neutral. Comments pertained to several key issues. These issues, and our responses, are discussed below.

Issue 1: Several comments pertained to farm rearing or captive breeding of alligator snapping turtles and map turtles. Some turtle farmers requested an exemption to the Appendix-III listing for farm-raised hatchlings. They believed that additional regulation was unnecessary because the State of Louisiana already regulates the turtle-farming industry.

Response: Our intent is to implement a permitting system that will not prove burdensome to U.S. turtle farmers or exporters while ensuring that persons engaging in illegal trafficking are stopped. This listing will not impact the States' current management and regulatory programs for the turtle-farming industry. Rather, the purpose of the listing is to support State management and conservation of the species by ensuring that exports occur in a manner consistent with State law. We will also use the listing to gather data on trade in these species, to better quantify the level of trade in these species and the impact of trade on these species. These data will be made available to State wildlife management agencies, to improve management programs and further the conservation of these species.

Issue 2: Some individuals also expressed the concern that Appendix-III permitting requirements would impede trade in farm-raised turtle hatchlings, because any delays in receiving export permits would negatively impact this segment of the trade by making captive propagation economically unfeasible. With this in mind, several individuals suggested that we exempt State-certified farm-raised turtles from the Appendix-III permit requirements.

Response: The provisions of CITES require that a listing include all live specimens. Therefore, we cannot exempt live farm-raised turtle hatchlings from the Appendix-III listing. The Appendix-III listing will cover trade in all types of specimens of these species, including meat.

To address the concern about delay in permit issuance, DMA has developed a two-tiered plan for review of export applications, with the goal of streamlining permit review and issuance for exporters of turtle hatchlings from certified farms. As with all CITES-listed species, DMA must determine that the Appendix-III specimens were legally acquired. After consultation with State authorities, we have concluded that the export of hatchlings raised on State-certified farms, if 2 inches or less in straight-line carapace length for map turtles and 3 inches or less in straight-line carapace length for alligator snapping turtles, pose little or no risk to wild populations, since it is unlikely they were collected from the wild. However, specimens larger than the 2- or 3-inch length limits, as described above, will require greater scrutiny due to the greater potential that these specimens have originated directly from the wild. For turtles that exceed the length limits, or for dealers that do not exclusively export farm-raised turtles within the size limits (*e.g.*, those farms that hold both farm-raised and wild-collected specimens, or specimens of multiple size-classes), we will use our standard data-collection and review process to make legal acquisition findings. The applicant must provide all the information required on the application form, and will be subject to the same permitting process established for all other CITES specimens.

All data and information provided by permit applicants will be provided to the States on an annual basis. Likewise, as required by the Convention, we will monitor trade in these species. Approximately every 2 years, we will consult with the States and review the effectiveness of the listing, documented levels of illegal trade, and the volume of legal trade in the species, particularly trade in those specimens harvested from the wild. After these consultations, we will determine if further action is needed.

Issue 3: Several individuals suggested development of reintroduction programs for alligator snapping turtles and map turtles using farm-raised hatchlings to replace eggs and adults that are removed from wild populations for farming purposes and/or trade. Commenters stated that it is important to release sufficient numbers of turtles in reintroduction programs, that releases should include a 1:1 sex ratio, and that turtles must be released in appropriate habitat. They advised us that the State of Louisiana has a restocking program for alligator snapping turtles; each turtle farmer is required to provide a specified number of hatchlings each year for release. Another commenter noted that the number of turtles returned to the wild far exceeds the number of wild-caught turtles taken each year.

Response: The Federal Government has responsibility only for recovery and/or reintroduction of species listed under the Act. Reintroduction programs for alligator snapping turtles and map turtles that are not listed under the Act are the sole responsibility of State wildlife management agencies. The Service encourages those individuals who are interested in such programs to contact their local State wildlife management agency for information on regulations and management plans for the reintroduction of native species.

Issue 4: Several individuals noted that the Service currently requires an Office of Law Enforcement Declaration for Importation or Exportation of Fish or Wildlife (Form 3–177) for the export of

wildlife specimens, including their parts or products. They questioned the need for an Appendix-III listing to collect trade data on alligator snapping turtles and map turtles when Form 3–177 is an existing tool for collecting export data.

Response: Many importing and re-exporting countries do not have national legislation that requires inspection of all wildlife, particularly if the species in question is not listed under CITES. One reason for listing these species is to improve enforcement of Federal and State laws by enlisting the support of other CITES Parties. An Appendix-III listing will require inspection and documentation of imports, exports, and re-exports of alligator snapping turtles and map turtles by all CITES Parties, not just the United States.

The listing will also close some export loopholes and improve the quality and quantity of turtle export data. The U.S. Food and Drug Administration (FDA) defines turtles as fish and/or fisheries products when intended for human consumption. In addition, Service regulations found at 50 CFR 14.55 exempt fishery products for human or animal consumption from declaration and Service clearance requirements when the products do not require a permit under 50 CFR Part 17 or 23. Since the FDA defines turtles as fish, exporters may be interpreting the regulations found at 50 CFR 14.55 as not applying to turtles that are being exported for human consumption, and thereby bypassing the Service's requirements for the export of wildlife. There is the probability that, due to differing interpretations of these regulations, a number of turtle specimens, in particular meat and meat products, leave the United States without completion of the Service's Declaration Form 3–177. The absence of this information may be a limiting factor when States are developing management programs for these species. Listing of these species in Appendix III will give us the ability to capture this information and better quantify the volume of all exports. It will help us detect trade trends and, in consultation with the States, implement pro-active conservation or trade management measures that better control exports and detect illegal trade.

Issue 5: One individual noted that an Appendix-III listing might discourage exporters from putting resources into captive breeding, resulting in increased take from the wild.

Response: We believe an Appendix-III listing will afford additional protection to wild alligator snapping turtle and map turtle populations, and it will not deter captive breeding of these turtle species, whether for commercial or conservation purposes. A higher degree of scrutiny will be applied to applications for the export of animals that are or may have been harvested from the wild than for those turtles that are legitimately raised on State-certified turtle farms. Documentation that larger animals, or those exceeding the size limits, were legally acquired will require consultation with the State of origin. Therefore, we believe that this listing will provide us with more accurate information on the harvest of wild turtles, and because permit processing will be streamlined for State-certified turtle farms, this listing is unlikely to discourage the production of farm-raised turtles.

Issue 6: Several individuals noted that some exported turtles are not transported in a humane manner. Many turtles are dying in transport containers or shortly after arrival at foreign destinations. However, one commenter stated that the use of standard International Air Transport Association (IATA) Live Animal Regulations (LAR) for the humane transport of turtles is unnecessary because, in an effort to protect their business, some turtle farmers have developed packing containers that minimize stress and mortality for exported turtles.

Response: Any international air cargo shipments of live turtles are required by the airlines to comply with the IATA LAR. An Appendix-III listing, however, requires the humane transport of all live specimens in international trade in order for the CITES documents to be valid. Currently, the Service has no authority to enforce humane transport requirements for the import or export of alligator snapping turtles or map turtles. Although humane transport requirements for the import of mammals and birds exist, and the Service is developing transport regulations for the import of reptiles and amphibians, the Service can only enforce humane transport requirements for export when a species is listed in the CITES appendices. The CITES Appendix-III listing will, therefore, strengthen the Service's legal authority to enforce these regulations and penalize exporters if adequate primary containers are not used for shipment of live specimens of these species. In comments we received from the State of Louisiana's Department of Wildlife and Fisheries (James H. Jenkins, Jr., Secretary, Louisiana Department of Wildlife and Fisheries, in litt. to the Service 2000), they noted that several Louisiana turtle farmers have already developed packing containers that minimize stress and mortality of live turtles in transit. We support all efforts to ensure humane transport of live animals, and the Service will enforce the IATA LAR for all map and alligator snapping turtle shipments entering or leaving the United States via air cargo once this rule becomes effective.

Issue 7: Our original proposal to list the alligator snapping turtle and map turtles in Appendix III indicated that female alligator snapping turtles were routinely held to obtain hatchlings and then butchered for the meat trade. Comments we received from the State of Louisiana's Department of Wildlife and Fisheries (James H. Jenkins, Jr., Secretary, Louisiana Department of Wildlife and Fisheries, in litt. to the Service 2000) indicated that, in the State of Louisiana, ''few turtle farmers (<5) deal in alligator snapping turtles,'' and the farmers maintain their breeding stock from year to year. Furthermore, breeding stock is not butchered as suggested in our earlier proposal. The price for live alligator snapping turtles (in 2000) was about $1.50 per pound when exported for the meat market (at least $50 per female), yet the average female annually produces hatchlings that yield a total value of about $250.00. On the basis of these figures, it was suggested that slaughtering breeding stock for meat was not a sound business practice, and would require paying about $50.00 per turtle to acquire new female breeding stock for the next season.

Response: We appreciate this additional information from the State of Louisiana's Department of Wildlife and Fisheries, and note that the purpose of the proposed rule was to obtain additional information that may be used to make a final decision based on the best available scientific data and other relevant information. We do, however, remain concerned that some portion of the international trade in these species is turtle meat, or processed turtle meat products, such as canned soup, that is being exported without being declared and cleared by the Service. An Appendix-III listing will require prior issuance of permits and clearance of all alligator snapping turtles and map turtles and their parts and products, including processed food products for human consumption, at a designated port (or a non-designated port if the exporter holds a valid designated port exemption permit issued by the Service's OLE.) This should substantiate or refute the assumption that this is an unknown segment of the international trade in turtles, and allow us to quantify the international trade in these species.

Except for the State of Louisiana, States that allow commercial trade in alligator snapping turtles and map turtles did not provide us with trade data for these species. Therefore, we believe that an Appendix-III listing is the best method available to further understand the international trade in alligator snapping turtles and map turtles.

Issue 8: The State of Louisiana's Department of Wildlife and Fisheries opposed inclusion of alligator snapping turtles and map turtles in CITES Appendix III. State officials contended that the proposed listing was unnecessary because strict statutes are already in place within Louisiana that govern turtle-farming operations.

Response: We have discussed this proposal with IAFWA, an organization that represents State wildlife management agencies. Through IAFWA, a consensus was reached among the States that these species would benefit from an Appendix-III listing.

Issue 9: In our original proposal, we noted that ''some [alligator snapping turtle] hatchlings offered by dealers are said to have been captive-bred, although these are likely to have been hatched from eggs collected from nests in the wild.'' Regarding map turtles, we stated, ''[t]urtle farmers in recent years in the Southeast have apparently achieved considerable success with captive-breeding operations, but we believe all such operations draw upon the wild to replace breeding stock. The degree of wild harvest is unknown but could be very substantial * * *. The majority of these [turtles] may represent farm-raised animals that may or may not [have] been taken directly from the wild.'' In response to these statements in our proposed rule, Jeff Boundy, a herpetologist for the State of Louisiana's Department of Wildlife and Fisheries, observed that the map turtles are farm-raised hatchlings, and furthermore, the hatchlings were not taken from the wild due to difficulties in collecting hatchling map turtles from aquatic habitats (Boundy in James H. Jenkins, Jr., Secretary, Louisiana Department of Wildlife and Fisheries, in litt. to the Service 2000). Mr. Boundy further acknowledged that most turtle farmers originally obtain breeding stock from the wild, although ''family-based branch operations'' acquire stock from captive turtle breeding ponds already in existence. Mr. Boundy stated that, after initial stocking, most farmers do not restock their ponds. However, he noted that, over an unspecified amount of time, there are records of a single operation in Louisiana purchasing 6,500 map turtles, and an unknown number of farms within the State that purchased new stock of ''fewer than 1,200'' turtles.

Response: The Service's analysis of export data from 1996 to 2000 confirms that many of the alligator snapping turtles and map turtles exported from the United States were declared as captive-bred animals. However, a portion of each year's exports is declared as wild, and as stated previously, not all trade is being recorded under the wildlife declaration program. An Appendix-III listing will help quantify the actual trade of wild and captive-bred specimens.

Required Determinations

The Office of Management and Budget has not reviewed this document under Executive Order 12866.

The Department of the Interior certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 60 *et seq.*). This final rule establishes the means to monitor international trade in several native U.S. species and does not impose any new or changed restriction on the trade of legally acquired specimens. This final rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. 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.

This final rule does not impose an unfunded mandate or have a significant or unique effect on State, local, or Tribal governments, or the private sector under the Unfunded Mandates Reform Act (2 U.S.C. 501 *et seq.*) because we, as the lead agency for CITES implementation in the United States, are responsible for the authorization of shipments of live wildlife, or their parts or products, that are subject to the requirements of CITES.

Under Executive Order 12630, this final rule does not have significant takings implications since there are no changes in what may be exported. The permit requirement will not alter the current criteria for exports of these specimens.

Under Executive Order 13132, this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment because it will not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Although this final rule will generate information that will be beneficial to State wildlife agencies, it is not anticipated that any State monitoring or control programs will need to be developed to fulfill the purpose of this final rule. We have consulted the States, through the IAFWA, on this final rule. Under Executive Order 12988, the Office of the Solicitor has determined that this final rule does not unduly burden the judicial system and meets the requirements of Sections 3(a) and 3(b)(2) of the Order.

The information collections referenced in this final rule are already approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. They have been assigned control numbers 1018–0093 (for CITES export permits and CITES re-export certificates) and 1018–0012 (for Form 3–177). Implementing regulations for the CITES documentation appear at 50 CFR 23. We 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.

This final rule does not constitute a major Federal action significantly affecting the quality of the human environment. The action is categorically excluded under 516 DM 2, Appendix 1.10 in the Departmental Manual. Therefore, a detailed statement under the National Environmental Policy Act of 1969 is not required.

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Author

This final rule was prepared by Marie T. Maltese, Division of Scientific Authority, under authority of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 23

Endangered and threatened species, Exports, Fish, Imports, Plants, Reporting and record keeping requirements, Treaties.

Regulation Promulgation

■ For the reasons set forth in the preamble, the Service amends title 50, chapter I, subchapter B, part 23 of the Code of Federal Regulations as follows:

PART 23—ENDANGERED SPECIES CONVENTION

■ 1. The authority citation for part 23 continues to read as follows:

Authority: Convention on International Trade in Endangered Species of Wild Fauna and Flora, 27 U.S.T. 1087; and Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

■ 2. In § 23.23, amend the table in paragraph (f) to add the new entries set forth below:

§ 23.23 Species listed in Appendices I, II, and III.

(f) * * *

Species	Common name	Appendix	First listing date (month/day/year)
* * * *	* * *	*	
CLASS REPTILIA:	REPTILES:		
* * * *	* * *	*	
Order Testudinata:			
* * * *	* * *	*	
Graptemys spp.	Map turtles	III	(6/14/06)
* * * *	* * *	*	
Macroclemys (=Macrochelys) temminckii	Alligator snapping turtle	III	(6/14/06)

Dated: July 13, 2005.

Marshall P. Jones, Jr.

Director, Fish and Wildlife Service

Editorial Note: This document was received in the Office of the Federal Regiser on December 12, 2005.

[FR Doc. 05–24099 Filed 12–15–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 121205F]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; inseason retention limit adjustment.

SUMMARY: NMFS has determined that the Atlantic bluefin tuna (BFT) General category daily retention limit for three of the previously designated restricted fishing days (RFD) for December should be adjusted. These General category RFDs are being waived to provide reasonable opportunity for utilization of the coastwide General category BFT quota. Therefore, NMFS waives three RFDs in December and increases the daily retention limit from zero to two large medium or giant BFT on these previously designated RFDs.

DATES: Effective dates for BFT daily retention limits are provided in Table 1 under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Regulations implemented under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. The 2005 BFT fishing year began on June 1, 2005, and ends May 31, 2006. The final initial 2005 BFT specifications and General category effort controls (June 7, 2005; 70 FR 33033) established the following RFD schedule for the 2005 fishing year: All Fridays, Saturdays, and Sundays from November 18, 2005, through January 31, 2006, and Thursday, November 24, 2005, inclusive, provided quota remained available and the fishery was open. RFDs are intended to extend the General category BFT fishery late into the season and provide for a winter fishery in the southern Atlantic region.

TABLE 1. EFFECTIVE DATES FOR RETENTION LIMIT ADJUSTMENTS

Permit Category	Effective Dates	Area	BFT Size Class Limit
Atlantic tunas General and HMS Charter/ Headboat (while fishing commercially)	December 16 through 18, 2005, inclusive.	All	Two BFT per vessel per day/trip, measuring 73 inches (185 cm) CFL or larger.

Adjustment of General Category Daily Retention Limits

Under 50 CFR 635.23(a)(4), NMFS may increase or decrease the General category daily retention limit of large medium and giant BFT over a range from zero (on RFDs) to a maximum of three per vessel to allow for maximum utilization of the quota for BFT. NMFS has taken multiple actions during the 2005 fishing year in an attempt to allow for maximum utilization of the General category BFT quota. On September 28, 2005 (70 FR 56595), NMFS adjusted the commercial daily BFT retention limit (on non-RFDs), in all areas, for those vessels fishing under the General category quota, to two large medium or giant BFT, measuring 73 inches (185 cm) or greater curved fork length (CFL), per vessel per day/trip, effective through January 31, 2006, inclusive, provided quota remained available and the fishery remained open. On November 9, 2005 (70 FR 67929), NMFS waived the previously designated RFDs for the month of November and adjusted the daily retention limit on those RFDs to two large medium or giant BFT.

On December 7, 2005 (70 FR 72724), NMFS adjusted the General category quota by conducting a 200 mt inseason quota transfer to the Reserve category, resulting in an adjusted General category quota of 708.3 mt. This action was taken to account for any potential overharvests that may occur in the Angling category during the 2005 fishing year (June 1, 2005 through May 31, 2006) and to ensure that U.S. BFT harvest is consistent with international and domestic mandates.

Based on a review of dealer reports, daily landing trends, available quota, weather conditions, and the availability of BFT on the fishing grounds, NMFS has determined that waiving three RFDs

established for the month of December and increasing the General category daily BFT retention limit on those RFDs is warranted. Therefore, NMFS adjusts the General category daily BFT retention limits for December 16, 17, and 18, 2005, to two large medium or giant BFT per vessel. NMFS has selected these days to give enough advance notice to fishery participants and to assist the fishery access the available quota.

NMFS recognizes that catch rates have continued to be low so far this season however, they may increase rapidly, and to ensure equitable fishing opportunities in all areas and provide opportunities for a late winter General category BFT fishery, NMFS needs to carefully monitor and manage this fishery. Conversely, if catch rates continue to be low, some or all of the remaining previously scheduled RFDs may be waived as well.

The intent of this current adjustment is to provide reasonable opportunity to utilize landings quota of BFT while maintaining an equitable distribution of fishing opportunities to help achieve optimum yield in the General category BFT fishery, to collect a broad range of data for stock monitoring purposes, and to be consistent with the objectives of the HMS FMP.

Monitoring and Reporting

NMFS selected the RFDs being waived after examining current fishing year catch and effort rates, previous fishing years catch and effort rates, predicted weather patterns over the next week, and the available quota for the 2005 fishing year. NMFS will continue to monitor the BFT fishery closely through dealer landing reports. Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional retention limit adjustments are necessary to ensure available quota is not exceeded or, to enhance scientific data collection from, and fishing opportunities in, all geographic areas.

Closures or subsequent adjustments to the daily retention limits, if any, will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (888) 872–8862 or (978) 281–9260, or access the Internet at www.nmfspermits.com for updates on quota monitoring and retention limit adjustments.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for, public comment on this action.

NMFS has recently become aware of increased availability of large medium and giant BFT on the fishing grounds. This increase in abundance provides the potential for the fishery to increase General category landings rates if participants are authorized to harvest two large medium or giant BFT per day on previously designated RFDs. The regulations implementing the 1999 Fishery Management Plan (FMP) for Atlantic Tunas, Swordfish, and Sharks provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Based on a review of recent information regarding the availability of BFT on the fishing grounds, dealer reports, daily landing trends, available quota, and weather conditions, NMFS has determined that this retention limit adjustment is warranted to increase access to available quota.

Delays in waiving the selected December RFDs, and thereby increasing the General category daily retention limit, would be contrary to the public interest. Such delays would adversely affect those General category vessels that would otherwise have an opportunity to harvest BFT on an RFD and would further exacerbate the problem of low catch rates. Limited opportunities to access the General category quota may have negative social and economic impacts to U.S. fishermen that depend on catching the available quota. For the General category, waiving of the selected December RFDs needs to be done as expeditiously as possible for the General category participants to be able to use the waived RFDs to take advantage of the adjusted retention limits and plan accordingly.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, and because this action relieves a restriction (i.e., waives a number of RFDs, thus increasing the opportunity to retain more fish), there is also good cause under 5 U.S.C. 553(d) to waive the 30–day delay in effectiveness.

This action is being taken under 50 CFR 635.23(a)(4) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: December 13, 2005.

Alan Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 05–24133 Filed 12–13–05; 10:57 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 70, No. 241
Friday, December 16, 2005

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.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1216

Testimony by MSPB Employees and Production of Official Records in Legal Proceedings

AGENCY: Merit Systems Protection Board.

ACTION: Proposed rule.

SUMMARY: The Merit Systems Protection Board seeks public comment on a proposed rule that would set out procedures that requesters would have to follow when making demands on or requests to an MSPB employee to produce official records or provide testimony relating to official information in connection with a legal proceeding in which the MSPB is not a party. The rule would establish procedures to respond to such demands and requests in an orderly and consistent manner. The proposed rule will promote uniformity in decisions, protect confidential information, provide guidance to requesters, and reduce the potential for both inappropriate disclosures of official information and wasteful allocation of agency resources.

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

ADDRESSES: Send or deliver comments to the Office of the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov.*

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

SUPPLEMENTARY INFORMATION:

Background

The MSPB occasionally receives subpoenas and requests for MSPB employees to provide evidence or testimony in litigation in which MSPB is not a party. Usually the subpoenas or requests for records are for the MSPB's records that are not available to the public under the Freedom of Information Act (FOIA). The MSPB may also receive a request for an MSPB employee to provide testimony relating to materials contained in the MSPB's official records or to provide testimony or information acquired by an MSPB employee during the performance of the MSPB employee's official duties.

Responding to such demands and requests may result in a significant disruption of an MSPB employee's work schedule and possibly involve the MSPB in issues unrelated to its responsibilities. In order to resolve these problems, many agencies have issued regulations, similar to the proposed regulation, governing the circumstances and manner in which an employee may respond to demands for testimony or for the production of documents. The United States Supreme Court upheld this type of regulation in *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

Briefly summarized, the proposed rule will prohibit disclosure of nonpublic official records or testimony by the MSPB's employees, as defined in Part 1216.103(e), unless there is compliance with the rule. The proposed rule sets out the information that requesters must provide and the factors that the MSPB will consider in making determinations in response to requests for testimony or the production of documents.

The charges for witnesses are the same as those provided in Federal courts; and the fees related to production of records are the same as those charged under FOIA. The charges for time spent by an employee to prepare for testimony and for searches, copying, and certification of records by the MSPB are authorized under 31 U.S.C. 9701, which permits an agency to charge for services or things of value that are provided by the agency.

This rule applies to a range of matters in any legal proceeding in which the MSPB is not a named party. It also applies to former and current MSPB employees (as well as to MSPB consultants and advisors). Former MSPB employees are prohibited from testifying about specific matters for which they had responsibility during their active employment unless permitted to testify as provided in the rule. They would not be prohibited from testifying about general matters unconnected with the specific MSPB matters for which they had responsibility.

This rule will ensure a more efficient use of the MSPB's resources, minimize the possibility of involving the MSPB in issues unrelated to its responsibilities, promote uniformity in responding to such subpoenas and like requests, and maintain the impartiality of the MSPB in matters that are in dispute between other parties. It will also serve the MSPB's interest in protecting sensitive, confidential, and privileged information and records that are generated in fulfillment of the MSPB's statutory responsibilities.

This rule is internal and procedural rather than substantive. It does not create a right to obtain official records or the official testimony of an MSPB employee nor does it create any additional right or privilege not already available to MSPB to deny any demand or request for testimony or documents. Failure to comply with the procedures set out in these regulations would be a basis for denying a demand or request submitted to the MSPB.

List of Subjects in 5 CFR Part 1216

Administrative practice and procedure.

For the reasons stated in the preamble, the Merit Systems Protection Board proposes to amend 5 CFR, chapter II as set forth below:

PART 1211—[RESERVED]

PART 1212—[RESERVED]

PART 1213—[RESERVED]

PART 1214—[RESERVED]

PART 1215—[RESERVED]

PART 1216—TESTIMONY BY MSPB EMPLOYEES RELATING TO OFFICIAL INFORMATION AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Subpart A—General Provisions

Sec.

1216.101 Scope and Purpose.
1216.102 Applicability.

1216.103 Definitions.

Subpart B—Demands or Requests for Testimony and Production of Documents

1216.201 General Prohibition.
1216.202 Factors the MSPB will consider.
1216.203 Filing requirements for litigants seeking documents or testimony.
1216.204 Service of requests or demands.
1216.205 Processing requests or demands.
1216.206 Final determinations.
1216.207 Restrictions that apply to testimony.
1216.208 Restrictions that apply to released records.
1216.209 Procedure when a decision is not made prior to the time a response is required.
1216.210 Procedure in the event of an adverse ruling.

Subpart C—Schedule of Fees

1216.301 Fees.

Subpart D—Penalties

1216.401 Penalties.

Authority: 5 U.S.C. § 1204(h); 31 U.S.C. § 9701.

Subpart A—General Provisions

§ 1216.101 Scope and Purpose.

(a) These regulations establish policy, assign responsibilities and prescribe procedures with respect to:

(1) the production or disclosure of official information or records by MSPB employees, advisors, and consultants; and

(2) the testimony of current and former MSPB employees, advisors, and consultants relating to official information, official duties, or the MSPB's records, in connection with federal or state litigation in which the MSPB is not a party.

(b) The MSPB intends these provisions to:

(1) Conserve the time of MSPB employees for conducting official business;

(2) Minimize the involvement of MSPB employees in issues unrelated to MSPB's mission;

(3) Maintain the impartiality of MSPB employees in disputes between private litigants; and

(4) Protect sensitive, confidential information and the deliberative processes of the MSPB.

(c) In providing for these requirements, the MSPB does not waive the sovereign immunity of the United States.

(d) This part provides guidance for the internal operations of MSPB. It does not create any right or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

§ 1216.102 Applicability.

This part applies to demands and requests to current and former employees, advisors, and consultants for factual or expert testimony relating to official information or official duties or for production of official records or information, in legal proceedings in which the MSPB is not a named party. This part does not apply to:

(a) Demands upon or requests for an MSPB employee to testify as to facts or events that are unrelated to his or her official duties or that are unrelated to the functions of the MSPB;

(b) Demands upon or requests for a former MSPB employee to testify as to matters in which the former employee was not directly or materially involved while at the MSPB;

(c) Requests for the release of records under the Freedom of Information Act, 5 U.S.C. 552, or the Privacy Act, 5 U.S.C. 552a; or

(d) Congressional demands and requests for testimony, records or information.

§ 1216.103 Definitions.

The following definitions apply to this part.

(a) *Demand* means an order, subpoena, or other command of a court or other competent authority for the production, disclosure, or release of records or for the appearance and testimony of an MSPB employee in a legal proceeding.

(b) *General Counsel* means the General Counsel of the MSPB or a person to whom the General Counsel has delegated authority under this part.

(c) *Legal proceeding* means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer or other body that conducts a legal or administrative proceeding. Legal proceeding includes all phases of litigation.

(d) *MSPB* means the Merit Systems Protection Board.

(e) *MSPB employee* or *employee* means:

(L) (i) Any current or former employee of the MSPB;

(ii) Any other individual hired through contractual agreement by or on behalf of the MSPB or who has performed or is performing services under such an agreement for the MSPB; and

(iii) Any individual who served or is serving in any consulting or advisory capacity to the MSPB, whether formal or informal.

(2) This definition does not include:

Persons who are no longer employed by the MSPB and who agree to testify about general matters, matters available to the public, or matters with which they had no specific involvement or responsibility during their employment with the MSPB.

(f) *Records or official records and information* means:

All information in the custody and control of the MSPB, relating to information in the custody and control of the MSPB, or acquired by an MSPB employee in the performance of his or her official duties or because of his or her official status, while the individual was employed by or on behalf of the MSPB.

(g) *Request* means any informal request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority

(h) *Testimony* means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, interviews, and statements made by an individual in connection with a legal proceeding.

Subpart B—Demands or Requests for Testimony and Production of Documents

§ 1216.201 General prohibition.

No employee may produce official records and information or provide any testimony relating to official information in response to a demand or request without the prior, written approval of the General Counsel.

§ 1216.202 Factors the MSPB will consider.

The General Counsel, in his or her sole discretion, may grant an employee permission to testify on matters relating to official information, or produce official records and information, in response to a demand or request. Among the relevant factors that the General Counsel may consider in making this decision are whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice;

(c) Allowing such testimony or production of records would assist or hinder the MSPB in performing its statutory duties;

(d) Allowing such testimony or production of records would be in the best interest of the MSPB or the United States;

(e) The records or testimony can be obtained from other sources;

(f) The demand or request is unduly burdensome or otherwise inappropriate

under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(g) Disclosure would violate a statute, Executive Order or regulation;

(h) Disclosure would reveal confidential, sensitive, or privileged information, trade secrets or similar, confidential or financial information, otherwise protected information, or information which would otherwise be inappropriate for release;

(i) Disclosure would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(j) Disclosure would result in the MSPB appearing to favor one litigant over another;

(k) Whether the request was served before the demand;

(l) A substantial Government interest is implicated;

(m) The demand or request is within the authority of the party making it; and

(n) The demand or request is sufficiently specific to be answered.

§ 1216.203 Filing requirements for litigants seeking documents or testimony.

A litigant must comply with the following requirements when filing a request for official records and information or testimony under Subpart 1216. A request should be filed before a demand.

(a) The request must be in writing and must be submitted to the Clerk of the Board who will immediately forward the request to the General Counsel.

(b) The written request must contain the following information:

(1) The caption of the legal proceeding, docket number, and name and address of the court or other authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement as to how the need for the information outweighs any need to maintain the confidentiality of the information and outweighs the burden on the MSPB to produce the records or provide testimony;

(5) A statement indicating that the information sought is not available from another source, from other persons or entities, or from the testimony of someone other than an MSPB employee, such as a retained expert;

(6) If testimony is requested, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requester and other parties will require for each MSPB employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) The MSPB reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 30 days before the date that records or testimony is required. Requests submitted in less than 30 days before records or testimony is required must be accompanied by a written explanation stating the reasons for the late request and the reasons for expedited processing.

(e) Failure to cooperate in good faith to enable the General Counsel to make an informed decision may serve as the basis for a determination not to comply with the request.

(f) The request should state that the requester will provide a copy of the MSPB employee's statement free of charge and that the requester will permit the MSPB to have a representative present during the employee's testimony.

§ 1216.204 Service of requests or demands.

Requests or demands for official records or information or testimony under this Subpart must be served on the Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419–0002 by mail, fax, or e-mail and clearly marked ''Part 1216 Request for Testimony or Official Records in Legal Proceedings.'' The request or demand will be immediately forwarded to the General Counsel for processing.

§ 1216.205 Processing requests or demands.

(a) After receiving service of a request or demand for testimony, the General Counsel will review the request and, in accordance with the provisions of this Subpart, determine whether, or under what conditions, to authorize the employee to testify on matters relating to official information and/or produce official records and information.

(b) Absent exigent circumstances, the MSPB will issue a determination within 30 days from the date the request is received.

(c) The General Counsel may grant a waiver of any procedure described by this Subpart where a waiver is considered necessary to promote a significant interest of the MSPB or the United States, or for other good cause.

(d) *Certification (authentication) of copies of records.* The MSPB may certify that records are true copies in order to facilitate their use as evidence. If a requester seeks certification, the requester must request certified copies from the MSPB at least 30 days before the date they will be needed. The request should be sent to the Clerk of the Board.

§ 1216.206 Final determination.

The General Counsel makes the final determination on demands or requests to employees for production of official records and information or testimony in litigation in which the MSPB is not a party. All final determinations are within the sole discretion of the General Counsel. The General Counsel will notify the requester and, when appropriate, the court or other competent authority of the final determination, the reasons for the grant or denial of the request, and any conditions that the General Counsel may impose on the release of records or information, or on the testimony of an MSPB employee. The General Counsel's decision exhausts administrative remedies for discovery of the information.

§ 1216.207 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on the testimony of MSPB employees including, for example:

(1) Limiting the areas of testimony;

(2) Requiring the requester and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;

(3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested. The General Counsel may also require a copy of the transcript of testimony at the requester's expense.

(b) The MSPB may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify pursuant to this part, an employee may testify as to facts within his or her personal

knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Disclose confidential or privileged information; or

(2) For a current MSPB employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of the MSPB unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to the MSPB's approval.

§ 1216.208 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure. The terms of the protective order or of a confidentiality agreement must be acceptable to the General Counsel. In cases where protective orders or confidentiality agreements have already been executed, the MSPB may condition the release of official records and information on an amendment to the existing protective order or confidentiality agreement.

(b) If the General Counsel so determines, original MSPB records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official MSPB records, nor may they be marked or altered. In lieu of the original records, certified copies may be presented for evidentiary purposes.

§ 1216.209 Procedure when a decision is not made prior to the time a response is required.

If a response to a demand or request is required before the General Counsel can make the determination referred to in § 1216.206, the General Counsel, when necessary, will provide the court or other competent authority with a copy of this part, inform the court or other competent authority that the request is being reviewed, provide an estimate as to when a decision will be made, and seek a stay of the demand or request pending a final determination.

§ 1216.210 Procedure in the event of an adverse ruling.

If the court or other competent authority fails to stay a demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951).

Subpart C—Schedule of Fees

§ 1216.301 Fees.

(a) *Generally.* The General Counsel may condition the production of records or appearance for testimony upon advance payment of a reasonable estimate of the costs to the MSPB.

(b) *Fees for records.* Fees for producing records will include fees for searching, reviewing, and duplicating records, costs of attorney time spent in reviewing the request, and expenses generated by materials and equipment used to search for, produce, and copy the responsive information. Costs for employee time will be calculated on the basis of the hourly pay of the employee (including all pay, allowances, and benefits). Fees for duplication will be the same as those charged by the MSPB in its Freedom of Information Act regulations at 5 CFR Part 1204.

(c) *Witness fees.* Fees for attendance by a witness will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based upon the rule of the Federal district court closest to the location where the witness will appear and on 28 U.S.C. 1821, as applicable. Such fees will include cost of time spent by the witness to prepare for testimony, in travel and for attendance in the legal proceeding, plus travel costs.

(d) *Payment of fees.* A requester must pay witness fees for current MSPB employees and any record certification fees by submitting to the Clerk of the Board a check or money order for the appropriate amount made payable to the Treasury of the United States. In the case of testimony of former MSPB employees, the requester must pay applicable fees directly to the former MSPB employee in accordance with 28 U.S.C. 1821 or other applicable statutes.

(e) *Waiver or reduction of fees.* The General Counsel, in his or her sole discretion, may, upon a showing of reasonable cause, waive or reduce any fees in connection with the testimony, production, or certification of records.

(f) *De minimis fees.* Fees will not be assessed if the total charge would be $10.00 or less.

Subpart D—Penalties

§ 1216.401 Penalties.

(a) An employee who discloses official records or information or gives testimony relating to official information, except as expressly authorized by the MSPB, or as ordered by a Federal court after the MSPB has had the opportunity to be heard, may face the penalties provided in 18 U.S.C. 641 and other applicable laws. Additionally, former MSPB employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current MSPB employee who testifies or produces official records and information in violation of this part shall be subject to disciplinary action.

Dated: December 12, 2005.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 05–24117 Filed 12–15–05; 8:45 am]

BILLING CODE 7400–01–P

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.

SUMMARY: This proposed rule would adopt new procedures to be used by the Commodity Credit Corporation (CCC) in the evaluation of bids in connection with the procurement of commodities for donation overseas. In general, CCC proposes to amend the existing regulations to provide for the simultaneous review of commodity and ocean freight offers when evaluating lowest-landed cost options in connection with the procurement of commodities. This proposed rule would enhance bidding opportunities for potential vendors while allowing CCC to more efficiently acquire commodities.

DATES: Comments on this proposed rule must be received on or before January 17, 2006 in order to be assured consideration. Comments on the information collections in this proposed rule must be received by February 14, 2006 in order to be assured consideration.

ADDRESSES: CCC invites interested persons to submit comments on this proposed rule and on the collection of information. 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 20250–0512.
- *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.

Comments on the information collection requirements of this rule must also be sent to the addresses listed in the Paperwork Reduction Act section of this Notice. Comments may be inspected in the Office of the Director, Commodity Procurement Policy & Analysis Division, Rm. 5755–S, 1400 Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Richard Chavez, phone: (202) 690–0194; E-Mail: *Richard.Chavez@USDA.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Kansas City Commodity Office (KCCO), within the Farm Service Agency, U.S. Department of Agriculture, procures agricultural commodities on behalf of CCC 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. Currently, KCCO follows a two-step ocean freight bid evaluation process in connection with the purchase of commodities for these programs. First, KCCO issues a public invitation soliciting bids for the sale of commodities and requests that ocean carriers provide indications of available freight rates to KCCO. These ''indications'' of rates are not offers to KCCO. In fact, KCCO does not contract for ocean transportation for the donated commodities. Ocean transportation contracting is done by the Cooperating Sponsors (grantee organizations or foreign governments receiving the commodities) or by USAID in the case of some Title II, P.L. 480 shipments.

At this point, KCCO evaluates commodity bids together with the freight rate indications to identify the combination which would most likely result in the lowest-landed cost, i.e., the lowest combined cost of commodities and freight to destination. CCC will purchase the commodities to be donated overseas on that basis. Lowest-landed cost is calculated on the basis of U.S.-flag rates for that quantity of the commodities being purchased that is determined necessary and practical to meet cargo preference requirements, i.e., the tonnage required to be shipped on U.S.-flag vessels. Although KCCO does not contract for freight, the freight costs are borne by the U.S. government from the same accounts as the commodity costs. Therefore, purchasing on the basis of lowest-landed cost will reduce outlays and maximize the use of funds.

KCCO's commodity purchase determines the point at which the commodity is delivered to the carriers. However, as stated above, the freight rates used for this lowest-landed cost evaluation were not firm, fixed offers. Therefore, a second step is currently necessary that involves the Cooperating Sponsors or USAID issuing invitations for firm freight offers. KCCO will notify the Cooperating Sponsors or USAID of the location of the commodity as determined in its commodity bid evaluation and the Cooperating Sponsors or USAID will issue ocean freight invitations that will lead to actual freight bookings by the Cooperating Sponsors or USAID on firm, fixed ocean rates.

This two-step process has been in place for many years and was designed at the time that processed commodities were shipped at ocean carrier tariff rates that could be readily identified. Now, as rates are ''submitted rates'' and not tied to tariffs the process is exceedingly cumbersome and time-consuming, typically requiring 80 man hours each month to analyze the first-step indications. Additionally, the process does not guarantee that commodities will be actually purchased and shipped on the basis of lowest-landed cost. One reason for this is that the Maritime Administration, within the Department of Transportation, prioritizes U.S.-flag ocean service for purposes of cargo preference and assigns a higher priority to service that uses only U.S.-flag vessels to the final discharge point. The current two-step process often results in commodities being purchased at locations based upon indications of service available from U.S.-flag carriers that have a lower priority. These port locations may not be cost-effective for the higher priority vessels, which can then ''trump,'' or displace, the rate of the lower priority vessels and secure the cargo at a substantially higher rate.

CCC proposes to add clarity to the commodity bid evaluation process by eliminating the two-step process. A major constraint to revising this two-step process has been that computer resources available to KCCO have been unable to analyze the large number of variables that comprise modern government commodity procurements and the complexities of cargo preference compliance. These include the many contract priorities that are mandated by law as well as the shear volume of possible commodity and freight cost variables that result from a national bidding system. KCCO is now in the process of updating its computer bid-evaluation systems that would be able to accommodate a more unified one-step bid evaluation. The procurement for commodities using firm, fixed ocean rates to determine lowest-landed cost would be the most efficient method of procurement. Under such a system, the cargo preference requirements would be determined initially and not subject to a change of carriers. This should reduce the ocean freight costs considerably because the tonnage would be consolidated by the carriers' bids and by allowing lowest-landed cost and cargo preference requirements to determine the U.S. delivery points. The delivery time from call forward issuance to delivery abroad could be reduced because the current freight evaluation process would be streamlined.

The new procedures would apply to processed and bulk commodities and cover the assistance programs identified above. Under the proposed system, KCCO would issue invitations for commodity bids and Cooperating Sponsors or USAID would issue separate invitations for freight offers at approximately the same time. Freight invitations may call for bids to be submitted to the donee organizations or USAID via an Internet-based bid entry system maintained by CCC approximately 3 days prior to the time for receipt of commodity bids. Such a process would speed data input and evaluation as compared to the transmittal of written offers. Offers of commodities and freight would be invited on a ''bid-point'' basis, *i.e.*, a point where the transfer of care and custody of the commodity from the vendor to the ocean carrier takes place. This point of transfer may include one or more terminals included under the specific bid point designation. CCC

believes this specificity is desirable because a more general offer that designates a port area can have additional transfer costs once a specific terminal is named. CCC should be able to identify these extra costs at the time the bids are evaluated as it may impact on true lowest-landed cost calculations. The submitted freight offers will be reviewed by the donee organization, AID, and/or USDA prior to bid evaluation in order to determine the availability of service for commodities and destinations. Furthermore, this proposed bid evaluation process will be more efficient because ocean carriers are expected to offer quantity increments that are the most economical for them.

After commodity offers are received, KCCO would evaluate the offers on the basis of lowest-landed cost by a comparison with offered freight rates. KCCO would award the commodity bid on that basis and notify the Cooperating Sponsor of the bid accepted. The Cooperating Sponsor would be required to book freight at the rate KCCO used for the lowest-landed cost determination, or a lower rate, except in circumstances where, in the opinion of the Contracting Officer and the applicable program agency's representative, extenuating circumstances (such as internal strife at the foreign destination or urgent humanitarian conditions threatening the lives of persons at the foreign destination) preclude such awards, or efficiencies and cost-savings lead to the use of different types of ocean services such as multi-trip voyage charters, indefinite delivery/indefinite quantity (IDIQ), delivery Cost and Freight (C & F), delivery Cost Insurance and Freight (C I F), and indexed ocean freight costs.

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. This rule has been determined to be not significant and, therefore, it has not been reviewed by the Office of Management and Budget.

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

Title: Procurement of Processed Agricultural Commodities for Donation.

OMB Control Number: 0560–NEW.

Type of Request: New Information Collection Package.

Abstract: The information collected under OMB Control Number 0560–NEW is needed in the evaluation of bids in connection with the procurement of commodities for donation overseas. This information is submitted by steamship lines, or their respective agents, and collected by the Kansas City Commodity Office (KCCO). This reporting requirement imposed on the public by the regulations at 7 CFR part 1496 is necessary to effectively administer the Title II, Pub. L. 480 program. This proposed rule will reduce information requirements which are imposed on the public by eliminating the need for steamship lines, or their respective agents, to provide indications of available freight rates to KCCO before submitting a final fixed ocean freight offer. The procurement of commodities using firm fixed ocean rates to determine the lowest-landed cost would be the most efficient method of procurement. The revisions to 7 CFR part 1496 proposed in this rule will adopt new procedures to be used by the Commodity Credit Corporation (CCC) in the evaluation of bids in connection with the procurement of commodities for donation overseas.

Estimate of Burden:

Respondents: Steamship Lines an/or their agents.

Estimated Number of Respondents: Approximately 15.

Estimated Number of Responses per Respondent: Approximately 8.

Estimated Total Annual Burden on Respondents: 15 hours.

Topics for comments include but are limited to the following: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimated burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding these issues should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 and to the Director, Commodity and Procurement Policy & Analysis Division, Farm Service Agency, United States Department of Agriculture (USDA), Rm. 5755–S, 1400 Independence Avenue, SW., Washington, DC 20250–0512.

Comments regarding paperwork burden will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

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 part 1496 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 set forth above:

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. The heading for part 1496 is revised to read as set forth above:

PART 1496—PROCUREMENT OF COMMODITIES FOR FOREIGN DONATION

3. Section 1496.1 is revised to read as follows:

§ 1496.1 General statement.

This subpart sets forth the policies, procedures and requirements governing the procurement of agricultural commodities by CCC to be donated for assistance overseas under title II of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480); the Food for Progress Act of 1985; the McGovern-Dole International Food for Education and Child Nutrition Program; and any other program under which CCC is authorized to provide agriculture commodities for assistance overseas.

4. In § 1496.2, paragraph (a) is amended by removing the last sentence and paragraph (b) is revised to read as follows:

§ 1496.2 Administration.

* * * * *

(b) Purchases are made to fulfill commodity requests received from AID in the administration of Public Law 480 and from a grantee organization receiving commodities under the other authorities set forth in § 1496.1 of this part.

5. In § 1496.4, the first sentence is revised to read as follows:

§ 1496.4 Issuance of invitations.

From time to time, CCC will issue invitations to purchase or process agricultural products for utilization in the foreign assistance programs enumerated in § 1496.1 of this part.

* * *

6. In § 1496.5, paragraph (b) is revised, paragraph (c) is removed and reserved, and paragraph (d) is revised as follows:

§ 1496.5 Consideration of bids.

* * * * *

(b) Availability of ocean service.

(1) In determining lowest-landed cost as specified in paragraph (a) of this section, CCC will use vessel rates offered in response to invitations issued by AID or grantee organizations receiving commodities under the authorities set forth in section 1496.1 of this part. If CCC or AID, in the case of title II, Public Law 480, determines that it is not practicable to evaluate lowest-landed cost on the basis of a competitive ocean freight bid process, CCC may use other methods of soliciting freight rates that CCC or AID may approve for the foreign assistance programs that they respectively administer.

(2) In order to be considered in lowest-landed cost commodity bid evaluations, ocean freight rates must be submitted to grantee organizations or AID in response to an invitation for bids issued by grantee organizations or AID. All such freight invitations for bids must:

(i) Specify a closing time for the receipt of offers and state that late offers will not be considered;

(ii) Provide that offers are required to have a canceling date no later than the last contract lay day specified in the invitation for bids;

(iii) Provide the same deadline for receipt of offers from both U.S. flag vessel and non-U.S. flag vessels; and

(iv) Must be received and opened prior to receipt of offers for the sale of commodities to CCC. The extent to which offered rates may be made public will depend upon regulations or guidelines applicable to the specific foreign assistance program involved.

(3) CCC may require donee organizations or USAID to specify in their freight invitations that the ocean carriers submit bids electronically through a web based system maintained by CCC. In the event of any discrepancy between information furnished to CCC electronically and the written offers submitted to grantee organizations or AID, the offers submitted to the grantee organization or AID will prevail. Copies of all written freight offers received in response to invitations for bids must be promptly furnished to CCC and CCC may require the grantee organization or it shipping agent to submit a written certification that all non-electronic offers received were transmitted to CCC.

(c) [Reserved]

(d) Port performance.

(1) CCC may contact any port prior to bid evaluation to determine the port's cargo handling capabilities including the adequacy of the port to receive, accumulate, handle, store, and protect the cargo. Factors which will be considered in this determination will include, but not be limited to, the adequacy of building structures, proper ventilation, freedom from insects and rodents, cleanliness, and overall good housekeeping and warehousing practices. CCC will require that capacity information be submitted electronically by the port and or the terminal prior to bid evaluation.

(2) If CCC determines that: A port is congested; facilities are overloaded; a vessel would not be able to dock and load cargo without delay; labor disputes or lack of labor may prohibit the loading of the cargo onboard a vessel in a timely manner; or other similar situation exists that may adversely affect the ability of CCC to have the commodity delivered in a timely manner, CCC may consider the use of another coastal range or port. In considering another combination of commodity offers and vessel rate offers, CCC will adhere as closely as possible to the principal of lowest-landed cost.

* * * * *

7. Section 1496.7 is revised to read as follows:

§ 1496.7 Final contract determinations.

(a) *Commodity awards.* (1) Invitations for the procurement of commodities and the evaluation of bids submitted in response to such invitations shall be performed as provided in the Federal Acquisition Regulations (FAR) and Department of Agriculture's procurement regulations set forth in Title 48 of the Code of Federal Regulations (the AGAR).

(2) If more than one bid for the sale of commodities is received and more than one delivery point has been designated in such bids, in order to achieve a combination of a freight rate and commodity award that produces the lowest-landed cost for the delivery of the commodity to the foreign

destination, CCC may evaluate bids submitted for the sale of commodities on a delivery point by delivery point basis. In such cases, all bids submitted with respect to a specific delivery point will be evaluated under the provisions of the FAR, AGAR, and the solicitation, and CCC will determine the lowest bid for each delivery point.

(b) *Combination of bids.* CCC will determine which combination of commodity bids and bids for ocean freight rate 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 unless the Contracting Officer determines that extenuating circumstances preclude such awards, or efficiency and cost-savings justify use of a different type of ocean service. Examples of 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. 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 (C I F), 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.

(c) *Notification of awards.* (1) The party submitting the accepted commodity procurement bid will be notified of the acceptance of the bid by CCC.

(2) AID or the grantee organization, or its shipping agent, will be notified of the vessel freight rate used in determining the commodity contract award. The grantee organization or AID will be responsible for finalizing the charter or booking contract with the vessel representing the freight rate so used.

Signed at Washington, DC, on December 6, 2005.

Teresa C. Lasseter,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. E5–7460 Filed 12–15–05; 8:45 am]

BILLING CODE 3410–05–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

41 CFR Parts 51–2, 51–3, and 51–4

Nonprofit Agency Governance and Executive Compensation

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Advanced notice of proposed rulemaking: Request for comments and notice of public hearings.

SUMMARY: The Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) is considering revising its regulations regarding: The qualifications required of both central nonprofit agencies and nonprofit agencies to participate in the Javits-Wagner-O'Day (JWOD) Program, and the guidelines under which executive compensation will be considered as either influencing or not influencing a fair market price. The Committee wants to ensure that Federal customers continue to receive high value products and services from JWOD affiliated central nonprofit agencies and nonprofit agencies and believes that these two areas merit further review at this time.

Prior to initiating any formal rulemaking, the Committee is seeking further information and suggestions on: alternative approaches to determine that central nonprofit agencies and nonprofit agencies are initially qualified to participate in the JWOD Program and then qualified to continue to participate in the Program, and alternative approaches and mechanisms to assess that the fair market price set by the Committee and paid by Federal departments and agencies is not burdened inappropriately by excessive executive compensation costs.

DATES: The Committee will hold three public hearings. Hearings will be held on Thursday, January 12, 2006, in Arlington, VA; Thursday, January 19, 2006, in Dallas, TX; and Thursday, January 26, 2006, in San Francisco, CA. Written comments from those that do not attend the hearings are also welcomed and must be received by January 31, 2006. The Committee will not consider comments pertaining to these hearings that are received after January 31, 2006.

ADDRESSES: The specific locations and times where the hearings will be held are:

1. Thursday, January 12, 2006, from 2 p.m. to 5 p.m., Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.
2. Thursday, January 19, 2006 from 10 a.m. to 1 p.m., Red River Conference Room (7th Floor, Room 752). Earl Cabell Federal Office Building, 1100 Commerce Street, Dallas, TX 75242.
3. Thursday, January 26, 2006, from 10 a.m. to 1 p.m., California/Nevada Room, Phillip Burton Federal Building, 450 Golden Gate Avenue, San Francisco, CA 94102.

The Committee office is located at Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, VA 22202–3259.

FOR FURTHER INFORMATION CONTACT: For information about the hearings, submitting requests to testify, or submitting written comments contact Stephanie Hillmon, Assistant General Counsel, by telephone (703) 603–7740; by facsimile at (703) 603–0030; by e-mail at *RulesComment@jwod.gov;* and by mail at the Committee for Purchase From People Who Are Blind or Severely Disabled, 1421 Jefferson Davis Hwy., Suite 10800, Arlington, VA 22202–3259. Office hours are between 7:30 a.m. and 5 p.m., eastern standard time, Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION: Pursuant to its statutory authority to determine suitability and the fair market price, the Committee plans to issue regulations that ensure that only qualified central nonprofit agencies and nonprofit agencies participate in the JWOD Program and that the fair market price charged to Federal customers is both reasonable and appropriate.

Public Hearings:

Requests to testify must be received at the Committee office at least one week prior to the hearing date. Requests to testify should also indicate which hearing will be attended. Persons interested in providing oral testimony are encouraged, but not required, to submit written comments a week in advance of the hearings and testimony will be limited to the matters contained in this notice. The Committee staff will moderate the hearings. In the event that more people ask to testify than can be accommodated in the time allowed, the Committee will hear testimony from a cross-section of those wishing to testify, as determined by the Committee staff. Only one person from a particular organization may testify. Oral testimony shall not exceed 5 minutes.

The public hearings and comment period are for the purpose of gathering information about implementing better mechanisms to ensure that only qualified central nonprofit agencies and nonprofit agencies participate in the JWOD Program and that the fair market

price established by the Committee is not affected by inappropriate executive compensation costs. The Committee plans to develop regulations that will achieve these objectives. The hearings are not intended as a forum for presentation or discussion of other issues to include the Committee's authority, redundancy, and similar issues. Testimony will only be heard and comments will only be considered that address the questions listed in this notice. In preparing testimony or written comments, the public is asked to address the questions presented below:

Background Information

The Committee administers the JWOD Act, which leverages the Federal procurement system to provide employment for over 45,000 persons who are blind or have other severe disabilities. In Fiscal Year 2004, Federal customers purchased over $2 billion of goods and services from about 650 participating nonprofit agencies nationwide. The Committee anticipates additional growth in both the numbers of people employed through the program and in the dollar value of Federal funds used to purchase goods and services. The Committee strongly believes that accountability, stewardship, and value form the foundation for maintaining and growing employment opportunities for people who are blind or have other severe disabilities. With the increasing size, scope, and complexity of the JWOD Program, the Committee believes it is appropriate to review its regulations and policies to insure proper accountability standards, provide effective stewardship, and demonstrate a strong value proposition for Federal customers.

As established in 41 U.S.C. 47(a)(2), the Committee determines the suitability of products and services which, if added to the Committee's Procurement List, must be purchased by Federal departments and agencies requiring those items or services. Under the Committee's regulations, 41 CFR 51–2.4(a), there are currently four criteria used to assess the suitability of a proposed product or service: (1) The potential for employing people who are blind or severely disabled; (2) the qualifications of the nonprofit agency; (3) the capability of the nonprofit agency to meet Government quality standards and delivery times; (4) and the level of impact on the current or most recent contractor if the product or service were to be added to the Procurement List. The Committee has statutory authority to determine which central nonprofit agencies and nonprofit agencies are qualified to participate in the JWOD Program. The Committee is considering revising its regulations concerning the qualifications required of both designated central nonprofit agencies and all other nonprofit agencies to participate in the JWOD Program. The Committee is interested in identifying and applying qualification standards through which central nonprofit agencies and participating nonprofit agencies would demonstrate good governance practices and therefore be qualified to participate in the Program.

If a proposed product or service is determined to be suitable, the Committee has the sole responsibility under the JWOD Act to set the fair market price to be paid by the Government customer. The Committee is also seeking information on suggested criteria to identify and evaluate the impact of executive compensation costs on any proposed or recommended fair market price.

Qualified Agencies Have Good Governance Practices

There are a number of criteria and tests that are widely considered as benchmarks of good nonprofit agency governance practices. The Committee believes the following to be representative of such ''best practices'' but not all-inclusive:

(1) The board of directors (the board) should be composed of individuals who are personally committed to the mission of the organization and possess the specific skills needed to accomplish the mission.

(2) Where an employee of the organization is a voting member of the board, the circumstances must insure that the employee will not be in a position to exercise ''undue influence.''

(3) The board should have no fewer than five unrelated directors. Seven or more directors are preferable. The board chairperson should not also be serving as the nonprofit agency's CEO/President.

(4) The organization's bylaws should set forth term limits for the service of board members.

(5) Board membership should reflect the diversity of the communities served by the organization.

(6) Board members should serve without compensation for their service as board members. Board members may be reimbursed only for expenses directly related to carrying out their board service.

(7) The full board or some designated committee of the board should hire the executive director, set the executive's compensation, and evaluate the director's performance at least annually. In cases where a designated committee performs this responsibility, details should be reported to the full board.

(8) The board should periodically review the appropriateness of the overall compensation structure of the organization.

(9) The full board should approve the findings of the organization's annual audit and ''management letter'' and approve a plan to implement the recommendations of the management letter.

(10) Nonprofits should have a written conflict of interest policy. The policy should be applicable to board members and staff, who have significant independent decision-making authority regarding the resources of the organization. The policy should identify the types of conduct or transactions that raise conflict of interest concerns, should set forth procedures for disclosure of actual or potential conflicts, and should provide for review of individual transactions by the uninvolved members of the board of directors.

(11) The accuracy of the agency's financial reports should be subject to audit by a Certified Public Accountant. The board of directors should have at least one ''financial expert'' serving;

(12) Nonprofit agencies should periodically conduct an internal review of the organization's compliance with existing statutory, regulatory and financial reporting requirements and should provide a summary of the results of the review to members of the board of directors.

(13) Nonprofit agencies should prepare, and make available annually to the public, information about the organization's mission, program activities, and basic audited (if applicable) financial data. The report should also identify the names of the organization's board of directors and executive management staff.

(14) Executive compensation paid to the Chief Executive Officer (CEO)/President and ''highly compensated individuals'' must be monitored by the board of directors. The full board should approve all compensation packages for the CEO/President and all highly compensated employees through a ''rebuttable presumption'' process to determine reasonableness.

The Committee is seeking further information and perspective in the following areas related to governance practices:

(1) Are these criteria comprehensive and inclusive enough to effectively evaluate that a nonprofit agency demonstrates good governance practices

and should be deemed qualified to participate in the JWOD Program?

(2) Are there additional criteria that should be used, or substituted for the above, to evaluate evidence of good governance practices by nonprofit agencies in the Program?

(3) Should accreditation by one or more state or national organizations be recognized as evidence of a nonprofit agency adhering to good governance practices without further review by the Committee?

(4) Should different benchmarks be used for nonprofit agencies that are state, county, or local government agencies, or should they be exempt from any Committee regulations in this area?

(5) Should the size and/or the annual revenue of the nonprofit agency be a factor or factors in assessing appropriate governance practices?

(6) What is the best way to ensure that only qualified central nonprofit agencies and nonprofit agencies, with an internal structure that minimizes opportunities for impropriety, participate in the JWOD Program?

(7) What if any enforcement mechanisms should be adopted to ensure only the qualified central nonprofit agencies and nonprofit agencies participate in the JWOD Program?

(8) What steps will the nonprofit agencies and central nonprofit agencies need to take to avoid conflicts of interest among its board members?

(9) What steps will the nonprofit agencies and central nonprofit agencies have to take to demonstrate financial responsibility?

Effect of Executive Compensation on Fair Market Price Determinations

Board involvement in setting the compensation of the CEO/President and other highly compensated employees is one of the benchmarks of effective nonprofit governance practices. In furtherance of assessing information used to set the initial fair market price for products and services added to the Procurement List, and then periodic adjustments to the price thereafter, the Committee is seeking information on the following:

(1) What is the threshold beyond which the compensation paid to the executives in a JWOD-participating nonprofit agency should be considered as influencing a proposed fair market price determination? For example, if the agency receives more than a certain percentage of its total revenue from sales through the JWOD Program, is there a compensation level (total dollars paid or total dollars paid as a percentage of total revenue) at and above which fair market price impact would be deemed to occur?

(2) Conversely, is there a point below which executive compensation, regardless of the dollar amount paid, would not be considered as influencing a recommended fair market price? Is such a *de minimis* test appropriate for large diversified nonprofits where total JWOD sales represent only a small percentage of total revenue?

(3) Without regard to any analysis of JWOD-related revenue, is there an established benchmark or absolute dollar threshold above which compensation would be deemed as influencing a proposed fair market price?

(4) Should receipt of documentation to support a ''rebuttable presumption of reasonableness'' serve to demonstrate that executive compensation does not by itself influence a proposed fair market price or any adjustment thereto?

(5) To what extent should there be a relationship between the pay and compensation of line workers and highly compensated individuals?

(6) At what point would be appropriate to begin a review of an executive compensation package even if the proposed price for a product or service would fall within a range that it could be considered as a fair market price?

(7) What approaches are available to identity and monitor nonprofit agencies executive compensation that would provide such information to the Committee routinely but without placing an undue burden on agencies?

Definitions of Terms in Quotation Marks Above

(1) A ''financial expert'' is a director that must understand GAAP and financial statements, have the ability to assess the general application of such principles in connection with the accounting for estimates, accruals and reserves, have experience preparing, auditing, analyzing or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the registrant's financial statements, or experience actively supervising one or more persons engaged in such activities, have an understanding of internal controls and the procedures for financial reporting, and have an understanding of audit committee functions.

(2) A ''rebuttable presumption of reasonableness'' requires the maintaining a board of independent members, requires the Board of Directors to approve compensation arrangements for highly paid executives and individuals using independent comparative salary data gathered from similar organizations for similar executive positions, and documents all data used in decision making for compensation packages including all annual compensation, incentive compensation plans, long-term incentive plans, supplemental retirement plans, wrap-around Section 401K plans, deferred compensation arrangements and benefits.

(3) A ''highly compensated individual'' is an individual:

(i) With a year's compensation in excess of $90,000.00; or

(ii) Who had compensation within the previous year which was in excess of $90,000.00; or

(iii) At the election of the employer had compensation in excess of $90,000.00 and was in the top 20 percent of employees by compensation for any year.

(4) ''Undue influence'' is prohibited and occurs when an officer, director, or employee of the agency directly or indirectly takes any action to coerce, manipulate, mislead, or fraudulently influence the agencies' audit committee, Directors, CEO/President or any individual that has authority or power to influence the preceding persons.

(5) A ''management letter'' is a technical letter, which is prepared by an auditor or audit committee.

Patrick Rowe,

Deputy Executive Director, Committee for Purchase From People Who Are Blind or Severely Disabled.

[FR Doc. E5–7439 Filed 12–15–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 051205324–5324–01; I.D. 112805B]

Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; 2006 and 2007 Proposed Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes 2006 and 2007 harvest specifications and prohibited species catch (PSC) allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to establish harvest limits for groundfish during the 2006 and 2007 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 17, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions at that site for submitting comments;
- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail to *2006AKgroundfish.tacspecs@noaa.gov* and include in the subject line the document identifier: 2006 Proposed Specifications (E-mail comments, with or without attachments, are limited to 5 megabytes); or
- Fax to 907–586–7557.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS at the addresses above or from the Alaska Region Web site at *http://www.fakr.noaa.gov.* Copies of the final 2004 Stock Assessment and Fishery Evaluation (SAFE) report for the groundfish resources of the BSAI, dated November 2004, are available from the North Pacific Fishery Management Council (Council), West 4th Avenue, Suite 306, Anchorage, AK 99510–2252, 907–271–2809, or from its Web site at *http://www.fakr.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228, or e-mail at *mary.furuness@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Federal regulations at 50 CFR part 679 implement the FMP and govern the groundfish fisheries in the BSAI. The Council prepared the FMP and NMFS approved it under the Magnuson-Stevens Act. General regulations governing U.S. fisheries also appear at 50 CFR part 600.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify annually the total allowable catch (TAC) for each target species and the ''other species'' category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (see § 679.20(a)(1)(i)). Regulations at § 679.20(c)(1) further require NMFS to publish proposed harvest specifications in the **Federal Register** and solicit public comment on proposed annual TACs and apportionments thereof, PSC allowances and prohibited species quota (PSQ) reserves established by § 679.21, seasonal allowances of pollock, Pacific cod and Atka mackerel TAC, including pollock Community Development Quota (CDQ), and CDQ reserve amounts established by § 679.20(b)(1)(iii). The proposed harvest specifications set forth in Tables 1 through 13 of this action satisfy these requirements.

Under § 679.20(c)(3), NMFS will publish the final harvest specifications for 2006 and 2007 after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2005 meeting, and (3) considering new information presented in the EA and the final 2005 SAFE reports prepared for the 2006 and 2007 groundfish fisheries.

Other Rules Affecting the 2006 and 2007 Harvest Specifications

When possible, this proposed rule identifies proposals that are under consideration by the Council that, if approved by the Secretary of Commerce (Secretary), could change the final harvest specifications. The 2006 harvest specifications will be updated in early 2006, when final harvest specifications for 2006 and new harvest specifications for 2007 are implemented.

The Council is reviewing Amendment 85, which may revise the BSAI Pacific cod sector allocation and apportion the Pacific cod acceptable biological catch (ABC) or TAC by Bering Sea subarea and Aleutian Islands (AI) subarea separately instead of by the entire BSAI management area. The Council is also reviewing Amendment 84, which may modify current regulations for managing incidental catch of chinook and chum salmon. The Council may consider separating some rockfish species from the ''other rockfish'' species category so individual overfishing levels (OFLs), ABCs, and TACs may be established for some rockfish species. The Council may pursue a change to the start date for the BSAI pollock ''A'' season fishery. An earlier start date would allow the fleet more flexibility to harvest pollock when roe content is optimal.

Proposed ABC and TAC Harvest Specifications

The proposed ABC levels are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass. In general, the development of ABCs and OFLs involves sophisticated statistical analyses of fish populations and is based on a successive series of six levels, or tiers, of reliable information available to fishery scientists. Tier one represents the highest level of data quality available and tier six the lowest level of data quality available.

Appendix A to the final SAFE report for the 2005 BSAI groundfish fisheries dated November 2004 (see **ADDRESSES**) sets forth the best information currently available. Information on the status of stocks will be updated with the 2005 survey results and reconsidered by the Plan Team in November 2005 for the 2005 SAFE report. The 2006 and 2007 final harvest specifications will be based on the 2005 SAFE report.

In October 2005, the Scientific and Statistical Committee (SSC), Advisory Panel, and the Council reviewed the Plan Team's preliminary projections as the basis for the 2006 and 2007 proposed ABC, OFL, and TAC amounts. The SSC concurred in the Plan Team's recommendations which, for stocks in tiers 1–3, used 2005 estimated fishing mortality rates in stock projection models to estimate OFLs and ABCs for 2006. The estimated 2006 TACs were derived based on ABC constraints and past Council actions. The estimated 2006 TACs were treated as the projected 2006 fishing mortality rates to derive estimates of OFLs and ABCs for 2007. For stocks in tiers 4–6, for which there are no population projection models, the OFL and ABC amounts from 2005 were used for 2006 and 2007. The Council adopted the OFL and ABC amounts recommended by the SSC (Table 1). The Council recommended that the 2006 proposed TACs be set equal to the 2006 TACs the Council adopted and the Secretary approved in 2005 for the 2006 final specifications

(70 FR 8979, February 24, 2005). The Council recommended that the 2007 proposed TACs be set equal to the proposed ABCs, except for decreases for Aleutian Islands and Bogoslof pollock, arrowtooth flounder, Alaska plaice, and other species. The Council recommended using the 2005 and 2006 PSC allowances for the 2006 and 2007 proposed allowances. The Council will reconsider the OFL, ABC, TAC, and PSC amounts in December 2005 after the Plan Team incorporates new status of groundfish stocks information into a final 2005 SAFE report for the 2006 and 2007 BSAI groundfish fishery. None of the Council's recommended proposed TACs for 2006 or 2007 exceeds the recommended 2006 or 2007 proposed ABC for any species category. NMFS finds the Council's recommended proposed 2006 and 2007 OFLs, ABCs, and TACs are consistent with the best available information on the biological condition of the groundfish stocks.

Table 1 lists the 2006 and 2007 proposed OFL, ABC, and TAC, initial TAC (ITAC) and CDQ amounts for groundfish in the BSAI. The proposed apportionment of TAC amounts among fisheries and seasons is discussed below.

TABLE 1.—2006 AND 2007 PROPOSED OVERFISHING LEVEL (OFL), ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC), AND CDQ RESERVE ALLOCATION OF GROUNDFISH IN THE BSAI [1]

[Amounts are in metric tons]

Species	Area	2006					2007				
		OFL	ABC	TAC	ITAC [2]	CDQ [3]	OFL	ABC	TAC	ITAC [2]	CDQ [3]
Pollock [4]	BS [2]	1,966,100	1,636,800	1,487,756	1,338,980	148,776	1,487,100	1,223,200	1,223,200	1,100,880	122,320
	AI [2]	39,100	29,400	19,000	17,100	1,900	39,100	29,400	19,000	17,100	1,900
	Bogoslof	39,600	2,570	10	10	n/a	39,600	2,570	11	11	n/a
Pacific cod	BSAI	250,700	195,000	195,000	165,750	14,625	222,000	172,200	172,200	146,370	12,915
Sablefish [5]	BS	3,085	2,556	2,310	982	318	2,880	2,400	2,400	1,020	44490
	AI	3,315	2,744	2,480	527	419	3,120	2,600	2,600	553	49
Atka mackerel	BSAI	126,700	107,000	63,000	53,550	4,725	106,900	90,800	90,800	77,180	6,810
	WAI	n/a	40,230	20,000	17,000	1,500	n/a	28,825	28,825	24,501	2,162
	CAI	n/a	45,580	35,500	30,175	2,663	n/a	51,165	51,165	43,490	3,837
	EAI/BS	n/a	21,190	7,500	6,375	563	n/a	10,810	10,810	9,189	811
Yellowfin sole	BSAI	139,500	117,700	90,000	76,500	6,750	130,000	109,600	109,600	93,160	8,220
Rock sole	BSAI	145,100	121,700	42,000	35,700	3,150	138,400	116,100	116,100	98,685	8,708
Greenland turbot	BSAI	18,100	11,400	3,500	2,975	263	16,900	10,500	10,500	8,925	788
	BS	n/a	7,590	2,500	2,125	188	n/a	7,500	7,500	6,375	563
	AI	n/a	3,410	1,000	850	75	n/a	3,000	3,000	2,550	225
Arrowtooth flounder	BSAI	128,500	104,200	12,000	10,200	900	125,800	102,100	39,100	33,235	2,933
Flathead sole	BSAI	65,900	54,900	20,000	17,000	1,500	60,800	50,600	50,600	43,010	3,795
Other flatfish [6]	BSAI	28,500	21,400	3,000	2,550	225	28,500	21,400	21,400	18,190	1,605
Alaska plaice	BSAI	231,000	183,400	10,000	8,500	750	224,400	178,100	65,000	55,250	4,875
Pacific ocean perch	BSAI	17,600	14,900	12,600	10,710	945	17,900	15,100	15,100	12,835	1,133
	BS	n/a	3,000	1,400	1,190	105	n/a	1,678	1,678	1,426	126
	WAI	n/a	5,450	5,085	4,322	381	n/a	6,096	6,096	5,182	457
	CAI	n/a	3,252	3,035	2,580	228	n/a	3,637	3,637	3,091	273
	EAI	n/a	3,298	3,080	2,618	231	n/a	3,689	3,689	3,136	277
Northern rockfish	BSAI	9,800	8,200	5,000	4,250	375	9,700	8,200	8,200	6,970	615
Shortraker rockfish	BSAI	794	596	596	507	45	794	596	596	507	45
Rougheye rockfish	BSAI	298	223	223	190	17	298	223	223	190	17
Other rockfish [7]	BS	1,122	810	460	391	35	1,122	810	810	689	61
	AI	748	590	590	502	44	748	590	590	502	44
Squid	BSAI	2,620	1,970	1,275	1,084	n/a	2,620	1,970	1,970	1,675	n/a
Other species [8]	BSAI	87,920	57,870	29,200	24,820	2,190	87,920	57,870	50,000	42,500	3,750
Total		3,306,102	2,675,629	2,000,000	1,772,778	187,953	2,746,602	2,196,929	2,000,000	1,759,437	180,673

[1] These amounts apply to the entire BSAI management area unless otherwise specified. With the exception of pollock, and for the purpose of these harvest specifications, the Bering Sea (BS) subarea includes the Bogoslof District.

[2] Except for pollock and the portion of the sablefish TAC allocated to hook-and-line and pot gear, 15 percent of each TAC is put into a reserve. The ITAC for each species is the remainder of the TAC after the subtraction of these reserves.

[3] Except for pollock, squid and the hook-and-line or pot gear allocation of sablefish, one half of the amount of the TACs placed in reserve, or 7.5 percent of the TACs, is designated as a CDQ reserve for use by CDQ participants (see §§ 679.20(b)(1)(iii) and 679.31).

[4] Under § 679.20(a)(5)(i)(A)(*1*), the annual Bering Sea pollock TAC after subtraction for the CDQ directed fishing allowance—10 percent and the ICA—3.5 percent, is further allocated by sector for a directed pollock fishery as follows: inshore—50 percent; catcher/processor—40 percent; and motherships—10 percent. Under § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), the annual AI pollock TAC, after subtraction for the CDQ directed fishing allowance—10 percent and the ICA—1,800 mt, is allocated to the Aleut Corporation for a directed pollock fishery.

[5] The ITAC for sablefish reflected in Table 1 is for trawl gear only. Regulations at § 679.20(b)(1) do not provide for the establishment of an ITAC for the hook-and-line and pot gear allocation for sablefish. Twenty percent of the sablefish TAC allocated to hook-and-line gear or pot gear and 7.5 percent of the sablefish TAC allocated to trawl gear is reserved for use by CDQ participants (see § 679.20(b)(1)(iii)).

[6] "Other flatfish" includes all flatfish species, except for halibut (a prohibited species), flathead sole, Greenland turbot, rock sole, yellowfin sole, arrowtooth flounder and Alaska plaice.

[7] "Other rockfish" includes all *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, northern, shortraker, and rougheye rockfish.

[8] "Other species" includes sculpins, sharks, skates and octopus. Forage fish, as defined at § 679.2, are not included in the "other species" category.

Reserves and the Incidental Catch Allowance (ICA) for Pollock

Regulations at § 679.20(b)(1)(i) require placement of 15 percent of the TAC for each target species or species group, except for pollock and the hook-and-line and pot gear allocation of sablefish, in a non-specified reserve. Regulations at § 679.20(b)(1)(iii) further require the allocation of one half of each TAC amount that is placed in the non-specified reserve (7.5 percent), with the exception of squid, to the groundfish CDQ reserve, and the allocation of 20 percent of the hook-and-line and pot gear allocation of sablefish to the fixed gear sablefish CDQ reserve. Regulations at §§ 679.20(a)(5)(i)(A) and 679.31(a) also require the allocation of 10 percent of the BSAI pollock TACs to the pollock CDQ directed fishing allowance. The entire Bogoslof District pollock TAC is allocated as an ICA (see § 679.20(a)(5)(ii)). With the exception of the hook-and-line and pot gear sablefish CDQ reserve, the regulations do not further apportion the CDQ reserves by gear. Regulations at § 679.21(e)(1)(i) also require withholding of 7.5 percent of each PSC limit, with the exception of herring, as a PSQ reserve for the CDQ fisheries. Sections 679.30 and 679.31 set forth the regulations governing the management of the CDQ and PSQ reserves.

Under regulations at § 679.20(a)(5)(i)(A)(*1*), NMFS allocates a pollock ICA of 3.5 percent of the Bering Sea pollock TAC after subtraction of the 10 percent CDQ reserve. This allowance is based on NMFS' examination of the incidental catch of pollock in target fisheries other than pollock from 1999 through 2004. During this 6-year period, the incidental catch of pollock ranged from a low of 2 percent in 2003 to a high of 5 percent in 1999, with a 6-year average of 3.5 percent. Because these incidental percentages are contingent on the relative amounts of other groundfish TACs, NMFS will be better able to assess the ICA amount when the Council makes final ABC and TAC amount recommendations in December. Under regulations at § 679.20(a)(5)(iii)(B)(*2*)(*i*) and (*ii*), NMFS recommends setting a 1,800 mt ICA for AI subarea pollock after a subtraction of the 10 percent CDQ directed fishing allowance.

The regulations do not designate the remainder of the non-specified reserve by species or species group, and any amount of the reserve may be reapportioned to a target species or the ''other species'' category during the year, providing that such reapportionments do not result in overfishing (see § 679.20(b)(1)(ii)).

Allocations of Pollock TAC Under the American Fisheries Act (AFA)

Regulations at § 679.20(a)(5)(i)(A) require that the pollock TAC apportioned to the Bering Sea subarea, after subtraction of the 10 percent for the CDQ program and the 3.5 percent for the ICA, will be allocated as a directed fishing allowance (DFA) as follows: 50 percent to the inshore sector, 40 percent to the catcher/processor sector, and 10 percent to the mothership sector. In the Bering Sea subarea, the A season (January 20–June 10) is allocated 40 percent of the DFA and the B season (June 10–November 1) is allocated 60 percent of the DFA. The AI directed pollock fishery allocation to the Aleut Corporation equals the AI subarea pollock TAC after subtracting first the 10 percent for the CDQ DFA (1,900 mt) and second the ICA (1,800 mt). In the AI subarea, 40 percent of the ABC is allocated to the A season and the remainder of the directed pollock fishery is allocated to the B season. Table 2 lists these 2006 and 2007 proposed amounts.

The regulations also include several specific requirements regarding pollock and pollock allocations under § 679.20(a)(5)(i)(A)(*4*). First, 8.5 percent of the pollock allocated to the catcher/processor sector will be available for harvest by AFA catcher vessels with catcher/processor sector endorsements, unless the Regional Administrator receives a cooperative contract that provides for the distribution of harvest among AFA catcher/processors and AFA catcher vessels in a manner agreed to by all members. Second, AFA catcher/processors not listed in the AFA are limited to harvesting not more than 0.5 percent of the pollock allocated to the catcher/processor sector. Table 2 lists the 2006 and 2007 proposed allocations of pollock TAC. Tables 8 through 13 list other provisions of the AFA, including inshore pollock cooperative allocations and listed catcher/processor and catcher vessel harvesting sideboard limits.

Table 2 also lists seasonal apportionments of pollock and harvest limits within the Steller Sea Lion Conservation Area (SCA). The harvest within the SCA, as defined at § 679.22(a)(7)(vii), is limited to 28 percent of the DFA until April 1. The remaining 12 percent of the 40 percent of the annual DFA allocated to the A season may be taken outside the SCA before April 1 or inside the SCA after April 1. If the 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder will be available to be taken inside the SCA after April 1. The A season pollock SCA harvest limit will be apportioned to each sector in proportion to each sector's allocated percentage of the DFA. Table 2 lists by sector these 2006 and 2007 proposed amounts.

TABLE 2.—2006 AND 2007 PROPOSED ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]

[Amounts are in metric tons]

Area and sector	2006 allocations	2006 A season [1]		2006 B season [1]	2007 allocations	2007 A season [1]		2007 B season
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Bering Sea subarea	1,487,756	n/a	n/a	n/a	1,223,200	n/a	n/a	n/a
CDQ DFA	148,776	59,510	41,657	89,265	122,320	48,928	34,250	73,392
ICA[1]	46,864	n/a	n/a	n/a	38,531	n/a	n/a	n/a
AFA Inshore	646,058	258,423	180,896	387,635	531,175	212,470	148,729	318,705
AFA Catcher/Processors [3]	516,846	206,739	144,717	310,108	424,940	169,976	118,983	254,964
Catch by C/Ps	472,914	189,166	n/a	283,749	388,820	155,528	n/a	233,292
Catch by CVs [3]	43,932	17,573	n/a	26,359	36,120	14,448	n/a	21,672
Unlisted C/P Limit [4]	2,584	1,034	n/a	1,551	2,125	850	n/a	1,275
AFA Motherships	129,212	51,685	36,179	77,527	106,235	42,494	29,746	63,741
Excessive Harvesting Limit [5]	226,120	n/a	n/a	n/a	185,911	n/a	n/a	n/a

TABLE 2.—2006 AND 2007 PROPOSED ALLOCATIONS OF POLLOCK TACS TO THE DIRECTED POLLOCK FISHERIES AND TO THE CDQ DIRECTED FISHING ALLOWANCES (DFA)[1]—Continued

[Amounts are in metric tons]

Area and sector	2006 allocations	2006 A season [1]		2006 B season [1]	2007 allocations	2007 A season [1]		2007 B season
		A season DFA	SCA harvest limit [2]	B season DFA		A season DFA	SCA harvest limit [2]	B season DFA
Excessive Processing Limit [6]	387,635	n/a	n/a	n/a	318,705	n/a	n/a	n/a
Total Bering Sea DFA	1,487,756	576,357	403,450	864,535	1,223,200	473,868	331,707	710,802
Aleutian Islands subarea [1]	19,000	n/a	n/a	n/a	19,000	n/a	n/a	n/a
CDQ DFA	1,900	760	n/a	1,140	1,900	760	n/a	1,140
ICA	1,800	1,000	n/a	800	1,800	1,000	n/a	800
Aleut Corporation	15,300	10,000	n/a	5,300	15,300	10,000	n/a	5,300
Bogoslof District ICA [7]	10	n/a	n/a	n/a	11	n/a	n/a	n/a

[1] Under § 679.20(a)(5)(i)(A), the Bering Sea subarea pollock after subtraction for the CDQ DFA—10 percent and the ICA—3.5 percent, the pollock TAC is allocated as a DFA as follows: Inshore component—50 percent, catcher/processor component—40 percent, and mothership component—10 percent. In the Bering Sea subarea, the A season, January 20–June 10, is allocated 40 percent of the DFA and the B season, June 10–November 1 is allocated 60 percent of the DFA. The Aleutian Islands (AI) AI directed pollock fishery allocation to the Aleut Corporation remains after subtraction for the CDQ DFA—10 percent and the ICA—1,800 mt. In the AI subarea, the A season is allocated 40 percent of the ABC and the B season is allocated the remainder of the directed pollock fishery.

[2] In the Bering Sea subarea, no more than 28 percent of each sector's annual DFA may be taken from the SCA before April 1. The remaining 12 percent of the annual DFA allocated to the A season may be taken outside of SCA before April 1 or inside the SCA after April 1. If 28 percent of the annual DFA is not taken inside the SCA before April 1, the remainder is available to be taken inside the SCA after April 1.

[3] Under § 679.20(a)(5)(i)(A)(*4*), not less than 8.5 percent of the DFA allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

[4] Under § 679.20(a)(5)(i)(A)(*4*)(*iii*), the AFA unlisted catcher/processors are limited to harvesting not more than 0.5 percent of the catcher/processors sector's allocation of pollock.

[5] Under § 679.20(a)(5)(i)(A)(*6*) NMFS establishes an excessive harvesting share limit equal to 17.5 percent of the sum of the pollock DFAs.

[6] Under § 679.20(a)(5)(i)(A)(*7*) NMFS establishes an excessive processing share limit equal to 30.0 percent of the sum of the pollock DFAs.

[7] The Bogoslof District is closed by the proposed harvest specifications to directed fishing for pollock. The amounts specified are for ICA only, and are not apportioned by season or sector.

Allocation of the Atka Mackerel TAC

Under § 679.20(a)(8)(i), up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea Atka mackerel ITAC may be allocated to jig gear. The amount of this allocation is determined annually by the Council based on several criteria, including the anticipated harvest capacity of the jig gear fleet. The Council recommended and NMFS proposes that 1 percent of the Atka mackerel ITAC in the Eastern Aleutian District and the Bering Sea subarea be allocated to jig gear in 2006 and 2007. Based on the 2006 ITAC of 6,375 mt, the jig gear allocation is 64 mt for 2006. Based on the 2007 ITAC of 9,189 mt, the jig gear allocation is 92 mt for 2007.

Regulations at § 679.20(a)(8)(ii)(A) apportion the Atka mackerel ITAC into two equal seasonal allowances. After subtraction of the jig gear allocation, the first allowance is made available for directed fishing from January 1 (January 20 for trawl gear) to April 15 (A season), and the second seasonal allowance is made available from September 1 to November 1 (B season) (Table 3).

Under § 679.20(a)(8)(ii)(C)(*1*), the Regional Administrator establishes a harvest limit area (HLA) limit of no more than 60 percent of the seasonal TAC for the Western and Central Aleutian Districts. A lottery system is used for the HLA Atka mackerel directed fisheries to reduce the amount of daily catch in the HLA by about half and to disperse the fishery over two districts (see § 679.20(a)(8)(iii)).

TABLE 3.—2006 AND 2007 PROPOSED SEASONAL AND SPATIAL ALLOWANCES, GEAR SHARES, AND CDQ RESERVE OF THE BSAI ATKA MACKEREL TAC [1]

[Amounts are in metric tons]

Subarea and component	2006 TAC	2006 CDQ reserve	2006 CDQ reserve HLA limit [4]	2006 ITAC	2006 Seasonal allowances [2]			
					A season [3]		B season [3]	
					Total	HLA limit [4]	Total	HLA limit [4]
Western AI District	20,000	1,500	900	17,000	8,500	5,100	8,500	5,100
Central AI District	35,500	2,663	1,598	30,175	15,088	9,053	15,088	9,053
EAI/BS subarea [5]	7,500	563	n/a	6,375	n/a	n/a	n/a	n/a
Jig (1%) [6]	n/a	n/a	n/a	64	n/a	n/a	n/a	n/a
Other gear (99%)	n/a	n/a	n/a	6,311	3,156	n/a	3,156	n/a
Total	63,000	4,725	n/a	53,550	26,743	n/a	26,743	n/a

Subarea and component	2007 TAC	2007 CDQ reserve	2007 CDQ reserve HLA limit [4]	2007 ITAC	Seasonal allowances [2]			
					A season [3]		B season [3]	
					Total	HLA limit [4]	Total	HLA limit [4]
Western AI District	28,825	2,162	1,297	24,501	12,251	7,350	12,251	7,350
Central AI District	51,165	3,837	2,302	43,490	21,745	13,047	21,745	13,047
EAI/BS subarea [5]	10,810	811	n/a	9,189	n/a	n/a	n/a	n/a
Jig (1%) [6]	n/a	n/a	n/a	92	n/a	n/a	n/a	n/a
Other gear (99%)	n/a	n/a	n/a	9,097	4,549	n/a	4,548	n/a
Total	90,800	6,810	n/a	77,180	38,544	n/a	38,544	n/a

[1] Regulations at §§ 679.20(a)(8)(ii) and 679.22(a) establish temporal and spatial limitations for the Atka mackerel fishery.
[2] The seasonal allowances of Atka mackerel are 50 percent in the A season and 50 percent in the B season.
[3] The A season is January 1 (January 20 for trawl gear) to April 15 and the B season is September 1 to November 1.
[4] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2006 and 2007, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.
[5] Eastern Aleutian District and the Bering Sea subarea.
[6] Regulations at § 679.20(a)(8)(i) require that up to 2 percent of the Eastern Aleutian District and the Bering Sea subarea ITAC be allocated to jig gear. The proposed amount of this allocation is 1 percent. The jig gear allocation is not apportioned by season.

Allocation of the Pacific Cod TAC

Under § 679.20(a)(7)(i)(A), 2 percent of the Pacific cod ITAC is allocated to vessels using jig gear, 51 percent to vessels using hook-and-line or pot gear, and 47 percent to vessels using trawl gear. Under regulations at § 679.20(a)(7)(i)(B), the portion of the Pacific cod ITAC allocated to trawl gear is further allocated 50 percent to catcher vessels and 50 percent to catcher/processors. Under regulations at § 679.20(a)(7)(i)(C)(*1*), a portion of the Pacific cod ITAC allocated to hook-and-line or pot gear is set aside as an ICA of Pacific cod in directed fisheries for groundfish using these gear types. Based on anticipated incidental catch in these fisheries, the Regional Administrator proposes an ICA of 500 mt. The remainder of Pacific cod is further allocated to vessels using hook-and-line or pot gear as the following DFAs: 80 percent to hook-and-line catcher/processors, 0.3 percent to hook-and-line catcher vessels, 3.3 percent to pot catcher processors, 15 percent to pot catcher vessels, and 1.4 percent to catcher vessels under 60 feet (18.3 m) length overall (LOA) using hook-and-line or pot gear.

Due to concerns about the potential impact of the Pacific cod fishery on Steller sea lions and their critical habitat, the apportionment of the ITAC disperses the Pacific cod fisheries into seasonal allowances (see §§ 679.20(a)(7)(iii)(A) and 679.23(e)(5)). For pot and most hook-and-line gear, the first seasonal allowance of 60 percent of the ITAC is made available for directed fishing from January 1 to June 10, and the second seasonal allowance of 40 percent of the ITAC is made available from June 10 (September 1 for pot gear) to December 31. No seasonal harvest constraints are imposed on the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is January 20 to April 1 and is allocated 60 percent of the ITAC. The second season, April 1 to June 10, and the third season, June 10 to November 1, are each allocated 20 percent of the ITAC. The trawl catcher vessel allocation is further allocated as 70 percent in the first season, 10 percent in the second season, and 20 percent in the third season. The trawl catcher/processor allocation is allocated 50 percent in the first season, 30 percent in the second season, and 20 percent in the third season. For jig gear, the first and third seasonal allowances are each allocated 40 percent of the ITAC and the second seasonal allowance is allocated 20 percent of the ITAC. Table 4 lists the 2006 and 2007 proposed allocations and seasonal apportionments of the Pacific cod ITAC. In accordance with § 679.20(a)(7)(ii)(D) and (a)(7)(iii)(B), any unused portion of a seasonal Pacific cod allowance will become available at the beginning of the next seasonal allowance.

TABLE 4.—2006 AND 2007 PROPOSED GEAR SHARES AND SEASONAL ALLOWANCES OF THE BSAI PACIFIC COD ITAC

[Amounts are in metric tons]

Gear sector	Percent	2006 Share of gear sector total	2006 Sub-total percentages for gear sectors	2006 Share of gear sector total	2006 Seasonal apportionment [1]		2007 Share of gear sector total	2007 Sub-total percentages for gear sectors	2007 Share of gear sector total	2007 Seasonal apportionment [1]	
					2006 Share of gear sector total						
					Date	Amount				Date	Amount
Total hook-and-line/pot gear.	51	84,533	n/a	n/a	n/a	n/a	87,822	n/a	n/a	n/a	n/a
Hook-and-line/pot ICA.	n/a	n/a	n/a	500	n/a	n/a	n/a	n/a	500	n/a	n/a
Hook-and-line/pot subtotal.	n/a	84,033	n/a	n/a	n/a	n/a	87,322	n/a	n/a	n/a	n/a
Hook-and-line C/P	n/a	n/a	80	67,226	Jan 1–Jun 10	40,336	n/a	80	69,858	Jan 1–Jun 10	41,915
					Jun 10–Dec 31	26,890				Jun 10–Dec 31	27,943
Hook-and-line CV	n/a	n/a	0.3	252	Jan 1–Jun 10	151	n/a	0.3	262	Jan 1–Jun 10	157
					Jun 10–Dec 31	101				Jun 10–Dec 31	105
Pot C/P	n/a	n/a	3.3	2,773	Jan 1–Jun 10	1,664	n/a	3.3	2,882	Jan 1–Jun 10	1,729
					Sept 1–Dec 31	1,109				Sept 1–Dec 31	1,153
Pot CV	n/a	n/a	15	12,605	Jan 1–Jun 10	7,563	n/a	15	13,098	Jan 1–Jun 10	7,859
					Sept 1–Dec 31	5,042				Sept 1–Dec 31	5,239
CV < 60 feet LOA using Hook-and-line or Pot gear.	n/a	n/a	1.4	1,176	n/a	n/a	n/a	1.4	1,223	n/a	n/a
Total Trawl Gear.	47	77,903	n/a	n/a	n/a	n/a	80,934	n/a	n/a	n/a	n/a
Trawl CV			50	38,951	Jan 20–Apr 1	27,266		50	40,467	Jan 20–Apr 1	28,327
					Apr 1–Jun 10	3,895				Apr 1–Jun 10	4,047
					Jun 10–Nov 1	7,790				Jun 10–Nov 1	8,093
Trawl CP			50	38,951	Jan 20–Apr 1	19,476		50	40,467	Jan 20–Apr 1	20,234
					Apr 1–Jun 10	11,685				Apr 1–Jun 10	12,140
					Jun 10–Nov 1	7,790				Jun 10–Nov 1	8,093
Jig	2	3,315	n/a	n/a	Jan 1–Apr 30	1,326	3,444	n/a	n/a	Jan 1–Apr 30	1,378
					Apr 30–Aug 31	663				Apr 30–Aug 31	689
					Aug 31–Dec 31	1,326				Aug 31–Dec 31	1,378
Total	100	165,750	n/a	n/a	n/a	n/a	172,200	n/a	n/a	n/a	n/a

[1] For most non-trawl gear the first season is allocated 60 percent of the ITAC and the second season is allocated 40 percent of the ITAC. For jig gear, the first season and third seasons are each allocated 40 percent of the ITAC and the second season is allocated 20 percent of the ITAC. No seasonal harvest constraints are imposed for the Pacific cod fishery by catcher vessels less than 60 feet (18.3 m) LOA using hook-and-line or pot gear. For trawl gear, the first season is allocated 60 percent of the ITAC and the second and third seasons are each allocated 20 percent of the ITAC. The trawl catcher vessels' allocation is further allocated as 70 percent in the first season, 10 percent in the second season and 20 percent in the third season. The trawl catcher/processors' allocation is allocated 50 percent in the first season, 30 percent in the second season and 20 percent in the third season. Any unused portion of a seasonal Pacific cod allowance will be reapportioned to the next seasonal allowance.

Sablefish Gear Allocation

Regulations at § 679.20(a)(4)(iii) and (iv) require the allocation of sablefish TACs for the Bering Sea and AI subareas between trawl and hook-and-line or pot gear. Gear allocations of the TACs for the Bering Sea subarea are 50 percent for trawl gear and 50 percent for hook-and-line or pot gear and for the AI subarea are 25 percent for trawl gear and 75 percent for hook-and-line or pot gear. Regulations at § 679.20(b)(1)(iii)(B) require apportionment of 20 percent of the hook-and-line and pot gear allocation of sablefish to the CDQ reserve. Additionally, regulations at § 679.20(b)(1)(iii)(A) require apportionment of 7.5 percent of the trawl gear allocation of sablefish (one half of the reserve) to the CDQ reserve. Under regulations at § 679.20(c)(1)(iv), the harvest specifications for the hook-and-line gear and pot gear sablefish IFQ fisheries will be limited to the 2006 fishing year to ensure those fisheries are conducted concurrent with the halibut IFQ fishery. Having sablefish IFQ fisheries concurrent with the halibut IFQ fishery would reduce the potential for discards of halibut and sablefish in those fisheries. The sablefish IFQ fisheries would remain closed at the beginning of each fishing year until the final harvest specifications for the sablefish IFQ fisheries are in effect. The trawl sablefish fishery would be managed using harvest specifications for a 2-year period concurrent with the remaining target species in the BSAI. Table 5 lists the 2006 and 2007 proposed gear allocations of the sablefish TAC and CDQ reserve amounts.

TABLE 5.—2006 AND 2007 PROPOSED GEAR SHARES AND CDQ RESERVE OF BSAI SABLEFISH TACS

[Amounts are in metric tons]

Subarea and gear	Percent of TAC	2006 Share of TAC	2006 ITAC [1]	2006 CDQ reserve	2007 Share of TAC	2007 ITAC	2007 CDQ reserve
Bering Sea.							
Trawl [2]	50	1,115	982	87	1,200	1,020	90
Hook-and-line/pot gear [3]	50	1,115	n/a	231	n/a	n/a	n/a
Total	100	2,310	982	318	1,200	1,020	90
Aleutian Islands.							
Trawl [2]	25	620	527	47	650	553	49
Hook-and-line/pot gear [3]	75	1,860	n/a	372	n/a	n/a	n/a
Total	100	2,480	527	419	650	553	49

[1] Except for the sablefish hook-and-line or pot gear allocation, 15 percent of TAC is apportioned to the reserve. The ITAC is the remainder of the TAC after the subtraction of these reserves.

[2] For the portion of the sablefish TAC allocated to vessels using trawl gear, one half of the reserve (7.5 percent of the specified TAC) is reserved for the CDQ program.

[3] For the portion of the sablefish TAC allocated to vessels using hook-and-line or pot gear, 20 percent of the allocated TAC is reserved for use by CDQ participants. Regulations in § 679.20(b)(1) do not provide for the establishment of an ITAC for sablefish allocated to hook-and-line or pot gear.

Allocation of PSC Limits for Halibut, Crab, Salmon, and Herring

Section 679.21(e) sets forth the halibut PSC limits. The BSAI halibut mortality limits are 3,675 mt for trawl fisheries and 900 mt for the non-trawl fisheries. Regulations at § 679.21(e)(1)(vii) specify 29,000 fish as the 2006 and 2007 proposed chinook salmon PSC limit for the Bering Sea subarea pollock fishery. Regulations at § 679.21(e)(1)(i) allocate 7.5 percent, or 2,175 chinook salmon, as the proposed PSQ for the CDQ program and allocate the remaining 26,825 chinook salmon to the non-CDQ fisheries. Regulations at § 679.21(e)(1)(ix) specify 700 fish as the 2006 and 2007 proposed chinook salmon PSC limit for the AI subarea pollock fishery. Regulations at § 679.21(e)(1)(i) allocate 7.5 percent, or 53 chinook salmon, as the proposed PSQ for the CDQ program and allocate the remaining 647 chinook salmon to the non-CDQ fisheries. Regulations at § 679.21(e)(1)(viii) specify 42,000 fish as the 2006 and 2007 proposed non-chinook salmon PSC limit. Regulations at § 679.21(e)(1)(i) allocate 7.5 percent, or 3,150 non-chinook salmon, as the proposed PSQ for the CDQ program and allocate the remaining 38,850 non-chinook salmon to the non-CDQ fisheries. PSC limits for crab and herring are specified annually based on abundance and spawning biomass. Due to the lack of new information in October 2005 regarding PSC limits and apportionments in October 2005, the Council recommended using the halibut, crab, and herring 2005 and 2006 PSC amounts for the proposed 2006 and 2007 amounts. The Council will reconsider these amounts in December 2005, based on recommendations by the Plan Team and the SSC.

The red king crab mature female abundance is estimated from the 2004 survey data as 35.4 million king crab and the effective spawning biomass is estimated as 61.9 million pounds (28,077 mt). Based on the criteria set out at § 679.21(e)(1)(ii), the 2006 and 2007 proposed PSC limit of red king crab in Zone 1 for trawl gear is 197,000 animals as a result of the mature female abundance being above 8.4 million king crab and of the effective spawning biomass estimate being greater than 55 million pounds (24,948 mt).

Regulations at § 679.21(e)(3)(ii)(B) establish criteria under which NMFS must specify an annual red king crab bycatch limit for the Red King Crab Savings Subarea (RKCSS). The regulations limit the bycatch limit within the RKCSS to up to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/''other flatfish'' fishery category and is based on the need to optimize the groundfish harvest relative to red king crab bycatch. The Council recommended, and NMFS proposes, a red king crab bycatch limit equal to 35 percent of the trawl bycatch allowance specified for the rock sole/flathead sole/''other flatfish'' fishery category within the RKCSS.

Based on 2004 survey data, Tanner crab *Chionoecetes bairdi* abundance is estimated as 437.41 million animals. Given the criteria set out at § 679.21(e)(1)(iii), the 2006 and 2007 proposed *C. bairdi* crab PSC limit for trawl gear is 980,000 animals in Zone 1 and 2,970,000 animals in Zone 2 as a

result of the *C. bairdi* crab abundance estimate of over 400 million animals.

Under § 679.21(e)(1)(iv), the PSC limit for snow crab *C. opilio* is based on total abundance as indicated by the NMFS annual bottom trawl survey. The *C. opilio* crab PSC limit is set at 0.1133 percent of the Bering Sea abundance index. Based on the 2004 survey estimate of 4.421 billion animals, the calculated limit is 5,008,993 animals. Under § 679.21(e)(1)(iv)(B), the 2006 and 2007 proposed *C. opilio* crab PSC limit is 5,008,993 million animals minus 150,000 animals, which results in a limit of 4,858,993 animals.

Under § 679.21(e)(1)(vi), the proposed PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. The best estimate of 2005 and 2006 herring biomass is 201,180 mt. This amount was derived using 2004 survey data and an age-structured biomass projection model developed by the Alaska Department of Fish and Game. Therefore, the proposed herring PSC limit for 2006 and 2007 is 2,012 mt.

Under § 679.21(e)(1)(i), 7.5 percent of each PSC limit specified for crab and halibut is allocated as a PSQ reserve for use by the groundfish CDQ program. Regulations at § 679.21(e)(3) require the apportionment of each trawl PSC limit into PSC bycatch allowances for seven specified fishery categories. Regulations at § 679.21(e)(4)(ii) authorize the apportionment of the non-trawl halibut PSC limit into PSC bycatch allowances for five fishery categories. Table 6 lists the proposed fishery bycatch allowances for the trawl and non-trawl fisheries.

Regulations at § 679.21(e)(4)(ii) authorize exemption of specified non-trawl fisheries from the halibut PSC limit. As in past years, NMFS, after consultation with the Council, proposes to exempt pot gear, jig gear, and the sablefish IFQ hook-and-line gear fishery categories from halibut bycatch restrictions because: (1) The pot gear fisheries experience low halibut bycatch mortality, (2) halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers, and (3) the sablefish and halibut Individual Fishing Quota (IFQ) program (subpart D of 50 CFR part 679) requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder or a hired master is aboard and is holding unused halibut IFQ. In 2005, total groundfish catch for the pot gear fishery in the BSAI was approximately 16,971 mt, with an associated halibut bycatch mortality of about 4 mt. The 2005 groundfish jig gear fishery harvested about 123 mt of groundfish. Most vessels in the jig gear fleet are less than 60 ft (18.3 m) LOA and are exempt from observer coverage requirements. As a result, observer data are not available on halibut bycatch in the jig gear fishery. However, a negligible amount of halibut bycatch mortality is assumed because of the selective nature of this gear type and the likelihood that halibut caught with jig gear have a high survival rate when released.

Regulations at § 679.21(e)(5) authorize NMFS, after consultation with the Council, to establish seasonal apportionments of PSC amounts in order to maximize the ability of the fleet to harvest the available groundfish TAC and to minimize bycatch. The factors to be considered are: (1) Seasonal distribution of prohibited species, (2) seasonal distribution of target groundfish species, (3) PSC bycatch needs on a seasonal basis relevant to prohibited species biomass, (4) expected variations in bycatch rates throughout the year, (5) expected start of fishing effort, and (6) economic effects of seasonal PSC apportionments on industry sectors. The Council recommended seasonal PSC apportionments to maximize harvest among gear types, fisheries, and seasons while minimizing bycatch of PSC based on the above criteria. NMFS proposes the Council's recommendations listed in Table 6.

TABLE 6.–2006 AND 2007 PROPOSED PROHIBITED SPECIES BY CATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

Trawl fisheries	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red king Crab (animals) Zone 1 [1]	C. opilio (animals) COBLZ [1]	C. bairdi (animals)	
					Zone 1 [1]	Zone 2 [1]
Yellowfin sole	886	183	33,843	3,101,915	340,844	1,788,459
January 20–April 1	262					
April 1–May 21	195					
May 21–July 1	49					
July 1–December 31	380					
Rock sole/other flat/flathead sole[2,6]	779	27	121,413	1,082,528	365,320	596,154
January 20–April 1	448					
April 1–July 1	164					
July 1–December 31	167					
Turbot/arrowtooth/sablefish [3]		12		44,946		
Rockfish						
July 1–December 31	69	10		44,945		10,988
Pacific cod	1,434	27	26,563	139,331	183,112	324,176
Midwater trawl pollock		1,562				
Pollock/Atka mackerel/other [4]	232	192	406	80,903	17,224	27,473
Red King Crab Savings Subarea [6]						
(non-pelagic trawl)			42,495			
Total trawl PSC	3,400	2,012	182,225	4,494,569	906,500	2,747,250
Non-trawl fisheries						
Pacific cod—Total	775					
January 1–June 10	320					
June 10–August 15	0					
August 15–December 31	455					
Other non-trawl—Total	58					
May 1–December 31	58					

TABLE 6.–2006 AND 2007 PROPOSED PROHIBITED SPECIES BY CATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES—Continued

Trawl fisheries	Prohibited species and zone					
	Halibut mortality (mt) BSAI	Herring (mt) BSAI	Red king Crab (animals) Zone 1 [1]	C. opilio (animals) COBLZ [1]	C. bairdi (animals)	
					Zone 1 [1]	Zone 2 [1]
Groundfish pot and jig	exempt					
Sablefish hook-and-line	exempt					
Total non-trawl PSC	833					
PSQ reserve [5]	342		14,775	364,424	73,500	222,750
PSC grand total	4,575	2,012	197,000	4,858,993	980,000	2,970,000

[1] Refer to § 679.2 for definitions of areas.
[2] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.
[3] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[4] Pollock other than pelagic trawl pollock, Atka mackerel, and "other species" fishery category.
[5] With the exception of herring, 7.5 percent of each PSC limit is allocated to the CDQ program as PSQ reserve. The PSQ reserve is not allocated by fishery, gear, or season.
[6] In October 2005, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (see § 679.21(e)(3)(ii)(B)).

Halibut Discard Mortality Rates

To monitor halibut bycatch mortality allowances and apportionments, the Regional Administrator will use observed halibut bycatch rates, assumed discard mortality rates (DMR), and estimates of groundfish catch to project when a fishery's halibut bycatch mortality allowance or seasonal apportionment is reached. The DMRs are based on the best information available, including information contained in the annual SAFE report.

The Council recommended and NMFS proposes that the recommended halibut DMRs developed by staff of the International Pacific Halibut Commission (IPHC) for the 2005 and 2006 BSAI groundfish fisheries be used for monitoring halibut bycatch allowances established for the 2006 and 2007 groundfish fisheries (see Table 7). The IPHC developed these DMRs using the 10-year mean DMRs for the BSAI non-CDQ groundfish fisheries. Plots of annual DMRs against the 10-year mean indicated little change since 1990 for most fisheries. DMRs were more variable for the smaller fisheries that typically take minor amounts of halibut bycatch. The IPHC will analyze observer data annually and recommend changes to the DMRs where a fishery DMR shows large variation from the mean. The IPHC has been calculating the CDQ fisheries DMRs since 1998, and a 10-year mean is not yet available. The justification for the proposed DMRs is discussed in Appendix A to the final SAFE report dated November 2004. The proposed DMRs listed in Table 7 are subject to change pending the results of an updated analysis on halibut DMRs in the groundfish fisheries that IPHC staff is scheduled to present to the Council at its December 2005 meeting.

TABLE 7.—2006 AND 2007 PROPOSED ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES

Fishery	Mortality rates (percent)
Hook-and-line gear fisheries:	
Greenland turbot	15
Other species	11
Pacific cod	11
Rockfish	16
Trawl gear fisheries:	
Atka mackerel	78
Flathead sole	67
Greenland turbot	72
Non-pelagic pollock	76
Pelagic pollock	85
Other flatfish	71
Other species	67
Pacific cod	68
Rockfish	74
Rock sole	77
Sablefish	49
Yellowfin sole	78
Pot gear fisheries:	
Other species	8
Pacific cod	8
CDQ trawl fisheries:	
Atka mackerel	85
Flathead sole	67
Non-pelagic pollock	85
Pelagic pollock	90
Rockfish	74
Yellowfin sole	84
CDQ hook-and-line fisheries:	
Greenland turbot	15
Pacific cod	10

TABLE 7.—2006 AND 2007 PROPOSED ASSUMED PACIFIC HALIBUT DISCARD MORTALITY RATES FOR THE BSAI FISHERIES—Continued

Fishery	Mortality rates (percent)
CDQ pot fisheries:	
Pacific cod	8
Sablefish	33

Bering Sea Subarea Inshore Pollock Allocations

Regulations at § 679.4(l) set forth procedures for AFA inshore catcher vessel pollock cooperatives to apply for and receive cooperative fishing permits and inshore pollock allocations. For 2006, NMFS received applications from seven inshore catcher vessel cooperatives. Table 8 lists the proposed pollock allocations to the seven inshore catcher vessel pollock cooperatives based on applications for membership in the cooperatives received by NMFS for 2006. This membership is assumed to remain unchanged for 2007. For 2006 and 2007, the sum of the member vessel's official catch histories increased as revised catch history became available. Allocations for cooperatives and open access vessels are not made for the AI subarea because the Consolidated Appropriations Act of 2004 requires the non-CDQ directed pollock fishery to be fully allocated to the Aleut Corporation. The Bering Sea subarea allocations may be revised pending adjustments to the pollock TACs.

TABLE 8.—2006 AND 2007 PROPOSED BERING SEA SUBAREA INSHORE COOPERATIVE ALLOCATIONS

[Amounts are in metric tons]

Cooperative name and member vessels	Sum of member vessel's official catch histories [1] (mt)	Percentage of inshore sector allocation	2006 Annual cooperative allocation (mt)	2007 Annual cooperative allocation (mt)
Akutan Catcher Vessel Association	.....	31.145	201,215	165,434
Arctic Enterprise Association	.....	1.146	7,402	6,086
Northern Victor Fleet Cooperative	.....	8.412	54,350	44,684
Peter Pan Fleet Cooperative	.....	2.876	18,582	15,279
Unalaska Cooperative	.....	12.191	78,758	64,753
UniSea Fleet Cooperative	.....	25.324	163,609	134,516
Westward Fleet Cooperative	.....	18.906	122,142	100,423
Open access AFA vessels	.....	0	0	0
Total inshore allocation	875,572	100	646,058	531,175

[1] According to regulations at § 679.62(e)(1), the individual catch history for each vessel is equal to the vessel's best 2 of 3 years inshore pollock landings from 1995 through 1997 and includes landings to catcher/processors for vessels that made 500 or more mt of landings to catcher/processors from 1995 through 1997.

Section 679.20(a)(5)(i)(A)(*3*) further divides the inshore sector allocation into separate allocations for cooperative and open access fishing. In addition, according to § 679.22(a)(7)(vii), NMFS must establish harvest limits inside the SCA and provide a set-aside so that catcher vessels less than or equal to 99 ft (30.2 m) LOA have the opportunity to operate entirely within the SCA until April 1. Accordingly, Table 9 lists the proposed Bering Sea subarea inshore pollock allocation to the cooperative and open access sectors and establishes a cooperative-sector SCA set-aside for AFA catcher vessels less than or equal to 99 ft (30.2 m) LOA. The SCA set-aside for catcher vessels less than or equal to 99 ft (30.2 m) LOA that are not participating in a cooperative will be established inseason based on actual participation levels and is not included in Table 9. These proposed allocations may be revised pending final review and approval of 2006 and 2007 pollock TACs.

TABLE 9.—2006 AND 2007 PROPOSED BERING SEA SUBAREA POLLOCK ALLOCATIONS TO THE COOPERATIVE AND OPEN ACCESS SECTORS OF THE INSHORE POLLOCK FISHERY

[Amounts are in metric tons]

Sector	2006 A season TAC	2006 A season SCA harvest limit [1]	2006 B season TAC	2007 A season TAC	2007 A season SCA harvest limit [1]	2007 B season TAC
Inshore cooperative sector	.....	.....	.....	.....	.....	.....
Vessels >99 ft	n/a	155,400	n/a	n/a	127,767	n/a
Vessels ≤99 ft	n/a	25,496	n/a	n/a	20,962	n/a
Total	258,423	180,896	387,635	212,470	148,729	318,705
Open access sector	0	0 [2]	0	0	0 [2]	0
Total inshore sector	258,423	180,896	387,635	212,470	148,729	318,705

[1] The Steller sea lion conservation area (SCA) established at § 679.22(a)(7)(vii).

[2] The SCA limitations for vessels less than or equal to 99 ft LOA that are not participating in a cooperative will be established on an inseason basis in accordance with § 679.22(a)(7)(vii)(C)(2) which specifies that the Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA, catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit before April 1 to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA until April 1."

Listed AFA Catcher/Processor Sideboard Limits

According to § 679.64(a), the Regional Administrator will restrict the ability of listed AFA catcher/processors to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). Table 10 lists the 2006 and 2007 proposed catcher/processor sideboard limits.

All groundfish other than pollock that are harvested by listed AFA catcher/processors, whether as targeted catch or incidental catch, will be deducted from the proposed sideboard limits in Table 10. However, groundfish other than pollock that are delivered to listed catcher/processors by catcher vessels will not be deducted from the 2006 and 2007 proposed sideboard limits for the listed catcher/processors.

TABLE 10.—2006 AND 2007 PROPOSED LISTED BSAI AMERICAN FISHERIES ACT CATCHER/PROCESSOR GROUNDFISH SIDEBOARD LIMITS

[Amounts are in metric tons]

Target species	Area	1995–1997			2006 Proposed ITAC available to trawl C/Ps	2006 Proposed C/P sideboard limit	2007 Proposed ITAC available to trawl C/Ps	2007 Proposed C/P sideboard limit
		Retained catch	Total catch	Ratio of retained catch to total catch				
Pacific cod trawl	BSAI	12,424	48,177	0.258	38,951	10,049	40,467	10,440
Sablefish trawl	BS	8	497	0.016	982	16	1,020	16
	AI	0	145	0.000	527	0	553	0
Atka mackerel	Western AI							
	A season [1]	n/a	n/a	0.200	8,500	1,700	12,251	2,450
	HLA limit [2]	n/a	n/a	n/a	5,100	1,020	7,351	1,470
	B season	n/a	n/a	0.200	8,500	1,700	12,251	2,450
	HLA limit	n/a	n/a	n/a	5,100	1,020	7,351	1,470
	Central AI							
	A season [1]	n/a	n/a	0.115	15,088	1,735	21,745	2,501
	HLA limit	n/a	n/a	n/a	9,053	1,041	13,047	1,500
	B season	n/a	n/a	0.115	15,088	1,735	21,745	2,501
	HLA limit	n/a	n/a	n/a	9,053	1,041	13,047	1,500
Yellowfin sole	BSAI	100,192	435,788	0.230	76,500	17,595	93,160	21,427
Rock sole	BSAI	6,317	169,362	0.037	35,700	1,321	98,685	3,651
Greenland turbot	BS	121	17,305	0.007	2,125	15	6,375	45
	AI	23	4,987	0.005	850	4	2,550	13
Arrowtooth flounder	BSAI	76	33,987	0.002	10,200	20	33,235	66
Flathead sole	BSAI	1,925	52,755	0.036	17,000	612	43,010	1,548
Alaska plaice	BSAI	14	9,438	0.001	8,500	9	55,250	55
Other flatfish	BSAI	3,058	52,298	0.058	2,550	148	18,190	1,055
Pacific ocean perch	BS	12	4,879	0.002	1,190	2	1,426	3
	Western AI	54	13,598	0.004	4,322	17	5,182	21
	Central AI	3	5,698	0.001	2,580	3	3,091	3
	Eastern AI	125	6,179	0.020	2,618	52	3,136	63
Northern rockfish	BSAI	91	13,040	0.007	4,250	30	6,970	49
Shortraker rockfish	BSAI	50	2,811	0.018	507	9	507	9
Rougheye rockfish	BSAI	50	2,811	0.018	190	3	190	3
Other rockfish	BS	18	621	0.029	391	11	689	20
	AI	22	806	0.027	502	14	502	14
Squid	BSAI	73	3,328	0.022	1,084	24	1,675	37
Other species	BSAI	553	68,672	0.008	24,820	199	42,500	340

[1] The seasonal apportionment of Atka mackerel in the open access fishery is 50 percent in the A season and 50 percent in the B season. Listed AFA catcher/processors are limited to harvesting no more than zero in the Eastern Aleutian District and Bering Sea subarea, 20 percent of the annual TAC specified for the Western Aleutian District, and 11.5 percent of the annual TAC specified for the Central Aleutian District.

[2] Harvest Limit Area (HLA) limit refers to the amount of each seasonal allowance that is available for fishing inside the HLA (see § 679.2). In 2006 and 2007, 60 percent of each seasonal allowance is available for fishing inside the HLA in the Western and Central Aleutian Districts.

Section 679.64(a)(5) establishes a formula for PSC sideboard limits for listed AFA catcher/processors. These amounts are equivalent to the percentage of PSC amounts taken in the groundfish fisheries other than pollock by the AFA catcher/processors listed in subsection 208(e) and section 209 of the AFA from 1995 through 1997 (see Table 10). These amounts were used to calculate the relative amount of PSC that was caught by pollock catcher/processors shown in Table 10. That relative amount of PSC was then used to determine the PSC sideboard limits for listed AFA catcher/processors in the 2006 and 2007 groundfish fisheries other than pollock.

Halibut and crab PSC, listed in Table 11, that are caught by listed AFA catcher/processors participating in any groundfish fishery other than pollock will accrue against the 2006 and 2007 proposed PSC sideboard limits for the listed AFA catcher/processors. Section 679.21(e)(3)(v) authorizes NMFS to close directed fishing for groundfish other than pollock for listed AFA catcher/processors once a 2006 or 2007 proposed PSC sideboard limit listed in Table 11 is reached.

Crab or halibut PSC caught by listed AFA catcher/processors while fishing for pollock will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/“other species” fishery categories according to regulations at § 679.21(e)(3)(iv).

TABLE 11.—2006 AND 2007 PROPOSED BSAI AMERICAN FISHERIES ACT LISTED CATCHER/PROCESSOR PROHIBITED SPECIES SIDEBOARD LIMITS [1]

PSC species	1995–1997			2006 and 2007 Proposed PSC available to trawl vessels	2006 and 2007 Proposed C/P sideboard limit
	PSC catch	Total PSC	Ratio of PSC catch to total PSC		
Halibut mortality	955	11,325	0.084	3,400	286
Red king crab	3,098	473,750	0.007	182,225	1,276
C. opilio	2,323,731	15,139,178	0.153	4,494,569	687,669
C. bairdi.					
Zone 1 [2]	385,978	2,750,000	0.140	906,500	126,910
Zone 2 [2]	406,860	8,100,000	0.050	2,747,250	137,363

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Refer to § 679.2 for definitions of areas.

AFA Catcher Vessel Sideboard Limits

Under § 679.64(b), the Regional Administrator restricts the ability of AFA catcher vessels to engage in directed fishing for groundfish species other than pollock to protect participants in other groundfish fisheries from adverse effects resulting from the AFA and from fishery cooperatives in the directed pollock fishery. Section 679.64(b) establishes formulas for setting AFA catcher vessel groundfish and PSC sideboard limits for the BSAI. The basis for these sideboard limits is described in detail in the final rule implementing major provisions of the AFA (67 FR 79692, December 30, 2002). Tables 12 and 13 list the 2006 and 2007 proposed catcher vessel sideboard limits.

All harvests of groundfish sideboard species made by non-exempt AFA catcher vessels, whether as targeted catch or as incidental catch, will be deducted from the 2006 and 2007 proposed sideboard limits listed in Table 12.

TABLE 12.—2006 AND 2007 PROPOSED BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS

[Amounts are in metric tons]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2006 Proposed initial TAC	2006 Proposed catcher vessel sideboard limits	2007 Proposed initial TAC	2007 Proposed catcher vessel sideboard limits
Pacific cod	BSAI					
	Jig gear	0.0000	3,315	0	3,444	0
	Hook-and-line CV					
	Jan 1–Jun 10	0.0006	151	0	157	0
	Jun 10–Dec 31	0.0006	101	0	105	0
	Pot gear CV					
	Jan 1–Jun 10	0.0006	7,563	5	7,859	5
	Sept 1–Dec 31	0.0006	5,042	3	5,239	3
	CV < 60 feet LOA using hook-and-line or pot gear	0.0006	1,176	1	1,223	1
	Trawl gear CV					
	Jan 20–Apr 1	0.8609	27,266	23,473	28,327	24,387
	Apr 1–Jun 10	0.8609	3,895	3,353	4,047	3,484
	Jun 10–Nov 1	0.8609	7,790	6,706	8,093	6,967
Sablefish	BS trawl gear	0.0906	982	89	1,020	92
	AI trawl gear	0.0645	527	34	553	36
Atka mackerel	Eastern AI/BS					
	Jig gear	0.0031	64	0	92	0
	Other gear					
	Jan 1–Apr 15	0.0032	3,155	10	4,548	15
	Sept 1–Nov 1	0.0032	3,155	10	4,548	15
	Central AI					
	Jan–Apr 15	0.0001	15,088	2	21,745	2
	HLA limit	0.0001	9,053	1	13,047	1
	Sept 1–Nov 1	0.0001	15,088	2	21,745	2
	HLA limit	0.0001	9,053	1	13,047	1
	Western AI					
	Jan–Apr 15	0.0000	8,500	0	12,251	0
	HLA limit	n/a	5,100	0	7,351	0
	Sept 1–Nov 1	0.0000	8,500	0	12,251	0
	HLA limit	n/a	5,100	0	7,351	0
Yellowfin sole	BSAI	0.0647	76,500	4,950	93,160	6,027
Rock sole	BSAI	0.0341	35,700	1,217	98,685	3,365
Greenland Turbot	BS	0.0645	2,125	137	6,375	411
	AI	0.0205	850	17	2,550	52
Arrowtooth flounder	BSAI	0.0690	10,200	704	33,235	2,293

TABLE 12.—2006 AND 2007 PROPOSED BSAI AMERICAN FISHERIES ACT CATCHER VESSEL SIDEBOARD LIMITS—Continued

[Amounts are in metric tons]

Species	Fishery by area/season/processor/gear	Ratio of 1995–1997 AFA CV catch to 1995–1997 TAC	2006 Proposed initial TAC	2006 Proposed catcher vessel sideboard limits	2007 Proposed initial TAC	2007 Proposed catcher vessel sideboard limits
Alaska plaice	BSAI	0.0441	8,500	375	55,250	2,437
Other flatfish	BSAI	0.0441	2,550	112	18,190	802
Pacific ocean perch	BS	0.1000	1,190	119	1,426	143
	Eastern AI	0.0077	2,618	20	3,136	24
	Central AI	0.0025	2,580	6	3,091	8
	Western AI	0.0000	4,322	0	5,182	0
Northern rockfish	BSAI	0.0084	4,250	36	6,970	59
Shortraker rockfish	BSAI	0.0037	507	2	507	2
Rougheye rockfish	BSAI	0.0037	190	1	190	1
Other rockfish	BS	0.0048	391	2	689	3
	AI	0.0095	502	5	502	5
Squid	BSAI	0.3827	1,084	415	1,675	641
Other species	BSAI	0.0541	24,820	1,343	42,500	2,299
Flathead Sole	BS trawl gear	0.0505	17,000	859	43,010	2,172

The AFA catcher vessel PSC limits for halibut and crab species in the BSAI for which a trawl bycatch limit has been established will be a portion of the PSC limit equal to the ratio of aggregate retained groundfish catch by AFA catcher vessels in each PSC target category from 1995 through 1997, relative to the retained catch of all vessels in that fishery from 1995 through 1997. Table 13 lists the 2006 and 2007 proposed PSC sideboard limits for AFA catcher vessels.

Halibut and crab PSC, listed in Table 13, that are caught by AFA catcher vessels participating in any groundfish fishery other than pollock will accrue against the 2006 and 2007 proposed PSC sideboard limits for the AFA catcher vessels. Sections 679.21(d)(8) and (e)(3)(v) authorize NMFS to close directed fishing for groundfish other than pollock for AFA catcher vessels once a 2006 and 2007 proposed PSC sideboard limit listed in Table 13 is reached. The PSC caught by AFA catcher vessels, while fishing for pollock in the BSAI, will accrue against the bycatch allowances annually specified for either the midwater pollock or the pollock/Atka mackerel/''other species''' fishery categories under regulations at § 679.21(e)(3)(iv).

TABLE 13.—2006 AND 2007 PROPOSED BSAI AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS [1]

[Amounts are in metric tons]

PSC species	Target fishery category [2]	Ratio of 1995–1997 AFA catcher vessel retained catch to total retained catch	2006 and 2007 Proposed PSC limit	2006 and 2007 Proposed AFA catcher vessel PSC sideboard limit
Halibut	Pacific cod trawl	0.6183	1,434	887
	Pacific cod hook-and-line or pot	0.0022	775	2
	Yellowfin sole			
	January 20–April 1	0.1144	262	30
	April 1–May 21	0.1144	195	22
	May 21–July 5	0.1144	49	6
	July 5–December 31	0.1144	380	43
	Rock sole/flathead sole/other flatfish [5]			
	January 20–April 1	0.2841	448	127
	April 1–July 5	0.2841	164	47
	July 5–December 31	0.2841	167	47
	Turbot/Arrowtooth/Sablefish	0.2327	0	0
	Rockfish (July 1–December 31)	0.0245	69	2
	Pollock/Atka mackerel/other species	0.0227	232	5
Red King Crab	Pacific cod	0.6183	26,563	16,424
Zone 1 [4]	Yellowfin sole	0.1144	33,843	3,872
	Rock sole/flathead sole/other flatfish [5]	0.2841	121,413	34,493
	Pollock/Atka mackerel/other species	0.0227	406	9
C. opilio	Pacific cod	0.6183	139,331	86,148
COBLZ [3]	Yellowfin sole	0.1144	3,101,915	354,859
	Rock sole/flathead sole/other flatfish [5]	0.2841	1,082,528	307,546
	Pollock/Atka mackerel/other species	0.0227	80,903	1,836
	Rockfish	0.0245	44,945	1,101
	Turbot/Arrowtooth/Sablefish	0.2327	44,946	10,459
C. bairdi	Pacific cod	0.6183	183,112	113,218

TABLE 13.—2006 AND 2007 PROPOSED BSAI AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH SIDEBOARD LIMITS [1]—Continued

[Amounts are in metric tons]

PSC species	Target fishery category [2]	Ratio of 1995–1997 AFA catcher vessel retained catch to total retained catch	2006 and 2007 Proposed PSC limit	2006 and 2007 Proposed AFA catcher vessel PSC sideboard limit
Zone 1 [3]	Yellowfin sole	0.1144	340,844	38,993
	Rock sole/flathead sole/other flatfish [5]	0.2841	365,320	103,787
	Pollock/Atka mackerel/other species	0.0227	17,224	391
C. bairdi	Pacific cod	0.6183	324,176	200,438
Zone 2 [3]	Yellowfin sole	0.1144	1,788,459	204,600
	Rock sole/flathead sole/other flatfish [5]	0.2841	596,154	169,367
	Pollock/Atka mackerel/other species	0.0227	27,473	624
	Rockfish	0.0245	10,988	269

[1] Halibut amounts are in metric tons of halibut mortality. Crab amounts are in numbers of animals.
[2] Target fishery categories are defined in regulation at § 679.21(e)(3)(iv).
[3] Refer to 679.2 for definitions of areas.
[4] In October 2005, the Council recommended that red king crab bycatch for trawl fisheries within the RKCSS be limited to 35 percent of the total allocation to the rock sole/flathead sole/"other flatfish" fishery category (see § 679.21(e)(3)(ii)(B)).
[5] "Other flatfish" for PSC monitoring includes all flatfish species, except for halibut (a prohibited species), Greenland turbot, rock sole, yellowfin sole, and arrowtooth flounder.

Classification

NMFS has determined that the proposed specifications are consistent with the FMP and preliminarily determined that the proposed specifications are consistent with the Magnuson-Stevens Act and other applicable laws.

This action is authorized under 50 CFR 679.20 and is exempt from review under Executive Order 12866.

An IRFA was prepared to evaluate the impacts of the 2006 and 2007 proposed harvest specifications on directly regulated small entities. This IRFA is intended to meet the statutory requirements of the Regulatory Flexibility Act (RFA). The reason for the action, a statement of the objective of the action and the legal basis are discussed in the preamble and are not repeated here.

The 2006 and 2007 harvest specifications establish harvest limits for the groundfish species and species groups in the BSAI. This action is necessary to allow fishing in 2006 and 2007. Entities directly impacted are those fishing for groundfish in the Exclusive Economic Zone (EEZ), or in parallel fisheries in State waters (in which harvests are counted against the Federal TAC). An estimated 693 small catcher vessels, 18 small catcher/processors, and 6 small private non-profit CDQ groups may be directly regulated by these harvest specifications in the BSAI. The catcher vessel estimate in particular is subject to various uncertainties; it may provide an underestimate since it does not count vessels that fish only within State parallel fisheries; this may be offset by upward biases introduced by the use of preliminary price estimates (which don't fully account for post-season price adjustments) and by a failure to account for affiliations, other than AFA cooperative affiliations, among entities. For these reasons, the catcher vessel estimate must be considered an approximation.

The IRFA examined the impacts of the preferred alternative on small entities within fisheries reliant on species groups whose TACs might be notably adjusted by the harvest specifications. The IRFA identified the potential for adverse impacts on small fishing operations harvesting pollock and Pacific cod, and on CDQ groups, in the BSAI.

In the BSAI, small Pacific cod fishing operations would experience an estimated 2.3 percent reduction in their gross revenues from all sources in 2006, and an estimated reduction of 6.3 percent in revenues from all sources between 2005 and 2007. The pollock fishery will be the other major fishery to experience large reductions in gross revenues. These are estimated to rise by less than 1 percent in 2006, but to decline by about 11.6 percent from 2005 to 2007. Aside from the CDQ groups, this fishery is dominated by large entities. Targeted pollock fishing by non-CDQ operations is limited to AFA affiliated entities, and one Native Corporation. Operations affiliated with AFA cooperatives are considered to be large entities. The Native Corporation is considered to be a holding company, and, on the basis of estimated gross revenues, is believed to be large. Incidental catch appears to be concentrated among catcher/processors fishing for flatfish and Pacific cod. A large proportion of these vessels are considered large. However, some small catcher/processor operations taking pollock incidentally in their fishing operations may be adversely affected in 2007. Adverse impacts for catcher/processor vessels in 2007 may be mitigated by increases in TACs for several of their target flatfish species. CDQ groups are considered to be small entities by virtue of their status as non-profit organizations. CDQ group revenues are expected to be almost unchanged in 2006, but to drop by about 15 percent in 2007, due to projected declines in TACs for their key species, pollock.

This analysis examined four alternatives to the preferred alternative. These included alternatives that set TACs to produce fishing rates equal to $maxF_{ABC}$, ½ $maxF_{ABC}$, the recent 5 year average F, and zero. Only one of these alternatives, setting TACs to produce fishing rates of $maxF_{ABC}$, would potentially have a smaller adverse impact on small entities than the preferred alternative. This alternative is associated with larger gross revenues for the BSAI fisheries in 2006, but with similar gross revenues in 2007. Many of the vessels identified above would share in these gross revenues. However, the $maxF_{ABC}$ is a fishing rate that may, and often does, exceed ABCs recommended by stock assessment scientists on the basis of circumstances unique to each species. The increases in TACs related to producing fishing rates of $maxF_{ABC}$ would not be consistent with biologically prudent fishery

management because they do not fall within the scientifically determined ABC. Moreover, in 2006, the sum of the TACs contemplated under Alternative 1 would also exceed the statutorily mandated two million mt optimum yield for the BSAI (it would exceed this by only a small amount in 2007).

A copy of the IRFA is available from NMFS (see **ADDRESSES**).

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; and 3631 *et seq.*

Dated: December 12, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 051201318–5318–01; I.D. 112805A]

Fisheries of the Exclusive Economic Zone Off Alaska; Gulf of Alaska; Proposed 2006 and 2007 Harvest Specifications for Groundfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; apportionment of reserves; request for comments.

SUMMARY: NMFS proposes 2006 and 2007 harvest specifications, reserves and apportionments, and Pacific halibut prohibited species catch (PSC) limits, for the groundfish fishery of the Gulf of Alaska (GOA). This action is necessary to establish harvest limits and associated management measures for groundfish during the 2006 and 2007 fishing years. The intended effect of this action is to conserve and manage the groundfish resources in the GOA in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Comments must be received by January 17, 2006.

ADDRESSES: Send comments to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

- Mail to P.O. Box 21668, Juneau, AK 99802;
- Hand Delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, AK;
- E-mail to *2006AKgroundfish.tacspecs@noaa.gov* and include in the subject line the document identifier: 2006 Proposed Specifications (E-mail comments, with or without attachments, are limited to 5 megabytes);
- Fax to 907–586–7557; or
- Webform at the Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions at that site for submitting comments.

Copies of the draft Environmental Assessment/Initial Regulatory Flexibility Analysis (EA/IRFA) prepared for this action are available from NMFS at the address above or from the Alaska Region Web site www.fakr.noaa.gov. Copies of the final 2004 Stock Assessment and Fishery Evaluation (SAFE) reports, dated November 2004, and the October 2005 Council meeting minutes, are available from the North Pacific Fishery Management Council, West 4th Avenue, Suite 306, Anchorage, AK, 99510 or from its home page at *http://www.fakr.noaa.gov/npfmc.*

FOR FURTHER INFORMATION CONTACT: Tom Pearson, Sustainable Fisheries Division, Alaska Region, 907–481–1780 or e-mail at *tom.pearson@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the GOA groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for Groundfish of the GOA (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, *et seq*. Regulations governing U.S. fisheries and implementing the FMP appear at 50 CFR parts 600, 679, and 680.

These proposed specifications are based on the 2004 SAFE reports. In November 2005, the 2005 SAFE reports will be used to develop the 2006 and 2007 final acceptable biological catch (ABC) amounts. Any anticipated changes in the final specifications from the proposed specification are identified in this notice for public review.

The FMP and its implementing regulations require NMFS, after consultation with the Council, to specify the total allowable catch (TAC) for each target species and for the ''other species'' category, the sum of which must be within the optimum yield (OY) range of 116,000 metric tons (mt) to 800,000 mt. Section 679.20(c)(1) further requires NMFS to publish and solicit public comment on proposed annual TACs, halibut PSC amounts, and seasonal allowances of pollock and inshore/offshore Pacific cod. The proposed specifications set forth in Tables 1 through 16 of this document satisfy these requirements. For 2006, the sum of the proposed TAC amounts is 301,304 mt. For 2007, the sum of the proposed TAC amounts is 281,640 mt. Under § 679.20(c)(3), NMFS will publish the 2006 and 2007 final specifications after (1) considering comments received within the comment period (see **DATES**), (2) consulting with the Council at its December 2005 meeting, and (3) considering new information presented in the EA and the final 2005 SAFE report prepared for the 2006 and 2007 fisheries.

Proposed ABC and TAC Specifications

The proposed ABC and TAC for each species or species group are based on the best available biological and socioeconomic information, including projected biomass trends, information on assumed distribution of stock biomass, and revised methods used to calculate stock biomass. The FMP specifies the formulas, or tiers, to be used in computing ABCs and overfishing levels (OFL). The formulas applicable to a particular stock or stock complex are determined by the level of reliable information available to fisheries scientists. This information is categorized into a successive series of six tiers with tier one representing the highest level of information and tier six the lowest level of information.

The Council and its Science and Statistical Committee (SSC) and Advisory Panel (AP) reviewed current biological and harvest information about the condition of groundfish stocks in the GOA in October 2005. Most of the information available to the SSC, AP, and Council was initially compiled by the Council's GOA Groundfish Plan Team and was presented in the final 2004 SAFE report for the GOA groundfish fisheries, dated November 2004 (see **ADDRESSES**). The Plan Team annually produces the SAFE report as the first step in the process of specifying TACs.

The SAFE report contains a review of the latest scientific analyses, estimates of each species' biomass and other biological parameters, summaries of the available information on the GOA ecosystem, and the economic condition

of the groundfish fisheries off Alaska. From these data and analyses, the Plan Team estimates an ABC for each species category. The 2004 SAFE report will be updated to include new information collected during 2005. The Plan Team will provide revised stock assessments in November 2005 in the final 2005 SAFE report. The Council will review the 2005 SAFE report in December 2005. The final 2006 and 2007 harvest specifications may be adjusted from the proposed harvest specifications based on the 2005 SAFE report.

The SSC adopted the OFL and ABC recommendations from the Plan Team for all groundfish species. Based on the recommendations from the SSC for OFLs and ABCs and the AP recommendations for TAC amounts, the Council recommended amending the 2006 OFL, ABC, and TAC amounts for pollock, Pacific cod, sablefish, flathead sole, arrowtooth flounder, northern rockfish, and ''other species'' as published in the 2005 and 2006 final harvest specifications for groundfish in the GOA on February 24, 2005 (70 FR 8958). These amended amounts were recommended by the Council based on new information developed in 2005. For tier 1–3 stocks listed above, the GOA Groundfish Plan Team recommended projected groundfish OFLs and ABCs for 2006 and 2007 at its September 2005 meeting. The projections for tier 1–3 stocks used species-specific Alaska Fisheries Science Center population models, which include information on age structure, growth and reproduction, and natural and fishing mortality. The Council recommended that proposed OFL and ABC levels for those stocks in tiers 4–6, for which projections cannot be made, remain unchanged from 2005 levels for 2006 and 2007.

As in 2005, the SSC's, AP's and Council's recommendation for the method of apportioning the sablefish ABC among management areas includes commercial fishery and survey data. NMFS stock assessment scientists believe that the use of unbiased commercial fishery data reflecting catch-per-unit effort provides a desirable input for stock distribution assessments. The use of commercial fishery data is evaluated annually to assure that unbiased information is included in stock distribution models. The Council's recommendation for sablefish area apportionments also takes into account the prohibition on the use of trawl gear in the Southeast Outside (SEO) District of the Eastern GOA and makes available 5 percent of the combined Eastern GOA TACs to trawl gear for use as incidental catch in other directed groundfish fisheries in the West Yakutat District (WYK).

The AP, SSC, and Council recommended that the ABC for Pacific cod in the GOA be apportioned among regulatory areas based on the three most recent NMFS summer trawl surveys. As in previous years, the Plan Team, SSC, and Council recommended that total removals of Pacific cod from the GOA not exceed ABC recommendations. Accordingly, the Council recommended adjusting the 2006 and 2007 TACs downward from the ABCs by amounts equal to the 2005 guideline harvest levels (GHL) established for Pacific cod by the State of Alaska (State) for the state managed fisheries in the GOA. The effect of the State's GHL on the Pacific cod TAC is discussed in greater detail below. As in 2005, for 2006 and 2007, NMFS proposes to establish an A season directed fishing allowance (DFA) for the Pacific cod fisheries in the GOA based on the management area TACs less the recent average A season incidental catch of Pacific cod in each management area before June 10 (§ 679.20(d)(1)). The DFA and incidental catch before June 10 will be managed such that total harvest in the A season will be no more than 60 percent of the annual TAC. Incidental catch taken after June 10 will continue to be taken from the B season TAC. This action meets the intent of the Steller Sea Lion Protection Measures by achieving temporal dispersion of the Pacific cod removals and reducing the likelihood of harvest exceeding 60 percent of the annual TAC in the A season (January 1 through June 10).

For 2006 and 2007, the Council recommends and NMFS proposes the ABCs listed in Tables 1 and 2. These amounts reflect harvest amounts that are less than the proposed 2006 and 2007 overfishing amounts. The sum of the proposed 2006 ABCs for all target species TACs is 547,181 mt, which is higher than the final 2005 ABC total of 539,263 mt and the final 2006 ABC total of 542,456 mt (70 FR 8958, February 24, 2005). The sum of the proposed 2007 ABCs for all target species TACs is 536,559 mt, which is lower than the final 2005 ABC total and the final 2006 ABC total of 547,181 mt.

Specification and Apportionment of TAC Amounts

The Council recommended proposed TACs for 2006 and 2007 that are equal to proposed ABCs for pollock, deep-water flatfish, rex sole, sablefish, Pacific ocean perch, shortraker rockfish, rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, skates, and Atka mackerel. The Council recommended TACs that are less than the ABCs for Pacific cod, flathead sole, shallow-water flatfish, arrowtooth flounder, and other rockfish.

The apportionment of annual pollock TAC among the Western and Central Regulatory Areas of the GOA reflects the seasonal biomass distribution and is discussed in greater detail below. The annual pollock TAC in the Western and Central Regulatory Areas of the GOA is divided into four equal seasonal apportionments. Twenty-five percent of the annual TAC in the Western and Central Regulatory Areas of the GOA is apportioned respectively to the A season (January 20 through March 10), the B season (March 10 through May 31), the C season (August 25 through October 1), and the D season (October 1 through November 1) in Statistical Areas 610, 620, and 630 of the GOA (§§ 679.23(d)(2)(i) through (iv) and 679.20(a)(5)(iii)(B)).

The 2006 and 2007 Pacific cod TACs are affected by the State's developing fishery for Pacific cod in State waters in the Western and Central GOA, and in Prince William Sound (PWS). The SSC, AP, and Council recommended that the sum of all State and Federal water Pacific cod removals not exceed the ABC. Accordingly, the Council recommended that for 2006 and 2007, the Pacific cod TACs be reduced from ABC levels to account for State GHLs in each regulatory area of the GOA. Therefore, respective 2006 TACs are reduced from ABCs as follows: (1) Eastern GOA 386 mt, (2) Central GOA 7,898 mt, and (3) Western GOA 4,988 mt. Respective 2007 TACs are reduced as follows: (1) Eastern GOA 324 mt, (2) Central GOA 6,643 mt, and (3) Western GOA 4,196 mt. These amounts reflect the sum of the State's 2006 and 2007 GHLs in these areas, which are 10 percent, 25 percent, and 25 percent of the Eastern, Central, and Western GOA ABCs, respectively.

NMFS also is proposing seasonal apportionments of the annual Pacific cod TAC in the Western and Central Regulatory Areas. Sixty percent of the annual TAC is apportioned to the A season for hook-and-line, pot or jig gear from January 1 through June 10, and for trawl gear from January 20 through June 10. Forty percent of the annual TAC is apportioned to the B season for hook-and-line, pot or jig gear from September 1 through December 31, and for trawl gear from September 1 through November 1 (§§ 679.23(d)(3) and 679.20(a)(11)). These seasonal apportionments of the annual Pacific cod TAC are discussed in greater detail below.

The FMP specifies that the amount for the ''other species'' category is calculated as 5 percent of the combined TAC amounts for target species. The 2006 GOA-wide ''other species'' TAC is 14,348 mt and the 2007 TAC is 13,411 mt, which is 5 percent of the sum of the combined TAC amounts (286,946 mt for 2006 and 268,229 mt for 2007) for the assessed target species. The sum of the TACs for all GOA groundfish is 301,304 mt for 2006 and 281,640 mt for 2007, which is within the OY range specified by the FMP. The sum of the proposed 2006 TACs are higher than the 2005 TAC sum of 291,298 mt while the sum of the proposed 2007 TACs are lower than in 2005.

In June 2005, the Council selected its preferred alternative for Amendment 69 to the GOA FMP to revise the manner in which the ''other species'' complex TAC is annually established. If approved, Amendment 69 would allow the Council, as part of its annual harvest specification process, to recommend a TAC amount for the ''other species'' less than or equal to 5 percent of the sum of the combined TAC amounts for target species. The intent of Amendment 69 is to better conserve and manage the species which comprise the ''other species'' complex.

If approved by the Secretary of Commerce, the Central Gulf of Alaska Rockfish Pilot Program would allocate rockfish, associated groundfish, halibut PSC limits, and groundfish sideboard limits to a specific group of eligible harvesters in 2007. These amounts are expected to be identified in September 2006 and would modify the harvest specifications for 2007.

NMFS finds that the Council's recommendations for proposed OFL, ABC, and TAC amounts are consistent with the biological condition of groundfish stocks as adjusted for other biological and socioeconomic considerations, including maintaining the total TAC within the required OY range of 116,000 to 800,000 mt. The proposed 2006 and 2007 ABCs, TACs, and OFLs are shown in Tables 1 and 2.

TABLE 1.—PROPOSED 2006 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.

[Values are rounded to the nearest metric ton]

Total	Species	Area [1]	ABC	TAC	Overfishing level
	Pollock [2]	Shumagin (610)	35,202	35,202	N/A
		Chirikof (620)	39,865	39,865	N/A
		Kodiak (630)	21,678	21,678	N/A
		WYK (640)	1,955	1,955	N/A
Subtotal		W/C/WYK	98,700	98,700	133,900
		SEO (650)	6,520	6,520	8,690
Total			105,220	105,220	142,590
	Pacific cod [3]	W	19,952	14,964	N/A
		C	31,590	23,692	N/A
		E	3,858	3,472	N/A
Total			55,400	42,128	82,000
	Flatfish [4] (deep-water)	W	330	330	N/A
		C	3,340	3,340	N/A
		WYK	2,120	2,120	N/A
		SEO	1,030	1,030	N/A
Total			6,820	6,820	8,490
	Rex sole	W	1,680	1,680	N/A
		C	7,340	7,340	N/A
		WYK	1,340	1,340	N/A
		SEO	2,290	2,290	N/A
Total			12,650	12,650	16,480
	Flathead sole	W	12,316	2,000	N/A
		C	31,617	5,000	N/A
		WYK	3,149	3,149	N/A
		SEO	408	408	N/A
Total			47,490	10,557	59,240
	Flatfish [5] (shallow-water)	W	21,580	4,500	N/A
		C	27,250	13,000	N/A
		WYK	2,030	2,030	N/A
		SEO	1,210	1,210	N/A
Total			52,070	20,740	63,840
	Arrowtooth flounder	W	25,833	8,000	N/A
		C	166,275	25,000	N/A
		WYK	11,599	2,500	N/A
		SEO	9,753	2,500	N/A
Total			213,460	38,000	249,140
	Sablefish [6]	W	2,371	2,371	N/A
		C	6,767	6,767	N/A
		WYK	2,409	2,409	N/A
		SEO	3,333	3,333	N/A
Subtotal		E	5,742	5,742	N/A
Total			14,880	14,880	18,000
	Pacific ocean perch [7]	W	2,525	2,525	3,019
		C	8,375	8,375	10,008
		WYK	813	813	N/A
		SEO	1,579	1,579	N/A
Subtotal		E	N/A	N/A	2,860

TABLE 1.—PROPOSED 2006 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.—Continued

[Values are rounded to the nearest metric ton]

Total	Species	Area [1]	ABC	TAC	Overfishing level
Total			13,292	13,292	15,887
	Shortraker rockfish [8]	W	155	155	N/A
		C	324	324	N/A
		E	274	274	N/A
Total			753	753	982
	Rougheye rockfish [9]	W	188	188	N/A
		C	557	557	N/A
		E	262	262	N/A
Total			1,007	1,007	1,531
	Other rockfish [10 11]	W	40	40	N/A
		C	300	300	N/A
		WYK	130	130	N/A
		SEO	3,430	200	N/A
Total			3,900	670	5,150
	Northern rockfish [11 12]	W	752	752	N/A
		C	3,978	3,978	N/A
		E	0	0	N/A
Total			4,730	4,730	5,620
	Pelagic shelf rockfish [13]	W	366	366	N/A
		C	2,973	2,973	N/A
		WYK	205	205	N/A
		SEO	871	871	N/A
Total			4,415	4,415	5,510
	Thornyhead rockfish	W	410	410	N/A
		C	1,010	1,010	N/A
		E	520	520	N/A
Total			1,940	1,940	2,590
	Big skates [14]	W	727	727	N/A
		C	2,463	2,463	N/A
		E	809	809	N/A
Total			3,999	3,999	5,332
	Longnose skates [15]	W	66	66	N/A
		C	1,972	1,972	N/A
		E	780	780	N/A
Total			2,818	2,818	3,757
	Other skates [16]	GW	1,327	1,327	1,769
	Demersal shelf rockfish [18]	SEO	410	410	640
	Atka mackerel	GW	600	600	6,200
	Other species [17 19]	GW	N/A	14,348	N/A
Total [20]			547,181	301,304	694,748

[1] Regulatory areas and districts are defined at § 679.2.

[2] Pollock is apportioned in the Western/Central Regulatory Areas among three statistical areas. During the A season, the apportionment is based on an adjusted estimate of the relative distribution of pollock biomass of approximately 24 percent, 56 percent, and 20 percent in Statistical Areas 610, 620, and 630, respectively. During the B season, the apportionment is based on the relative distribution of pollock biomass at 24 percent, 66 percent, and 10 percent in Statistical Areas 610, 620, and 630, respectively. During the C and D seasons, the apportionment is based on the relative distribution of pollock biomass at 49 percent, 21 percent, and 30 percent in Statistical Areas 610, 620, and 630, respectively. These proposed seasonal apportionments for 2006 and 2007 are shown in Tables 5 and 6. In the West Yakutat and Southeast Outside Districts of the Eastern Regulatory Area, pollock is not divided into seasonal allowances.

[3] The annual Pacific cod TAC is apportioned 60 percent to an A season and 40 percent to a B season in the Western and Central Regulatory Areas of the GOA. Pacific cod is allocated 90 percent for processing by the inshore component and 10 percent for processing by the offshore component. Proposed seasonal apportionments and component allocations of TAC for 2006 and 2007 are shown in Tables 7 and 8.

[4] "Deep water flatfish" means Dover sole, Greenland turbot, and deepsea sole.

[5] "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears for 2006 and to trawl gear in 2007 these amounts are shown in Tables 3 and 4.

[7] "Pacific ocean perch" means *Sebastes alutus.*

[8] "Shortraker rockfish" means *Sebastes borealis.*

[9] "Rougheye rockfish" means *Sebastes aleutianus.*

[10] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District means slope rockfish and demersal shelf rockfish. The category "other rockfish" in the SEO District means slope rockfish.

[11] "Slope rockfish" means *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegatus* (harlequin), *S. wilsoni* (pygmy), *S. babcocki* (redbanded), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose), *S. saxicola* (stripetail), *S. miniatus* (vermilion), and *S. reedi* (yellowmouth). In the Eastern GOA only, slope rockfish also includes northern rockfish, *S. polyspinous.*

[12] "Northern rockfish" means *Sebastes polyspinis.*

[13] "Pelagic shelf rockfish" means *Sebastes ciliatus* (dark), *S. variabilis* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] Big skate means *Raja binoculata.*

[15] Longnose skate means *Raja rhina.*

[16] Other skates means *Bathyraja spp.*

[17] N/A means not applicable.
[18] "Demersal shelf rockfish" means *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).
[19] "Other species" means sculpins, sharks, squid, and octopus. There is no OFL or ABC for "other species", the TAC for "other species" equals 5 percent of the TACs for assessed target species.
[20] The total ABC and OFL is the sum of the ABCs and OFLs for assessed target species.
These footnotes also apply to Table 2.

TABLE 2.—PROPOSED 2007 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.

[Values are rounded to the nearest metric ton]

Total	Species	Area [1]	ABC	TAC	Overfishing level
	Pollock [2]	Shumagin (610)	31,743	31,743	N/A
		Chirikof (620)	35,947	35,947	N/A
		Kodiak (630)	19,547	19,547	N/A
		WYK (640)	1,763	1,763	N/A
Subtotal		W/C/WYK	89,000	89,000	119,800
		SEO (650)	6,520	6,520	8,690
Total			95,520	95,520	128,490
	Pacific cod [3]	W	16,783	12,587	N/A
		C	26,572	19,929	N/A
		E	3,245	2,920	N/A
Total			46,600	35,436	68,900
	Flatfish [4] (deep-water)	W	330	330	N/A
		C	3,340	3,340	N/A
		WYK	2,120	2,120	N/A
		SEO	1,030	1,030	N/A
Total			6,820	6,820	8,490
	Rex sole	W	1,680	1,680	N/A
		C	7,340	7,340	N/A
		WYK	1,340	1,340	N/A
		SEO	2,290	2,290	N/A
Total			12,650	12,650	16,480
	Flathead sole	W	12,355	2,000	N/A
		C	31,721	5,000	N/A
		WYK	2,336	2,336	N/A
		SEO	308	308	N/A
Total			47,650	9,644	59,500
	Flatfish [5] (shallow-water)	W	21,580	4,500	N/A
		C	27,250	13,000	N/A
		WYK	2,030	2,030	N/A
		SEO	1,210	1,210	N/A
Total			52,070	20,740	63,840
	Arrowtooth flounder	W	26,939	8,000	N/A
		C	173,394	25,000	N/A
		WYK	12,096	2,500	N/A
		SEO	10,171	2,500	N/A
Total			222,600	38,000	260,150
	Sablefish [6]	W	2,215	2,215	N/A
		C	6,322	6,322	N/A
		WYK	2,250	2,250	N/A
		SEO	3,113	3,113	N/A
Subtotal		E	5,363	5,363	N/A
Total			13,900	13,900	16,900
	Pacific ocean perch [7]	W	2,494	2,494	2,985
		C	8,293	8,293	9,896
		WYK	803	803	N/A
		SEO	1,560	1,560	N/A
Subtotal		E	N/A	N/A	2,829
Total			13,150	13,150	15,710
	Shortraker rockfish [8]	W	155	155	N/A
		C	324	324	N/A
		E	274	274	N/A
Total			753	753	982
	Rougheye rockfish [9]	W	188	188	N/A
		C	557	557	N/A
		E	262	262	N/A
Total			1,007	1,007	1,531
	Other rockfish [10] [11]	W	40	40	N/A
		C	300	300	N/A
		WYK	130	130	N/A
		SEO	3,430	200	N/A

TABLE 2.—PROPOSED 2007 ABCS, TACS, AND OVERFISHING LEVELS OF GROUNDFISH FOR THE WESTERN/CENTRAL/WEST YAKUTAT (W/C/WYK), WESTERN (W), CENTRAL (C), EASTERN (E) REGULATORY AREAS, AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULFWIDE (GW) DISTRICTS OF THE GULF OF ALASKA.—Continued

[Values are rounded to the nearest metric ton]

Total	Species	Area [1]	ABC	TAC	Overfishing level
Total			3,900	670	5,150
	Northern rockfish [11 12]	W	704	704	N/A
		C	3,726	3,726	N/A
		E	0	0	N/A
Total			4,430	4,430	5,270
	Pel agic shelf rockfish [13]	W	366	366	N/A
		C	2,973	2,973	N/A
		WYK	205	205	N/A
		SEO	871	871	N/A
Total			4,415	4,415	5,510
	Thornyhead rockfish	W	410	410	N/A
		C	1,010	1,010	N/A
		E	520	520	N/A
Total			1,940	1,940	2,590
	Big skates [14]	W	727	727	N/A
		C	2,463	2,463	N/A
		E	809	809	N/A
Total			3,999	3,999	5,332
	Longnose skates [15]	W	66	66	N/A
		C	1,972	1,972	N/A
		E	780	780	N/A
Total			2,818	2,818	3,757
	Other skates [16]	GW	1,327	1,327	1,769
	Demersal shelf rockfish [18]	SEO	450	450	690
	Atka mackerel	GW	600	600	6,200
	Other species [17 19]	GW	[21]	13,411	N/A
Total [20]			536,559	281,640	677,191

The footnotes in Table 2 are identical to those presented above for Table 1.

Proposed Apportionment of Reserves

Regulations at § 679.20(b)(2) require 20 percent of each TAC for pollock, Pacific cod, flatfish, and the ''other species'' category to be set aside in reserves for possible apportionment at a later date. In 2005, NMFS reapportioned all the reserves in the final harvest specifications. For 2006 and 2007, NMFS proposes apportionment of all the reserves for pollock, Pacific cod, flatfish, and ''other species.'' Specifications of TAC shown in Tables 1 and 2 reflect apportionment of reserve amounts for these species and species groups.

Proposed Apportionments of the Sablefish TAC Amounts to Vessels Using Hook-and-Line and Trawl Gear

Under § 679.20(a)(4)(i) and (ii), sablefish TACs for each of the regulatory areas and districts are allocated to hook-and-line and trawl gear. In the Western and Central Regulatory Areas, 80 percent of each TAC is allocated to hook-and-line gear, and 20 percent of each TAC is allocated to trawl gear. In the Eastern GOA, 95 percent of the TAC is allocated to hook-and-line gear and 5 percent is allocated to trawl gear. The trawl gear allocation in the Eastern GOA may only be used to support incidental catch of sablefish in directed fisheries for other target species (§ 679.20(a)(1)). In recognition of the trawl ban in the SEO District of the Eastern GOA, the Council recommended and NMFS proposes that 5 percent of the combined Eastern GOA sablefish TAC be allocated to trawl gear in the WYK District and the remainder to vessels using hook-and-line gear. In the SEO District, 100 percent of the sablefish TAC is allocated to vessels using hook-and-line gear. The Council recommended that only trawl sablefish TAC be established biennially. This recommendation results in an allocation of 287 mt to trawl gear and 2,122 mt to hook-and-line gear in the WYK District and 3,333 mt to hook-and-line gear in the SEO District in 2006. Table 3 shows the allocations of the proposed 2006 sablefish TACs between hook-and-line gear and trawl gear. Table 4 presents the allocation of the proposed 2007 sablefish TACs to trawl gear.

TABLE 3.—PROPOSED 2006 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/District	TAC	Hook-and-line apportionment	Trawl apportionment
Western	2,371	1,897	474
Central	6,767	5,414	1,353
West Yakutat	2,409	2,122	287

TABLE 3.—PROPOSED 2006 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATIONS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR—Continued

[Values are rounded to the nearest metric ton]

Area/District	TAC	Hook-and-line apportionment	Trawl apportionment
Southeast Outside	3,333	3,333	0
Total	14,880	12,766	2,114

TABLE 4.—PROPOSED 2007 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ALLOCATION THEREOF TO TRAWL GEAR

[Values are rounded to the nearest metric ton]

Area/District	TAC	Hook-and-line apportionment [1]	Trawl apportionment
Western	2,215	N/A	443
Central	6,322	N/A	1,264
West Yakutat	2,250	N/A	268
Southeast Outside	3,113	N/A	0
Total	13,900	N/A	1,975

[1] The Council recommended that specifications for the hook-and-line gear sablefish IFQ fisheries be limited to 1 year to ensure that those fisheries are conducted concurrently with the halibut IFQ fishery.

Proposed Apportionments of Pollock TAC Among Seasons and Regulatory Areas, and Allocations for Processing by Inshore and Offshore Components

In the GOA, pollock is apportioned by season and area, and is further divided between inshore and offshore processing components. Under § 679.20(a)(5)(iii)(B), the annual pollock TAC specified for the Western and Central Regulatory Areas of the GOA is apportioned into four equal seasonal allowances of 25 percent. As established by § 679.23(d)(2)(i) through (iv), the A, B, C, and D season allowances are available from January 20 through March 10, March 10 through May 31, August 25 through October 1, and October 1 through November 1, respectively.

Pollock TACs in the Western and Central Regulatory Areas of the GOA are apportioned among statistical areas 610, 620, and 630 in the A and B seasons in proportion to the distribution of pollock biomass based on a composite of NMFS winter surveys and in the C and D seasons in proportion to the distribution of pollock biomass based on the four most recent NMFS summer surveys. As in 2005, the Council recommended averaging the winter and summer distribution of pollock in the Central Regulatory Area for the A season to better reflect the distribution of pollock and the performance of the fishery in the area during the A season for the 2006 and 2007 fishing years. Within any fishing year, the underage or overage of a seasonal allowance may be added to, or subtracted from, subsequent seasonal allowances. The rollover amount is limited to 20 percent of the seasonal apportionment for the statistical area. Any unharvested pollock above the 20 percent limit could be further distributed to the other statistical areas, in proportion to the estimated biomass in the subsequent season in those statistical areas. The WYK District pollock TAC of 1,955 mt in 2006, and 1,763 mt in 2007, along with the SEO District pollock TAC of 6,520 mt for 2006 and 2007, are not allocated seasonally.

Section 679.20(a)(6)(i) requires the allocation of 100 percent of the pollock TAC in all regulatory areas and all seasonal allowances thereof to vessels catching pollock for processing by the inshore component after subtraction of amounts that are projected by the Regional Administrator to be caught by, or delivered to, the offshore component incidental to directed fishing for other groundfish species. The amount of pollock available for harvest by vessels harvesting pollock for processing by the offshore component is that amount actually taken as incidental catch during directed fishing for groundfish species other than pollock, up to the maximum retainable amounts allowed under at § 679.20(e) and (f). At this time, these incidental catch amounts are unknown and will be determined during the fishing year.

The proposed 2006 and 2007 seasonal biomass distribution of pollock in the Western and Central GOA, area apportionments, and seasonal apportionments for the A, B, C, and D seasons are summarized in Tables 5 and 6.

TABLE 5.—PROPOSED 2006 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton]

[Area Apportionments Resulting From Seasonal Distribution of Biomass]

Season	Shumagin (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total
A	5,835 (24.12%)	13,547 (56.01%)	4,805 (19.87%)	24,187 (100%)
B	5,835 (24.12%)	16,012 (66.2%)	2,339 (9.68%)	24,186 (100%)

TABLE 5.—PROPOSED 2006 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC—Continued

[Values are rounded to the nearest metric ton]
[Area Apportionments Resulting From Seasonal Distribution of Biomass]

Season	Shumagin (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total
C	11,766 (48.64%)	5,153 (21.3%)	7,267 (30.06%)	24,186 (100%)
D	11,766 (48.64%)	5,153 (21.3%)	7,267 (30.06%)	24,186 (100%)
Annual total	35,202	39,865	21,678	96,745

TABLE 6.—PROPOSED 2007 DISTRIBUTION OF POLLOCK IN THE CENTRAL AND WESTERN REGULATORY AREAS OF THE GULF OF ALASKA; SEASONAL BIOMASS DISTRIBUTION, AREA APPORTIONMENTS; AND SEASONAL ALLOWANCES OF ANNUAL TAC

[Values are rounded to the nearest metric ton]
[Area Apportionments Resulting From Seasonal Distribution of Biomass]

Season	Shumagin (Area 610)	Chirikof (Area 620)	Kodiak (Area 630)	Total
A	5,262 (24.12%)	12,216 (56.01%)	4,332 (19.87%)	21,810 (100%)
B	5,261 (24.12%)	14,439 (66.2%)	2,109 (9.68%)	21,809 (100%)
C	10,610 (48.64%)	4,646 (21.3%)	6,553 (30.06%)	21,809 (100%)
D	10,610 (48.64%)	4,646 (21.3%)	6,553 (30.06%)	21,809 (100%)
Annual total	31,743	35,947	19,547	87,237

Proposed Seasonal Apportionments of Pacific Cod TAC and Allocations for Processing of Pacific Cod TAC Between Inshore and Offshore Components

Pacific cod fishing is divided into two seasons in the Western and Central Regulatory Areas of the GOA. For hook-and-line, pot, and jig gear, the A season is January 1 through June 10, and the B season is September 1 through December 31. For trawl gear, the A season is January 20 through June 10, and the B season is September 1 through November 1 (§ 679.23(d)(3)). After subtraction of incidental catch, 60 percent and 40 percent of the annual TAC will be available for harvest during the A and B seasons, respectively, and will be apportioned between the inshore and offshore processing components, as provided in § 679.20(a)(6)(ii). Between the A and the B seasons, directed fishing for Pacific cod is closed, and fishermen participating in other directed fisheries may retain Pacific cod up to the maximum retainable amounts allowed under § 679.20(e) and (f). Under § 679.20(a)(11)(ii), any overage or underage of Pacific cod allowance from the A season may be subtracted from or added to the subsequent B season allowance.

Section 679.20(a)(6)(ii) requires the allocation of the TAC apportionment of Pacific cod in all regulatory areas to vessels catching Pacific cod for processing by the inshore and offshore components. Ninety percent of the Pacific cod TAC in each regulatory area is allocated to vessels catching Pacific cod for processing by the inshore component. The remaining 10 percent of the TAC is allocated to vessels catching Pacific cod for processing by the offshore component. These seasonal apportionments and allocations of the proposed 2006 and 2007 Pacific cod TACs are shown in Tables 7 and 8, respectively.

TABLE 7.—PROPOSED 2006 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
Annual	Western	14,964	13,468	1,496
A season (60%)		8,978	8,080	898
B season (40%)		5,986	5,388	598
Annual	Central	23,692	21,323	2,369
A season (60%)		14,215	12,794	1,421
B season (40%)		9,477	8,529	948
Annual	Eastern	3,472	3,125	347
Total		42,128	37,915	4,213

TABLE 8.—PROPOSED 2007 SEASONAL APPORTIONMENTS AND ALLOCATION OF PACIFIC COD TAC AMOUNTS IN THE GULF OF ALASKA; ALLOCATIONS FOR PROCESSING BY THE INSHORE AND OFFSHORE COMPONENTS

[Values are rounded to the nearest metric ton]

Season	Regulatory area	TAC	Component allocation	
			Inshore (90%)	Offshore (10%)
Annual	Western	12,587	11,328	1,259
A season (60%)		7,552	6,797	755
B season (40%)		5,035	4,531	504
Annual	Central	19,929	17,936	1,993
A season (60%)		11,957	10,761	1,196
B season (40%)		7,972	7,175	797
Annual	Eastern	2,920	2,628	292
Total		35,436	31,892	3,544

Proposed Halibut PSC Limits

Under § 679.21(d), annual halibut PSC limits are established and apportioned to trawl and hook-and-line gears and may be established for pot gear. In October 2005, the Council recommended that NMFS maintain the 2005 halibut PSC limits of 2,000 mt for the trawl fisheries and 300 mt for the hook-and-line fisheries. Ten mt of the hook-and-line limit is further allocated to the demersal shelf rockfish (DSR) fishery in the SEO District. Historically, the DSR fishery, defined at § 679.21(d)(4)(iii)(A), has been apportioned this amount in recognition of its small scale harvests. Most vessels in the DSR fishery are less than 60 ft (18.3 m) length overall (LOA) making them exempt from observer coverage. Although observer data are not available to verify actual bycatch amounts, NMFS assumes the halibut bycatch in the DSR fishery is low because of the short soak times for the gear and duration of the DSR fishery. Also, the DSR fishery occurs in the winter when less overlap occurs in the distribution of DSR and halibut.

Section 679.21(d)(4) authorizes the exemption of specified non-trawl fisheries from the halibut PSC limit. The Council recommended that pot gear, jig gear, and the hook-and-line sablefish fishery be exempted from the non-trawl halibut limit for 2006 and 2007. The Council recommended these exemptions because: (1) The pot gear fisheries experience low halibut bycatch mortality (averaging 11 mt annually from 2001 through 2004 and 38 mt through October 8, 2005); (2) the Individual Fishing Quota (IFQ) program requires legal-sized halibut to be retained by vessels using hook-and-line gear if a halibut IFQ permit holder is aboard and is holding unused halibut IFQ; and (3) halibut mortality for the jig gear fleet cannot be estimated because these vessels do not carry observers. NMFS assumes halibut mortality is very low given the small amount of groundfish harvested by jig gear (averaging 303 mt annually from 2001 through 2004 and 153 mt through October 8, 2005) and assumes that survival rates of any halibut incidentally caught by jig gear and released are high.

Under § 679.21(d)(5), NMFS seasonally apportions the halibut PSC limits based on recommendations from the Council. The FMP and regulations require that the Council and NMFS consider the following information in seasonally apportioning halibut PSC limits: (1) Seasonal distribution of halibut, (2) seasonal distribution of target groundfish species relative to halibut distribution, (3) expected halibut bycatch needs on a seasonal basis relative to changes in halibut biomass and expected catch of target groundfish species, (4) expected bycatch rates on a seasonal basis, (5) expected changes in directed groundfish fishing seasons, (6) expected actual start of fishing effort, and (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The final 2005 groundfish and PSC specifications (70 FR 8958, February 24, 2005) summarized the Council and NMFS findings with respect to each of these FMP considerations. The Council's and NMFS' findings are unchanged. The proposed Pacific halibut PSC limits, and apportionments thereof for 2006 and 2007, are presented in Table 9. Sections 679.21(d)(5)(iii) and (iv) specify that any underages or overages in a seasonal apportionment of a PSC limit will be deducted from or added to the next respective seasonal apportionment within the 2006 and 2007 fishing years.

TABLE 9.—PROPOSED 2006 AND 2007 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. THE HOOK-AND-LINE SABLEFISH FISHERY IS EXEMPT FROM HALIBUT PSC LIMITS.

[Values are in metric tons]

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amount	Dates	Amount	Dates	Amount
January 20–April 1	550 (27.5%)	January 1–June 10	250 (86%)	January–December 31	10 (100%)
April 1–July 1	400 (20%)	June 10–September 1	5 (2%)		
July 1–September 1	600 (30%)	September 1–December 31	35 (12%)		
September 1–October 1	150 (7.5%)				
October 1–December 31	300 (15%)				

TABLE 9.—PROPOSED 2006 AND 2007 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. THE HOOK-AND-LINE SABLEFISH FISHERY IS EXEMPT FROM HALIBUT PSC LIMITS.—Continued

[Values are in metric tons]

Trawl gear		Hook-and-line gear			
Dates	Amount	Other than DSR		DSR	
		Dates	Amount	Dates	Amount
Total	2,000 (100%)		290 (100%)		10 (100%)

Section 679.21(d)(3)(ii) authorizes the further apportionment of the trawl halibut PSC limit to trawl fishery categories, based on each category's proportional share of the anticipated halibut bycatch mortality during a fishing year and the need to optimize the total amount of groundfish harvest under the halibut PSC limit. The fishery categories for the trawl halibut PSC limits are (1) a deep-water species complex, comprised of sablefish, rockfish, deep-water flatfish, rex sole and arrowtooth flounder; and (2) a shallow-water species complex, comprised of pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates, and ''other species'' (§ 679.21(d)(3)(iii)). The proposed 2006 and 2007 seasonal apportionments for these two fishery complexes are presented in Table 10.

TABLE 10.—PROPOSED 2006 AND 2007 SEASONAL APPORTIONMENTS OF PACIFIC HALIBUT PSC TRAWL LIMITS BETWEEN THE TRAWL GEAR DEEP-WATER SPECIES COMPLEX AND THE SHALLOW-WATER SPECIES COMPLEX

[Values are in metric tons]

Season	Shallow-water	Deep-water	Total
January 20–April 1	450	100	550
April 1–July 1	100	300	400
July 1–September 1	200	400	600
September 1–October 1	150	Any remainder	150
Subtotal January 20–October 1	900	800	1,700
October 1–December 31	N/A	N/A	300
Total	N/A	N/A	2,000

No apportionment between shallow-water and deep-water fishery complexes during the 5th season (October 1–December 31).

Based on public comment and information contained in the final 2005 SAFE report, the Council may recommend, or NMFS may make, changes in the seasonal, gear-type, or fishing-complex apportionments of halibut PSC limits for the final 2006 and 2007 harvest specifications. NMFS will consider the following types of information in setting final halibut PSC limits.

Estimated Halibut Bycatch in Prior Years

The best available information on estimated halibut bycatch is data collected by observers during 2005. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gears through October 8, 2005, is 2,005 mt, 187 mt, and 38 mt, respectively, for a total halibut mortality of 2,230 mt.

Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the 2005 fishing year. Trawling during the first season closed for the deep-water complex on March 23 (70 FR 15600, March 28, 2005) and during the second season on April 8 (70 FR 19339, April 13, 2005). This April 18 closure was modified to open trawling for the deep-water fishery complex from April 24 through May 3 (70 FR 21678, April 27, 2005 and 70 FR 23940, May 6, 2005). Trawling during the third season closed for the deep-water complex on July 24 (70 FR 43327, July 27, 2005) and during the fourth season on September 4 (70 FR 52326, September 2, 2005). Trawling during the third season closed for the shallow-water complex on August 19 (70 FR 49507, August 24, 2005) and during the fourth season on September 4 (70 FR 52325, September 2, 2005). Trawling for all groundfish targets (with the exception of pollock by vessels using pelagic trawl gear) closed for the fifth season on October 1 (70 FR 57803, October 4, 2005). The use of hook-and-line gear targeting groundfish has remained open thus far as the first seasonal allowance of halibut PSC has not been reached (as of November 8, 2005). The amount of groundfish that trawl gear might have harvested if halibut catch limitations had not restricted the 2005 season is unknown.

Expected Changes in Groundfish Stocks and Catch

Proposed 2006 and 2007 ABCs for pollock, flathead sole, and arrowtooth flounder (in 2007) are higher than those established for 2005. However, the proposed 2006 and 2007 ABCs for Pacific cod, sablefish, arrowtooth (in 2006), northern rockfish, Pacific ocean perch, and pelagic shelf rockfish are lower than those established for 2005. For the remaining target species, the Council recommended that ABC levels remain unchanged from 2005. More information on these changes is included in the final SAFE report (November 2004) and in the Council, SSC, and AP October 2005 meeting minutes available from the Council (see **ADDRESSES**).

The total TAC amounts for the GOA are 301,304 mt for 2006, and 281,640 mt

for 2007, an increase of about 3.4 percent in 2006 and a decrease of about 3.3 percent in 2007 from the 2005 TAC total of 291,298 mt. Those fisheries for which the 2006 and 2007 TACs are lower than in 2005 are Pacific cod (decreased to 42,128 mt in 2006 and 35,436 mt in 2007 from 44,433 mt in 2005), flathead sole (decreased to 9,644 mt in 2007 from 10,390 mt in 2005), sablefish (decreased to 14,880 mt in 2006 and 13,900 mt in 2007 from 15,940 mt in 2005), northern rockfish (decreased to 4,730 mt in 2006 and 4,430 mt in 2007 from 5,091 mt in 2005), Pacific ocean perch (decreased to 13,292 mt in 2006 and 13,150 mt in 2007 from 13,575 mt in 2005), and ''other species'' (decreased to 13,411 mt in 2007 from 13,871 mt in 2005). Those fisheries for which the 2006 and 2007 TACs are higher than in 2005 are pollock (increased to 105,220 mt in 2006 and 95,520 mt in 2007 from 91,710 mt in 2005), flathead sole (increased to 10,557 mt in 2006 mt from 10,390 mt in 2005), and ''other species'' (increased to 13,411 mt in 2006 from 13,871 mt in 2005).

Current Estimates of Halibut Biomass and Stock Condition

The most recent halibut stock assessment was conducted by the International Pacific Halibut Commission (IPHC) in December 2004 for the 2005 commercial fishery. The 2004 assessment contains minor technical changes from the previous year. The halibut stock is healthy in the central and southern portion of its range (Areas 3A through 2A) but is believed to have declined in western and northern portion of its range (Areas 3B and 4). The current exploitable halibut biomass in Alaska for 2005 was estimated to be 149,687 mt, down from 215,912 mt in 2004. Most of this change is due to revised estimates of biomass in 2004. The female spawning biomass remains far above the minimum which occurred in the 1970s.

The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988. According to the IPHC, the long-term average reproductive biomass for the Pacific halibut resource was estimated at 118,000 mt. Long-term average yield was estimated at 26,980 mt, round weight. The species is fully utilized. Recent average catches (1994–2004) in the commercial halibut fisheries in Alaska have averaged 34,241 mt, round weight. This catch in Alaska is 27 percent higher than long-term potential yield for the entire halibut stock reflecting the good condition of the Pacific halibut resource. In January 2005, the IPHC recommended commercial catch limits totaling 35,828 mt, round weight, for Alaska in 2005. Through October 14, 2005, commercial hook- and line harvests of halibut in Alaska totaled 34,459 mt, round weight.

In 2004, IPHC staff identified a 25 percent harvest rate as a candidate target rate for use with the new population assessment, pending its evaluation using the sex-specific population model. This updated evaluation was completed and indicated that a harvest rate less than 25 percent would result in a 50 percent lower probability that the stock biomass would reach a level requiring reductions in harvest rate. Accordingly, the IPHC adopted a harvest rate of 22.5 percent for the central and southern regulatory areas (Areas 3A through 2A) and a harvest rate of 20 percent for the western and northern regulatory areas (Areas 3B and 4) in 2005. The lower rate for the western and northern areas is based on a concern that the long term productivity of these areas may not be as high as the central and southern areas.

Additional information on the Pacific halibut stock assessment may be found in the IPHC's 2004 Pacific halibut stock assessment (December 2004), available from the IPHC and on its website at *http://www.iphc.washington.edu.* The IPHC will consider the 2005 Pacific halibut assessment for 2006 at its January 2006 annual meeting when it sets the 2006 commercial halibut fishery quotas.

Other Factors

The allowable commercial catch of halibut will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 2006 and 2007 groundfish fisheries are expected to use the entire proposed annual halibut PSC limit of 2,300 mt. The allowable directed commercial catch is determined by accounting for the recreational and subsistence catch, waste, and bycatch mortality and then providing the remainder to the directed fishery. Groundfish fishing is not expected to adversely affect the halibut stocks. Methods available for reducing halibut bycatch include: (1) Publication of individual vessel bycatch rates on the NMFS Alaska Region homepage at *http://www.fakr.noaa.gov*, (2) modifications to gear, (3) changes in groundfish fishing seasons, (4) individual transferable quota programs, and (5) time/area closures.

Reductions in groundfish TAC amounts provide no incentive for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TAC amounts depend on the species and amounts of groundfish foregone.

Under § 679.2, the definition of ''Authorized fishing gear,'' paragraph 12, specifies requirements for biodegradable panels and tunnel openings for groundfish pots to reduce halibut bycatch. As a result, low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits.

The regulations also define ''Pelagic trawl gear'' in a manner intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation (§ 679.2, ''Authorized fishing gear,'' paragraph 11) and performance of the trawl gear in terms of crab bycatch (§ 679.7(a)(14)). Furthermore, all hook-and-line vessel operators are required to employ careful release measures when handling halibut bycatch (§ 679.7(a)(13)). These measures are intended to reduce handling mortality, thereby lowering overall halibut bycatch mortality in the groundfish fisheries, and to increase the amount of groundfish harvested under the available halibut mortality bycatch limits.

NMFS and the Council will review the methods available for reducing halibut bycatch listed here to determine their effectiveness, and will initiate changes, as necessary, in response to this review or to public testimony and comment.

Halibut Discard Mortality Rates

The Council recommends and NMFS proposes that the recommended halibut discard mortality rates (DMRs) developed by the staff of the IPHC for the 2005 GOA groundfish fisheries be used to monitor halibut bycatch mortality limits established for the 2006 and 2007 GOA groundfish fisheries. The IPHC recommended use of long-term average DMRs for the 2004–2006 groundfish fisheries. The IPHC recommendation also includes a provision that DMRs could be revised should analysis indicate that a fishery's annual DMR deviates substantially (up or down) from the long-term average. Most of the IPHC's assumed DMRs were based on an average of mortality rates determined from NMFS observer data collected between 1993 and 2002. DMRs were lacking for some fisheries, so rates from the most recent years were used. For the ''other species'' and skate fisheries, where insufficient mortality data are available, the mortality rate of halibut caught in the Pacific cod fishery for each gear type was recommended as

a default rate. The DMRs proposed for the GOA in 2006 and 2007 are unchanged from those used in 2005. The DMRs for hook-and-line targeted fisheries range from 8 to 13 percent. The DMRs for trawl targeted fisheries range from 57 to 75 percent. The DMRs for all pot targeted fisheries is 17 percent. The proposed DMRs for 2006 and 2007 are listed in Table 11. The justification for these DMRs is discussed in Appendix A of the final SAFE report dated November 2004. The IPHC will update and provide recommendations for halibut DMRs in 2006 for the 2007 groundfish fisheries.

TABLE 11.—PROPOSED 2006 AND 2007 HALIBUT DISCARD MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA

[Listed values are percent of halibut bycatch assumed to be dead]

Gear	Target	Mortality Rate
Hook-and-line	Other species	13
	Skates	13
	Pacific cod	13
	Rockfish	8
Trawl	Arrowtooth flounder	69
	Atka mackerel	60
	Deep-water flatfish	57
	Flathead sole	62
	Non pelagic pollock	59
	Other species	61
	Skates	61
	Pacific cod	61
	Pelagic pollock	75
	Rex sole	62
	Rockfish	67
	Sablefish	62
	Shallow-water flatfish	68
Pot	Other species	17
	Skates	17
	Pacific cod	17

Non-Exempt American Fisheries Act (AFA) Catcher Vessel Groundfish Harvest and PSC Limitations

Section 679.64 established groundfish harvesting and processing sideboard limitations on AFA catcher/processors and catcher vessels in the GOA. These sideboard limitations are necessary to protect the interests of fishermen and processors who do not directly benefit from the AFA from fishermen and processors who received exclusive harvesting and processing privileges under the AFA. In the GOA, listed AFA catcher/processors are prohibited from harvesting any species of fish (§ 679.7(k)(1)(ii)) and from processing any groundfish harvested in Statistical Area 630 of the GOA (§ 679.7(k)(1)(iv)). Section 679.64(b)(2)(ii) exempts from sideboard limitations AFA catcher vessels in the GOA less than 125 ft (38.1 m) LOA whose annual Bering Sea and Aleutians Islands pollock landings totaled less than 5,100 mt and that made 40 or more GOA groundfish landings from 1995 through 1997.

For non-exempt AFA catcher vessels in the GOA, sideboard limitations are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. Section 679.64(b)(3)(iii) establishes the GOA groundfish sideboard limitations based on the retained catch of non-exempt AFA catcher vessels of each sideboard species from 1995 through 1997 divided by the TAC for that species over the same period. These amounts are listed in Table 12 for 2006 and in Table 13 for 2007. All targeted or incidental catch of sideboard species made by non-exempt AFA catcher vessels will be deducted from the sideboard limits in Tables 12 and 13.

TABLE 12.—PROPOSED 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20–March 10			
	Shumagin (610)	0.6112	5,835	3,566
	Chirikof (620)	0.1427	13,547	1,933
	Kodiak (630)	0.2438	4,805	1,171
	B Season (W/C areas only)			
	March 10–May 31			
	Shumagin (610)	0.6112	5,835	3,566
	Chirikof (620)	0.1427	16,012	2,285
	Kodiak (630)	0.2438	2,339	570
	C Season (W/C areas only)			

TABLE 12.—PROPOSED 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
	August 25–October 1			
	Shumagin (610)	0.6112	11,766	7,191
	Chirikof (620)	0.1427	5,153	735
	Kodiak (630)	0.2438	7,267	1,772
	D Season (W/C areas only)			
	October 1–November 1			
	Shumagin (610)	0.6112	11,766	7,191
	Chirikof (620)	0.1427	5,153	735
	Kodiak (630)	0.2438	7,267	1,772
	Annual			
	WYK (640)	0.3499	1,955	684
	SEO (650)	0.3499	6,520	2,281
Pacific cod	A Season[1]			
	January 1–June 10			
	W inshore	0.1423	8,080	1,050
	W offshore	0.1026	898	92
	C inshore	0.0722	12,794	924
	C offshore	0.0721	1,421	102
	B Season[2]			
	September 1–December 31.			
	W inshore	0.1423	5,388	767
	W offshore	0.1026	598	61
	C inshore	0.0722	8,529	616
	C offshore	0.0721	948	68
	Annual			
	E inshore	0.0079	3,125	25
	E offshore	0.0078	347	3
Flatfish deep-water	W	0.0000	330	0
	C	0.0670	3,340	224
	E	0.0171	3,150	54
Rex sole	W	0.0010	1,680	2
	C	0.0402	7,340	295
	E	0.0153	3,360	56
Flathead sole	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	3,557	17
Flatfish shallow-water	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	3,240	41
Arrowtooth flounder	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sablefish	W trawl gear	0.0000	474	0
	C trawl gear	0.0720	1,353	97
	E trawl gear	0.0488	287	14
Pacific ocean perch	W	0.0623	2,525	157
	C	0.0866	8,357	725
	E	0.0466	2,392	111
Shortraker rockfish	W	0.0000	155	0
	C	0.0237	324	8
	E	0.0124	247	3
Rougheye rockfish	W	0.0000	188	0
	C	0.0237	557	13
	E	0.0124	262	3
Other rockfish	W	0.0034	40	0
	C	0.2065	300	62
	E	0.0000	330	0
Northern rockfish	W	0.0003	752	0
	C	0.0336	3,978	146
Pelagic shelf rockfish	W	0.0001	366	0
	C	0.0000	2,973	0
	E	0.0067	1,076	7
Thornyhead rockfish	W	0.0308	410	13
	C	0.0308	1,010	31
	E	0.0308	520	16
Big skates	W	0.0090	727	7

TABLE 12.—PROPOSED 2006 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2006 TAC	2006 non-exempt AFA catcher vessel sideboard
	C	0.0090	2,463	22
	E	0.0090	809	7
Longnose skates	W	0.0090	66	1
	C	0.0090	1,972	18
	E	0.0090	780	7
Other skates	GW	0.0090	1,327	12
Demersal shelf rockfish	SEO	0.0020	410	1
Atka mackerel	Gulfwide	0.0309	600	19
Other species	Gulfwide	0.0090	14,348	129

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 13.—PROPOSED 2007 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2007 TAC	2007 non-exempt AFA catcher vessel sideboard
Pollock	A Season (W/C areas only): January 20–March 10			
	Shumagin (610)	0.6112	5,262	3,216
	Chirikof (620)	0.1427	12,216	1,743
	Kodiak (630)	0.2438	4,332	1,056
	B Season (W/C areas only)			
	March 10–May 31			
	Shumagin (610)	0.6112	5,261	3,216
	Chirikof (620)	0.1427	14,439	2,060
	Kodiak (630)	0.2438	2,109	514
	C Season (W/C areas only)			
	August 25–October 1			
	Shumagin (610)	0.6112	10,610	6,485
	Chirikof (620)	0.1427	4,646	633
	Kodiak (630)	0.2438	6,553	1,598
	D Season (W/C areas only)			
	October 1–November 1			
	Shumagin (610)	0.6112	10,610	6,485
	Chirikof (620)	0.1427	4,646	663
	Kodiak (630)	0.2438	6,553	1,598
	Annual			
	WYK (640)	0.3499	1,763	617
	SEO (650)	0.3499	6,520	2,281
Pacific cod	A Season [1]			
	January 1–June 10			
	W inshore	0.1423	6,797	967
	W offshore	0.1026	755	77
	C inshore	0.0722	10,761	777
	C offshore	0.0721	1,197	86
	B Season [2]			
	September 1–December 31			
	W inshore	0.1423	4,531	645
	W offshore	0.1026	504	52
	C inshore	0.0722	7,175	518
	C offshore	0.0721	797	57
	Annual			
	E inshore	0.0079	2,628	21
	E offshore	0.0078	292	2
Flatfish deep-water.				
	W	0.0000	330	0
	C	0.0670	3,340	224
	E	0.0171	3,150	54
Rex sole.				
	W	0.0010	1,680	2

TABLE 13.—PROPOSED 2007 GOA NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1995–1997 non-exempt AFA CV catch to 1995–1997 TAC	2007 TAC	2007 non-exempt AFA catcher vessel sideboard
	C	0.0402	7,340	295
	E	0.0153	3,630	56
Flathead sole.				
	W	0.0036	2,000	7
	C	0.0261	5,000	131
	E	0.0048	2,664	13
Flatfish shallow-water.				
	W	0.0156	4,500	70
	C	0.0598	13,000	777
	E	0.0126	3,240	41
Arrowtooth flounder.				
	W	0.0021	8,000	17
	C	0.0309	25,000	773
	E	0.0020	5,000	10
Sablefish.				
	W trawl gear	0.0000	443	0
	C trawl gear	0.0720	1,264	91
	E trawl gear	0.0488	268	13
Pacific ocean perch.				
	W	0.0623	2,494	155
	C	0.0866	8,293	718
	E	0.0466	2,363	110
Shortraker rockfish.				
	W	0.0000	155	0
	C	0.0237	324	8
	E	0.0124	247	3
Rougheye rockfish.				
	W	0.0000	188	0
	C	0.0237	557	13
	E	0.0124	262	3
Other rockfish.				
	W	0.0034	40	0
	C	0.2065	300	62
	E	0.0000	330	0
Northern rockfish.				
	W	0.0003	704	0
	C	0.0336	3,726	136
Pelagic shelf rockfish.				
	W	0.0001	366	0
	C	0.0000	2,973	0
	E	0.0067	1,076	7
Thornyhead rockfish.				
	W	0.0308	410	13
	C	0.0308	1,010	31
	E	0.0308	520	16
Big skates.				
	W	0.0090	727	7
	C	0.0090	2,463	22
	E	0.0090	809	7
Longnose skates.				
	W	0.0090	66	1
	C	0.0090	1,972	18
	E	0.0090	780	7
Other skates.				
	GW	0.0090	1,327	12
Demersal shelf rockfish.				
	SEO	0.0020	410	1
Atka mackerel.				
	Gulfwide	0.0309	600	19
Other species.				
	Gulfwide	0.0090	13,411	121

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

In accordance with § 679.64(b)(4), PSC sideboard limitations for non-exempt AFA catcher vessels in the GOA are based on the ratio of aggregate retained groundfish catch by non-exempt AFA catcher vessels in each PSC target category from 1995 through 1997, relative to the retained catch of all vessels in that fishery from 1995 through 1997. These amounts are shown in Table 14.

TABLE 14.—PROPOSED 2006 AND 2007 NON-EXEMPT AMERICAN FISHERIES ACT CATCHER VESSEL PROHIBITED SPECIES CATCH (PSC) LIMITS FOR THE GOA.

[Values are in metric tons]

PSC species	Season	Target fishery	Ratio of 1995–1997 non-exempt AFA CV retained catch to total retained catch	2006 and 2007 PSC limit	2006 and 2007 non-exempt AFA catcher vessel PSC limit
Halibut (mortality in mt).	Trawl 1st seasonal allowance January 20–April 1.	shallow water targets	0.340	450	153
		deep water targets	0.070	100	7
	Trawl 2nd seasonal allowance April 1–July 1.	shallow water targets	0.340	100	34
		deep water targets	0.070	300	21
	Trawl 3rd seasonal allowance July 1–September 1.	shallow water targets	0.340	200	68
		deep water targets	0.070	400	28
	Trawl 4th seasonal allowance September 1–October 1.	shallow water targets	0.340	150	51
		deep water targets	0.070	0	0
	Trawl 5th seasonal allowance October 1–December 31.	all targets	0.205	300	61

Non-AFA Crab Vessel Groundfish Harvest Limitations

Section 680.22 establishes groundfish catch limitations for vessels with a history of participation in the Bering Sea snow crab fishery to prevent these vessels from using the increased flexibility provided by the Crab Rationalization Program to expand their level of participation in the GOA groundfish fisheries. Restrictions on participation in other fisheries, also called sideboards, will restrict a vessel's harvests to its historical landings in all GOA groundfish fisheries (except the fixed-gear sablefish fishery). Restrictions also will apply to landings made using a License Limitation Program (LLP) license derived from the history of a restricted vessel, even if that LLP is used on another vessel.

For non-AFA crab vessels in the GOA, sideboards limitations are based on their traditional harvest levels of TAC in groundfish fisheries covered by the GOA FMP. The regulations base the groundfish sideboard limitations in the GOA on the retained catch by non-AFA crab vessels of each sideboard species from 1996 through 2000 divided by the total retained harvest of that species over the same period (§ 680.22 (d) and (e)). These amounts are listed in Table 15 for 2006 and in Table 16 for 2007. All harvests of sideboard species made by non-AFA crab vessels, whether as targeted catch or incidental catch, will be deducted from the sideboard limits in Tables 15 and 16. Vessels exempt from Pacific cod sideboards are those that landed less than 45,359 kg of Bering Sea snow crab and more than 500 mt of groundfish (in round weight equivalents) from the GOA between January 1, 1996 and December 31, 2000, and any vessel named on an LLP that was generated in whole or in part by the fishing history of a vessel meeting the criteria in § 680.22(a)(3). The ratios of 1996–2000 non-AFA CV catch to 1996–2000 total harvest in Tables 15 and 16 may be subject to modification pending changes to named vessels on LLPs as of December 31, 2005.

TABLE 15.—PROPOSED 2006 GOA NON AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2006 TAC	2006 non-AFA crab vessel sideboard
Pollock	A Season (W/C areas only); January 20–March 10			
	Shumagin (610)	0.0325	5,835	190
	Chirikof (620)	0.0101	13,547	137
	Kodiak (630)	0.0003	4,805	1
	B Season (W/C areas only); March 10–May 31			
	Shumagin (610)	0.0325	5,835	190
	Chirikof (620)	0.0101	16,012	162
	Kodiak (630)	0.0003	2,339	1
	C Season (W/C areas only); August 25–October 1			

TABLE 15.—PROPOSED 2006 GOA NON AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2006 TAC	2006 non-AFA crab vessel sideboard
	Shumagin (610)	0.0325	11,766	382
	Chirikof (620)	0.0101	5,153	52
	Kodiak (630)	0.0003	7,267	2
	D Season (W/C areas only); October 1–November 1			
	Shumagin (610)	0.0325	11,766	382
	Chirikof (620)	0.0101	5,153	52
	Kodiak (630)	0.0003	7,267	2
	Annual			
	WYK (640)	0.0000	1,955	0
	SEO (650)	0.0000	6,520	0
Pacific cod	A Season [1]; January 1–June 10			
	W inshore	0.0976	8,080	789
	W offshore	0.3550	898	319
	C inshore	0.0502	12,794	642
	C offshore	0.2659	1,421	378
	B Season [2] September 1–December 31			
	W inshore	0.0976	5,388	526
	W offshore	0.3550	598	212
	C inshore	0.0502	8,529	428
	C offshore	0.2659	948	252
	Annual			
	E inshore	0.0179	3,125	56
	E offshore	0.0000	347	0
Flatfish deep-water	W	0.0048	330	2
	C	0.0001	3,340	0
	E	0.0000	3,150	0
Rex sole	W	0.0001	1,680	0
	C	0.0001	7,340	1
	E	0.0000	3,630	0
Flathead sole	W	0.0037	2,000	7
	C	0.0005	5,000	3
	E	0.0000	3,557	0
Flatfish shallow-water	W	0.0061	4,500	27
	C	0.0001	13,000	1
	E	0.0000	3,240	0
Arrowtooth flounder	W	0.0017	8,000	14
	C	0.0003	25,000	8
	E	0.0000	5,000	0
Sablefish	W trawl gear	0.0000	474	0
	C trawl gear	0.0007	1,353	1
	E trawl gear	0.0000	287	0
Pacific ocean perch	W	0.0000	2,525	0
	C	0.0008	8,357	7
	E	0.0000	2,392	0
Shortraker rockfish	W	0.0017	155	0
	C	0.0028	324	1
	E	0.0012	247	0
Rougheye rockfish	W	0.0067	188	1
	C	0.0050	557	3
	E	0.0011	262	0
Other rockfish	W	0.0035	40	0
	C	0.0034	300	1
	E	0.0001	330	0
Northern rockfish	W	0.0005	752	0
	C	0.0018	3,978	7
Pelagic shelf rockfish	W	0.0017	366	1
	C	0.0002	2,973	1
	E	0.0000	1,076	0
Thornyhead rockfish	W	0.0051	410	2
	C	0.0077	1,010	8
	E	0.0050	520	3
Big skate	W	0.0200	727	15
	C	0.0200	2,463	49
	E	0.0200	809	16
Longnose skate	W	0.0200	66	1
	C	0.0200	1,972	39

TABLE 15.—PROPOSED 2006 GOA NON AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2006 TAC	2006 non-AFA crab vessel sideboard
	E	0.0200	780	16
Other skates	GW	0.0200	1,327	27
Demersal shelf rockfish	SEO	0.0000	410	0
Atka mackerel	Gulfwide	0.0000	600	0
Other species	Gulfwide	0.0200	14,348	287

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

TABLE 16.—PROPOSED 2007 GOA NON AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2007 TAC	2007 non-AFA crab vessel sideboard
Pollock	A Season (W/C areas only)			
	January 20–March 10			
	Shumagin (610)	0.0325	5,262	171
	Chirikof (620)	0.0101	12,216	123
	Kodiak (630)	0.0003	4,332	1
	B Season (W/C areas only)			
	March 10–May 31			
	Shumagin (610)	0.0325	5,261	171
	Chirikof (620)	0.0101	14,439	146
	Kodiak (630)	0.0003	2,109	1
	C Season (W/C areas only)			
	August 25–October 1			
	Shumagin (610)	0.0325	10,610	345
	Chirikof (620)	0.0101	4,646	47
	Kodiak (630)	0.0003	6,553	2
	D Season (W/C areas only)			
	October 1–November 1			
	Shumagin (610)	0.0325	10,610	345
	Chirikof (620)	0.0101	4,646	47
	Kodiak (630)	0.0003	6,553	2
	Annual			
	WYK (640)	0.0000	1,763	0
	SEO (650)	0.0000	6,520	0
Pacific cod	A Season [1]			
	January 1–June 10			
	W inshore	0.0976	6,797	663
	W offshore	0.3550	755	268
	C inshore	0.0502	10,761	540
	C offshore	0.2659	1,197	318
	B Season [2]			
	September 1–December 31			
	W inshore	0.0976	4,531	442
	W offshore	0.3550	504	179
	C inshore	0.0502	7,175	360
	C offshore	0.2659	797	212
	Annual			
	E inshore	0.0179	2,628	47
	E offshore	0.0000	292	0
Flatfish deep-water	W	0.0048	330	2
	C	0.0001	3,340	0
	E	0.0000	3,150	0
Rex sole	W	0.0001	1,680	0
	C	0.0001	7,340	1
	E	0.0000	3,630	0
Flathead sole	W	0.0037	2,000	7
	C	0.0005	5,000	3
	E	0.0000	2,664	0

TABLE 16.—PROPOSED 2007 GOA NON AMERICAN FISHERIES ACT CRAB VESSEL (CV) GROUNDFISH HARVEST SIDEBOARD LIMITATIONS.—Continued

[Values are rounded to nearest metric ton]

Species	Apportionments and allocations by area/season/processor/gear	Ratio of 1996–2000 non-AFA CV catch to 1996–2000 total harvest	2007 TAC	2007 non-AFA crab vessel sideboard
Flatfish shallow water	W	0.0061	4,500	27
	C	0.0001	13,000	1
	E	0.0000	3,240	0
Arrowtooth flounder	W	0.0017	8,000	14
	C	0.0003	25,000	8
	E	0.0000	5,000	0
Sablefish	W trawl gear	0.0000	443	0
	C trawl gear	0.0007	1,264	1
	E trawl gear	0.0000	268	0
Pacific ocean perch	W	0.0000	2,494	0
	C	0.0008	8,293	7
	E	0.0000	2,363	0
Shortraker rockfish	W	0.0017	155	0
	C	0.0028	324	1
	E	0.0012	247	0
Rougheye rockfish	W	0.0067	188	1
	C	0.0050	557	3
	E	0.0011	262	0
Other rockfish	W	0.0035	40	0
	C	0.0034	300	1
	E	0.0001	330	0
Northern rockfish	W	0.0005	704	0
	C	0.0018	3,726	7
Pelagic shelf rockfish	W	0.0017	366	1
	C	0.0002	2,973	1
	E	0.0000	1,076	0
Thornyhead rockfish	W	0.0051	410	2
	C	0.0077	1,010	8
	E	0.0050	520	3
Big skate	W	0.0200	727	15
	C	0.0200	2,463	49
	E	0.0200	809	16
Longnose skate	W	0.0200	66	1
	C	0.0200	1,972	39
	E	0.0200	780	16
Other skates	GW	0.0200	1,327	27
Demersal shelf rockfish	SEO	0.0000	410	0
Atka mackerel	Gulfwide	0.0000	600	0
Other species	Gulfwide	0.0200	13,411	268

[1] The Pacific cod A season for trawl gear does not open until January 20.
[2] The Pacific cod B season for trawl gear closes November 1.

Classification

An IRFA was prepared to evaluate the impacts of the 2006 and 2007 proposed harvest specifications on directly regulated small entities. This IRFA is intended to meet the statutory requirements of the Regulatory Flexibility Act (RFA). A copy of the IRFA is available from NMFS (See **ADDRESSES**). The reason for the action, a statement of the objective of the action, and the legal basis are discussed in the preamble and are not repeated here.

The 2006 and 2007 harvest specifications establish harvest limits for the groundfish species and species groups in the GOA. Entities directly impacted are those fishing for groundfish in the Exclusive Economic Zone (EEZ), or in parallel fisheries in State waters (in which harvests are counted against the Federal TAC). An estimated 693 small catcher vessels, 18 small catcher/processors, and 6 small private non-profit CDQ groups may be directly regulated by these harvest specifications in the GOA. The catcher vessel estimate in particular is subject to various uncertainties. It may provide an underestimate since it does not count vessels that fish only within State parallel fisheries. This underestimate may be offset by upward biases introduced by the use of preliminary price estimates (which don't fully account for post-season price adjustments) and by a failure to account for affiliations, other than AFA cooperative affiliations, among entities. For these reasons, the catcher vessel estimate must be considered an approximation.

The IRFA examined the impacts of the preferred alternative on small entities within fisheries reliant on species groups whose TACs might be notably adjusted by the harvest specifications. The IRFA identified the potential for adverse impacts on small fishing operations harvesting Pacific cod, sablefish, and rockfish species in the GOA.

GOA Pacific cod revenue decreases for small entities and were estimated to be about 1 percent of their revenues from all sources in 2006 and 3.7 percent between 2005 and 2007. Sablefish revenue decreases for small entities and

were estimated to be about 3.7 percent of their revenues from all sources in 2006 and 6.7 percent between 2005 and 2007. TAC declines were expected for the rockfish species or species groups, Pacific ocean perch, northern rockfish, and pelagic shelf rockfish. Rockfish revenue changes for small entities were estimated to be a maximum of 4.7 percent of their revenues from all sources in 2006 and a maximum of 4 percent between 2005 and 2007.

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities. This analysis did not reveal any Federal rules that duplicate, overlap, or conflict with the proposed action.

This analysis examined four alternatives to the preferred alternative. These included alternatives that set TACs to produce fishing rates equal to $maxF_{ABC}$, one half $maxF_{ABC}$, the recent 5 year average F, and zero. Only one of these alternatives, setting TACs equal to $maxF_{ABC}$, would have potentially a smaller adverse impact on small entities than the preferred alternative. This alternative is associated with larger gross revenues for the GOA fisheries. Many of the vessels identified above would share in these gross revenues. However, the $maxF_{ABC}$ is a fishing rate that may, and often does, exceed biologically recommended ABCs. For the pollock, deep-water flatfish, rex sole, sablefish, Pacific ocean perch, shortraker rockfish, rougheye rockfish, northern rockfish, pelagic shelf rockfish, thornyhead rockfish, demersal shelf rockfish, skate, and Atka mackerel fisheries described above, the preferred alternative, which produces fishing rates less than $maxF_{ABC}$, sets TACs equal to projected annual ABCs. In addition, the preferred alternative TACs for Pacific cod, when combined with the State of Alaska guideline harvest levels for these fisheries, also equals ABC. The increases in TACs related to producing fishing rates of $maxF_{ABC}$ would not be consistent with biologically prudent fishery management because they do not fall within the scientifically determined ABC.

This action is authorized under § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 773 *et seq.*; 1540(f); 1801 *et seq.*; 1851 note; and 3631 *et seq.*

Dated: December 12, 2005.

James W. Balsiger,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E5–7463 Filed 12–15–05; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 70, No. 241
Friday, December 16, 2005

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

Food Safety and Inspection Service

[Docket No. 05–035N]

Notice of Request for a New Information Collection (Application for Return of Exported Products)

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and the Office of Management and Budget (OMB) regulations, this notice announces the Food Safety and Inspection Service's (FSIS) intention to request a new information collection regarding the application for the return of exported meat, poultry, and egg products to the United States.

DATES: Comments on this notice must be received on or before February 14, 2006.

ADDRESSES: FSIS invites interested persons to submit comments on this information collection request. Comments may be submitted by mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items. Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250. All submissions received must include the Agency name and docket number 05–035N.

All comments submitted in response to this notice, as well as research and background information used by FSIS in developing this document, will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/regulations_&_policies/2005_Notices_Index/index.asp.*

FOR FURTHER INFORMATION CONTACT: John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–0345.

SUPPLEMENTARY INFORMATION:

Title: Application for Return of Exported Products.

Type of Request: New information collection.

Abstract: FSIS has been delegated the authority to exercise the functions of the Secretary as specified in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA) (21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031, *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat, poultry, and egg products are safe, wholesome, unadulterated, and properly labeled and packaged.

FSIS is requesting a new information collection addressing paperwork requirements regarding the application for return of exported meat, poultry, and egg products.

In accordance with 9 CFR 327.17, 381.209, and 590.965, exported product returned to this country is exempt from FSIS import inspection requirements upon notification to and approval from the Agency's Office of International Affairs (OIA). Returned exported product may, however, require re-inspection at a federally-inspected facility for food safety and food defense determinations. When FSIS inspection program personnel determine that product is safe and not adulterated or misbranded, the product may be released into domestic commerce.

When an FSIS inspected and passed product is exported and then returned to this country, the owner, broker, or agent of the product (the applicant) arranges for the product's entry and notifies FSIS. To formalize this process, FSIS is seeking approval for the new form. The applicant will fill out the FSIS Form, Application for the Return of Exported Products to the United States.

The purpose of the form is to allow OIA the opportunity to determine whether re-inspection of the product is needed and to notify the appropriate FSIS office where to perform the re-inspection of the product, if necessary.

FSIS has made the following estimates based upon an information collection assessment.

Estimate of Burden: FSIS estimates that it will take an average of 17 hours to collect and submit this information to FSIS.

Respondents: Owners, brokers, and agents.

Estimated Number of Respondents: 500.

Estimated Number of Responses per Respondent: 100.

Estimated Total Annual Burden on Respondents: 8,333 hours.

Copies of this information collection assessment can be obtained from John O'Connell, Paperwork Reduction Act Coordinator, Food Safety and Inspection Service, USDA, 300 12th Street, SW., Room 112, Washington, DC 20250–3700, (202) 720–5627, (202) 720–0345.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of FSIS' functions, including whether the information will have practical utility; (b) the accuracy of FSIS' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and, (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques, or other forms of information technology. Comments may be sent to both John O'Connell, Paperwork Reduction Act Coordinator, at the address provided above, and the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20253.

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

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to ensure that the public and in particular minorities, women, and persons with disabilities, are aware of this notice, FSIS will announce it on-line through

the FSIS Web page located at *http://www.fsis.usda.gov/regulations/2005_Notices_Index/index.asp.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

In addition, FSIS offers an e-mail subscription service which provides an automatic and customized notification when popular pages are updated, including **Federal Register** publications and related documents. This service is available at *http://www.fsis.usda.gov/news_and_events/email_subscription/* and allows FSIS customers to sign up for subscription options across eight categories. Options range from recalls to export information to regulations, directives and notices.

Customers can add or delete subscriptions themselves and have the option to password protect their account.

Done at Washington, DC, on: December 13, 2005.

Barbara J. Masters,

Administrator.

[FR Doc. E5–7443 Filed 12–15–05; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

New Information Collection for Special Use Administration

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the new information collection established pursuant to the Cabin User Fee Fairness Act (CUFFA) of 2000.

DATES: Comments must be received in writing on or before February 14, 2006 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to: USDA, Forest Service, Attention: Rita Staton, Lands Staff (2720), 1400 Independence Avenue, SW., Stop 1124, Washington, DC 20250–1124 or by facsimile to Rita Staton at 202–205–1604 or by e-mail to: *reply_lands_staff@fs.fed.us.* Comments may also be submitted by the following instructions at the federal eRulemaking portal at: *http://www.regulation.gov.* If comments are sent by e-mail or facsimile, the public is requested not to send duplicate comments via mail. Please confine comments to issues pertinent to the proposed information collection, explain the reasons for any recommended changes, and where possible, reference the specific wording being addressed.

All comments, including names and addresses when provided, will be placed in the record and will be available for public inspection and copying. The public may inspect comments received in the Office of the Director, Lands Staff, 4th Floor South, Sidney R. Yates Federal Building, 14th and Independence Avenue, SW., Washington, DC on business days between the hours of 8:30 a.m. and 4 p.m. Those wishing to inspect comments are encouraged to call ahead at (202) 205–1248 to facilitate entry to the building.

FOR FURTHER INFORMATION CONTACT: Rita Staton, Lands Staff, at (202) 205–1390. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339, 24 hours a day, every day of the year, including holidays.

SUPPLEMENTARY INFORMATION:

Title: Request for New Appraisal and Peer Review Pursuant to the Cabin User Fee Fairness Act of 2000.

OMB Number: 0596–New.

Expiration Date of Approval: N/A.

Type of Request: New.

Abstract: The Cabin User Fee Fairness Act (CUFFA) of 2000 (16 U.S.C. 6201–13) directs the Forest Service to promulgate regulations and adopt policies for assessing a base cabin user fee for recreation residences on National Forest System lands. Section 614 of CUFFA establishes a ''transition period'', defines how long the transition period will last, and provides guidelines on how the annual cabin user fees should be assessed and adjusted during the transition period. The transition period is that period of time between the date of the enactment of CUFFA (Oct. 11, 2000) and the date upon which the base cabin user fee for a recreation residence is established as a result of implementing the final regulations and agency directives.

Upon adoption of the final regulations and agency directives, recreation residence permit holders will have 2 years to request that the Forest Service take one of the following actions to establish a new base cabin user fee:

(1) Conduct a new appraisal pursuant to the final regulations and policies (permit holder's request for new appraisal);

(2) Commission a peer review of an existing appraisal report for the typical lot completed after September 30, 1995 (permit holder's request for peer review); or

(3) Establish a new fee based on the market value of the typical lot identified in an existing appraisal report that was completed and approved after September 30, 1995 (permit holder's request to use the value established in the existing appraisal).

A request to act on one of the three options in the 2-year transition period must be submitted in writing to the authorized officer and must be signed by a majority of the recreation residence holders within the group of the recreation residence lots represented by the typical lot to be appraised. There is no specific form or format required for permit holders to use when requesting a new appraisal, a peer review, or that the Forest Service use an existing appraisal. However, the Forest Service is proposing to use standard forms (''Statement from Holders Requesting a New Appraisal'' and ''Statement from Holders Requesting a Peer Review'') when a new appraisal or peer review is requested, and the base fee of the previous appraisal increases more than $3,000.00 from the annual fee assessed on October 1, 1996, and the new base cabin user fee established by either the new appraisal or the peer review is 90% or more of the fee determined by the previous appraisal (October 1996). Permit holders are required to document that they agree to pay the United States the additional fees, pursuant to the phase-in provisions of CUFFA. The forms would facilitate documenting the request and agreement by the permit holder.

The information request is necessary for the Forest Service to collect the permit holder's request, agreement, and accompanying signatures. Such information is necessary to assist the Forest Service in establishing an accurate base cabin user fee during the

transition period prescribed by CUFFA. Failure to collect this information could prevent the Forest Service from complying with the provisions of CUFFA and deny holders the opportunity to exercise one of the three options provided under CUFFA—seek a new appraisal; commission a peer review of the existing appraisal; or accept the existing appraisal during the 2-year transition period.

Estimate of Annual Burden: 30 minutes.

Type of Respondents: Recreation Residence Permit Holders.

Estimated Annual Number of Respondents: 20.

Estimated Annual Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 10 hours.

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: December 9, 2005.

Gloria Manning,

Associate Deputy Chief, National Forest System.

[FR Doc. E5–7457 Filed 12–15–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Forestry Research Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forestry Research Advisory Council will meet in Arlington, Virginia, January 12–13, 2006. The purpose of the meeting is to discuss emerging issues in forestry research.

DATES: The meeting will be held January 12–13, 2006. On January 12 the meeting will be from 8:30 a.m. to 5 p.m, and on January 13 from 8:30–noon.

ADDRESSES: The meeting will be held at the Crystal City Marriott near Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, Virginia. Individuals who wish to speak at the meeting or to propose agenda items must send their names and proposals to Daina Apple, Designated Federal Officer, Forestry Research Advisory Council, USDA Forest Service Research and Development, 1400 Independence Ave. SW., Washington DC 20250–1120. Individuals also may fax their names and proposed agenda items to (202) 205–1530.

FOR FURTHER INFORMATION CONTACT: Daina Apple, Forest Service Office of the Deputy Chief for Research and Development, (202) 205–1665.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Council discussion is limited to Forest Service, Cooperative State Research Education, and Extension Service staff and Council members. However, persons who wish to bring forestry research matters to the attention of the Council may file written statements with the Council staff before or after the meeting.

Dated: December 8, 2005.

Ann M. Bartuska,

Deputy Chief for Research and Development.

[FR Doc. E5–7416 Filed 12–15–05; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lake Tahoe Basin Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on January 18, 2006 at the North Tahoe Conference Center, 8318 N. Lake Blvd., Kings Beach, CA 96143. This Committee, established by the Secretary of Agriculture on December 15, 1998 (64 FR 2876), is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

DATES: This meeting will be held January 18, 2006, beginning at 3:30 p.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at the North Tahoe Conference Center, 8318 N. Lake Blvd., Kings Beach, CA 96143.

FOR FURTHER INFORMATION CONTACT: Arla Hains, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2643.

SUPPLEMENTARY INFORMATION: Items to be covered on the agenda include: (1) The Environmental Improvement Program at Lake Tahoe; (2) the Southern Nevada Public Land Management Act—Round 7; and, (3) Public Comment. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues may be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: December 9, 2005.

Terri Marceron,

Forest Supervisor.

[FR Doc. 05–24149 Filed 12–15–05; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS).

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue three revised conservation practice standards in Section IV of the FOTG. The revised standards are: Residue and Tillage Management—No-Till (329), Residue and Tillage Management—Mulch-Till (345) and Sediment Basin (350). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to J. Xavier Montoya, Acting State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of these standards will be made available upon written request. You may submit your electronic requests and comments to *shannon.zezula@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: J. Xavier Montoya, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: November 29, 2005.

J. Xavier Montoya,

Acting State Conservationist, Indianapolis, Indiana.

[FR Doc. E5–7455 Filed 12–15–05; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for ''Self-Help Technical Assistance Grants'' (7 CFR part 1944, subpart I).

DATES: Comments on this notice must be received by February 14, 2006 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Nica Mathes, Senior Loan Specialist, Single Family Housing Direct Loan Division, RHS, U.S. Department of Agriculture, Stop 0783, 1400 Independence Ave., SW., Washington, DC 20250–0783, Telephone (202) 205–3656.

SUPPLEMENTARY INFORMATION:

Title: 7 CFR part 1944, subpart I, Self-Help Technical Assistance Grants.

OMB Number: 0575–0043.

Expiration Date of Approval: June 30, 2006.

Type of Request: Extension of currently approved information collection.

Abstract: This subpart sets forth the policies and procedures and delegates authority for providing technical assistance funds to eligible applicants to finance programs of technical and supervisory assistance for self-help housing, as authorized under section 523 of the Housing Act of 1949. This financial assistance may pay part of all of the costs of developing, administering, or coordinating technical and supervisory assistance to aid very low- and low-income families in carrying out self-help housing efforts in rural areas. The primary purpose is to locate and work with families that otherwise do not qualify as homeowners, are below the 50 percent of median incomes, and living in substandard housing.

RHS will be collecting information from non-profit organizations to enter into grant agreements. These non-profit organizations will give technical and supervisory assistance, and in doing so, they must develop a final application for section 523 grant funds. This application includes Agency forms that contain essential information for making a determination of eligibility.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.3 hours per response.

Respondents: Public or private nonprofit organizations, State, local, or Tribal governments.

Estimated Number of Respondents: 160.

Estimated Number of Responses per Respondent: 20.5.

Estimated Number of Responses: 3,287.

Estimated Total Annual Burden on Respondents: 4,372 hours.

Copies of this information collection can be obtained from Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0039.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Tracy Givelekian, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave., SW., Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: December 2, 2005.

Russell T. Davis,

Administrator, Rural Housing Service.

[FR Doc. E5–7453 Filed 12–15–05; 8:45 am]

BILLING CODE 3410–XV–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 products to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products previously furnished by such agencies.

DATES: *Effective Date:* January 15, 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 October 21, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 61249) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and impact of the additions on the current or most recent contractors, the Committee has determined that the products 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 products to the Government.

2. The action will 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 addition to the Procurement List.

End of Certification

Accordingly, the following products are added to the Procurement List:

Products

Product/NSN: Folder, File, Hanging (GSA Global Supply Only)
NSN: 7530–01–316–1639—Letter size folders 1/5-cut tabs, assorted colors
NPA: L.C. Industries for The Blind, Inc., Durham, North Carolina
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY
Product/NSN: Pad, Writing Paper (Repositionable) Neon Colors (GSA Global Supply Only)
NSN: 7530–01–393–0103—2'' x 3'' Assorted Neon Colors (Unruled)
NSN: 7530–01–286–5121—3'' x 4'' Yellow Color (Unruled)
NPA: Association for the Blind & Visually Impaired & Goodwill Industries of Greater Rochester, Rochester, New York
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY

Deletions

On October 21, 2005, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (70 FR 61249) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products 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 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 deleted from the Procurement List.

End of Certification

Accordingly, the following products are deleted from the Procurement List:

Products

Product/NSN: Brush, Wire, Scratch
NSN: 7920–00–246–8501—Brush, Wire, Scratch
NPA: Industries for the Blind, Inc., Milwaukee, Wisconsin
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas
Product/NSN: Carpet Concentrate
NSN: 7930–00–NIB–0341—H2Orange2 Crystal Carpet Concentrate
Product/NSN: Cleaner/Degreaser
NSN: 7930–00–NIB–0326—H2Orange2 Concentrate 117 Cleaner/Degreaser
Product/NSN: Grout Safe
NSN: 7930–00–NIB–0327—H2Orange2 Grout Safe
Product/NSN: Mineral Shock Cleaner
NSN: 7930–00–NIB–0353—H2Orange2 Mineral Shock Cleaner
Product/NSN: Spot Remover
NSN: 7930–00–NIB–0342—H2Orange2 Quick Spot Crystal Carpet Spot Remover
Product/NSN: Ultimate Cleaner/Degreaser
NSN: 7930–00–NIB–0163—H2Orange2 Ultimate Cleaner/Degreaser
NPA: Blind Industries & Services of Maryland, Baltimore, Maryland
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY
Product/NSN: Cloth, High Performance
NSN: 7920–01–482–6037—Cloth, High Performance
NSN: 7920–00–NIB–0397—Cloth, High Performance
NPA: L.C. Industries for The Blind, Inc., Durham, North Carolina
Contracting Activity: GSA, Southwest Supply Center, Fort Worth, Texas
Product/NSN: Label, Pressure-Sensitive Adhesive
NSN: 7530–00–007–2165—Label, Pressure-Sensitive Adhesive
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania
Contracting Activity: Office Supplies & Paper Products Acquisition Center, New York, NY

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. E5–7417 Filed 12–15–05; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.
Title: 2006 Short-Form Experiment.
Form Number(s): S–1A, S–1B, S–1C.
Agency Approval Number: None.
Type of Request: New collection.
Burden: 4,734 hours.
Number of Respondents: 28,400.
Avg Hours Per Response: 10 minutes.
Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) to collect data from the public as part of the Decennial Short Form Experiment (SFE). This is one of a number of tests planned to improve the 2010 Census.

In response to the lessons learned from Census 2000, and in striving to better meet our Nation's ever-expanding needs for social, demographic, and geographic information, the U.S. Department of Commerce and the Census Bureau have developed a multi-year effort to completely modernize and re-engineer the 2010 Census of Population and Housing.

In order to meet our constitutional and legislative mandates, we must implement a re-engineered 2010 Census that is cost-effective and improve measurement. Achieving this strategic goal requires an iterative series of tests that will provide an opportunity to evaluate new or improved question wording, methodology, technology, and questionnaire design. The 2006 SFE is part of this testing cycle, which has been planned to allow us to finalize methodologies and operational procedures in time to conduct a Dress Rehearsal in 2008 and a successful census in 2010.

The SFE is a national mail survey test. This test will be conducted with households that have a city-type address and that receive mail from the U.S. Postal Service (USPS). The population of interest includes those households that would be eligible for a mailout-mailback short form. The one exception is that households in Austin, TX will be excluded from the sample in order to avoid interference with the 2006 Census Test, which is taking place in Austin.

Like other research leading up to the 2010 Census, this test is designed to evaluate revised methods intended to improve accuracy and/or contain costs.

In conjunction with the results of other testing (e.g., cognitive tests, focus groups, the 2003 National Census Test, the 2004 Census Test, and the 2005 National Census Test) the 2006 SFE will help us develop the optimal data collection methodology for the 2010 Census.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: December 13, 2005.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E5–7456 Filed 12–15–05; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review

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

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting the third administrative review of the antidumping duty order on honey from the People's Republic of China (PRC). The period of review (POR) is December 1, 2003, through November 30, 2004. One named respondent company had no exports or sales of the subject merchandise during the POR; therefore, we are preliminarily rescinding our review of this company. We preliminarily determine that two companies have failed to cooperate by not acting to the best of their ability to comply with our requests for information and, as a result, should be assigned a rate based on adverse facts available. Finally, we have preliminarily determined that five respondents made sales to the United States of the subject merchandise at prices below normal value.

We invite interested parties to comment on these preliminary results. Parties that submit comments are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument(s).

EFFECTIVE DATE: December 16, 2005.

FOR FURTHER INFORMATION CONTACT: Kristina Boughton or Bobby Wong, 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) 482–8173 or (202) 482–0409, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2004, the Department published a *Notice of Opportunity to Request an Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 69 FR 69889 (December 1, 2004). On December 30, 2004, the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners), requested, in accordance with section 351.213(b) of the Department's regulations, an administrative review of entries of subject merchandise made during the POR by 19 Chinese producers/exporters.[1] Also on December 30, 2004, Wuhan Bee, Zhejiang, Anhui Honghui, Eurasia, Jiangsu Kanghong, Jinfu, and Eswell requested that the Department conduct an administrative review of each respective company's entries during the POR.

On January 3, 2005, Dubao and Chengdu Waiyuan requested that the Department conduct an administrative review of each respective company's entries during the POR. On January 31, 2005, the Department initiated an administrative review of 19 Chinese companies. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 70 FR 4818 (January 31, 2005).

On February 1, 2005, the Department issued antidumping duty questionnaires to 18 PRC producers/exporters of the subject merchandise covered by this administrative review.[2] On February 3, 2005, the Department received a letter from Inner Mongolia Youth and Shanghai Xiuwei stating that neither company sold subject merchandise to the United States during the POR. On February 22, 2005, petitioners filed a letter withdrawing their request for review of Kunshan, High Hope, Henan, Shanghai Xiuwei, Shanghai Shinomiel, Foodworld, and Inner Mongolia Youth. On February 23, 2005, Anhui Native separately notified the Department that it had no sales of subject merchandise to the United States during the POR, and requested that the Department rescind this proceeding for Anhui Native.

On March 9, 2005, we invited interested parties to comment on the Department's surrogate country selection and/or significant production in the other potential surrogate countries and to submit publicly available information to value the factors of production. On March 29, 2005, the Department rescinded this review with respect to Kunshan, High Hope, Henan, Shanghai Xiuwei, Shanghai Shinomiel, Foodworld, and Inner Mongolia Youth, because petitioners, the only party to request a review for these companies, withdrew their request for review. *See Notice of Partial Rescission of Antidumping Duty Administrative Review: Honey from the People's Republic of China*, 70 FR 15836 (March 29, 2005).

On April 28, 2005, petitioners withdrew their request for review of

[1] The request included: Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp. (Inner Mongolia); Kunshan Foreign Trade Company (Kunshan); Zhejiang Native Produce and Animal By-Products Import & Export Corp. aka Zhejiang Native Produce and Animal By-Products Import & Export Group Corp. (Zhejiang); High Hope International Group Jiangsu Foodstuffs Import & Export Corp. (High Hope); Shanghai Eswell Enterprise Co., Ltd. (Eswell); Anhui Native Produce Import & Export Corp. (Anhui Native); Henan Native Produce Import & Export Corp. (Henan); Inner Mongolia Autonomous Region Native Produce and Animal By-Products; Shanghai Xiuwei International Trading Co., Ltd. (Shanghai Xiuwei); Sichuan-Dujiangyan Dubao Bee Industrial Co., Ltd. (Dubao); Wuhan Bee Healthy Company, Ltd. (Wuhan Bee); Jinfu Trading Co., Ltd. (Jinfu); Shanghai Shinomiel International Trade Corporation (Shanghai Shinomiel); Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui); Chengdu Waiyuan Bee Products Co., Ltd. (Chengdu Waiyuan); Eurasia Bee's Products Co., Ltd. (Eurasia); Foodworld International Club, Ltd. (Foodworld); Inner Mongolia Youth Trade Development Co., Ltd. (Inner Mongolia Youth); and Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu Kanghong).

[2] The Department notes that while petitioners requested a review for Inner Mongolia Autonomous Region Native Produce and Animal By-Products Import & Export Corp. and Inner Mongolia Autonomous Region Native Produce and Animal By-Products separately, both names refer to the same company.

Anhui Native, and on April 29, 2005, petitioners withdrew their request for review of Inner Mongolia. On May 25, 2005, the Department rescinded this review with respect to Anhui Native and Inner Mongolia because petitioners, the only party to request a review for these companies, withdrew their request for review. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 30082 (May 25, 2005).

On June 22, 2005, petitioners filed a letter withdrawing their request for review of Wuhan Bee, and on the same day, the respondent also filed a letter withdrawing its request for an administrative review. On July 21, 2005, the Department rescinded this review with respect to Wuhan Bee. *See Honey from the People's Republic of China: Notice of Partial Rescission of Antidumping Duty Administrative Review*, 70 FR 42032 (July 21, 2005). Also on July 21, 2005, the Department published an extension of the time limits to complete these preliminary results. *See Honey from the People's Republic of China: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review*, 70 FR 42033 (July 21, 2005).

On October 11, 2005, petitioners and Eswell, Anhui Honghui, Jiangsu Kanghong, and Zhejiang submitted comments on surrogate information with which to value the factors of production in this proceeding. On October 18 and 21, 2005, the same parties submitted comments on each other's October 11, 2005, surrogate value submissions. From October 18 to 21, 2005, the Department conducted verification of the information submitted by Anhui Honghui, and from October 23 to 27, 2005, the Department conducted verification of the information submitted by Jiangsu Kanghong.

With regard to Anhui Honghui, Eswell, Jinfu, Jiangsu Kanghong, and Zhejiang, between March and December 2005, the Department received timely filed original and supplemental questionnaire responses and petitioners' comments on those responses.

Eurasia:

We received timely responses from Eurasia to the Department's original questionnaire. We subsequently issued three supplemental questionnaires to Eurasia, receiving responses to the first two supplemental questionnaires and no response to the third supplemental questionnaire, sent October 7, 2005. On October 19, 2005, the Department received a letter from Eurasia's counsel stating that Eurasia was withdrawing its request for an administrative review. On October 26, 2005, the Department issued a warning letter to Eurasia, noting that petitioners had not withdrawn their request for review and that the Department required Eurasia's response to the supplemental questionnaire. The Department noted that it might have to resort to facts available if Eurasia failed to file a response. The Department received no response to this letter.

Dubao:

The Department received no response from Dubao to its original questionnaire, sent February 1, 2005. On February 23, 2005, Dubao, through its counsel, withdrew its request for a review in this administrative proceeding. On March 7, 2005, the Department informed Dubao, via its counsel, that petitioners had not withdrawn their request for review of Dubao, that the Department was proceeding with the review, and that the Department required Dubao's questionnaire response or the Department might resort to facts available. On March 17, 2005, the Department notified Dubao for the second time, through its counsel, that the Department was not rescinding the review with respect to Dubao and that Dubao risked application of adverse facts available if it failed to submit a response. The Department did not receive a response to either letter.

Chengdu Waiyuan:

In response to the Department's issuance of the antidumping duty questionnaire, on February 23, 2005, Chengdu Waiyuan notified the Department that it had no sales of subject merchandise to the United States during the POR, and requested that the Department rescind this proceeding for Chengdu Waiyuan. We received no comments from any interested parties regarding Chengdu Waiyuan's request for rescission. Therefore, because Chengdu Waiyuan had no shipments to the United States during the POR, the Department is preliminarily rescinding this administrative review for Chengdu Waiyuan. *See* ''Preliminary Partial Rescission of Administrative Review'' section, below.

Scope of the Antidumping Duty Order

The products covered by this order are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form.

The merchandise subject to this order is currently classifiable under subheadings 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under order is dispositive.

Verification

As provided in section 782(i)(3) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.307, we conducted verification of the questionnaire responses of Anhui Honghui and Jiangsu Kanghong in October 2005. We used standard verification procedures, including on–site inspections of the production facilities and examination of relevant sales and financial records. Our verification results are outlined in the verification reports, public versions of which are on file in the Central Records Unit (CRU) located in room B–099 of the Main Commerce Building. *See* ''Memo to the File: Verification of Sales and of Factors of Production for Anhui Honghui Foodstuff (Group) Co., Ltd. (''Anhui Honghui'') in the Antidumping Duty Administrative Review of Honey from the People's Republic of China (''PRC''),'' dated December 9, 2005; *see also* ''Memo to the File: Verification of U.S. Sales and Factors of Production for Respondent Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu Kanghong),'' dated December 9, 2005, (Jiangsu Kanghong Verification Report).

Preliminary Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that Chengdu Waiyuan made no shipments of subject merchandise to the United States during the POR. In making this determination, the Department examined PRC honey shipment data maintained by U.S. Customs and Border Protection (CBP). Based on the information obtained from CBP, we found no entries of subject merchandise during the POR manufactured or exported by Chengdu Waiyuan to the United States. The Department also issued a no shipment inquiry to CBP on May 2, 2005, asking for notification from CBP if it had information contrary to our finding of no entries of subject merchandise for Chengdu Waiyuan during the POR. We received no response from CBP. *See also* ''Memorandum to the File regarding Entries by Chengdu Waiyuan Bee

Products Co., Ltd.,'' dated December 9, 2005.

Therefore, based on the results of our corroborative CBP query, indicating no shipments of subject merchandise by Chengdu Waiyuan during the POR, as well as Chengdu Waiyuan's claim that it had no subject shipments, we are preliminarily rescinding the administrative review, in accordance with 19 CFR 351.213(d)(3), with respect to Chengdu Waiyuan.

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 rate unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its export activities. In this review Anhui Honghui, Eswell, Eurasia, Jiangsu Kanghong, Jinfu, and Zhejiang submitted information in support of their claim for a company–specific rate.

Accordingly, we have considered whether each of the companies is independent from government control, and therefore eligible for a separate rate. The Department's separate–rate test to determine whether the exporters are independent from government control does not consider, in general, macroeconomic/border–type controls, *e.g.*, export licenses, quotas, and minimum export prices, particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision–making process at the individual firm level. *See Certain Cut–to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value*, 62 FR 61754, 61757 (November 19, 1997), and *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 62 FR 61276, 61279 (November 17, 1997).

To establish whether a firm is sufficiently independent from government control of its export activities to be entitled to a separate rate, the Department analyzes each entity exporting the subject merchandise under a test arising from the Notice of Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 at Comment 1 (May 6, 1991) (Sparklers), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585, 22586–7 (May 2, 1994) (*Silicon Carbide*). In accordance with the separate–rates criteria, the Department assigns separate rates in NME cases only if respondents can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

Anhui Honghui, Eswell, Jiangsu Kanghong, Jinfu, and Zhejiang (collectively, fully responsive companies) provided complete separate–rate information in their responses to our original and supplemental questionnaires. Accordingly, we performed a separate–rates analysis to determine whether these exporters are independent from government control.

For the reasons discussed below in the section titled ''The Use of Facts Otherwise Available and PRC–wide Rate,'' we have preliminarily determined that Dubao and Eurasia do not qualify for a separate rate and are instead part of the PRC–wide entity.

Absence of De Jure Control

The Department considers the following *de jure* criteria in determining whether an individual company may be granted a separate rate: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) other formal measures by the government decentralizing control of companies. *See Sparklers*, 56 FR at 20589. As discussed below, our analysis shows that the evidence on the record supports a preliminary finding of *de jure* absence of government control for the five fully responsive companies based on each of these factors.

Anhui Honghui:

Anhui Honghui has placed on the record a number of documents to demonstrate absence of de jure control, including the ''*Company Law* of the People's Republic of China'' (December 29, 1993) (*Company Law*), the ''Foreign Trade Law of the People's Republic of China'' (May 12, 1994) (*Foreign Trade Law*), the revised *Foreign Trade Law* (April 6, 2004), and ''Administrative Regulations of the People's Republic of China Governing the Registration of Legal Corporations'' (June 3, 1988) (*Legal Corporations Regulations*). *See* Exhibit 2 of Anhui Honghui's March 10, 2005, submission (Anhui Honghui Section A). Anhui Honghui also submitted a copy of its business license in Exhibit 3 of Anhui Honghui Section A. The Feidong County Industrial and Commercial Bureau issued this license. Anhui Honghui explains that its business license defines the scope of the company's business activities and ensures the company has sufficient capital to continue its business operations. Anhui Honghui affirms that its business operations are limited to the scope of the license, though it can be amended if it wishes to expand the scope of its operations, and that the license may be revoked if the company has insufficient capital or engages in activities outside the scope of its business. Further, Anhui Honghui states that the license must be renewed or reviewed annually, and to obtain a renewal, it must apply for a renewal and provide a copy of its most recent financial statements to the issuing authority.

Eswell:

Eswell has placed on the record a number of documents to demonstrate absence of *de jure* control, including the *Company Law, Foreign Trade Law, and the Legal Corporations Regulations. See* Exhibit 3 of Eswell's March 10, 2005, submission (Eswell Section A). Eswell also submitted a copy of its business license in Exhibit 4 of Eswell Section A. The Shanghai Industry and Commerce Administrative Bureau issued this license. Eswell explains that its business license defines the scope of its business operations. Eswell affirms that its business operations are limited to the scope of the license, and that the license may be revoked if the company engages in illegal activities or if the company conducts activities outside its authorized business scope. Further, Eswell states that the license must be reviewed annually, and to obtain a review qualification, it must apply for a renewal and provide a copy of its most recent financial statements to the issuing authority.

Jiangsu Kanghong:

Jiangsu Kanghong has placed on the record a number of documents to demonstrate absence of *de jure* control, including the *Company Law, the Foreign Trade Law, the revised Foreign Trade Law, and the Legal Corporations Regulations. See* Exhibit 2 of Jiangsu Kanghong's March 10, 2005, submission (Jiangsu Kanghong Section A). Jiangsu Kanghong also submitted a copy of its business license in Exhibit 3 of Jiangsu Kanghong Section A. The Funing County Industrial and Commercial Bureau issued this license. Jiangsu Kanghong explains that its business license defines the scope of the company's business activities and

ensures the company has sufficient capital to continue its business operations. Jiangsu Kanghong affirms that its business operations are limited to the scope of the license, though it can be amended if it wishes to expand the scope of its operations, and that the license may be revoked if the company has insufficient capital or engages in activities outside the scope of its business. Further, Jiangsu Kanghong states that the license must be renewed or reviewed annually, and to obtain a renewal, it must apply for a renewal and provide a copy of its most recent financial statements to the issuing authority.

Jinfu:

Jinfu has placed on the record a number of documents to demonstrate absence of *de jure* control, including the *Company Law and Foreign Trade Law*. *See* Exhibit A–2 of Jinfu's March 10, 2005, submission (Jinfu Section A). Jinfu also submitted a copy of its business license in Exhibit A–3 of Jinfu Section A. The Suzhou Kunshan Industry and Commerce Administrative Bureau issued this license. Jinfu explains that the business license defines its business scope and ensures that the company has sufficient capital to continue its business operations. Jinfu also affirms that its business operations are limited to the scope of the license, and that the license may be revoked if the company engages in activities outside the scope of its business or if the company goes bankrupt. Further, Jinfu states that the license is reviewed annually, and to obtain a renewal, it must provide a copy of its most recent financial statements to the issuing authority.

Zhejiang:

Zhejiang has placed on the record a number of documents to demonstrate absence of *de jure* control, including the ''Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People'' (April 13, 1988), *Company Law*, the revised *Foreign Trade Law*, and the *Legal Corporations Regulations*. *See* Exhibit 2 of Zhejiang's March 10, 2005, submission (Zhejiang Section A). Zhejiang also submitted a copy of its business license in Exhibit 3 of Zhejiang Section A. The Industrial and Commercial Administrative Bureau of Zhejiang Province issued this license. Zhejiang explains that its business license defines the scope of the company's business activities and ensures the company has sufficient capital to continue its business operations. Zhejiang affirms that its business operations are limited to the scope of the license, though it can be amended if it wishes to expand the scope of its operations, and that the license may be revoked if the company has insufficient capital or engages in activities outside the scope of its business. Further, Zhejiang states that the license must be renewed or reviewed annually, and to obtain a renewal, it must apply for a renewal and provide a copy of its most recent financial statements to the issuing authority.

We note that all five of the fully responsive companies state that they are governed by the *Company Law*, which they claim governs the establishment of limited liability companies and provides that such a company shall operate independently and be responsible for its own profits and losses. All of the fully responsive companies have placed on the record the *Foreign Trade Law* and state that this law allows them full autonomy from the central authority in governing their business operations. We have reviewed Article 11 of Chapter II of the *Foreign Trade Law*, which states, ''foreign trade dealers shall enjoy full autonomy in their business operation and be responsible for their own profits and losses in accordance with the law.'' As in prior cases, we have analyzed such PRC laws and found that they establish an absence of *de jure* control. *See, e.g., Pure Magnesium from the People's Republic of China: Final Results of New Shipper Review*, 63 FR 3085, 3086 (January 21, 1998) and *Preliminary Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 30695, 30696 (June 7, 2001), as affirmed in *Final Results of New Shipper Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 45006 (August 27, 2001). Therefore, we preliminarily determine that there is an absence of de jure control over the export activities of Anhui Honghui, Eswell, Jiangsu Kanghong, Jinfu, and Zhejiang.

Absence of De Facto Control

Typically, the Department considers four factors in evaluating whether a respondent is subject to *de facto* government control of its export functions: (1) whether the export prices are set by, or subject to, the approval of a government authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses. *See Silicon Carbide*, 59 FR at 22587.

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *Id.* at 22586–22587. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether respondents are, in fact, subject to a degree of government control, which would preclude the Department from assigning separate rates.

Anhui Honghui has asserted the following: (1) It is a privately owned company; (2) there is no government participation in its setting of export prices; (3) its general manager has the authority to bind sales contracts; (4) the company's executive director appoints the company's management and it does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) its executive director decides how profits will be used. We have examined the documentation provided and note that it does not suggest that pricing is coordinated among exporters of PRC honey.

Eswell has asserted the following: (1) It is a privately owned company; (2) there is no government participation in its setting of export prices; (3) the president of its affiliated company in the United States or its designated sales agent have the authority to bind sales contracts; (4) its management is appointed by its board of directors and it does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) its board of directors decides how profits will be used. We have examined the documentation provided and note that it does not suggest that pricing is coordinated among exporters of PRC honey.

Jiangsu Kanghong has asserted the following: (1) it is a privately owned company; (2) there is no government participation in its setting of export prices; (3) its general manager has the authority to bind sales contracts; (4) the company's executive director appoints the company's management and it does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) its executive director decides how profits will be used. We have examined the

documentation provided and note that it does not suggest that pricing is coordinated among exporters of PRC honey.

Jinfu has asserted the following: (1) It is a privately owned company; (2) there is no government participation in its setting of export prices; (3) the general manager has the authority to bind sales contracts; (4) the company's board of directors appoints the company's management and it does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) its board of directors decides how profits will be used. We have examined the documentation provided and note that it does not suggest that pricing is coordinated among exporters of PRC honey.

Zhejiang has asserted the following: (1) It is a publicly owned company; (2) there is no government participation in its setting of export prices; (3) the manager of the Bee Department Number 1 has the authority to bind sales contracts; (4) the company's president selects the company's management and it does not have to notify government authorities of its management selection; (5) there are no restrictions on the use of its export revenue; and (6) its president decides how profits will be used. We have examined the documentation provided and note that it does not suggest that pricing is coordinated among exporters of PRC honey.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over each respondent's export activities, we preliminarily determine that each fully responsive company has met the criteria for the application of a separate rate.

Use of Facts Otherwise Available and the PRC–Wide Rate

Anhui Honhui, Eswell, Jiangsu Kanghong, Jinfu, Zhejiang, Chengdu Waiyuan, Dubao, and Eurasia were given the opportunity to respond to the Department's questionnaire. As explained above, we received complete questionnaire responses from Anhui Honghui, Eswell, Jiangsu Kanghong, Jinfu, and Zhejiang, and we have calculated a separate rate for these companies. The PRC–wide rate applies to all entries of subject merchandise except for entries from PRC producers/exporters that have their own calculated rate. *See* ''Separate Rates'' section above.[3]

Dubao and Eurasia are appropriately considered to be part of the PRC–wide entity because they failed to establish their eligibility for a separate rate. Because the PRC–wide entity did not provide requested information necessary to the instant proceeding, it is necessary that we review the PRC–wide entity. In doing so, we note that section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act provides that if an interested party or any other person: (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department shall promptly inform the party submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that party with an opportunity to remedy or explain the deficiency. Section 782(d) of the Act additionally states that if the party submits further information that is unsatisfactory or untimely, the administering authority may, subject to subsection (e), disregard all or part of the original and subsequent responses. Section 782(e) of the Act provides that the Department shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority if: (1) the information is submitted by the deadline established for its submission; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority with respect to the information; and (5) the information can be used without undue difficulties.

We find that the PRC–wide entity (including Dubao and Eurasia) did not respond to our request for information and that necessary information either was not provided, or the information provided cannot be verified and is not sufficiently complete to enable the Department to use it for these preliminary results. Therefore, we find it necessary, under section 776(a)(2) of the Act, to use facts otherwise available as the basis for the preliminary results of this review for the PRC–wide entity.

As stated above in the ''Background'' section, Dubao did not respond to the Department's antidumping questionnaire. The Department has no information on the record for Dubao with which to calculate a dumping margin or determine if it is eligible for a separate rate in this proceeding; therefore, we find that Dubao has significantly impeded the proceeding, pursuant to sections 776(a)(2)(A) and 776(a)(2)(B) of the Act. Because Dubao did not respond to the Department's questionnaires, sections 782(d) and (e) of the Act are not applicable.

As stated above in the ''Background'' section, Eurasia responded to the Department's antidumping questionnaire, and two subsequent supplemental questionnaires. The Department subsequently requested additional information from Eurasia in a supplemental questionnaire. *See* Supplemental A, C, and D questionnaire, dated October 7, 2005. On October 19, 2005, the Department received a letter from Eurasia stating that it was withdrawing its request for a review. We note that the omitted information included details relating to Eurasia's ownership structure, information critical to the Department's separate–rates analysis (*see* ''Separate Rates'' section above), as well as information on freight expenses and payment. The Department gave Eurasia an additional opportunity to provide the information the Department had requested on October 26, 2005. *See* Letter from Carrie Blozy to Eurasia dated October 26, 2005. The Department received no response to this request.

Due to these serious deficiencies, we preliminarily find that Eurasia has failed to provide the information requested, thereby significantly impeding the proceeding. Therefore, pursuant to section 776(a)(2)(A), (B),

[3] Chengdu Waiyuan's reply to the Department's questionnaire was its February 23, 2005, letter stating it had no sales in the United States during the POR. Based on this and the Department's analysis of CBP data, we have determined that Chengdu Waiyuan had no shipments during the POR and therefore we are preliminarily rescinding this review for Chengdu Waiyuan. *See* ''Partial Rescission'' section of this notice.

and (C) of the Act, the Department preliminarily finds that the application of facts available is appropriate for these preliminary results.

Application of Adverse Inference

Section 776(b) of the Act provides that, in selecting from among the facts available, the Department may use an inference that is adverse to the interests of the respondent if it determines that a party has failed to cooperate to the best of its ability. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See Statement of Administrative Action (SAA)* accompanying the Uruguay Round Agreements Act, H. Doc. No. 316, 103d Cong., 2d Session, Vol. 1 (1994) at 870. In determining whether a respondent has failed to cooperate to the best of its ability, the Department need not make a determination regarding the willfulness of a respondent's conduct. *See Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382–1393 (Fed. Cir. 2003). Furthermore, '' affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.'' *Antidumping Duties; Countervailing Duties: Final Rule*, 62 FR 27296, 27340 (May 19, 1997).

In determining whether a party failed to cooperate to the best of its ability, the Department considers whether a party could comply with the request for information, and whether a party paid insufficient attention to its statutory duties. *See Pacific Giant Inc. v. United States*, 223 F. Supp 2d 1336, 1342 (CIT 2002). Furthermore, the Department also considers the accuracy and completeness of submitted information, and whether the respondent has hindered the calculation of accurate dumping margins. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997).

Pursuant to section 776(b) of the Act, we find that the PRC–wide entity (including Dubao and Eurasia) failed to cooperate by not acting to the best of its ability to comply with requests for information. As noted above, the PRC–wide entity informed the Department that it would not participate in this review, or otherwise did not provide the requested information, despite repeated requests that it do so. This information was in the sole possession of the respondents, and could not be obtained otherwise. Thus, because the PRC–wide entity refused to participate fully in this proceeding, we find it appropriate to use an inference that is adverse to the interests of the PRC–wide entity in selecting from among the facts otherwise available. By doing so, we ensure that the companies that are part of the PRC–wide entity will not obtain a more favorable result by failing to cooperate than had they cooperated fully in this review.

Selection of AFA Rate

In deciding which facts to use as AFA, section 776(b) of the Act and 19 CFR 351.308(c)(1) authorize the Department to rely on information derived from: (1) the petition; (2) a final determination in the investigation; (3) any previous review or determination; or (4) any information placed on the record. In reviews, it is the Department's practice to select, as AFA, the highest rate determined for any respondent in any segment of the proceeding. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review*, 68 FR 19504, 19508 (April 21, 2003).

The U.S. Court of International Trade (CIT) and the U.S. Court of Appeals for the Federal Circuit (CAFC) have consistently upheld the Department's practice in this regard. *See Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Circ. 1990) (*Rhone Poulenc*); *NSK Ltd. v. United States*, 346 F. Supp. 2d 1312, 1335 (CIT 2004) (upholding a 73.55 percent total AFA rate, the highest available dumping margin from a different respondent in a LTFV investigation); *see also Kompass Food Trading Int'l v. United States*, 24 CIT 678, 689 (2000) (upholding a 51.16 percent total AFA rate, the highest available dumping margin from a different, fully cooperative respondent); and *Shanghai Taoen International Trading Co., Ltd. v. United States*, 360 F. Supp. 2d 1339, 1348 (CIT 2005) (upholding a 223.01 percent total AFA rate, the highest available dumping margin from a different respondent in a previous administrative review).

The Department's practice when selecting an adverse rate from among the possible sources of information is to ensure that the margin is sufficiently adverse ''as to effectuate the purpose of the facts available role to induce respondents to provide the Department with complete and accurate information in a timely manner.'' *Static Random Access Memory Semiconductors from Taiwan; Final Determination of Sales at Less than Fair Value*, 63 FR 8909, 8932 (February 23, 1998). The Department's practice also ensures ''that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' SAA at 870. *See also D&L Supply Co. v. United States*, 113 F. 3d 1220, 1223 (Fed. Cir. 1997) and *Final Determination of Sales at Less than Fair Value: Certain Frozen and Canned Warmwater Shrimp from Brazil*, 69 FR 76910 (December 23, 2004). In choosing the appropriate balance between providing respondents with an incentive to respond accurately and imposing a rate that is reasonably related to the respondent's prior commercial activity, selecting the highest prior margin ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins, because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Rhone Poulenc*, 899 F.2d at 1190.

Consistent with the statute, court precedent, and its practice, the Department has preliminarily assigned the rate of 183.80 percent, the highest rate determined in any segment of the proceeding to the PRC–wide entity (including Dubao and Eurasia) as AFA. *See Notice of Final Determination of Sales at Less Than Fair Value; Honey from the PRC*, 66 FR 50608 (October 4, 2001) (*Final Determination*). As discussed further below, this rate has been corroborated.

Corroboration of Secondary Information Used as AFA

We note that information from a prior segment of this proceeding constitutes ''secondary information,'' and section 776(c) of the Act provides that, when the Department relies on such secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.[4] The *SAA* states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. The *SAA* also clarifies that ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See SAA* at 870. To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. *See Tapered Roller Bearings and Parts*

[4] Secondary information is described in the *SAA* as ''information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *SAA* at 870.

Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996) (*TRBs*), as affirmed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997). The *SAA* also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation. *SAA* at 870. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 35627, 35629 (June 16, 2003), as affirmed in *Notice of Final Determination of Sales at Less Than Fair Value: High and Ultra–High Voltage Ceramic Station Post Insulators from Japan*, 68 FR 62560 (November 7, 2003); and *Final Determination of Sales at Less Than Fair Value: Live Swine from Canada*, 70 FR 12181, 12183–4 (March 11, 2005).

We note that in the LTFV investigation, the Department corroborated the information in the petition that formed the basis of the 183.80 percent PRC–wide rate. *See Final Determination*. Specifically, in the LTFV investigation, the Department compared the prices in the petition to the prices submitted by individual respondents for comparable merchandise. For normal value (NV), we compared petitioners' factor–consumption data to data reported by respondents. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Honey from the People's Republic of China*, 66 FR 24101, 24105 (May 11, 2001) (*Investigation Prelim*), as affirmed in the *Final Determination*.

To satisfy the corroboration requirements under section 776(c) of the Act, in the instant review, we compared this margin rate to the margins we found for respondents in this review. Specifically, we found that respondents reported sales of subject merchandise for which the highest margins corroborate the 183.80 percent rate as established in the LTFV investigation and affirmed in the first and second administrative reviews. *See Investigation Prelim; Honey from the People's Republic of China: Preliminary Results of First Antidumping Duty Administrative Review*, 68 FR 69988, 69991–2 (December 16, 2003) and affirmed in *Honey from the People's Republic of China: Final Results of First Antidumping Duty Administrative Review*, 69 FR 24128, 24130 (May 3, 2004); and *Honey from the People's Republic of China: Final Results and Final Rescission, In Part, of Antidumping Duty Administrative Review*, 70 FR 38873, 38880 (July 6, 2005) (*AR2 Final Results*).

Based on our analysis of respondents' margin results, we find that the margin of 183.80 percent is reliable and relevant. As the rate is both reliable and relevant, and no information has been presented to call into question the reliability of this information, we determine that it has probative value. For the company–specific information used to corroborate this rate, *see* ''Memorandum to the File: Corroboration of the PRC–Wide Adverse Facts Available Rate,'' dated December 9, 2005.

We further note that, with respect to the relevance aspect of corroboration, the Department stated in *TRBs* that it will ''consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin.'' *TRBs*, 61 FR at 57392. *See also Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (disregarding the highest margin in the case as best information available because the margin was based on another company's uncharacteristic business expense resulting in an extremely high margin). Similarly, the Department does not apply a margin that has been discredited. *See D & L Supply Co. v. United States*, 113 F.3d 1220, 1221 (Fed. Cir. 1997) (the Department will not use a margin that has been judicially invalidated).

The rate applied in this review is the rate currently applicable to all exporters subject to the PRC–wide rate. Further, as noted above, there is no information on the record that the application of this rate would be inappropriate in this administrative review or that the margin is not relevant. Thus, we find that the information is relevant. Therefore, the Department preliminarily determines that the PRC–wide rate of 183.80 is still reliable, relevant, and has probative value within the meaning of section 776(c) of the Act.

Affiliation

Jinfu has claimed that it is affiliated with Jinfu Trading (USA) Inc., (Jinfu USA) within the meaning of section 771(33) of the Act. Section 771(33) of the Act states that affiliated persons include: (A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants; (B) any officer or director of an organization and such organization; (C) partners; (D) employer and employee; (E) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting stock or shares of any organization and such organization; (F) two or more persons directly or indirectly controlling, controlled by, or under common control with, any person; (G) any person who controls any other person and such other person. For purposes of this paragraph, a person shall be considered to control another person if the person is legally or operationally in a position to exercise restraint or direction over the other person. To find affiliation between companies, the Department must find that at least one of the criteria listed above is applicable to the respondents.

Though no party in this case is questioning whether or not Jinfu was in fact affiliated with Jinfu USA at some point during the POR within the meaning of section 771(33), the effective date of this affiliation is in question, and is significant to this proceeding for purposes of determining whether certain of Jinfu's U.S. sales should be reported as ''export price'' sales or ''constructed export price'' sales. *See* discussion below under ''U.S. Price'' section of this notice. In this regard, Jinfu claims that it was affiliated with Jinfu USA as of October 25, 2002, which means the two firms were affiliated throughout the entire POR.

In the most recently completed segment of these PRC honey proceedings, the Department determined that Jinfu was not affiliated with Jinfu USA until October 25, 2003, at the earliest. *See AR2 Final Results* and accompanying Issues and Decision Memorandum at Comment 8. In making this finding in *AR2 Final Results*, the Department noted that it intended to examine Jinfu's date of affiliation further in the instant review. *See id.*

In considering for purposes of these preliminary results whether Jinfu was affiliated with Jinfu USA under section 771(33) of the Act, we note that in the previous administrative review, the

Department found that evidence on the record in that review did not reflect a specific date of acquisition by Jinfu's CEO of Jinfu USA. Nevertheless, in that review, the Department found that the ''Certificate of Transfer of Stocks,'' a stock ownership transfer agreement, was the most significant in establishing affiliation between Jinfu and Jinfu USA. Specifically, in the *AR2 Final Results*, we found that Jinfu's purchase/investment in Jinfu USA, as delineated in the Certificate of Transfer of Stocks, resulted in a common control relationship between Jinfu USA and Jinfu upon the date (October 25, 2003) that document was signed. *See AR2 Final Results* and accompanying Issues and Decision Memorandum at Comment 8. This decision is also consistent with our findings in the new shipper review that Jinfu requested. *See Final Results and Final Rescission, In Part, of Antidumping Duty New Shipper Review*, 69 FR 64029 (November 3, 2004) and accompanying Issues and Decision Memorandum at Comment 2.

For purposes of this review, the Department continues to find that the stock ownership transfer agreement, which the Department placed on the record of this review, results in affiliation between Jinfu and Jinfu USA. The issue at hand is when the document was actually signed. The document itself indicates a date of October 25, 2003. However, Jinfu has stated that the document was not signed until December 2003. This information is contained in an affidavit, signed by Jinfu's CEO, in which he states: ''In December 2003, Jinfu's Trading council in the new antidumping new shipper review asked me for a copy of the Certificate of Transfer. I realized than that I had forgotten to sign the Certificate of Transfer of Stocks. '' *See* Attachment I of the October 5, 2005, supplemental questionnaire from the Department to Jinfu; *see also* Attachment I of the November 18, 2005, supplemental questionnaire from the Department to Jinfu.

However, Jinfu was unable to provide the exact date in December on which it was signed. Therefore, according to the information on the record, the Department has preliminarily determined that Jinfu and Jinfu USA were not affiliated within the meaning of section 771(33) of the Act until December 31, 2003, which is the last possible date that the above–referenced stock transfer agreement could have been executed. We note that this decision is consistent with our findings in *AR2 Final Results*. Moreover, in reaching this decision, the Department considered the limited additional information submitted by Jinfu in this proceeding, but determined such additional information did not have sufficient probative value to call into question the decision in *AR2 Final Results*. For a further discussion of this issue, *see* ''Memorandum to James C. Doyle, Office Director: Analysis of the Relationship and Treatment of Sales between Jinfu Trading, Co., Ltd. and Jinfu Trading (USA) Inc.,'' dated December 9, 2005.

Normal Value Comparisons

To determine whether the respondents' sales of the subject merchandise to the United States were made at prices below normal value, we compared their United States prices to normal values, as described in the ''U.S. Price'' and ''Normal Value'' sections of this notice.

U.S. Price

Export Price

For Jiangsu Kanghong, and certain sales by Jinfu (*i.e.*, those prior to or on December 31, 2003), we based U.S. price on export price (EP) in accordance with section 772(a) of the Act, because the first sale to an unaffiliated purchaser was made prior to importation, and constructed export price (CEP) was not otherwise warranted by the facts on the record. We calculated EP based on the packed price from the exporter to the first unaffiliated customer in the United States. Where applicable, we deducted foreign inland freight, foreign brokerage and handling expenses, international freight, marine insurance, U.S. inland freight expenses from port to warehouse, and U.S. import duties and brokerage and handling from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Specifically, for Jiangsu Kanghong we deducted foreign inland freight, foreign brokerage and handling expenses, international freight, U.S. inland freight expenses from warehouse to customer, and U.S. import duties, dock charges, and brokerage and handling from the starting price (gross unit price), in accordance with section 772(c) of the Act. Based on information obtained at verification, we made changes to the U.S. brokerage and handling charges for certain sales. *See* ''Memorandum to the File: Jiangsu Kanghong Natural Healthfoods Co., Ltd. (Jiangsu Kanghong) Analysis Memorandum for the Preliminary Results of Review,'' dated December 9, 2005, (Jiangsu Kanghong Analysis Memo).

Based on the Department's preliminary decision on affiliation between Jinfu and Jinfu USA, the Department requested that Jinfu supply EP sales information for all of its sales to the United States during the POR. For those sales that the Department determined should be considered EP sales for Jinfu, we deducted foreign inland freight and foreign brokerage and handling expenses, from the starting price (gross unit price), in accordance with section 772(c) of the Act.

Where foreign inland freight, foreign brokerage and handling, or marine insurance were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (*see* ''Factors of Production'' section below for further discussion). For those expenses that were provided by a market–economy provider and paid for in market–economy currency, we used the reported expense, pursuant to 19 CFR 351.408(c)(1).

Constructed Export Price

For Anhui Honghui, Eswell, Zhejiang, and certain sales by Jinfu, we calculated CEP in accordance with section 772(b) of the Act, because certain sales were made on behalf of the PRC–based company by its U.S. affiliate to unaffiliated purchasers. We based CEP on packed, delivered or ex–warehouse prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling charges, international freight, marine insurance, U.S. brokerage and handling, U.S. import duties, and U.S. inland freight expenses.

In accordance with section 772(d)(1) of the Act, we also deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses and indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

Specifically, for Anhui Honghui we deducted (where applicable) foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. inland freight from the port to warehouse, U.S. warehouse, U.S. dock storage, inventory carrying costs, credit expenses, other direct selling expenses (lab tests), indirect selling expenses, CEP profit, and added (where applicable) freight revenue. In its new shipper review, we found that Anhui Honghui was affiliated with Honghui USA and that

the use of CEP sales was appropriate. *See Notice of Preliminary Results of Antidumping Duty New Shipper Reviews: Honey From the People's Republic of China*, 69 FR 69350, 69353 (November 29, 2004), affirmed without change in *Honey From the People's Republic of China: Notice of Final Results of Antidumping Duty New Shipper Reviews*, 70 FR 9271 (February 25, 2005). For purposes of this review, there is no information on the record that would cause the Department to reconsider its affiliation finding. Therefore, we are continuing to analyze Honghui USA's sales to the first unaffiliated customer.

For Eswell we deducted (where applicable) foreign inland freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. inland freight from the port to warehouse, U.S. inland freight from the warehouse to the customer, U.S. dock storage, commissions, credit expenses, other direct selling expenses (lab tests), indirect selling expenses, CEP profit, and inventory carrying costs. We recalculated Eswell's reported indirect selling expenses to be consistent with the Department's standard methodology. *See* ''Memorandum to the File: Shanghai Eswell Enterprise Co., Ltd. (Eswell) Analysis Memorandum for the Preliminary Results of Review,'' dated December 9, 2005 (Eswell Analysis Memo).

For Zhejiang we deducted (where applicable) foreign inland freight, foreign brokerage and handling, international freight, marine insurance, other discounts, U.S. brokerage, U.S. customs duties, commissions, credit expenses, indirect selling expenses, CEP profit, and inventory carrying costs.

For those sales that the Department has determined should be calculated on a CEP basis for Jinfu, we deducted (where applicable) foreign inland freight, foreign brokerage and handling, international freight, U.S. brokerage, U.S. customs duties, U.S. inland freight from the port to warehouse, U.S. warehouse, U.S. inland freight from the warehouse to the customer, credit expenses, inventory carrying costs, indirect selling expenses, and CEP profit. Although Jinfu reported indirect selling expenses, the methodology used resulted in the double counting of certain expenses. Therefore, we recalculated the indirect selling expenses for Jinfu's affiliated company using its affiliate's financial statements to be consistent with the Department's standard methodology. *See* ''Memorandum to the File: Jinfu Trading Co., Ltd. (Jinfu) Analysis Memorandum for the Preliminary Results of Review,'' dated December 9, 2005 (Jinfu Analysis Memo).

Where foreign inland freight, foreign brokerage and handling, or marine insurance, were provided by PRC service providers or paid for in renminbi, we valued these services using Indian surrogate values (*see* ''Factors of Production'' section below for further discussion). For those expenses that were provided by a market–economy provider and paid for in market–economy currency, we used the reported expense.

Normal Value

Non–Market-Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. Pursuant to section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Preliminary Results 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 7500 (February 14, 2003), as affirmed in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of 2001–2002 Administrative Review and Partial Rescission of Review*, 68 FR 70488 (December 18, 2003). None of the parties to these reviews have contested such treatment. Accordingly, we calculated normal value (NV) in accordance with section 773(c) of the Act, which applies to NME countries.

Surrogate Country

Section 773(c)(4) of the Act requires the Department to value an NME producer's factors of production, to the extent possible, in one or more market–economy countries that: (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. India is among the countries comparable to the PRC in terms of overall economic development, as identified in the ''Memorandum from the Office of Policy to Carrie Blozy,'' dated March 7, 2005.[5] In addition, based on publicly available information placed on the record (*e.g.*, world production data), India is a significant producer of honey. Accordingly, we considered India the surrogate country for purposes of valuing the factors of production because it meets the Department's criteria for surrogate–country selection. *See* ''Memorandum to the File: Selection of a Surrogate Country,'' dated December 9, 2005, (Surrogate Country Memo).

Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production which included, but were not limited to: (A) hours of labor required; (B) quantities of raw materials employed; (C) amounts of energy and other utilities consumed; and (D) representative capital costs, including depreciation. We used factors of production reported by the producer or exporter for materials, energy, labor, and packing, except as indicated. To calculate NV, we multiplied the reported unit factor quantities by publicly available Indian values.

For Anhui Honghui, based on information obtained at verification, for these preliminary results the Department will adjust the labor input and recalculate energy, labor, and packing inputs so that they are reported on the correct per–unit measurement. *See* ''Memorandum to the File: Anhui Honghui Foodstuff (Group) Co., Ltd. (Anhui Honghui) Analysis Memorandum for the Preliminary Results of Review,'' dated December 9, 2005.

For Eswell, the Department has adjusted two of Eswell's reported factors of production for these preliminary results, including recalculating one of Eswell's packing inputs, but not including one of Eswell's reported by–products, for which it could not substantiate that said by–product was sold during the POR, in the normal value calculation. *See* Eswell Analysis Memo.

In the instant review, Jiangsu Kanghong reported factors of production beginning at the beehive stage because it maintains lease agreements with and pays salaries, rental fees, and bonuses to its raw honey suppliers. All other respondents in this proceeding have reported factors from the raw honey input stage of production. Although Jiangsu Kanghong initially only reported bee medicine and mileage and labor factors for the beehives, we asked Jiangsu Kanghong to report other factors used in the bee–keeping process, including beehives and all their parts, bees, and bee farmer tools. We asked them to report a factor for raw honey consumption as well. We note that Jiangsu Kanghong did not place any

[5] This memorandum is attached to the letters sent to interested parties to this proceeding requesting comments on surrogate country and surrogate value information, dated March 9, 2005.

surrogate value information on the record to value any of the inputs from the beehive stage of production, though it did provide surrogate value information on the record to value inputs from the raw honey stage of the production process.

The Department has preliminarily determined, as discussed below, that it should value Jiangsu Kanghong's intermediate product of raw honey because we do not find the factor data for the production of raw honey to be reliable. To calculate a factor of production for the number of bees per kilogram of processed honey (which the Department requested), Jiangsu Kanghong used the number of bee farmers, raw honey produced during the POR, and consumption of raw honey per kilogram of processed honey, but relied on estimates for the number of bee hives, bees per hive, days in the POR bee season, and average bee life expectancy. Jiangsu Kanghong was unable to provide either verifiable direct evidence or even authoritative secondary sources to substantiate the accuracy of the estimated number of beehives, bees per hive, and average bee life expectancy that it reported. Furthermore, queen bees play an important role in the honey making process, yet Jiangsu Kanghong did not address this element at all in its reported bee factor of production. *See* ''Memorandum to the File: Bee Research,'' dated December 9, 2005. In addition, our research has indicated that bee species matter in terms of production output and value, yet there is no authoritative source on the record supporting Jiangu Kanghong's claim of the type of bees that its beekeepers use. *See Id*. In summary, the respondent failed to provide authoritative sources to indicate the resulting quantity of bees to value and the appropriate information with which to value a major material input at this stage of production. Lastly, the limited data placed on the record by Jiangsu Kanghong suggest, contrary to Jiangsu Kanghong's argument, that bees should be considered a factor of production rather than treated as overhead because they are ''consumed,'' similar to other inputs. For instance, information on the record suggests that worker bees during the production season live only from one to three months. *See* Jiangsu Kanghong Verification Report.

At verification, the Department also found numerous errors with the factors of production data regarding other beekeeping inputs. These problems included three unreported inputs sugar, royal jelly scraper, and warming cloth. When beekeeping inputs were examined, we found that the reported measurements or quantities did not consistently match the measurements reported by Jiangsu Kanghong. For instance, the majority of the beekeeping–related inputs did not weigh what Jiangsu Kanghong reported or contain the exact number of pieces that Jiangsu Kanghong reported. The company also did not provide any supporting documentation demonstrating the useful asset lives of the beehives or beekeeping equipment to substantiate the numbers reported in its responses. Further, at verification, we could not reconcile the bee medicine input nor verify the packing input used for three of its reported by–products. We found that the majority of supplier distances and beekeeping labor hours were reported incorrectly. In addition, of the two beekeepers interviewed, one claimed that he had not repaired his hives in ''many'' years, yet we saw beehive covers obviously made of fresh wood. Both of these beekeepers said they did not use bee medicine, though Jiangsu Kanghong reported this input as its only raw material in its original Section C response. *See* Jiangsu Kanghong Verification Report.

Because of the many errors in the factors of production data for raw honey submitted by Jiangsu Kanghong, the Department finds that it is not necessary to reach a determination on whether Jiangsu Kanghong is sufficiently vertically integrated to value the raw honey using a factors of production approach. Because we do not find the factor data for raw honey to be reliable due to the lack of reliable information regarding bee consumption during the POR and the many errors found in the reported data at verification, for these preliminary results the Department will value the raw honey consumed by Jiangsu Kanghong using a surrogate value for the raw honey itself rather than a factor of production approach.

In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data, in accordance with our practice. *See, e.g., Fresh Garlic from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review*, 67 FR 72139 (December 4, 2002), and accompanying Issues and Decision Memorandum at Comment 6; and *Certain Preserved Mushrooms from China Final Results of First New Shipper Review and First Antidumping Duty Administrative Review: Certain Preserved Mushrooms From the People's Republic of China*, 66 FR 31204 (June 11, 2001), and accompanying Issues and Decision Memorandum at Comment 5. When we used publicly available import data from the Ministry of Commerce of India (Indian Import Statistics) for December 2003 through November 2004 to value inputs sourced domestically by PRC suppliers, we added to the Indian surrogate values a surrogate freight cost calculated using the shorter of the reported distance from the domestic supplier to the factory or the distance from the nearest port of export to the factory. This adjustment is in accordance with the CAFC's decision in *Sigma Corp. v. United States*, 117 F. 3d 1401, 1408 (Fed. Cir. 1997). When we used non–import surrogate values for factors sourced domestically by PRC suppliers, we based freight for inputs on the actual distance from the input supplier to the site at which the input was used. In instances where we relied on Indian import data to value inputs, in accordance with the Department's practice, we excluded imports from both NME countries and countries deemed to maintain broadly available, non–industry-specific subsidies which may benefit all exporters to all export markets (i.e., Indonesia, South Korea, and Thailand) from our surrogate value calculations. *See, e.g., Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields from the People's Republic of China*, 67 FR 6482 (February 12, 2002) and accompanying Issues and Decision Memorandum at Comment 1. *See also, Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Affirmative Preliminary Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China*, 68 FR 66800, 66808 (November 28, 2003), unchanged in the Department's final results at 69 FR 20594 (April 16, 2004). See ''Memorandum to the File: Factors of Production Valuation Memorandum for the Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review of Honey from the People's Republic of China,'' dated December 9, 2005 (Factor Valuation Memo), for a complete discussion of the import data that we excluded from our calculation of surrogate values. This memorandum is on file in the CRU.

Where we could not obtain publicly available information contemporaneous with the POR to value factors, we adjusted the surrogate values using the Indian Wholesale Price Index (WPI) as published in the *International Financial Statistics* of the International Monetary Fund, for those surrogate values in Indian rupees. We made currency

conversions, where necessary, pursuant to 19 CFR 351.415, to U.S. dollars using the daily exchange rate corresponding to the reported date of each sale. We relied on the daily exchanges rates posted on the Import Administration Web site (http://ia.ita.doc.gov). See Factor Valuation Memo.

We valued the factors of production as follows:

To value raw honey, we took a weighted average of the raw honey prices for each month from December 2002 through June 2003, based on the percentage of each type of honey produced and sold, as derived from EDA Rural Systems Pvt Ltd. website, http://www.litchihoney.com (EDA data), and as submitted by petitioners in their October 11, 2005, submission. We inflated the value for raw honey using the POR average WPI rate.

The respondents in this review submitted news articles to be used as potential sources for the surrogate value data for raw honey, including an article from the *Hindu Business Line* dated January 2004 and an article from IndiaInfoline.com dated September 2003. We have not used either of these alternate sources proposed by respondents in the preliminary results, as discussed in the Factor Valuation Memo.

In selecting the raw honey values from the EDA data as the best available information with which to value raw honey in this proceeding, we note that the Department has conducted extensive research on potential raw honey surrogate values for this administrative review, including data collected from www.banajata.org, published by the Regional Centre for Development Cooperation. The relevant research is included as Attachment 18 of the Factor Valuation Memo. However, the Department cannot confirm the quality or reliability of the Banajata values because it was unable to ascertain how the information published by the website was collected.

The use of EDA data is also consistent with the Department's recent decision in the second administrative review of this order. *See AR2 Final Results* and accompanying Issues and Decision Memorandum at Comment 1. For a further discussion of this issue, *see* Factor Valuation Memo.

To value coal, the Department used data from the Teri Energy Data Directory & Yearbook, 2003 - 2004, as consistent with the findings affirmed in *Wuhan Bee Healthy Co., Ltd. v. United States*, Slip Op. 05–142 (CIT 2005). The Department calculated a simple average of all types of grade C coal produced by Coal India Ltd. and its subsidiaries from September 29, 2003, through June 15, 2004. *See* Factor Valuation Memo.

To value water, we calculated the average price of inside and outside industrial water rate from various regions as reported by the Maharashtra Industrial Development Corporation, http://midcindia.org, dated June 1, 2003. We inflated the value for water using the POR average WPI rate. *See* Factor Valuation Memo.

We valued electricity using the 2000 electricity price in India reported by the International Energy Agency statistics for *Energy Prices & Taxes, Second Quarter 2003*. We inflated the value for electricity using the POR average WPI rate. *See* Factor Valuation Memo.

While Anhui Honghui, Eswell, Jiangsu Kanghong, Jinfu, and Zhejiang also identified diesel fuel and gasoline as inputs consumed in the production of the subject merchandise, the Department considers these materials as overhead rather than direct material inputs. The Department therefore has excluded diesel fuel and gasoline from the normal value calculation.

To value beeswax, scrap honey, paint, and labels, we used Indian Import Statistics, contemporaneous with the POR, removing data from certain countries as discussed in the Factor Valuation Memo. We also adjusted the surrogate values to include freight costs incurred between the shorter of the two reported distances from either: (1) the closest PRC seaport to the location producing the subject merchandise, or (2) the PRC domestic materials supplier to the location where the subject merchandise is produced. *See* Factor Valuation Memo.

To value drums, we relied upon a price quote from an Indian steel drum manufacturer from September 2000, as provided by petitioners in their October 11, 2005, submission at Exhibit 8. We inflated the value for drums using the POR average WPI rate. *See* Factor Valuation Memo.

To value factory overhead, selling, general, and administrative expenses (SG&A), and profit, we relied upon publicly available information in the 2003–2004 annual report of Mahabaleshwar Honey Production Cooperative Society Ltd. (MHPC), a producer of the subject merchandise in India, upon which petitioners and Eswell have argued that the Department should rely. Petitioners maintain in their October 11, 2005, submission that the Department should continue to rely on the methodology as used in *AR2 Final Results* for calculation of the SG&A ratios. Eswell argued in its October 11, 2005, submission that the Department should adjust its SG&A methodology for the MHPC data so that the cost calculations reflect the additional expenses incurred in selling honey from inventory. Anhui Honghui, Jiangsu Kanghong, and Zhejiang argue in their October 11, 2005, submission that the Department should rely on information available in an alternate Indian producer's financial statements, that of Apis India Natural Products Ltd. (Apis), 2003 2004. However, we preliminarily find that the Department's calculation in *AR2 Final Results* was appropriate, including relying on MHPC data as opposed to Apis data, because the Apis data are not as reliable or detailed as that of MHPC, and because the publicly available MHPC information meets the Department's criteria for data on which to base surrogate financial ratios. Therefore, for these preliminary results we are continuing to calculate SG&A based on the MHPC data as consistent with the *AR2 Final Results*. For a further discussion of this issue, *see* Factor Valuation Memo.

Because of the variability of wage rates in countries with similar levels of per capita gross domestic product, section 351.408(c)(3) of the Department's regulations requires the use of a regression–based wage rate. Therefore, to value the labor input, we used the PRC's regression–based wage rate published by Import Administration on its Web site, http://www.ia.ita.doc.gov. See Factor Valuation Memo.

To value truck freight, we calculated a weighted–average freight cost based on publicly available data from www.infreight.com, an Indian inland freight logistics resource website. To value train freight, we used an average of rail freight prices based on the publicly available freight rates reported by the Official Website of the Ministry of Railways: http://www.indianrailways.gov.in/railway/freightrates/freight_charges.htm. Consistent with the calculation of inland truck freight, the Department used the same freight distances used in the calculation of inland truck freight, as reported by www.infreight.com to derive the surrogate value. *See* Factor Valuation Memo.

We valued marine insurance, where necessary, based on publicly available price quotes from a marine insurance provider at http://www.rjgconsultants.com/insurance.html. We valued international freight expenses, where necessary, using contemporaneous freight quotes that the Department obtained from Maersk Sealand, a market–economy shipper. *See* Factor Valuation Memo.

To value brokerage and handling, we used a simple average of the publicly summarized versions of the average value for brokerage and handling expenses reported in the U.S. sales listings in Essar Steel Ltd.'s (Essar Steel) February 28, 2005, submission in the antidumping duty review of Certain Hot–Rolled Carbon Steel Flat Products from India, and the March 9, 2004, submission from Pidilite Industries Ltd. (Pidilite) in the antidumping duty investigation of Carbazole Violet Pigment 23 from India. Since the reported rate in Essar Steel is contemporaneous with the POR, no adjustments to the value were necessary. However, as the Pidilite rate was dated from October 2002 through September 2003, we adjusted this rate for inflation using the POR wholesale WPI for India. *See* Factor Valuation Memo.

In accordance with section 351.301(c)(3)(ii) of the Department's regulations, for the final results of this administrative review, interested parties may submit publicly available information to value the factors of production until 20 days following the date of publication of these preliminary results.

Preliminary Results of Review

We preliminarily determine that the following antidumping duty margins exist:

Exporter	Margin (percent)
Anhui Honghui Foodstuffs (Group) Co., Ltd.	151.80%
Shanghai Eswell Enterprise Co., Ltd.	117.53%
Jiangsu Kanghong Natural Healthfoods Co., Ltd.	151.13%
Jinfu Trading Co., Ltd.	115.59%
Zhejiang Native Produce and Animal By–Products Import & Export Group Corp.	116.22%
PRC–Wide Rate (including Sichuan–Dujiangyan Dubao Bee Industrial Co., Ltd. and Eurasia's Bee Products Co., Ltd.)	183.80%

For details on the calculation of the antidumping duty weighted–average margin for each company, see the respective company's analysis memorandum for the preliminary results of the third administrative review of the antidumping duty order on honey from the PRC, dated December 9, 2005. Public Versions of these memoranda are on file in the CRU.

Assessment Rates

Pursuant to 19 CFR 351.212(b), the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of this review. For assessment purposes, where possible, we calculated importer–specific assessment rates for honey from the PRC on a per–unit basis. Specifically, we divided the total dumping margins (calculated as the difference between normal value and export price or constructed export price) for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per–unit assessment amount. If these preliminary results are adopted in our final results of review, we will direct CBP to levy importer–specific assessment rates based on the resulting per–unit (*i.e.*, per–kilogram) rates by the weight in kilograms of each entry of the subject merchandise during the POR.

Cash Deposits

The following cash–deposit requirements will be effective upon publication of the final results for shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(2)(C) of the Act: (1) For subject merchandise exported by Anhui Honghui, Eswell, Jiangsu Kanghong, Jinfu, and Zhejiang, we will establish a per–kilogram cash deposit rate which will be equivalent to the company–specific cash deposit established in this review; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding (except for Eurasia, whose cash–deposit rate has changed in this review to the PRC–wide entity rate, as noted below); (3) for all other PRC exporters of subject merchandise which have not been found to be entitled to a separate rate (including Dubao and Eurasia), the cash–deposit rate will be the PRC–wide rate of 183.80 percent; (4) for all non–PRC exporters of subject merchandise, the cash–deposit rate will be the rate applicable to the PRC supplier of that exporter.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

Schedule for Final Results of Review

The Department will disclose calculations performed in connection with the preliminary results of this review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing would normally be held 37 days after the publication of this notice, or the first workday thereafter, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Requests for a public hearing should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) to the extent practicable, an identification of the arguments to be raised at the hearing.

Unless otherwise notified by the Department, interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309(c)(ii). As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Rebuttal briefs, which must be limited to issues raised in the case briefs, must be filed within five days after the case brief is filed. If a hearing is held, an interested party may make an affirmative presentation only on arguments included in that party's case brief and may make a rebuttal presentation only on arguments included in that party's rebuttal brief. Parties should confirm by telephone the time, date, and place of the hearing within 48 hours before the scheduled time. The Department will issue the final results of this review, which will include the results of its analysis of

issues raised in the briefs, not later than 120 days after the date of publication of this notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. 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 this notice are published in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: December 9, 2005.

Joseph A. Spetrini,

Acting Assistant Secretaryfor Import Administration.

[FR Doc. E5–7448 Filed 12–15–05; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

The Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health/Science Products and Services and the Industry Trade Advisory Committee on Intellectual Property Rights; Request for Nominations of Public Health and Health Care Community Representatives

AGENCY: International Trade Administration, Manufacturing and Services, Commerce.

ACTION: Request for nominations.

SUMMARY: The Secretary of Commerce (Commerce) and the United States Trade Representative (USTR) seek nominations for the appointment of public health or health care community representatives to the Industry Trade Advisory Committee on Chemicals, Pharmaceuticals, Health/Science Products and Services (ITAC 3); and the Industry Trade Advisory Committee on Intellectual Property Rights (ITAC 15).

In order to be considered for such an appointment, a nominee must be a U.S. citizen, must represent a U.S. entity in the public health or health care community, and may not be a registered foreign agent under the Foreign Agents Registration Act. A nominee's interest and expertise in public health or health care, international trade, and sectoral issues will be considered. Recruitment information is available on the International Trade Administration Web site at *http://www.ita.doc.gov/itac*.

FOR FURTHER INFORMATION CONTACT: Further inquiries may be directed to Ingrid V. Mitchem, Director, Industry Trade Advisory Center, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 4043, Washington, DC 20230 or Justin J. McCarthy, Assistant USTR for Intergovernmental Affairs, Winder Building, Room 100, 600 17th Street, NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

Background

In section 135 of the 1974 Trade Act, as amended (19 U.S.C. 2155), Congress established a private-sector trade advisory committee system to ensure that U.S. trade policy and trade negotiation objectives adequately reflect U.S. commercial and economic interests. Section 135(a)(1) of the 1974 Trade Act directs the President to ''seek information and advice from representative elements of the private sector and the non-Federal governmental sector with respect to:

(A) Negotiating objectives and bargaining positions before entering into a trade agreement under [title I of the 1974 Trade Act and section 2103 of the Bipartisan Trade Promotion Authority Act of 2002];

(B) the operation of any trade agreement once entered into, including preparation for dispute settlement panel proceedings to which the United States is a party; and

(C) other matters arising in connection with the development, implementation, and administration of the trade policy of the United States * * *.''

Section 135(c)(2) of the 1974 Trade Act provides—

''(2) The President shall establish such sectoral or functional advisory committees as may be appropriate. Such committees shall, insofar as is practicable, be representative of all industry, labor, agricultural, or service interests (including small business interests) in the sector or functional areas concerned. In organizing such committees, the United States Trade Representative and the Secretaries of Commerce, Labor, Agriculture, the Treasury, or other executive departments, as appropriate, shall—

(A) consult with interested private organizations; and

(B) take into account such factors as—

(i) patterns of actual and potential competition between United States industry and agriculture and foreign enterprise in international trade,

(ii) the character of the non-tariff barriers and other distortions affecting such competition,

(iii) the necessity for reasonable limits on the number of such advisory committees,

(iv) the necessity that each committee be reasonably limited in size, and

(v) in the case of each sectoral committee, that the product lines covered by each committee be reasonably related.''

Pursuant to this provision, Commerce and USTR have established and co-chair sixteen Industry Trade Advisory Committees (ITACs), plus an ITAC Committee of Chairs. ITACs provide information and advice that assists the USTR to develop U.S. trade policy and negotiating positions for specific industry sectors. ITAC members serve without compensation and are responsible for all expenses incurred in attending ITAC meetings. For additional information regarding ITAC functions and members, and general qualifications for membership, visit the ITAC Web site at *http://www.ita.doc.gov/itac*.

Commerce and USTR are now soliciting nominations of representatives of the public health and health care community to serve on ITAC 3 and ITAC 15. Nominations will be considered in light of the eligibility requirements and selection criteria set forth below.

Eligibility

Eligibility to serve as a public health or health care community representative is limited to U.S. citizens who are not full-time employees of a governmental entity, who represent a U.S. entity that is an organization in the public health and health care community and who are not registered with the Department of Justice under the Foreign Agents Registration Act. For purposes of the preceding sentence, a ''U.S. entity'' is an organization incorporated in the United States (or, if unincorporated, having its headquarters in the United States):

(1) That is controlled by U.S. citizens or by another U.S. entity. An entity is not a U.S. entity if more than 50 percent of its Board of Directors or membership is made up of non-U.S. citizens. If the nominee is to represent an organization more than 10 percent of whose Board of Directors or membership is made up of non-U.S. citizens, or non-U.S. entities, the nominee must demonstrate at the time of nomination that this non-U.S. interest does not constitute control and will not adversely affect his or her ability to serve as a trade advisor to the United States; and

(2) at least 50 percent of whose annual revenue is attributable to non-governmental, U.S. sources.

Selection Criteria

Commerce and USTR will consider nominations of public health and health care community representatives eligible for appointment to ITAC 3 and ITAC 15 in light of the following criteria:

(1) The organization to be represented has demonstrated an interest in health issues relevant to the work of the ITAC.

(2) The nominee has demonstrated a personal interest and expertise in health issues relevant to the work of the ITAC, and ability to work with governmental officials and industry representatives to reach consensus on complex health and international trade issues affecting the relevant industry sector.

(3) Preference will be accorded nominees who also demonstrate knowledge of and familiarity with the relevant industry sector, as well as with international trade matters, including trade policy development, relevant to that sector.

Public health and health care community representatives selected for appointment to an ITAC will be required to have a security clearance.

Application Procedures

To begin the nomination process, please send (1) sponsor letter (must be on organization's letterhead); (2) resume; and (3) organization profile to Ingrid V. Mitchem, Director, Industry Trade Advisory Center, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Room 4043, Washington, DC 20230. Please indicate in your letter the ITAC or ITACs to which you wish to be appointed.

Dated: December 13, 2005.

J. Marc Chittum,

Designated Federal Officer.

[FR Doc. 05–24136 Filed 12–13–05; 1:59 pm]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120205B]

Endangered and Threatened Species: Notice of Intent to Prepare a Recovery Plan for Central California Coast Coho Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Intent to prepare a recovery plan; request for information.

SUMMARY: NMFS is required by the Federal Endangered Species Act of 1973 (ESA), as amended to develop plans for the conservation and survival of Federally listed species, i.e., recovery plans. NMFS is announcing its' intent to prepare a recovery plan for the Central California Coast coho salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (CCC coho salmon ESU) and requests information from the public.

DATES: Information must be received within 120 days of the publication of this notice.

ADDRESSES: Submit materials by any of the following methods:

- E-mail: *CohoRecovery.swr@noaa.gov* (No files larger than 5MB will be accepted).
- Mail: National Marine Fisheries Service, 777 Sonoma Avenue, Suite 325, Santa Rosa, CA 95404, ATTN: Recovery Coordinator/CCC Coho Salmon Recovery Plan Comments.
- Hand-Delivered: National Marine Fisheries Service, 777 Sonoma Avenue, Suite 325, Santa Rosa, CA 95404, ATTN: Recovery Coordinator/CCC Coho Salmon Recovery Plan Comments. Business hours are 8 am to 5 pm Monday through Friday, except Federal holidays.
- Fax: (707) 578–3435. Please include the following on the cover page of the fax ''Attn: Recovery Coordinator/CCC Coho Salmon Recovery Plan Comments''.

FOR FURTHER INFORMATION CONTACT: Charlotte Ambrose, North-Central California Coast Recovery Coordinator at 707–575–6068 or *Charlotte.A.Ambrose@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS is charged with the recovery of Pacific salmon and steelhead species listed under the ESA. The recovery planning process is guided by the statutory language of section 4(f) of the ESA and NMFS policies. Recovery is the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to the ESA are no longer necessary. The ESA specifies that recovery plans must include: (1) a description of management actions as may be necessary to achieve the plan's goals for the conservation and survival of the species; (2) objective, measurable criteria which, when met, would result in the species being removed from the list; and (3) estimates of time and costs required to achieve the plan's goal and the intermediate steps towards that goal. Section 4(f) of the ESA, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. NMFS is hereby soliciting relevant information on CCC coho salmon ESU populations and their freshwater/marine habitats.

NMFS will work closely with the California Department of Fish and Game to integrate, where appropriate, the recently developed and State-approved February 2004 Recovery Strategy for California Coho Salmon with the Federal Recovery Plan. Workshops during recovery plan development will be noticed across the range of the CCC coho salmon ESU and, upon completion, the draft Recovery Plan will be available for public review and comment through publication in the **Federal Register**. NMFS requests relevant information from the public that should be considered by NMFS during preparation of the draft recovery plan.

Authority

The authority for this action is section 4(f) of the ESA.

Dated: December 12, 2005.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E5–7458 Filed 12–15–05; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Agreed Import Levels and the ELVIS (Electronic Visa Information System) Requirement for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 13, 2005.

AGENCY: Committee for the Implementation of Textiles Agreements (CITA).

ACTION: Directive to Commissioner, U.S. Customs and Border Protection (CBP) establishing agreed levels.

EFFECTIVE DATE: January 1, 2006.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to U.S.

Customs and Border Protection website (http://www.cbp.gov), or call (202) 344-2650. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov.*

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In the Memorandum of Understanding (MOU) between the Governments of the United States of America and the People's Republic of China concerning Trade in Textile and Apparel Products, signed and dated November 8, 2005, and Paragraph 242 of the *Report of the Working Party for the Accession of China to the World Trade Organization*, the Governments of the United States and China established agreed levels for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported to the United States during three one-year periods beginning on January 1, 2006 and extending through December 31, 2008.

In addition, the United States and China established an Electronic Visa Information System (ELVIS) Arrangement, in accordance with Annex III of the MOU.

The agreed levels are effective on January 1, 2006. These agreed levels may be adjusted during the course of the year for ''carryforward'' under the terms of the MOU.

Baby socks in HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050 shall be counted in dozen pairs for quota and ELVIS purposes. These baby socks are subject to the quota level for 332/432/632-T and the sublevel for 332/432/632-B but the correct category designation 239 will be required at the time of entry for quota and ELVIS purposes.

In the letter published below, the Chairman of CITA directs the Commissioner, U.S. Customs and Border Protection (CBP), to establish the 2006 limits. This arrangement provides for electronic transmission of visa information to CBP by the Government of China for textile products exported to the United States which describes the shipment and includes the visa number assigned to the shipment. The transmission certifies the country of origin and authorizes the shipment to be charged against any applicable quota. The Government of China is required to issue an ELVIS transmission for shipments of certain textile products, produced or manufactured in China and exported on or after January 1, 2006. The United States recognizes that China shall be free to issue additional documents, such as paper visas or certificates of origin. While the additional documents will not be a requirement of entry into the United States, CBP may review these documents on a case-by-case basis.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (refer to the Office of Textiles and Apparel Web site at *http://otexa.ita.doc.gov*).

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 13, 2005.

Commissioner,
U.S. Customs and Border Protection, Washington, DC 20229.

Dear Commissioner: Pursuant to the Memorandum of Understanding between the Governments of the United States of America and the People's Republic of China, Concerning Trade in Textiles and Apparel Products, dated November 8, 2005, you are directed to prohibit, effective on January 1, 2006, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories and HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 2006 and extending through December 31, 2006, in excess of the following agreed levels:

Category	Restraint Period
200/301	7,529,582 kilograms.
222	15,966,487 kilograms.
229	33,162,019 kilograms.
332/432/632-T (plus baby socks) [1].	64,386,841 dozen pairs, of which not more than 61,146,461 dozen pairs shall be in categories 332/432/632-B (plus baby socks) [2].
338/339pt. [3]	20,822,111 dozen.
340/640	6,743,644 dozen.
345/645/646	8,179,211 dozen.
347/348	19,666,049 dozen.
349/649	22,785,906 dozen.
352/652	18,948,937 dozen.
359-S/659-S [4]	4,590,626 kilograms.
363	103,316,873 numbers.
443	1,346,082 numbers.
447	215,004 dozen.
619	55,308,506 square meters.
620	80,197,248 square meters.
622	32,265,013 square meters.
638/639pt. [5]	8,060,063 dozen.
647/648pt. [6]	7,960,355 dozen.
666pt. [7]	964,014 kilograms.
847	17,647,255 dozen.

[1] Categories 332/432/632-T: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.20.9010, 6115.93.6020, 6115.93.9020, 6115.99.1420 and 6115.99.1820.

[2] Categories 332/432/632-B: baby socks: only HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050; within Category 632: only HTS numbers 6115.93.6020, 6115.93.9020, 6115.99.1420 and 6115.99.1820.

[3] Categories 338/339pt: all HTS numbers except: 6110.20.1026, 6110.20.1031, 6110.20.2067, 6110.20.2077, 6110.90.9067, and 6110.90.9071.

[3] Categories 338/339pt: all HTS numbers except: 6110.20.1026, 6110.20.1031, 6110.20.2067, 6110.20.2077, 6110.90.9067, and 6110.90.9071.

[4] Category 359-S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[5] Categories 638/639pt.: all HTS numbers except: 6110.30.2051, 6110.30.2061, 6110.30.3051, 6110.30.3057, 6110.90.9079, and 6110.90.9081.

[6] Categories 647/648pt.: all HTS numbers except 6203.43.3510, 6204.63.3010, 6210.40.5031, 6210.50.5031, 6211.20.1525 and 6211.20.1555.

[7] Category 666pt.: only HTS numbers 6303.12.0010 and 6303.92.2030.

The agreed levels set forth above are subject to adjustment pursuant to the current MOU between the Governments of the United States and China.

Textile products in the above categories and HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050 which have been exported to the United States prior to January 1, 2006 shall not be subject to this directive.

Textile products in those same categories and HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050 which have been released from the custody of U.S. Customs and Border Protection under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In addition, under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), Executive Order 11651 of March 3, 1972, as amended, and pursuant to the Memorandum of Understanding (MOU) between the Governments of the United States of America and the People's Republic of China Concerning Trade in Textile and Apparel Products, signed and dated November 8, 2005, and Paragraph 242 of the *Report of the Working Party for the Accession of China to the World Trade Organization*, the governments of the United States and China, you are directed to prohibit, effective

on January 1, 2006, entry into the Customs territory of the United States (i.e., the 50 states, the District of Columbia and the Commonwealth of Puerto Rico) for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the categories and HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050 subject to the agreed levels of restraint under the terms of the MOU, produced or manufactured in China and exported on or after January 1, 2006 for which the Government of China has not transmitted an appropriate ELVIS (Electronic Visa Information System) transmission fully described below. Should a category, including a merged category, or part category, be added to or modified in the MOU, the additional or modified category shall also be included in the coverage of this arrangement.

Baby socks in HTS numbers 6111.20.6050, 6111.30.5050 and 6111.90.5050 shall be counted in dozen pairs for quota and ELVIS purposes. These baby socks are subject to the quota level for 332/432/632-T and the sublevel for 332/432/632-B but the correct category designation 239 will be required at the time of entry for quota and ELVIS purposes.

An ELVIS message must accompany each commercial shipment of the aforementioned textile products.

A. Each ELVIS message will include the following information:

i. The visa number. The visa number shall be in the standard nine digit letter format, beginning with one numeric digit corresponding to the last digit of the year of export, followed by the two character alpha country code specified by the International Organization for Standardization (ISO) (the code for China is ''CN''), and ending with a six digit numerical serial number identifying the shipment; e.g., 6CN123456. The first digit after the ISO code should not be a ''9''.

ii. The date of issuance. The date of issuance shall be the day, month and year on which the visa was issued.

iii. The correct category(s), part category(s), merged category(s), quantity(s) and unit(s) of quantity in the shipment as set forth in the U.S. Department of Commerce Correlation and in the Harmonized Tariff Schedule of the United States, annotated or successor documents. e.g., ''Cat 340/640-510 dz. ''. Products covered by a merged agreed level must be accompanied by either a transmission referring to the merged category or by a transmission referring to the specific category corresponding to the actual shipment (e.g., if the shipment consists of both Category 340 and Category 640 merchandise, it may be transmitted as ''340/640'', if the shipment consists solely of Category 340 merchandise, it may be transmitted as ''Category 340'', but not as ''Category 640''). Quantities must be stated in whole numbers. Decimals or fractions will not be accepted.

iv. The manufacturer ID number (MID). The MID shall begin with ''CN'' followed by the first three characters from each of the first two words (of the English rendition) of the name of the entity performing the origin-conferring operations, followed by the largest number on the address line of the entity up to the first four digits, followed by the first three letters from the city name where the entity is located.

B. Entry of a shipment shall not be permitted:

i. if an ELVIS transmission has not been received for the shipment from China;

ii. if the ELVIS transmission for that shipment is missing any of the following:

a. visa number

b. category, part category, or merged category

c. quantity

d. unit of quantity

e. date of issuance

f. manufacturer ID number

iii. if the ELVIS transmission for the shipment does not match the information supplied by the importer or the Customs broker acting as an agent on behalf of the importer with regard to any of the following:

a. visa number

b. category, part category, or merged category

c. unit of quantity

iv. if the quantity being entered is greater than the quantity transmitted.

v. if the visa number has previously been used, except in the case of a split shipment, or canceled.

C. A new, correct ELVIS transmission from China is required before a shipment that has been denied entry for one of the circumstances mentioned in paragraph B.i-v will be released.

D. If the quantity in the ELVIS transmission is greater than that of the shipment, the United States shall permit entry and shall charge only the amount entered against any applicable level.

E. Shipments will not be released for forty-eight hours or 2 calendar days in the event of a system failure. If system failure exceeds forty-eight hours or 2 calendar days, for the remaining period of the system failure, CBP will only release shipments on the basis of the visa data provided by the Ministry of Commerce. If the Ministry of Commerce is able to provide that data by some means other than an ELVIS transmission. The Ministry of Commerce shall promptly retransmit all data that was affected by the system failure when the system is functioning normally.

F. If a shipment from China has been allowed entry into the commerce of the United States with an incorrect ELVIS transmission, or no ELVIS transmission, and the importer does not comply with a CBP request to redeliver the shipment to CBP, CBP will charge the correct quantity and category of the shipment against the appropriate agreed level.

Other Provisions.

A. The date of export is the actual date the merchandise finally leaves the country of origin. For merchandise exported by carrier, this is the day on which the carrier last departs the country of origin.

B. Merchandise imported for the personal use of the importer and not for resale, regardless of value, and properly marked commercial sample shipments valued at U.S.$800 or less, do not require an ELVIS transmission for entry and shall not be charged to agreement levels.

In carrying out the above direction, the Commissioner should construe the term ''customs territory of the United States'' to include only the 50 States, the District of Columbia and Puerto Rico.CITA has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Philip J. Martello,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 05–24175 Filed 12–13–05; 5:13 pm]

BILLING CODE 3510–DS–S

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 am, Friday, January 13, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–24182 Filed 12–14–05; 11:09 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 am, Friday, January 6, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–24183 Filed 12–14–05; 11:09 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meetings

TIME AND DATE: 11 am, Friday, January 20, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–24184 Filed 12–14–05; 11:09 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

TIME AND DATE: 11 am, Friday, January 27, 2006.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 05–24185 Filed 12–14–05; 11:09 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 7–8 December 2005.

Time(s) of Meeting: 0700–1700, 7 December 2005, 0700–1700, 8 December 2005.

Place: Defense Acquisition University, Ft. Belvoir, Virginia.

1. *Agenda:* The Army Science Board FY06 Studies, will be holding a plenary meeting on 7 & 8 December 2005. The meeting will be held at the Defense Acquisition University in Ft. Belvoir, VA. The meeting will begin at 0700 hrs on the 7th and will end at approximately 1700 hrs on the 8th. For further information regarding ASB Force Aerial Systems Capability, please contact Mrs. Melanie McAnney by e-mail at *melanie.mcanney@hqda.army.mil* or call (703)–604–7479.

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 05–24114 Filed 12–15–05; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On December 9, 2005, a 60-day notice inviting comment from the public was inadvertently published for the ''2004/06 Beginning Postsecondary Students Longitudinal Study (BPS:04/06)'' in the **Federal Register** (70 FR 236) dated December 9, 2005. This notice amends the public comment period for this program to 30 days. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 17, 2006.

ADDRESSES: Written comment should be addressed to the Office of Information and Regulatory Affairs, Attention: Rachel Potter, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically or should be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623.

FOR FURTHER INFORMATION CONTACT: Angela Arrington (202) 245–6409.

Dated: December 12, 2005.

Angela C. Arrington,

Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

[FR Doc. E5–7434 Filed 12–15–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students

ACTION: Notice inviting applications for new awards for FY 2006; Correction.

SUMMARY: On December 7, 2005, we published in the **Federal Register** (70 FR 72791) a notice inviting applications for new awards for FY 2006 for the Native American and Alaska Native Children in School Program under section 3112 of Title III of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110)(NCLB). The notice incorrectly specified that applications would be available on December 5, 2005.

On page 72791, third column, and page 72792, third column, the date listed under *Applications Available* is corrected to read ''December 7, 2005''.

FOR FURTHER INFORMATION CONTACT: Trini Torres, U.S. Department of Education, 400 Maryland Avenue, SW., room 10082, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7134.

If you use a telecommunications device for the deaf (TTD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the individual listed in this section.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 12, 2005.

Kathleen Leos,

Assistant Deputy Secretary and Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

[FR Doc. 05–24167 Filed 12–15–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA NO. 84.031H]

Office of Postsecondary Education; Strengthening Institutions (SIP), American Indian Tribally Controlled Colleges and Universities (TCCU), Alaska Native and Native Hawaiian-Serving Institutions (ANNH) and Developing Hispanic-Serving Institutions (HSI) Programs; Notice Inviting Applications for Designation as Eligible Institutions for Fiscal Year (FY) 2006

Purpose of Programs: Under the SIP, TCCU, and ANNH Programs, (Title III, Part A programs) authorized under Part A of Title III of the Higher Education Act of 1965, as amended (HEA), institutions of higher education (IHEs or institutions) are eligible to apply for grants if they meet specific statutory and regulatory eligibility requirements. Similarly, institutions of higher education are eligible to apply for grants under the HSI program, authorized under Title V of the HEA, if they meet specific statutory and regulatory requirements. In addition, an institution that is designated as an eligible institution under those programs may also receive a waiver of certain non-Federal share requirements under the Federal Supplemental Educational Opportunity Grant (FSEOG), the Federal Work Study (FWS), the Student Support Services (SSS) and the Undergraduate International Studies and Foreign Language (UISFL) Programs. The FSEOG, FWS, and SSS Programs are authorized under Title IV of the HEA; the UISFL Program is authorized under Title VI of the HEA.

Qualified institutions may receive these waivers even if they are not recipients of grant funds under the Title III, Part A programs or the HSI program.

Special note: To qualify as an eligible institution under the Title III, Part A programs or the HSI program, your institution must satisfy several criteria, including one related to needy student enrollment and one related to average Educational and General (E&G) expenditures for a particular base year. The most recent data available for E&G expenditures is for base year 2003–2004. In order to award FY 2006 grants in a timely manner, we will use the most recent data available. Therefore, we use E&G expenditure threshold data from the base year 2003–2004. In completing your eligibility application, please use E&G expenditure data from the base year 2003–2004.

If you are designated as an eligible institution and you do not receive a new Title III or Title V award in FY 2006, your eligibility for the non-Federal cost share waiver under the FSEOG, the FWS, the SSS, and the UISFL programs is valid for five consecutive years. You will not need to reapply for eligibility until FY 2011, unless you wish to apply for a new Title III or title V grant. TCCUs applying for a FY 2006 *new* grant *or* requesting a waiver of the non-Federal cost share, must *also* apply for eligibility designation in FY 2006.

Eligible Applicants: To qualify as an eligible institution under the Title III, Part A programs or the HSI program, an accredited institution must, among other requirements, have an enrollment of needy students, and its average E&G expenditures per full-time equivalent (FTE) undergraduate student must be low in comparison with the average E&G expenditures per FTE undergraduate student of institutions that offer similar instruction.

The complete eligibility requirements for the Title III, Part A programs are found in 34 CFR 607.2 through 607.5. These regulations may be accessed by visiting the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_02/34cfr607_02.html*.

The complete eligibility requirements for the HSI program are found in 34 CFR 606.2 through 34 CFR 606.5. These regulations may be accessed at the following Web site: *http://www.access.gpo.gov/nara/cfr/waisidx_01/34cfr606_01.html*.

Enrollment of Needy Students: Under 34 CFR 606.3(a) and 607.3(a), an institution is considered to have an enrollment of needy students if (1) at least 50 percent of its degree students received financial assistance under one or more of the following programs: Federal Pell Grant, FSEOG, FWS, and Federal Perkins Loan Programs; or (2) the percentage of its undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants exceeded the median percentage of undergraduate degree students who were enrolled on at least a half-time basis and received Federal Pell Grants at comparable institutions that offered similar instruction.

To qualify under this latter criterion, an institution's Federal Pell Grant percentage for base year 2003–2004 must be more than the median for its category of comparable institutions provided in the table in this notice.

Education and General Expenditures Per FTE Student: An institution should compare its 2003–2004 average E&G expenditures per FTE student to the average E&G expenditure per FTE student for its category of comparable institutions contained in the table in this notice. If the institution's average E&G expenditures for the 2003–2003 base year are less than the average for its category of comparable institutions, the institution meets this eligibility requirement.

An institution's average E&G expenditures are the total amount it expended during the base year for instruction, research, public service, academic support, student services, institutional support including library expenditures, operation and maintenance, scholarships and fellowships, and mandatory transfers.

The following table identifies the relevant median Federal Pell Grant percentages for the base year 2003–2004 and the relevant average E&G expenditures per FTE student for the base year 2003–2004 for the four categories of comparable institutions:

Type of institution	2003–2004 Median Pell Grant percentage	2003–2004 Average E&G expenditures per FTE student
2-year Public Institutions	25.1	$8,824
2-year Private Nonprofit Institutions	40.6	19,272
4-year Public Institutions	25.8	22,702
4-year Private Nonprofit Institutions	26.8	35,801

Waiver Information: IHEs that are unable to meet the needy student enrollment requirement or the average E&G expenditures requirement may apply to the Secretary for waivers of these requirements, as described in 34 CFR 606.3(b), 606.4(c) and (d), 607.3(b), and 607.4(c) and (d). Institutions requesting a waiver of the needy student enrollment requirement or the average E&G expenditures requirement must include in their application detailed information supporting the waiver request, as described in the instructions for completing the application.

The regulations governing the Secretary's authority to waive the needy student requirement waiver, 34 CFR 606.3(b)(2) and (3) and 607.3(b)(2) and (3), refer to ''low-income'' students or families. The regulations define ''low-income'' as an amount that does not exceed 150 percent of the amount equal to the poverty level, as established by the U.S. Bureau of the Census, 34 CFR 606.3(c) and 607.3(c).

For the purposes of this waiver provision, the following table sets forth the low-income levels for the various sizes of families:

2003 ANNUAL LOW-INCOME LEVELS

Sizes of family unit	Family income for the 48 contiguous States, D.C., and outlaying jurisdictions	Family income for Alaska	Family income for Hawaii
1	$13,470	$16,815	$15,495
2	18,180	22,710	20,910
3	22,890	28,605	26,325
4	27,600	34,500	31,740
5	32,310	40,395	37,155
6	37,020	46,290	42,570
7	41,730	52,185	47,985
8	46,440	58,080	53,400

Note: The 2003 annual low-income levels are being used because those are the amounts that apply to the family income reported by students enrolled for the Fall 2003 semester. For family units with more than eight members, add the following amount for each additional family member: $4,710 for the contiguous 48 states, the District of Columbia and outlying jurisdictions; $5,895 for Alaska; and $5,415 for Hawaii.

The figures shown under family income represent amounts equal to 150 percent of the family income levels established by the U.S. Bureau of the Census for determining poverty status. The poverty guidelines were published by the U.S. Department of Health and Human Services in the **Federal Register**, Vol. 68, No. 26, February 7, 2003, pp. 6456–6458.

The information about ''metropolitan statistical areas'' referenced in 34 CFR 606.3(b)(4) and 607.3(b)(4) may be obtained by requesting the Metropolitan Statistical Areas, 1999 publication, order number PB99–501538, from the National Technical Information Service, Document Sales, 5285 Port Royal Road, Springfield, Virginia 22161, telephone number 1–800–553–6847. There is a charge for this publication.

Applications Available: December 16, 2005.

Deadline for Transmittal of Applications: February 24, 2006 for an applicant institution that wishes to be designated as eligible to apply for a FY 2006 new grant under the Title III, Part A program or the HSI program; June 15, 2006 for an institution that wishes to apply only for cost-sharing waivers under the FSEOG, FWS, SSS, or UISFL Programs; and, February 24, 2006 for an institution that wishes to apply for both a grant under the Title III, Part A programs or the HSI program and a waiver of the Non-Federal share requirement.

Electronic Submission of Applications

Applications for designation of eligibility must be submitted electronically using the following Web site: *http://webprod.cbmiweb.com/Title3and5/index.html.* To enter the Web site, you must use your institution's unique 8-digit identifier, i.e., your Office of Postsecondary Education Identification Number (OPE ID number). Your business office or student financial aid office should have the OPE ID Number, if they do not, contact the Department, using the e-mail addresses of the contact persons listed in this notice under *For Applications and Further Information Contact.*

You will find detailed instructions for completing the application form electronically under the ''eligibility 2006'' link at either of the following Web sites:

http://www.ed.gov/programs/iduestitle3a.index.html

or

http://www.ed.gov/hsi.

If your institution is unable to meet the needy student enrollment requirement or the average E&G expenditure requirement and wishes to request a waiver of one or both of those requirements, you must complete your designation application form electronically and transmit your waiver request narrative document from the following Web site: *http://webprod.cbmiweb.com/Title3and5/index.html.*

Exception to Electronic Submission Requirement: You may qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application electronically because—

- You do not have access to the Internet; or
- You do not have the capacity to upload documents to the Web site: *and*
- No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date fall on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application. If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no late than two weeks before the application deadline date.

Address and mail or fax your statement to: Dr. Maria Carrington, U.S. Department of Education, 1990 K Street, NW., room 6033, Washington, DC 20006–8513.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

Submission of Paper Applications by Mail

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier), your application to the Department. You must mail the application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service or commercial carrier: Dr. Maria Carrington, U.S. Department of Education, 1990 K Street, NW., Room 6033, Washington, DC 20006–8512.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

Submission of Paper Applications by Hand Delivery

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the application, on or before the application deadline date, to the Department at the following address: Dr. Maria Carrington, U.S. Department of Education, 1990 K Street, NW., Room 6033, Washington, DC 20006–8512.

Hand delivered applications will be accepted daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 82, 84, 85, 86, 97, 98, and 99. (b) The regulations for the Title III, Part A programs in 34 CFR part 607, and for the HSI program in 34 CFR part 606.

For Applications and Further Information Contact: Imogene Byers, Kelley Harris, or Carnisia Proctor, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 1990 K Street, NW., room 6033, Request for Eligibility Designation, Washington, DC 20202–8513.

You can contact these individuals at the following e-mail addresses or phone numbers:

Imogene.Byers@ed.gov—202–502–7672
Kelley.Harris@ed.gov—202–219–7083
Carnisia.Proctor@ed.gov—202–502–7606

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audio tape, or computer diskette) on request to the contact persons listed under *For Applications and Further Information Contact.*

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting those persons.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF, you must have Adobe Acrobat Reader which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html.*

Program Authority: 20 U.S.C. 1057–1059d, 1101–1103g.

Sally L. Stroup,

Assistant Secretary for Postsecondary Education.

[FR Doc. 05–24162 Filed 12–15–05; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information; Technology and Media Services for Individuals With Disabilities-Center To Support Technology Innovation for Students With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.327Z.

Dates:

Applications Available: December 16, 2005.

Deadline for Transmittal of Applications: February 2, 2006.

Deadline for Intergovernmental Review: April 3, 2006.

Eligible Applicants: State educational agencies (SEAs); local educational agencies (LEAs); public charter schools that are LEAs under State law; institutions of higher education (IHEs); other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

Estimated Available Funds: The Administration has requested $31,992,000 for the Technology and Media Services for Individuals with Disabilities program for FY 2006, of which we intend to use an estimated $800,000 for the Center to Support Technology Innovation for Students with Disabilities competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the program is to: (1) Improve results for children with disabilities by promoting the development, demonstration, and use of technology, (2) support educational media services activities designed to be of educational value in

the classroom setting to children with disabilities, and (3) provide support for captioning and video description that is appropriate for use in the classroom setting.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv) and (v), this priority is from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 674 and 681(d) of the Individuals with Disabilities Education Act (IDEA)).

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3), we consider only applications that meet this priority.

This priority is:

Technology and Media Services for Individuals with Disabilities-Center to Support Technology Innovation for Students With Disabilities

Background

During the past 20 years, the Office of Special Education Programs (OSEP) has funded projects that develop and study a range of assistive and instructional technologies to improve outcomes for children with disabilities. Technology that has been accessible to individuals with disabilities has played a significant role in making it possible for students with disabilities to acquire and improve their functional abilities and to participate and progress in regular education settings.

Over the same period of time, a variety of private and public sector programs and activities have developed technology applications that can benefit children with disabilities. Some of these technology applications have been developed at the State and local level, some have arisen from the work of professional groups and trade associations, some have been commercially developed and others have been refined in the business, medicine, research, or military sectors.

Technology innovations, however, will not result in widespread and long lasting benefits to students with disabilities unless they are shared beyond the field of special education. Commercially developed products may not benefit children with disabilities unless they are designed to meet their needs. Likewise, special education researchers and technology developers cannot draw upon technology innovations and trends unless they are aware of them.

Over the past five years, OSEP has supported initiatives and sponsored communication efforts designed to bridge the gaps among researchers, developers, vendors, and other entities. Although this work has been fruitful in improving communication, a permanent and more formal mechanism is needed. A Center would enable the array of stakeholders to develop strategic partnerships and to share cutting edge information thereby increasing innovative use of current technology while encouraging the development of new tools.

Priority

This priority will support a Center to advance learning opportunities and achieve better results for children with disabilities by—(a) Developing and implementing a network of collaborative partnerships; (b) Promoting the distribution and use of technology-related products and approaches to improve results for children with disabilities; and (c) Tracking technology innovation developments in government, private industry, early intervention, education policy, and other sectors and analyzing existing and anticipating emerging needs, issues, and trends to foster technology innovation that will improve results for children with disabilities.

The Center's activities for developing and implementing a collaborative network must include, but are not limited to—

(a) Developing and implementing a set of strategies to promote partnerships and collaboration among researchers, developers, vendors, and other appropriate entities. This activity also must include developing and implementing procedures to collect information on the relevant activities of these entities;

(b) Developing and regularly updating a database of projects (including OSEP-funded projects), agencies, professional and trade associations, commercial companies, and other organizations and entities that may contribute to the Center's efforts to improve the use of technology to achieve better results for children with disabilities. This database is to be posted on the Web site mentioned elsewhere in this priority;

(c) Forming an advisory board of eight to 10 representatives with various perspectives, and maintaining communication with this board, including convening an annual meeting in Washington, DC. The purpose of this board is to review and comment at least annually on the Center's plans and evaluation findings, and to provide additional advisory support as needed. Representatives on the advisory board must include, but are not limited to: Technology developers, technology researchers, Federal agencies and programs, commercial vendors, technical assistance providers, personnel preparation programs, teachers and other service providers, persons with disabilities who use technology, and parents of children with disabilities;

(d) Distributing a quarterly e-mail newsletter (with links to the Center's Web site) describing the activities of the Center and of other members of the network, including the activities of OSEP-funded projects, that contribute to improving the use of technology to advance learning opportunities and achieve better results for children with disabilities; and

(e) Conducting technical assistance, dissemination or training activities for target audiences. These activities must be conducted in collaboration with other members of the network. The activities may draw upon OSEP-sponsored projects and other sources, including the materials developed by the Center. The activities must be designed to disseminate information on using technology to achieve better results.

The Center's activities for promoting the distribution and use of technology-related products and approaches to improve results, including products and approaches developed with OSEP funding, must include, but are not limited to—

(a) Maintaining a listing of commercial and noncommercial resources for disseminating findings and products of technology projects, and including these resources in the network database;

(b) Providing technical assistance and training for developers of technology-related products and approaches on developing high quality and marketable products, and finding dissemination or marketing outlets; and

(c) Including information on technology-related products and approaches with the potential to improve results in the newsletter, and providing follow-up information to potential dissemination or marketing outlets.

The Center's activities for tracking technology innovation developments and analyzing existing and anticipating emerging needs, issues, and trends to foster technology innovation across a variety of entities must include, but are not limited to—

(a) Convening panels of experts annually to focus on specific needs, issues, and trends, and produce documents describing implications for using technology innovation to achieve better results. If the panels involve preparation of background papers prior to meetings, the Center must post all background papers and resulting

products of consensus panels on the Web site; and

(b) Maintaining an ongoing collection of information on developments in the government, private industry, early intervention, education, and other sectors relevant to needs, issues, and trends, including those related to promising technology approaches. This information must be reported in the newsletter and on the Web site.

In addition to the other required activities, the Center must also do the following:

(a) Maintain a Web site that includes: The network database, online documents and products developed by the Center, online descriptions of products developed by OSERS-funded projects, links to Web resources (including all Web sites maintained by OSERS-funded projects involved in technology innovation), articles linked to the newsletter, and discussion groups. This Web site must also include relevant information and documents in a format that meets a government or industry-recognized standards for accessibility.

(b) Conduct an annual meeting in Washington, DC, on technology and children with disabilities. This meeting must include directors of OSEP-sponsored projects involved in technology innovations, and may include directors of technology innovation projects funded by other sources, and other local participants representing Federal agencies, professional groups, etc. The Center must pay for travel and lodging for approximately 85 project directors (the remaining participants are local or will pay for their travel with their own project funds). The conference must include a demonstration event of OSEP-supported technologies.

(c) Meet with OSEP staff during the first month of each project year to discuss and obtain approval for plans for the year.

(d) Conduct internal and external project evaluation activities to ascertain the quality of the Center's activities and products, to align the project activities with project goals and objectives, and to determine the Center's progress toward improving the use of technology to achieve better results.

(e) Submit quarterly reports describing and documenting Center activities, including results of the required evaluation activities.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed priorities. However, section 681(d) of the IDEA makes the public comment requirements of the APA inapplicable to the priority in this notice.

Program Authority: 20 U.S.C. 1474 and 1481(d).

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 84, 85, 86, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to IHEs only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $31,992,000 for the Technology and Media Services for Individuals with Disabilities program for FY 2006, of which we intend to use an estimated $800,000 for the Center to Support Technology Innovation for Students with Disabilities competition. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $800,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* SEAs; LEAs; public charter schools that are LEAs under State law; IHEs; other public agencies; private nonprofit organizations; outlying areas; freely associated States; Indian tribes or tribal organizations; and for-profit organizations.

2. *Cost Sharing or Matching:* This competition does not involve cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this competition must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this competition must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.327Z.

Individuals with disabilities may obtain a copy of the application package in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 50 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the one-page abstract, the resumes, the bibliography, the references, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

• You apply these standards and exceed the page limit; or

• You apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:* Applications Available: December 16, 2005.

Deadline for Transmittal of Applications: February 2, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV.6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

Deadline for Intergovernmental Review: April 3, 2006.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Center to Support Technology Innovation for Students with Disabilities—CFDA Number 84.327Z is one of the competitions included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Center to Support Technology Innovation for Students with Disabilities-CFDA Number 84.327Z competition at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC, time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC, time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text) or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC, time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC, time, on the deadline date, please contact the

person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT,** and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.* If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327Z), 400 Maryland Avenue, SW., Washington, DC 20202–4260, or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.327Z), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.* If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.327Z), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of ED 424 the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are from 34 CFR 75.210 and are listed in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

4. *Performance Measures:* Under the Government Performance and Results Act (GPRA), the Department has developed measures that will yield information on various aspects of the quality of the Technology and Media Services for Individuals with Disabilities program. These measures focus on the extent to which projects are of high quality, are relevant to the needs of children with disabilities, and contribute to improving the results for children with disabilities. Data on these measures will be collected from the projects funded under this competition.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Jane Hauser, U.S. Department of Education, 400 Maryland Avenue, SW., Room 4092, Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7373.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request by contacting the following office: The Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza, Washington, DC 20202–2550. Telephone: (202) 245–7363.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

Dated: December 12, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–7402 Filed 12–15–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services, Overview Information; National Institute on Disability and Rehabilitation Research (NIDRR)—Rehabilitation Engineering Research Centers (RERC) on Low Vision and Blindness; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2006

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–3

Dates:

Applications Available: December 16, 2005.

Deadline for Transmittal of Applications: February 14, 2006.

Eligible Applicants: States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

Estimated Available Funds: The Administration has requested $950,000 for the Low Vision and Blindness RERC competition for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the RERC program is to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Act). For FY 2006, the competition for a new award focuses on projects designed to meet the priority we describe in the *Priority* section of this notice. We intend this priority to improve rehabilitation services and outcomes for individuals with disabilities.

Priority: This priority is from the notice of final priorities for this program, published in the **Federal Register** on April 25, 2005 (70 FR 21282).

Note: On April 25, 2005, we published a notice in the **Federal Register** (70 FR 21284) inviting applications under this priority. None of the applications received for this priority were successful.

Absolute Priority: For FY 2006 this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Low Vision and Blindness: This RERC must research and develop technologies that will improve assessment of vision impairments and promote independence for individuals with low vision and blindness, including those who are deaf/blind.

RERCs must focus on innovative technological solutions, new knowledge, and concepts to promote the health, safety, independence, active engagement in daily activities, and quality of life of persons with disabilities. Accordingly, each RERC must:

(1) Contribute substantially to the technical and scientific knowledge-base relevant to the priority;

(2) Research, develop, and evaluate innovative technologies, products, environments, performance guidelines, and monitoring and assessment tools as applicable to the priority;

(3) Identify, implement, and evaluate, in collaboration with the relevant industry, professional associations, and institutions of higher education, innovative approaches to expand research capacity in the specific field of study;

(4) Monitor trends and evolving product concepts that represent and signify future directions for technologies in the specific area of research; and

(5) Provide technical assistance to public and private organizations responsible for developing policies, guidelines, and standards that affect the specific area of research.

In addition, the following requirements apply to each RERC priority:

- Each RERC must have the capability to design, build, and test prototype devices and assist in the transfer of successful solutions to relevant production and service delivery settings. Each RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.
- Each RERC must develop and implement, in the first three months of the grant, a plan that describes how the RERC will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities including research, development, training, dissemination, and evaluation;
- Each RERC must develop and implement, in the first year of the grant and in consultation with the NIDRR-funded National Center for the Dissemination of Disability Research (NCDDR), a plan to disseminate the RERC's research results to persons with disabilities, their representatives, disability organizations, service providers, professional journals, manufacturers, and other interested parties.
- Each RERC must develop and implement, in the first year of the grant and in consultation with the NIDRR-funded RERC on Technology Transfer, a plan for ensuring that all new and improved technologies developed by this RERC are successfully transferred to the marketplace.
- Each RERC must conduct a state-of-the-science conference on its respective area of research in the third year of the grant and publish a comprehensive report on the final outcomes of the conference in the fourth year of the grant.
- Each RERC must coordinate with research projects of mutual interest with relevant NIDRR-funded projects as identified through consultation with the NIDRR project officer.

The RERC program is in concert with NIDRR's proposed Long-Range Plan (Plan) published in the **Federal Register** on July 27, 2005 (70 FR 43522). The Plan is comprehensive and integrates many issues relating to disability and rehabilitation research topics. The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/*

legislation/FedRegister/other/2005-3/072705d.html

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 85, 86, and 97, (b) the regulations for this program in 34 CFR part 350, and (c) the notice of final priority for this program, published on April 25, 2005 (70 FR 21282) in the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration has requested $950,000 for the Low Vision and Blindness RERC competition for FY 2006. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Maximum Award: We will reject any application that proposes a budget exceeding $950,000 for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note: The maximum amount includes direct and indirect costs.

Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; institutions of higher education; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You may obtain an application package via Internet or from the Education Publications Center (ED Pubs). To obtain a copy via Internet use the following address: *http://www.ed.gov/fund/grant/apply/grantapps/index.html.*

To obtain a copy from ED Pubs, write or call the following: ED Pubs, P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html* or you may contact ED Pubs at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA Number 84.133E.

Individuals with disabilities may obtain a copy of the application package in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition. Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We strongly recommend that you limit Part III to the equivalent of no more than 125 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative. Single spacing may be used for titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).

The suggested page limit does not apply to Part I, Application for Federal Assistance; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

The application package will provide instructions for completing all components to be included in the application. Each application must include the ED Standard Form 424, Application for Federal Assistance; budget requirements (ED Form 524) and narrative justification; other required forms; an abstract; Seven-Point Human Subjects narrative; Part III narrative; resumes of staff; and other related materials, if applicable.

3. *Submission Dates and Times:*

Applications Available: December 16, 2005.

Deadline for Transmittal of Applications: February 14, 2006.

Applications for grants under this competition may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* in this notice.

We do not consider an application that does not comply with the deadline requirements.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this competition may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We have been accepting applications electronically through the Department's e-Application system since FY 2000. In order to expand on those efforts and comply with the President's Management Agenda, we are continuing to participate as a partner in the new government wide Grants.gov Apply site in FY 2006. Rehabilitation Engineering Research Centers Program—CFDA Number 84.133E–3 is one of the programs included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Grants.gov Apply site at *http://www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for Rehabilitation Engineering Research Centers Program at: *http://www.grants.gov.* You must search for the downloadable application package for this program by the CFDA

number. Do not include the CFDA number's alpha suffix in your search.

Please note the following:

• Your participation in Grants.gov is voluntary.

• When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.

• Applications received by Grants.gov are time and date stamped. Your application must be fully uploaded and submitted, and must be date/time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not consider your application if it is date/time stamped by the Grants.gov system later than 4:30 p.m., Washington, DC time, on the application deadline date. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date/time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.

• The amount of time it can take to upload an application will vary depending on a variety of factors including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.

• You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*

• To submit your application via Grants.gov, you must complete all of the steps in the Grants.gov registration process (see *http://www.Grants.gov/GetStarted*). These steps include (1) registering your organization, (2) registering yourself as an Authorized Organization Representative (AOR), and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/assets/GrantsgovCoBrandBrochure8X11.pdf*). You also must provide on your application the same D–U–N–S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to successfully submit an application via Grants.gov.

• You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.

• You may submit all documents electronically, including all information typically included on the Application for Federal Education Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications. If you choose to submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified above or submit a password protected file, we will not review that material.

• Your electronic application must comply with any page limit requirements described in this notice.

• After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The Department will retrieve your application from Grants.gov and send you a second confirmation by e-mail that will include a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of System Unavailability

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically, or by hand delivery. You also may mail your application by following the mailing instructions as described elsewhere in this notice. If you submit an application after 4:30 p.m., Washington, DC time, on the deadline date, please contact the person listed elsewhere in this notice under **FOR FURTHER INFORMATION CONTACT**, and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number (if available). We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: Extensions referred to in this section apply only to the unavailability of or technical problems with the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the applicable following address:

By mail through the U.S. Postal Service: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–3), 400 Maryland Avenue, SW., Washington, DC 20202–4260 or

By mail through a commercial carrier: U.S. Department of Education, Application Control Center—Stop 4260, Attention: (CFDA Number 84.133E–3), 7100 Old Landover Road, Landover, MD 20785–1506.

Regardless of which address you use, you must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark,

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service,

(3) A dated shipping label, invoice, or receipt from a commercial carrier, or

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark, or

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–3), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department:

(1) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED 424) the CFDA number—and suffix letter, if any—of the competition under which you are submitting your application.

(2) The Application Control Center will mail a grant application receipt acknowledgment to you. If you do not receive the grant application receipt acknowledgment within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

Selection Criteria: The selection criteria for this competition are listed in 34 CFR 75.210 of EDGAR and 34 CFR 350.54. The specific selection criteria to be used for this competition are in the application package.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may also notify you informally.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as specified by the Secretary in 34 CFR 75.118.

Note: NIDRR will provide information by letter to grantees on how and when to submit the report.

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through review of grantee performance and products. Each year, NIDRR examines, through expert program review, a portion of its grantees to determine:

- The number of discoveries, analyses, and standards developed or tested with NIDRR funding that have been judged by expert panels to advance understanding of key concepts, issues, and emerging trends and strengthen the evidence-base for disability and rehabilitation policy, practice, and research.
- The number of new or improved tools and methods developed or tested with NIDRR funding that have been judged by expert panels to improve measurement and data collection procedures and enhance the design and evaluation of disability and rehabilitation interventions, products, and devices.
- The number of new and improved interventions, programs, and devices developed or tested with NIDRR funding that have been judged by expert panels to be successful in improving individual outcomes and increasing access.
- The number of NIDRR-funded tools, methods, interventions, programs, and devices developed or validated with NIDRR-funding that meet the standards for review by independent scientific collaborations and registries.
- The number of new or improved assistive and universally designed technologies, products, and devices developed and/or validated by grantees that are transferred to industry for potential commercialization.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports (APRs) for these reviews. NIDRR also determines, using information submitted as part of the APR:

- The number of publications in refereed journals that are based on NIDRR-funded research and development activities; and
- The percentage of NIDRR-supported fellows, post-doctoral trainees, and doctoral students who publish results of NIDRR-sponsored research in refereed journals.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *http://www.ed.gov/about/offices/list/opepd/sas/index.html.*

Updates on the GPRA indicators, revisions and methods appear in the NIDRR Program Review Web site: *http://www.neweditions.net/pr/commonfiles/pmconcepts.htm.*

Grantees should consult these sites, on a regular basis, to obtain details and explanations on how NIDRR programs contribute to the advancement of the Department's long-term and annual performance goals.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 6030, Potomac Center Plaza, Washington, DC 20202. Telephone: (202) 245–7462 or by e-mail: *donna.nangle@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 245–7317 or the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed in this section.

VIII. Other Information

Electronic Access to This Document: You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO

Access at: *http://www.gpoaccess.gov/nara/index.html.*

Dated: December 12, 2005.

John H. Hager,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E5–7403 Filed 12–15–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records

AGENCY: Program and Analytic Studies, Policy and Program Studies Service, Department of Education.

ACTION: Notice of a New System of Records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), 5 United States Code (U.S.C.) 552a, the Department of Education (Department) publishes this notice of a new system of records entitled ''Follow Up Evaluation of the Gear Up Program (18–17–02).'' This system will contain information about middle school students who participated in the GEAR UP program in 2000–01 and a matched comparison of middle school students who did not participate in the program. The students' expected high school completion year is 2006 and the follow-up information will be collected in spring of 2006. This system consists of the name, address, and social security number of the study participants as well as demographic information such race/ethnicity and age; educational background, transcript information, service participation information, high school graduation, and preliminary postsecondary enrollment information; and financial aid application and award. The information will be collected from students and their parents.

The Department seeks comment on this new system of records described in this notice, in accordance with the requirements of the Privacy Act.

DATES: We must receive your comments on the proposed routine uses for this system of records on or before January 17, 2006.

The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on December 13, 2005. This system of records will become effective at the later date of—(1) the expiration of the 40-day period for OMB review on January 23, 2006 or (2) January 17, 2006, unless the system of records needs to be changed as a result of public comment or OMB review.

ADDRESSES: Address all comments about the proposed routine uses of this system to Dr. David Goodwin, Director, Program and Analytic Studies Division, Policy and Program Studies Service, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W231, Washington, DC 20202. Telephone: (202) 401–3630.

If you prefer to send your comments through the Internet, use the following address: *Comments@ed.gov.*

You must include the term ''Follow Up Evaluation of the Gear Up Program.'' in the subject line of the electronic message.

During and after the comment period, you may inspect all comments about this notice in room 6W200, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8 a.m. and 4:30 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice.

If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. David Goodwin. Telephone: (202) 401–3630. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act requires the Department to publish in the **Federal Register** this notice of a new system of records maintained by the Department. The Department's regulations implementing the Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to a record about an individual that is maintained in a system of records from which information is retrieved by a unique identifier associated with each individual, such as a name or social security number. The information about each individual is called a ''record'' and the system, whether manual or computer-driven, is called a ''system of records.'' The Privacy Act requires each agency to publish a system of records notice in the **Federal Register** and to prepare reports to OMB and congressional committees whenever the agency publishes a new system of records.

Electronic Access to This Document

You may view this document, as well as all other documents of this Department published in the **Federal Register,** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news.fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

Dated: December 13, 2005.

Tom Luce,

Assistant Secretary for Planning, Evaluation, and Policy Development.

For the reasons discussed in the preamble, the Director, Policy and Program Studies Service, U.S. Department of Education, publishes a notice of a new system of records to read as follows:

18–17–02

SYSTEM NAME:

''Follow Up Evaluation of the Gear Up Program''.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Program and Analytic Studies Division, Policy and Program Studies Service, U.S. Department of Education, 400 Maryland Avenue, SW., Room 6W231, Washington, DC 20202.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on middle school students who participated in the GEAR UP program in 2000–01 and a comparison group of non-participants from schools matched on socio-demographic characteristics.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system consists of the name, address, and social security number of the study participants as well as demographic information such as race/ethnicity and age; educational background, transcript information, service participation information, high school graduation, and preliminary postsecondary enrollment information; and financial aid application and award.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

20 U.S.C. 1070a–27.

PURPOSE(S):

The information in this system is used for the following purposes: (1) to contribute to the legislatively mandated GEAR UP program evaluation; and (2) generally to identify the educational outcomes of study participants and the extent to which GEAR UP participation is associated with positive outcomes in comparison to the control group.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

ROUTINE USE COMPATIBILITY:

(1) *Freedom Of Information Act (FOIA) Advice Disclosure.* The Department may disclose records to the U.S. Department of Justice and the Office of Management and Budget (OMB) if the Department concludes that disclosure is desirable or necessary in determining whether the Freedom of Information Act (FOIA) requires particular records to be disclosed.

Under the FOIA, the public has a general right of access to Federal agency records, except to the extent that such records (or portions of them) are protected from disclosure by an exemption or an exclusion that is contained in the FOIA. This routine use is compatible with the purposes of this system in that the Department can disclose records to the agencies responsible for the litigation relating to and the interpretation of the FOIA. These agencies can assist the Department in determining whether the FOIA requires the disclosure of the records or whether the records are exempt from disclosure under the FOIA.

(2) *Contract Disclosure.* If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department must require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

In the course of administering its programs, the Department may enter into contracts with entities that will perform functions for these programs. This routine use is compatible with the purposes of the system to which it applies in that it permits entities with which the Department contracts to receive the information needed to ensure that the program is administered efficiently.

(3) *Research Disclosure.* The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of a system of records to which this routine use applies. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out that research related to the functions or purposes of the system of records. The researcher must maintain Privacy Act safeguards with respect to the disclosed records. This routine use is compatible with the purpose of this system of records because it permits the Department to disclose records to researchers so that the Department can improve the management of the system and contribute to advancing knowledge regarding the purposes and objective of the program served by the system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are on a computer database as well as in hard copy.

RETRIEVABILITY:

The records in this system are indexed by the name of the individual and/or a number assigned to each individual.

SAFEGUARDS:

All physical access to the Department's site, and the sites of Department contractors where this system of records is maintained, is controlled and monitored by security personnel. The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and contract staff on a ''need to know'' basis, and controls individual users' ability to access and alter records within the system. The contractor, Westat, has established a set of procedures to ensure confidentiality of data. The system ensures that information identifying individuals is in files physically separated from other research data. Westat will maintain security of the complete set of all master data files and documentation. Access to individually identifiable data will be strictly controlled. All data will be kept in locked file cabinets during nonworking hours, and work on hardcopy data will take place in a single room, except for data entry. Physical security of electronic data will also be maintained. Security features that protect project data include password-protected accounts that authorize users to use the Westat system but to access only specific network directories and network software; user rights and directory and file attributes that limit those who can use particular directories and files and determine how they can use them; e-mail passwords that authorize the user to access mail services; and additional security features that the network administrator establishes for projects as needed.

RETENTION AND DISPOSAL:

Records are maintained and disposed of in accordance with the Department's ED/RDS Part 3, Items 1, 2 or 3. Design, implementation, and final reports of the study are permanent records. They are maintained by the Department for 10 years, and then transferred to the National Archives and Records Administration. Administrative records of the study are destroyed 2 years after completion of the project.

SYSTEM MANAGER AND ADDRESS:

Director, Program and Analytic Studies Division, Policy and Program Studies Service, U.S. Department of Education, 400 Maryland Avenue, SW., room 6W231, Washington, DC 20202.

NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.5, including proof of identity.

RECORD ACCESS PROCEDURE:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of

the Department's Privacy Act regulations in 34 CFR 5b.5, including proof of identity.

CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the Department's Privacy Act regulations in 34 CFR 5b.7, including proof of identity.

RECORD SOURCE CATEGORIES:

Information in this system is obtained from surveys with students who were in middle school in 2000–01 and who participated in the GEAR UP program and from a comparison group of students. Students are to be surveyed in spring 2006 when normal progression would make them seniors in high school. Surveys are being conducted as a source of providing information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E5–7464 Filed 12–15–05; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Science; Notice of Renewal of the Biological and Environmental Research Advisory Committee

AGENCY: Department of Energy.

ACTION: Notice of renewal.

SUMMARY: Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65, and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Biological and Environmental Research Advisory Committee has been renewed for a two-year period beginning December 11, 2005.

The Committee will provide advice to the Director, Office of Science, on the Biological and Environmental Research Program managed by the Office of Biological and Environmental Research. The Secretary of Energy has determined that renewal of the Biological and Environmental Research Advisory Committee is essential to the conduct of the Department's business and is in the public interest in connection with the performance of duties imposed by law upon the Department of Energy. The Committee will continue to operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, D.C. on December 11, 2005.

Carol Matthews,

Acting Advisory Committee Management Officer.

[FR Doc. E5–7437 Filed 12–15–05; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP06–32–000]

Maritimes & Northeast Pipeline, L.L.C.; Notice of Petition for a Preliminary Determination

December 9, 2005.

Take notice that on November 16, 2005, Maritimes & Northeast Pipeline, L.L.C. (Maritimes) filed a petition for a preliminary determination pursuant to Rule 207(a)(2) of the Commission's Rules of Practice and Procedure. Maritimes requests that the Commission approve the design for its Phase IV Project on a preliminary basis and, if necessary, find that Portland Natural Gas Transmission System's claim for indemnification is without merit.

Any person desiring to be heard or to protest the petition should file comments, a protest, or a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 CFR 385.210, 385.211 and 385.214 on or before December 23, 2005. In determining the appropriate action to take, the Commission will consider all protests and other comments, but only those who file a motion to intervene may become parties to the proceeding.

The application 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.

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.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7425 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER05–1468–000 anf ER05–1468–001]

Ridge Generating Station, Limited Partnership; Notice of Issuance of Order

December 9, 2005.

Ridge Generating Station Limited Partnership (Ridge) filed an application for market-based rate authority, with an accompanying rate tariff. The proposed rate tariff provides for the sales of energy and capacity at market-based rates. Ridge also requested waiver of various Commission regulations. In particular, Ridge requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Ridge.

On December 8, 2005, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under Part 34. The Director's order also stated that the Commission would publish a separate notice in the **Federal Register** establishing a period of time for the filing of protests. Accordingly, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Ridge should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. 18 CFR 385.211, 385.214 (2004).

Notice is hereby given that the deadline for filing motions to intervene or protest is January 9, 2006.

Absent a request to be heard in opposition by the deadline above, Ridge is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object

within the corporate purposes of Ridge, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Ridge's issuances of securities or assumptions of liability.

Copies of the full text of the Director's Order are available from the Commission's Public Reference Room, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the eLibrary link. Enter the docket number excluding the last three digits in the docket number filed to access the document.

Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7427 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–007]

Trunkline LNG Company, LLC; Notice of Filing

December 12, 2005.

Take notice that on December 5, 2005, Trunkline LNG Company, LLC (Trunkline LNG), P.O. Box 4967, Houston, Texas 77210–4967, filed an abbreviated application, pursuant to section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Rules and Regulations, for a Certificate of Public Convenience and Necessity requesting authorization for an amendment to increase the peak day vaporization capacity at Trunkline LNG's liquefied natural gas (LNG) terminal near Lake Charles, Louisiana, from 1,300,000 Mcf/Day to 1,500,000 Mcf/Day. The application is on file with the Commission and open for 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.

Trunkline LNG's customer, BG LNG, has requested the increase of regasification to facilitate the efficient and economical scheduling of ships and LNG sendout for delivery to its downstream markets. The proposed increase in peak day vaporization will not increase the number of LNG deliveries contemplated by the Expansion Project. There will be no impact on the construction or services previously authorized and currently underway. The proposal will not change the certificated level of the LNG Terminal storage capacity. Trunkline LNG proposes to provide the additional vaporization pursuant to previously approved rates and general terms and conditions of services applicable to Rate Schedules FTS and FTS–2.

Any questions regarding the application are to be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs, 5444 Westheimer Road, Houston, Texas 77056–5306; phone number (713) 989–7000.

Any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, 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.

Motions to intervene, protests and comments may be filed electronically via the Internet in lieu of paper, see, 18 CFR 385.2001 (a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 27, 2005.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7424 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos.CP98–131–006 and CP06–29–000]

Vector Pipeline L.P.; Notice of Application

December 12, 2005.

On November 30, 2005, in Docket No. CP06–29–000, Vector Pipeline L.P (Vector), pursuant to Natural Gas Act section 7(c) and Part 157 Subpart A of the Federal Energy Regulatory Commission's (Commission) regulations filed an application for a certificate of public convenience and necessity for authorization to construct, own, and operate, compression faculties and appurtenances thereto, to be located in Will County, Illinois and Macomb County, Michigan, as more fully set forth in the application. The new compressor stations would be constructed adjacent to its mainline facilities. The proposed Joliet Compressor Station will consist of one 15,000 horsepower (hp) compressor unit, while the Romeo Compressor Station would consist of two 15, 000 hp compressor units. Total cost of construction would be about $70.4 million. Vector states that the additional compression will serve to increase its mainline transport capacity of additional supplies of gas for delivery in the United States and/or to its Canadian border connection. Vector requests that the Commission grant certificate authorization no later than November 1, 2006 so that the facilities can be in service by November 1, 2007.

Concurrently, in Docket No. CP98–131–006, Vector filed an application to amend the Presidential Permit and Natural Gas Act Section 3 authority issued to Vector by the May 27, 1998 Commission Order on Rehearing, 87 FERC ¶ 61,225, as subsequently amended. Vector states that the proposed amendment would add to their extant authority to transport gas between the United States and Canada by increasing the maximum capacity permitted to flow through the existing border facilities from 1330 thousand cubic feet per day (MMcf/d) to 2300 MMcf/d. The higher maximum capacity

is a result of the proposed system expansion in Docket No. CP06–29–000.

Questions concerning the application should be directed to Robert F. Smith Manager, Regulatory and Administration at Vector Pipeline L.P., 38705 Seven Mile Road, Suite 490, Livonia, Michigan 48152 or by calling (734) 462–0234, or facsimile (734) 462–0231; or Kim M. Clark, Esq. at John & Hengerer, 1200 17th Street, NW., Suite 600, Washington, DC 20036–3013 or by calling 202–429–8800 or facsimile 202–429–8805.

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, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding. However, a person does not have to intervene in order to have comments considered.

The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site under the ''e-Filing'' link at *http://www.ferc.gov*. The Commission strongly encourages intervenors to file electronically. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. eastern time on January 3, 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7426 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 9, 2005.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER04–1137–000; ER06–19–002.

Applicants: MeadWestvaco Energy Services, LLC.

Description: MeadWestvaco Energy Services, LLC submits a supplement to its October 7, 2005 & November 3, 2005 notifications to the Commission that it changed its name to NewPage Energy Services, LLC.

Filed Date: December 1, 2005.

Accession Number: 20051207–0083.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER05–1181–002.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits amended tariff sheets Revised Sheet No. 250 to FERC Electric Tariff, Sixth Revised Volume 1 to be effective February 1, 2006 in compliance with FERC's August 31, 2005 letter.

Filed Date: November 30, 2005.

Accession Number: 20051206–0027.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 21, 2005.

Docket Numbers: ER05–1366–001; ER05–1367–001; ER06–1368–001; ER05–1369–002; ER06–1370–001; ER05–1371–001; ER05–1372–001; ER05–1373–001; ER05–1374–001; ER05–1375–001; ER05–1376–001.

Applicants: Cincinnati Gas & Electric Company; PSI Energy, Inc.; Union Light Heat & Power Company; Cinergy Marketing & trading, LP; Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & trading, Inc.; Cinergy Power Investments, Inc.; St. Paul Cogeneration, LLC.

Description: Cincinnati Gas and Electric Co et al submits First Revised Sheet No. 5 et al to FERC Electric Tariff, Original Volume No.1, to be effective January 1, 2006 pursuant to FERC's November 22, 2005 Order.

Filed Date: December 1, 2005.

Accession Number: 20051206–0025.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER05–167–002.

Applicants: California Power Exchange Corporation.

Description: California Power Exchange Corp submits its compliance filing for Rate Periods 1thru 7 pursuant to Rate Case Settlement Agreement.

Filed Date: December 1, 2005.

Accession Number: 20051206–0026.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–149–001.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc submits the signature pages to the November 2, 2005 filing of two rate schedules providing for power coordination and interchange services to Conway and West Memphis, Arkansas.

Filed Date: December 1, 2005.

Accession Number: 20051206–0024.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–156–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc, acting as agent for Alabama Power Co, submits a notice of cancellation of the firm power purchase contract with Alabama Municipal Electric Authority.

Filed Date: December 1, 2005.

Accession Number: 20051205–0230.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–273–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits a notice of succession of certain transmission service agreement & network integration transmission service & operating agreements.

Filed Date: December 1, 2005.

Accession Number: 20051205–0065.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–274–000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Co submits changes in rates and rate design applicable to service to Cap Rock Energy Corp, et al.

Filed Date: December 1, 2005.

Accession Number: 20051205–0209.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–278–000.

Applicants: Nevada Hydro Company, Inc.

Description: The Nevada Hydro Co Inc submits Rate Request pursuant to section 205 of the Federal Power Act implementing regulations re the Lake Elsinore Advance Pump Storage Project.

Filed Date: December 1, 2005.

Accession Number: 20051207–0330.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–281–000.

Applicants: TECO EnergySource, Inc.

Description: TECO EnergySource, Inc submits a notice of cancellation for the purpose of terminating its market-based electric tariff.

Filed Date: December 1, 2005.

Accession Number: 20051207–0080.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–282–000.

Applicants: New England Power Pool.

Description: The New England Power Pool Participants Committee submits the transmittal letter along with counterpart signature pages of the New England Power Pool Agreement.

Filed Date: December 1, 2005.

Accession Number: 20051207–0066.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–283–000.

Applicants: Avista Corporation.

Description: Avista Corp submits Original Service Agreement No. 324, which is an Agreement for Purchase & Sale of Power with Public Utility District No. 1 of Douglas County, WA.

Filed Date: December 1, 2005.

Accession Number: 20051207–0067.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER96–1947–018.

Applicants: LS Power Marketing, LLC.

Description: LS Power Marketing, LLC submits its Third Revised Market-based Rate Tariff in compliance with FERC's November 30, 2005 Order.

Filed Date: November 30, 2005.

Accession Number: 20051206–0023.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 21, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*. or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7420 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

December 12, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER04–1137–000; ER06–19–002.

Applicants: MeadWestvaco Energy Services, LLC.

Description: MeadWestvaco Energy Services, LLC submits a supplement to its October 7, 2005 & November 3, 2005 notifications to the Commission that it changed its name to NewPage Energy Services, LLC.

Filed Date: December 1, 2005.

Accession Number: 20051207–0083.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER05–1181–002.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits amended tariff sheets Revised Sheet No. 250 *et al.*to FERC Electric Tariff, Sixth Revised Volume 1 to be effective February 1, 2006 in compliance with FERC's August 31, 2005 letter.

Filed Date: November 30, 2005.

Accession Number: 20051206–0027.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 21, 2005.

Docket Numbers: ER05–1366–001; ER05–1367–001; ER05–1368–001; ER05–1369–002; ER05–1370–001; ER05–1371–001; ER05–1372–001; ER05–1373–001; ER05–1374–001; ER05–1375–001; ER05–1376–001.

Applicants: Cincinnati Gas & Electric Company; PSI Energy, Inc.; Union Light Heat & Power Company; Cinergy Marketing & trading, LP; Brownsville Power I, L.L.C.; Caledonia Power I, L.L.C.; CinCap IV, LLC; CinCap V, LLC; Cinergy Capital & Trading, Inc.; Cinergy Power Investments, Inc.; St. Paul Cogeneration, LLC.

Description: Cincinnati Gas and Electric Co et al submits First Revised Sheet No. 5 et al to FERC Electric Tariff, Original Volume No.1, to be effective January 1, 2006 pursuant to FERC's 11/22/05 Order.

Filed Date: December 1, 2005.

Accession Number: 20051206–0025.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER05–167–002.

Applicants: California Power Exchange Corporation.

Description: California Power Exchange Corp submits its compliance

filing for Rate Periods 1 thru 7 pursuant to Rate Case Settlement Agreement.

Filed Date: December 1, 2005.

Accession Number: 20051206–0026.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–149–001.

Applicants: Entergy Services, Inc.

Description: Entergy Services, Inc submits the signature pages to the November 2, 2005 filing of two rate schedules providing for power coordination and interchange services to Conway and West Memphis, Arkansas.

Filed Date: December 1, 2005.

Accession Number: 20051206–0024.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–156–000.

Applicants: Southern Company Services, Inc.

Description: Southern Company Services, Inc, acting as agent for Alabama Power Co, submits an errata to the November 3, 2005 notice of cancellation of the firm power purchase contract with Alabama Municipal Electric Authority.

Filed Date: December 1, 2005.

Accession Number: 20051205–0230.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–273–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator, Inc submits a notice of succession of certain transmission service agreement & network integration transmission service & operating agreements.

Filed Date: December 1, 2005.

Accession Number: 20051205–0065.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–274–000.

Applicants: Southwestern Public Service Company.

Description: Southwestern Public Service Co submits changes in rates and rate design applicable to service to Cap Rock Energy Corp, *et al.*

Filed Date: December 1, 2005.

Accession Number: 20051205–0209.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–278–000.

Applicants: Nevada Hydro Company, Inc.

Description: The Nevada Hydro Co Inc submits Rate Request pursuant to section 205 of the Federal Power Act implementing regulations re the Lake Elsinore Advance Pump Storage Project.

Filed Date: December 1, 2005.

Accession Number: 20051207–0330.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–281–000.

Applicants: TECO EnergySource, Inc.

Description: TECO EnergySource, Inc submits a notice of cancellation for the purpose of terminating its market-based electric tariff.

Filed Date: December 1, 2005.

Accession Number: 20051207–0080.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–282–000.

Applicants: New England Power Pool.

Description: The New England Power Pool Participants Committee submits the transmittal letter along with counterpart signature pages of the New England Power Pool Agreement.

Filed Date: December 1, 2005.

Accession Number: 20051207–0066.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–283–000.

Applicants: Avista Corporation.

Description: Avista Corp submits Original Service Agreement No. 324, which is an Agreement for Purchase & Sale of Power with Public Utility District No. 1 of Douglas County, WA.

Filed Date: December 1, 2005.

Accession Number: 20051207–0067.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER96–1947–018; EL05–111–000.

Applicants: LS Power Marketing, LLC.

Description: LS Power Marketing, LLC submits its Third Revised Market-based Rate Tariff in compliance with FERC's November 30, 2005 Order.

Filed Date: November 30, 2005.

Accession Number: 20051206–0023.

Comment Date: 5 p.m. Eastern Time on Wednesday, December 21, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7421 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EG06–13–000 et al.]

ANP ERCOT Acquisiton, LLC, et al.; Electric Rate and Corporate Filings

December 9, 2005–12–13

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

ANP ERCOT Acquisition, LLC, Docket Nos. EG06–13–000
ANP ERCOT Development, LLC, EG06–14–000
ANP NE Acquisition, LLC, EG06–15–000
ANP NE Development, LLC, EG06–16–000
ANP PJM Acquisition, LLC, EG06–17–000
ANP PJM Development, LLC, EG06–18–000
ANP Acquisition, LLC, EG06–19–000
ANP Development, LLC, EG06–20–000
ANP Operations II, LLC, EG06–21–000

Take notice that on December 2, 2005, the above listed ANP Entities (Applicants) pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935 hereby submit for filing their Applications for Determination of Exempt Wholesale Generator Status.

Applicants state that they are a Delaware limited liability company with its principal place of business in Marlborough, Massachusetts and its sole purpose of each facilities will be used for the generation of electric energy exclusively for sale at wholesale.

Comment Date: 5 p.m. Eastern Time on December 23, 2005.

2. California Independent System Operator

[Docket Nos. ER04–115–005, EL04–47–005, ER04–242–004, ER05–367–002, EL04–50–003]

Take notice that on November 30, 2005, the California Independent System Operator (CA ISO) in compliance to ''Order Approving Uncontested Settlement'' issued on September 22, 2005, CA ISO provides details of refunds in Attachment A.

Comment Date: 5 p.m. Eastern Time on December 21, 2005.

3. Knedergy LLC

[Docket No. ER06–250–000]

Take notice that on November 28, 2005, Knedergy LLC tendered for filing a Petition for Acceptance of initial Rate Schedule, Waivers, and Blanket Authority for Rate Schedule FERC No. 1.

Comment Date: 5 p.m. Eastern Time on December 19, 2005.

4. Southern California Edison Company

[Docket No. ER06–259–000]

Take notice that on November 30, 2005, Southern California Edison Company (SCE) tenders for filing revisions to it Transmission Owner tariff, FERC Electric Tariff, Second Revised Volume No. 6, and to certain Existing Transmission Contracts to reflect a change to SCE's Reliability Services Rates.

Comment Date: 5 p.m. Eastern Time on December 21, 2005.

5. California Independence System Operator Corporation

[Docket No. ER06–54–001]

Take notice that on November 29, 2005, the California Independent System Operator Corporation (ISO) tendered for filing Attachment A, signature page, to the filing submitted on October 19, 2005.

Comment Date: 5 p.m. Eastern Time on December 19, 2005.

6. DTE Energy Trading, Inc.

[Docket No. EC06–30–000]

Take notice that on November 23, 2005, DTE Energy Trading, Inc. (DTE–ET) tendered for filing an Application for Authorization under section 203 of the Federal Power Act and as amended on November 28, 2005. DTE–ET requests Commission authorization to dispose of jurisdictional facilities by way of an assignment of the rights, obligations and interest in certain of its wholesale electric power sales agreement and associated books and records to Morgan Stanley Capital Group Inc.

Comment Date: 5 p.m. Eastern Time on December 20, 2005.

7. Ameren Services Company

[Docket Nos. EC06–35–000 and ES06–17–000]

Take notice that on December 7, 2005, Ameren Services Company (Ameren Services) tendered for filing an application on behalf of itself and its associate companies, Union Electric Company (d/b/a AmerenUE), Central Illinois Public Service Company (d/b/a AmerenCIPS), Central Illinois Light Company (d/b/a AmerenCILCO), Illinois Power Company (d/b/a Ameren IP), CILCORP Inc., Ameren Energy Resources Company, AmerenEnergy Resources Generating Company (f/k/a Central Illinois Generation, Inc.), Ameren Energy Generating Company (AEG), Ameren Energy Development Company, Ameren Energy Marketing Company, AmerenEnergy Medina Valley Cogen (No. 2), L.L.C., Ameren Energy Medina Valley Cogen, (No. 4) L.L.C., AmerenEnergy Median Valley Cogen, L.L.C., Electric Energy, Inc., and Ameren Corporation (collectively the Applicants) for an order pursuant to section 204 of the Federal Power Act authorizing AmerenUE, AmerenCIPS, AmerenCILCO and AEG (the section 204 Applicants) to issue short-term debt securities, for AEG to issue long-term debt securities, and for the section 204 Applicants to receive cash capital contributions and non-interest bearing open account advances from their respective parents. The Applicants also request pursuant to section 203 of the Federal Power Act, an order granting blanket authorization for the Applicants to acquire securities.

Comment Date: 5 p.m. Eastern Time on December 28, 2005.

8. San Diego Gas & Electric Company and Pacific Gas and Electric Company

[Docket Nos. EL00–95–170 and EL00–98–156]

Take notice that on December 1, 2005, Pacific Gas and Electric Company (PG&E) submitted compliance filing pursuant to a Commission Order issued August 8, 2005. PG&E states that this filing addresses outstanding disputes that are specific to PG&E and is being submitted to the Commission in conjunction with a contemporaneous pleading filed by certain California parties to address further disputes relating to offsets and market re-runs.

Comment Date: 5 p.m. Eastern Time on January 3, 2006.

9. City of Azusa, California

[Docket No. EL06–23–000]

Take notice that on December 2, 2005, City of Azusa, California (Azusa) submitted for filing its third annual revision to it Transmission Revenue Balancing Account Adjustment Azusa request an effective date of January 1, 2006.

Comment Date: 5 p.m. Eastern Time on January 3, 2006.

10. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–2458–006]

Take notice that on December 1, 2005, Midwest Independent Transmission System Operator, Inc. submitted for filing an amended contested settlement agreement.

Comment Date: 5 p.m. Eastern Time on December 19, 2005.

11. National Grid plc and National Grid USA

[Docket Nos. ES06–9–000, EC06–34–000, EL06–22–000]

Take notice that on December 2, 2005, National Grid plc and National Grid USA (collectively, Applicants) submited for filing an application and petition on behalf of themselves and certain of their subsidiaries and affiliates, to issue securities under section 204 of the Federal Power Act and part 34 of the Commission's regulations and authorization to acquire securities and for limited intra-family mergers and reorganization under section 203 of the Federal Power Act and part 33 of the Commission's regulations.

Comment Date: 5 p.m. Eastern Time on December 23, 2005.

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. Anyone filing a motion to intervene or protest must serve a copy

of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov*. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7422 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice Of Filings #2

December 12, 2005.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER00–2823–002.

Applicants: American Cooperative Services, Inc.

Description: American Cooperative Services, Inc submits revised rate schedule incorporating FERC's change in status provisions in compliance with the February 18, 2005 Order et al.

Filed Date: December 2, 2005.

Accession Number: 20051208–0060.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER02–1118–005.

Applicants: Continental Electric Cooperative Service.

Description: Continental Electric Cooperative Services, Inc submits revised rate schedule incorporating FERC's change in status provision in compliance with the February 18, 2005 Order et al.

Filed Date: December 2, 2005.

Accession Number: 20051207–0082.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER02–2605–004.

Applicants: Keystone Energy Group, Inc.

Description: Keystone Energy Group, Inc amends its December 31, 2002 filing to make corrections to its Market Based Rate, FERC Electric Schedule.

Filed Date: December 2, 2005.

Accession Number: 20051208–0065.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER03–1294–003.

Applicants: Energy Cooperative of New York, Inc.

Description: Energy Cooperative of New York, Inc submits revised Market-Based Rate Tariffs which include FERC's market behavior rules and change in status reporting requirement.

Filed Date: December 2, 2005.

Accession Number: 20051208–0061.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER05–1444–003.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc submits a supplement and errata to its November 23, 2005 Amendment to Filing of Large Generator Interconnection Agreement.

Filed Date: December 2, 2005.

Accession Number: 20051208–0067.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER05–1508–001.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest ISO submits an amendment to its September 26, 2005 executed Large Generator Interconnection Agreement with Power Partners Midwest, LLC, et al.

Filed Date: December 2, 2005.

Accession Number: 20051207–0061.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER05–508–004.

Applicants: ISO New England, Inc. and New England Power Pool.

Description: ISO New England Inc submits original transmittal letter and revised tariff sheet to Appendix H of Section III in response to the requirements of FERC's November 17, 2005 Order.

Filed Date: December 2, 2005.

Accession Number: 20051207–0081.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–28–001.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits Substitute Revised Sheet 163 et al to correct minor errors in two of the revised sheets submitted on October 11, 2005 etc.

Filed Date: December 2, 2005.

Accession Number: 20051207–0084.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–126–001.

Applicants: Ohio Edison Company.

Description: Ohio Edison Co submits a revised notice of cancellation of Rate Schedule FERC No. 154 pursuant to the guidelines in FERC Order No. 614.

Filed Date: December 2, 2005.

Accession Number: 20051208–0068.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–128–001.

Applicants: Ohio Edison Company.

Description: Ohio Edison Co submits a revised notice of cancellation of Rate Schedule FERC No. 153 pursuant to the guidelines in FERC Order No. 614.

Filed Date: December 2, 2005.

Accession Number: 20051208–0066.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–152–001.

Applicants: Wisconsin Public Service Corporation.

Description: Wisconsin Public Service Corp submits a revised market-based rate tariff designated as its FERC Electric Tariff, Substitute Fourth Revised Volume No. 10 to become effective November 3, 2005.

Filed Date: December 2, 2005.

Accession Number: 20051207–0063.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–214–001.

Applicants: Power Bidding Strategies, LLC.

Description: Power Bidding Strategies, LLC submits Section XI to its petition for acceptance of initial rate schedule to clarify the ownership structure of its affiliates and resubmits FERC Electric Tariff No. 1.

Filed Date: December 2, 2005.

Accession Number: 20051208–0059.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–262–000.

Applicants: Pittsfield Generating Company, L.P.

Description: Pittsfield Generating Co LP submits the signed affidavits of Donald W Scholl & Malcolm R Ketchum to the unexecuted Reliability Must Run Agreement with Sempra Energy Trading Corp et al submitted on November 30, 2005.

Filed Date: December 1, 2005.

Accession Number: 20051207–0053.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER06–276–000

Applicants: Alcoa Power Generating, Inc.

Description: Alcoa Power Generating, Inc—Tapoco Division submits FERC Electric Tariff, First Revised Volume No. 1, effective December 3, 2005.

Filed Date: December 2, 2005.

Accession Number: 20051206–0216.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–277–000

Applicants: NorthWestern Corporation

Description: NorthWestern Corp submits a notice of cancellation of its FERC Rate Schedule No.175 pursuant to effective January 1, 2006.

Filed Date: December 2, 2005.

Accession Number: 20051207–0057.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–279–000.

Applicants: NorthWestern Corporation.

Description: NorthWestern Corp submits a non-conforming Network Integration Transmission Service Agreements with the Bonneville Power Administration for service to its wholesale customers.

Filed Date: December 2, 2005.

Accession Number: 20051207–0079.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–280–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc & the New England Power Pool Participants Committee jointly submit a transmittal letter and related materials, which proposed revision to certain Market Rule 1 terms.

Filed Date: December 2, 2005.

Accession Number: 20051207–0165.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–284–000.

Applicants: SR Energy, LLC.

Description: SR Energy, LLC submits an application for authority to sell electric power and related services at market based rates, to be effective January 1, 2006.

Filed Date: December 2, 2005.

Accession Number: 20051207–0068.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER06–285–000; ER06–286–000.

Applicants: Cincinnati Gas & Electric Company; PSI Energy, Inc.

Description: Cinergy Services, Inc on behalf of The Cincinnati Gas & Electric Co and PSI Energy submit a Legacy Contract Transition Agreement to be effective January 1, 2006.

Filed Date: December 1, 2005.

Accession Number: 20051207–0069.

Comment Date: 5 p.m. Eastern Time on Thursday, December 22, 2005.

Docket Numbers: ER95–802–021.

Applicants: IEP Power Marketing, LLC.

Description: IEP Power Marketing, LLC file market power analysis to comply with FERC's May 11, 1995 Order.

Filed Date: December 2, 2005.

Accession Number: 20051202–5008.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Docket Numbers: ER98–4515–005.

Applicants: Cadillac Renewable Energy LLC.

Description: Cadillac Renewable Energy LLC submits Original Sheet Nos.1 thu 7 to its FERC Electric Tariff, First Revised Volume No. 1.

Filed Date: December 2, 2005.

Accession Number: 20051207–0062.

Comment Date: 5 p.m. Eastern Time on Friday, December 23, 2005.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other and the Applicant.

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Magalie R. Salas,

Secretary.

[FR Doc. E5–7432 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

December 12, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major license, 5 MW or less.

b. *Project No.:* 12597–002.[1]

c. *Date filed:* November 28, 2005.

d. *Applicant:* Birch Power Company.

e. *Name of Project:* Lower Turnbull Drop Hydroelectric Project.

f. *Location:* On the Spring Valley Canal, in Teton County, Montana, about 4 miles west of Fairfield, Montana. The project would occupy in part lands of the United States administered by the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Ted Sorenson, Sorenson Engineering, 5203 South 11th East, Idaho Falls, ID 83404, (208) 522–8069.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, *Dianne.rodman@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating

[1] The applicant has split its Turnbull Drop Project No. 12539, for which it holds a preliminary permit, into the Lower Turnbull Drop Project No. 12597 and the Upper Turnbull Drop Project No. 12598.

agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: January 27, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would be built at the Spring Valley Canal's Lower Turnbull drop structure, which is a reinforced concrete structure 2,332 feet long, with a total drop of 146.5 feet. The applicant proposes to construct: (1) A check structure, consisting of a spillway gate panel anchored to a ballast concrete structure spanning the full width of the canal floor between new concrete abutment walls; (2) an intake structure to divert flows from the left side of the canal; (3) 84-inch-diameter, 2,340-feet-long steel or polyethylene penstock that would be completely buried; (4) a powerhouse containing two horizontal Francis turbines and one generator with a rated output of 5 MW; (5) a draft tube and tailrace discharging flows into the canal about 40 feet downstream of the drop structure's existing stilling basin; (6) a 0.8-mile-long, 12.5-kilovolt (kV) transmission line; (7) a switchyard; and (8) a 1.7-mile-long, 69-kV transmission line extending from the switchyard to interconnect with an existing Sun River Electric Cooperative transmission line. The project would use flows as they are provided in accordance with the needs of the Greenfield Irrigation District, which operates the canal. The project would not impound water and would be operated strictly as a run-of-river plant. Average annual generation would be 13,350,000 kilowatt-hours.

o. A copy of the application 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Montana State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. Procedural schedule: We are currently reviewing the application for adequacy. This schedule allows 30 days for the correction of any deficiencies and the submittal of any additional information needed. If deficiencies and additional information needs require more time, the schedule will be revised accordingly.

Issue Deficiency Letter, December 2005.

Issue Acceptance Letter, January 2006.

Issue Scoping Document for comments, January 2006.

Notice of application is ready for environmental analysis, February 2006.

Notice of the availability of the EA, June 2006.

Ready for Commission's decision on the application, July 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7428 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

December 12, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Major license, 5 MW or less.

b. *Project No.:* 12598–002.

c. *Date filed:* November 28, 2005.

d. *Applicant:* Birch Power Company.

e. *Name of Project:* Upper Turnbull Drop Hydroelectric Project [1].

f. *Location:* On the Spring Valley Canal, in Teton County, Montana, about 4 miles west of Fairfield, Montana. The project would occupy lands of the United States administered by the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a) through 825(r).

h. *Applicant Contact:* Ted Sorenson, Sorenson Engineering, 5203 South 11th East, Idaho Falls, ID 83404, (208) 522–8069.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, *Dianne.rodman@ferc.gov*.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in

[1] The applicant has split its Turnbull Drop Project No. 12539, for which it holds a preliminary permit, into the Upper Turnbull Drop Project No. 12598 and Lower Turnbull Drop Project No. 12597.

order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. *Deadline for filing additional study requests and requests for cooperating agency status:* January 27, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would be built at the Spring Valley Canal's Upper Turnbull drop structure, which is a reinforced concrete structure 1,102 feet long, with a total drop of 101.6 feet. The applicant proposes to construct: (1) A check structure, consisting of a spillway gate panel anchored to a ballast concrete structure spanning the full width of the canal floor between new concrete abutment walls; (2) an intake structure to divert flows from the left side of the canal; (3) 84-inch-diameter, 1,100-feet-long steel or polyethylene penstock that would be completely buried; (4) a powerhouse containing two horizontal Francis turbines and one generator with a rated output of 4.1 MW; (5) a draft tube and tailrace discharging flows into the canal about 40 feet downstream of the drop structure's existing stilling basin; (6) a 1.3-mile-long, 12.5-kilovolt (kV) transmission line; (7) a switchyard; and (8) a 1.7-mile-long, 69-kV transmission line extending from the switchyard to interconnect with an existing Sun River Electric Cooperative transmission line. The project would use flows as they are provided in accordance with the needs of the Greenfield Irrigation District, which operates the canal. The project would not impound water and would be operated strictly as a run-of-river plant. Average annual generation would be 11,200,000 kilowatt-hours.

o. A copy of the application 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Montana State Historic Preservation Officer (SHPO), as required by (106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. *Procedural schedule:* We are currently reviewing the application for adequacy. This schedule allows 30 days for the correction of any deficiencies and the submittal of any additional information needed. If deficiencies and additional information needs require more time, the schedule will be revised accordingly.

Issue Deficiency Letter December 2005.

Issue Acceptance Letter January 2006. January 2006.

Issue Scoping Document for comments January 2006.

Notice of application is ready for environmental analysis February 2006.

Notice of the availability of the EA June 2006.

Ready for Commission's decision on the application July 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7429 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

December 12, 2005.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Minor License.

b. *Project No.:* 12599–002.[1]

c. *Date filed:* November 28, 2005.

d. *Applicant:* Wade Jacobsen.

e. *Name of Project:* Mill Coulee Drops Hydroelectric Project.

f. *Location:* On the Mill Coulee Canal, in Cascade County, Montana, about 4 miles west of Fairfield, Montana. The project would occupy in part on lands of the United States administered by the Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) through 825(r).

h. *Applicant Contact:* Ted Sorenson, Sorenson Engineering, 5203 South 11th East, Idaho Falls, ID 83404, (208) 522–8069.

i. *FERC Contact:* Dianne Rodman, (202) 502–6077, *Dianne.rodman@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. See, 94 FERC ¶ 61,076 (2001).

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and

[1] The Mill Coulee Drops Project No. 12599 would be located at the sites of the Mill Coulee Lower Project No. 12536 and the Mill Coulee Upper Project No. 12537, for which the applicant holds preliminary permits.

serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: January 27, 2006.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. 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.

m. The application is not ready for environmental analysis at this time.

n. The proposed project would be built at the Mill Coulee Canal's Upper and Lower Mill Coulee drop structures, which are reinforced concrete structures 290 and 190 feet long, respectively. The total drop for the two structures is 101.6 feet. The applicant proposes to construct: (1) A check structure, consisting of a spillway gate panel anchored to a ballast concrete structure spanning the full width of the canal floor between new concrete abutment walls, upstream from the concrete transition of the Upper Mill Coulee chute drop; (2) an intake structure to divert flows from the left side of the canal; (3) a 48-inch-diameter, 1,400-feet-long pre-stressed concrete, tape-coated steel, or polyethylene penstock that would be completely buried; (4) a powerhouse containing one horizontal Francis turbine and one generator with a rated output of 1.05 MW; (5) a draft tube and 2,650-feet-long tailrace discharging flows into the canal below the Lower Mill Coulee drop structure; (6) a switchyard immediately adjacent to the powerhouse; and (7) a 0.7-mile-long, 69-kV transmission line extending from the switchyard to interconnect with an existing Sun River Electric Cooperative transmission line. The project would use flows as they are provided in accordance with the needs of the Greenfield Irrigation District, which operates the canal. The project would not impound water and would be operated strictly as a run-of-river plant. Average annual generation would be 2,430,000 kilowatt-hours.

o. A copy of the application 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, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Montana State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR, at § 800.4.

q. *Procedural schedule:* We are currently reviewing the application for adequacy. This schedule allows 30 days for the correction of any deficiencies and the submittal of any additional information needed. If deficiencies and additional information needs require more time, the schedule will be revised accordingly.

Issue Deficiency Letter, December 2005.

Issue Acceptance Letter, January 2006.

Issue Scoping Document 1 for comments, January 2006.

Notice of application is ready for environmental analysis, February 2006.

Notice of the availability of the EA, June 2006.

Ready for Commission's decision on the application, July 2006.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7430 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD06–2–000]

Assessment of Demand Response Resources; Notice of Technical Conference on Demand Response and Advanced Metering

December 12, 2005.

Take notice that on Wednesday, January 25, 2005, at 9 a.m. (EST), staff of the Federal Energy Regulatory Commission will convene a technical conference on demand response and advanced metering regarding issues raised by the Energy Policy Act of 2005 (EPAct 2005) section 1252(e)(3).[1] The technical conference will be held in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. This will be a staff conference, but Commissioners may attend. In the coming weeks, an additional notice of this technical conference will be issued finalizing the agenda and participation on the proposed panels.

A free webcast of this event will be available through www.ferc.gov. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov's* Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the webcasts. It also offers access to this event via television in the Washington, DC area and via phone bridge for a fee. Visit *http://www.CapitolConnection.org* or contact Danelle Perkowski or David Reininger at the Capitol Connection 703–993–3100 for information about this service.

Commission 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 202–208–1659 (TTY), or send a FAX to 202–208–2106 with the required accommodations.

For further information on the technical conference, please contact:

David Kathan (Technical Information), Office of Markets, Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street, NE.,

[1] Energy Policy Act of 2005, Pub. L. No. 109–58, § 1252(e)(3), 119 Stat. 594, (2005) (EPAct section 1252(e)(3)).

Washington, DC 20426, (202) 502–6404, *David.Kathan@ferc.gov.*

Aileen Roder (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502–6022, *Aileen.Roder@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. E5–7431 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2153–012 California]

Notice of Public Meeting To Discuss the Environmental Assessment Prepared for the Santa Felicia Hydropower Project; United Water Conservation District

December 12, 2005.

On November 28, 2005, the Commission staff issued an Environmental Assessment (EA); prepared for the licensing of the Santa Felicia Hydroelectric Project.

Comments on the EA are due January 12, 2006. The EA evaluates the environmental effects of the continued operation, and maintenance of the project. The project occupies 174.5 acres of U.S. land, administered by the U.S. Department of Agriculture, Forest Service, in the Los Padres and Angeles National Forests.

In the EA, Commission staff analyze the probable environmental effects of relicensing the project and conclude that approval of the project, with appropriate staff-recommended environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A public meeting, which will be recorded by an official stenographer, is scheduled for Thursday, January 5, 2006, from 9 a.m. to 3 p.m. at the United Water Conservation District's office at 106 North Eighth Street, Santa Paula, CA 93060. We ask that persons in need of directions or other assistance contact John Dickenson of United directly at (805) 525–4431 or via e-mail at *johnd@unitedwater.org.*

At this meeting, resource agency personnel and other interested persons will have the opportunity to provide oral and written comments and recommendations regarding the licensing of the Santa Felicia Hydroelectric Project for the Commission's public record.

Copies of the EA are available for review in Public Reference Room 2–A of the Commission's offices at 888 First Street, NE., Washington, DC. The EA also may be viewed on the Commission's Internet Web site (*http://www.ferc.gov*) using the ''eLibrary'' link. For assistance with eLibrary, contact *FERCOlineSuuport@ferc.gov* or call toll-free at (866) 208–3676; for TTY contact (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E5–7423 Filed 12–15–05; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Post-2008 Resource Pool Allocation Procedures

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of final procedures.

SUMMARY: The Western Area Power Administration (Western), a Federal power marketing agency of the Department of Energy (DOE), announces the Parker-Davis Project (P–DP) Post-2008 Resource Pool Allocation Procedures, developed under the requirements of the Energy Planning and Management Program (EPAMP). EPAMP provides for the establishment of project-specific resource pools and power allocations from these pools to new preference customers. Western, under EPAMP, is finalizing procedures for use in allocating power from the P–DP Post-2008 Resource Pool that will become available October 1, 2008. Western originally proposed allocation procedures in the October 1, 2004, **Federal Register**. Responses to public comments received on the proposed procedures are included in this notice. In accordance with this notice, Western plans to announce proposed allocations in the **Federal Register** after April 1, 2006.

DATES: The P–DP Post-2008 Resource Pool Allocation Procedures will become effective January 17, 2006.

ADDRESSES: Information regarding the Post-2008 Resource Pool Allocation Procedures, including comments, letters, and other supporting documents made or kept by Western for the purpose of developing the final procedures, is available for public inspection and copying at the Desert Southwest Regional Office, Western Area Power Administration, located at 615 South 43rd Avenue, Phoenix, AZ 85009. Public comments may be viewed at *http://www.wapa.gov/dsw/pwrmkt.*

SUPPLEMENTARY INFORMATION: Western published a notice of proposed allocation procedures in the October 1, 2004, **Federal Register** (69 FR 58900), to implement Subpart C—Power Marketing Initiative (PMI) of EPAMP's Final Rule, 10 CFR part 905 (60 FR 54151). EPAMP, developed in part to implement section 114 of the Energy Policy Act of 1992, became effective on November 20, 1995. The goal of EPAMP is to require planning and efficient electric energy use by Western's long-term firm power customers and to provide a framework for extending Western's firm power resource commitments. One aspect of EPAMP is to establish project-specific power resource pools when existing resource commitments expire and to allocate power from these pools to new preference customers. Existing resource commitments for the P–DP expire on September 30, 2008. Western published its decision to apply the PMI of EPAMP to the P–DP in the **Federal Register** on May 5, 2003 (68 FR 23709). This decision created a resource pool of approximately 17 megawatts (MW) of summer season capacity and 13 MW of winter season capacity, based on estimates of current P–DP hydroelectric resource availability, for allocation to eligible preference customers for 20 years beginning October 1, 2008. Western will make allocations to preference customers under the final procedures described in this notice, the current P–DP Marketing Plan (49 FR 50582, 52 FR 7014, and 52 FR 28333), and EPAMP. These final Post-2008 Resource Pool Allocation Procedures for the P–DP address (1) Eligibility criteria, (2) how Western intends to allocate pool resources, and (3) the terms and conditions under which Western will allocate the power pool.

Western held public comment forums regarding the proposed procedures between November 30, 2004, and December 2, 2004, to accept oral and written comments on the proposed allocation procedures and call for applications. The formal comment period ended January 30, 2005. Western's responses to public comments on the proposed allocation procedures are included in this notice.

Response to Comments on the Post-2008 Resource Pool Allocation Procedures

Comments and Responses

Comment: Some comments expressed support for the proposed order of priority for use in making allocations,

specifically the exclusion of existing Firm Electric Service contractors from the first priority.

Response: Western appreciates the support and agrees that this order of priority will facilitate the widespread use of hydropower resources.

Comment: Western received comments that subcontractors receiving allocations of Boulder Canyon Project power should be considered as having a contract with Western or as a member of a parent entity that has a contract with Western.

Response: Western agrees that the definition of ''a member of a parent entity that has a contract with Western'' includes the Boulder Canyon Project subcontractors (or suballottees). These subcontractors receive the benefits of Federal power resources through power contracts with Boulder Canyon Project contractors and would not meet the criteria to receive first priority consideration.

Comment: Western received comments that applicants may receive standard retail service from electric service providers and have no contract with their electric service providers for Federal resources. These comments asserted that the status of their electric service providers as contractors for Federal resources should not disqualify such retail customers from being in the first priority for consideration unless the applicants otherwise receive specified benefits from federal resources.

Response: Retail customers of an electric service provider are not intended to be included in the definition of ''member of a parent entity.'' Therefore, otherwise qualified applicants would not be disqualified from being in the first priority for consideration solely on the basis of the applicant's retail service provider having a contract with Western for Federal resources. To encourage widespread use of Federal resources, Western may consider the magnitude of direct or indirect benefits from Federal resources received by applicants in determining allocations.

Comment: One comment suggested that resource pool allocations should be given to applicants previously unsuccessful in obtaining a Federal power allocation.

Response: In the October 1, 2004, **Federal Register** notice, Western provided an order of priority for use in determining which qualified applicants would receive consideration for P–DP resource pool allocations. The first order of priority contains those applicants that do not have contracts with Western for Federal power resources or are not members of parent entities that have a contract with Western for Federal power. This category would include those qualified applicants within the marketing area that have been previously unsuccessful at obtaining a contract with Western for Federal power resources.

Comment: Comments were received requesting that Western consider making allocations to municipalities, that are not utilities, for identified end-use loads, such as water, waste water, street lighting, and municipal facilities.

Response: Western's historic practice has been to require electrical utility status for municipalities to be eligible to receive Federal power under the preference clause. This requirement is contained in EPAMP, and utility status will continue as a requirement for municipalities to receive a preference allocation. For the P–DP, Western will consider making allocations to municipal utilities, other than electrical utilities, that are recognized as utilities by their applicable legal authorities, are nonprofit in nature, have electrical facilities, and are independently governed and financed.

Comment: Western received comments that applicants should not be required to meet utility status before Western determines who will receive allocations.

Response: Western must know prior to publishing proposed allocations whether applicants have attained utility status. To accommodate applicants that may need more time, Western has decided to extend the deadline for attaining utility status to April 1, 2006.

Comment: Western received a comment that applicants with direct use needs such as irrigation districts should not be required to meet utility status.

Response: The October 1, 2004, **Federal Register** notice stated that ''qualified applicants that desire to purchase power from Western for resale to consumers * * * must have utility status.'' Utility status means that the applicant has responsibility to meet load growth, has a distribution system, and is ready, willing, and able to purchase power from Western on a wholesale basis for resale to retail consumers. Electrical districts, as well as certain irrigation districts, resell power to retail consumers and, therefore, must meet utility status requirements. Irrigation districts desiring power allocations entirely for direct use loads, which are owned and controlled by these entities, are not required to have utility status as they are not required to distribute power to members that are preference entities or to retail consumers.

Comment: A comment suggested that partial requirements customers of entities with allocations of Federal resources should receive special consideration as compared to full requirements customers of such entities.

Response: Western's consideration of an application for an allocation will not differentiate between a partial requirements customer and a full requirements customer of an entity that has a contract for Federal resources. The amount of any Western power allocation could be affected by the magnitude of benefit received from the Federal resources, which could be impacted by the applicant's status as a partial requirements customer versus as a full requirements customer.

Comment: Comments stated that the future, projected load of applicants should be considered when making the determination as to which applicants should get an allocation and how much power to allocate.

Response: In the October 1, 2004, **Federal Register** notice, Western stated that it would base allocations made to qualified applicants on the actual loads in calendar year 2003. This practice enables Western to more accurately determine allocations and the benefits derived from those allocations, as opposed to consideration of future projected loads, which may or may not be realized. Western will allow applicants to provide updated load data if they desire. Applicants may provide the most recent 12 months of actual load data, which must be received by Western no later than April 1, 2006. In addition, applicants may also provide any other updated or new information relevant to their applications no later than April 1, 2006.

Comment: A comment said that any power remaining unallocated or not placed under contract should be offered to the contractors that contributed the power to the resource pool.

Response: Resource pool power not placed under contract will be offered on a pro rata basis to existing contractors up to the amount they contributed to the resource pool. Beyond that, any remaining resource pool power will be used as determined by Western.

Comment: A comment stated that the entire resource pool should be allocated to Native American applicants.

Response: Native American tribal applicants will be considered for allocations along with all other eligible applicants.

Comment: A comment said that the proposed 1–MW minimum allocation should be decreased or eliminated.

Response: The current marketing plan criteria include a 1–MW minimum for

new customer allocations (52 FR 28333, July 29, 1987). This 1–MW minimum recognizes that Western does not schedule power to entities in quantities of less than 1 MW. Because of this and because small customer allocations were rounded to an even megawatt in the May 5, 2003, **Federal Register** notice (68 FR 23711), Western will continue the 1–MW minimum allocation provision.

Comment: Comments suggested that aggregating or pooling loads of different applicants should be allowed to meet the proposed 1–MW minimum allocation.

Response: Applicants will be allowed to aggregate their loads to qualify for an allocation of P–DP power provided Western is able to schedule power deliveries in 1 MW or greater quantities to the aggregated group. Applicants that aggregate loads will be required to demonstrate to Western's satisfaction that a contractual aggregated arrangement is in place by April 1, 2006. Members of an aggregated group must individually and collectively meet preference status and all other eligibility requirements. Western does not intend to allocate power to aggregated loads that are retail in nature.

Comment: Some comments supported the provision requiring contractors to pay Western in advance for firm electric service.

Response: Western appreciates support for the contract provision requiring contractors to pay their firm electric service bills 1 month in advance, unless both parties mutually agree to pay more than 1 month in advance.

Comment: Comments expressed understanding for the requirement to reimburse existing contractors that provided advanced funding for certain capital items.

Response: Western appreciates support and recognition of the obligation to reimburse existing contractors for any undepreciated replacement advances, to the extent existing contractors' allocations are reduced to create the resource pool.

Comment: Comments requested clarification of the transmission arrangements necessary to deliver P–DP power allocations from P–DP point(s) of delivery to applicants' loads.

Response: As stated in the October 1, 2004, **Federal Register** notice, each customer is ultimately responsible for arranging third-party delivery of firm power beyond P–DP point(s) of delivery. Western may assist new applicants, upon request, in facilitating third-party arrangements for delivery of allocated firm power, which may include transmission and/or displacement power delivery arrangements. Applicants must have the necessary arrangements for transmission, displacement, and/or distribution service in place by April 1, 2008.

Comment: Western received a comment requesting clarification of the transmission and/or distribution requirements of those applicants that purchase for resale to consumers versus those that purchase for end use purposes.

Response: All applicants, including those that purchase power from Western for end use purposes only, must have the necessary arrangements for transmission, displacement and/or distribution service in place by April 1, 2008. Applicants that purchase power for resale to consumers must have electrical utility status; which means the applicant has the responsibility to meet load growth, has a distribution system, and is ready, willing and able to purchase Federal power from Western on a wholesale basis for resale to retail consumers. To meet this electrical utility status requirement, Western will require applicants that purchase power for resale to consumers to either own or lease their distribution systems. The deadline for attaining utility status has been extended to April 1, 2006.

Comment: Comments were received stating that Western should allow bill crediting to accommodate end-use applicants that will not attain utility status.

Response: Under EPAMP, Western reserved the right to provide the economic benefits of its resources to Native Americans directly, in the event unanticipated obstacles to delivery of hydropower benefits arise. Bill crediting is an example of a direct benefit extended to Native Americans. Western's flexibility to provide direct economic benefits under EPAMP is expressly limited to Native Americans.

Comment: A comment stated that the San Luis Rey Indian Water Authority (Water Authority), as a congressionally recognized tribal entity, should have the same preference eligibility as Federally recognized tribes.

Response: As a result of the San Luis Rey Indian Water Rights Settlement Act of 1988, the Water Authority was recognized by Congress as ''an Indian entity under Federal law with which the United States has a trust relationship.'' Because of this and because the tribes that comprise the Water Authority are Federally recognized, Western does regard the Water Authority as a recognized tribal entity for the purposes of this process.

Comment: A comment suggested that the P–DP marketing area should include the City of Page, Arizona.

Response: The P–DP marketing area was not altered by the decision to apply EPAMP to the Post-2008 Resource Pool. The P–DP marketing area excludes the portion of the State of Arizona lying in the Upper Colorado River Basin, except for that portion in which the Navajo Generating Station is located. Navajo Generating Station is included in the marketing area as a resource only. The City of Page lies within the Upper Colorado River Basin and is, therefore, located outside of the P–DP marketing area.

Comment: Comments said contractors should have sufficient notice and opportunity to comment, discuss, cure and appeal any decision by Western's Administrator to adjust power resource allocations during the contract term of the P–DP contract extensions.

Response: Western addressed these concerns in the revision to the General Power Contract Provisions, effective on June 15, 2005.

Final Post-2008 Resource Pool Allocation Procedures

These final procedures for the P–DP resource pool address (1) eligibility criteria, (2) how Western intends to allocate pool resources, and (3) the terms and conditions under which Western will allocate the power pool.

I. Amount of Pool Resources

As of October 1, 2008, Western will allocate, as long-term firm power to eligible preference entities, approximately 17 MW of summer season capacity and 13 MW of winter season capacity, based on estimates of current P–DP hydroelectric resource availability. Firm power means capacity and associated energy allocated by Western and subject to the terms and conditions specified in the Western P–DP electric service contract. The associated energy will be a maximum of 3,441 kilowatthours per kilowatt (kWh/kW) in summer and 1,703 kWh/kW in winter, based on current marketing plan criteria. This new resource pool includes 0.869 MW of summer withdrawable capacity and 0.619 MW of winter withdrawable capacity. Withdrawable power is power reserved for United States priority use, but not presently needed. Priority use power is capacity and energy required for the development and operation of Bureau of Reclamation (Reclamation) projects as required by legislation, and irrigation pumping on certain Indian lands. Reclamation may submit a request to Western for priority use withdrawals, at

which time Western will substantiate that the power to be withdrawn will be used for the purposes specified in the P–DP Marketing Plan Criteria (49 FR 50582). Thereafter, upon a 2-year written notice, Western may withdraw the necessary amount of power on a pro rata basis, which would subsequently reduce each contractor's withdrawable portion of its power allocation.

II. General Eligibility Criteria

Western will apply the following general eligibility criteria to applicants seeking a firm power allocation under the Post-2008 Resource Pool Allocation Procedures:

A. Qualified applicants must be preference entities as defined by section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c), as amended and supplemented.

B. First consideration will be given to qualified applicants in the P–DP marketing area that do not have a contract with Western for Federal power resources or are not a member of a parent entity that has a contract with Western for Federal power resources.

C. Qualified applicants, except Native American tribes, must be ready, willing and able to receive and distribute or use power from Western. Ready, willing, and able means that the potential contractor has the facilities needed to receive power or has made the necessary arrangements for transmission, displacement, and/or distribution service; and the potential contractor's power supply contracts with third parties permit the delivery of Western's power (60 FR 54173). Applicants must have the necessary arrangements for transmission, displacement, and/or distribution service in place by April 1, 2008.

D. Qualified applicants (including cooperatives, public utility districts, public power districts and municipalities) desiring to purchase power from Western for resale to consumers must have electrical utility status by April 1, 2006. Native American tribes are not subject to this requirement. Electrical utility status means the applicant has responsibility to meet load growth, has a distribution system and is ready, willing, and able to purchase Federal power from Western on a wholesale basis for resale to retail consumers. For the P–DP, Western will consider making allocations to municipal utilities, other than electrical utilities, that are recognized as utilities by their applicable legal authorities, are nonprofit in nature, have electrical facilities, and are independently governed and financed.

E. A qualified Native American applicant must be an Indian tribe as defined in the Indian Self Determination Act of 1975, 25 U.S.C. 450b, as amended.

III. General Allocation Criteria

Western will apply the following general allocation criteria to applicants seeking an allocation of firm power under the Post-2008 Resource Pool Allocation Procedures.

A. Allocations of firm power will be made in amounts as determined solely by Western in exercising its discretion under Federal Reclamation Law.

B. An allottee may begin service to purchase firm power only upon the execution of an electric service contract between Western and the allottee, and satisfaction of required conditions in that contract.

C. Firm power will be allocated under these procedures to qualified applicants in accordance with preference provisions of section 9(c) of the Reclamation Project Act of 1939, in the following order of priority:

1. Preference entities in the P–DP marketing area that do not have a contract with Western for Federal power resources or are not a member of a parent entity that has a contract with Western for Federal power resources.

2. Preference entities in the P–DP marketing area that have a contract with Western for Federal power resources or are a member of a parent entity that has a contract with Western for Federal power resources.

3. Preference entities in adjacent Federal marketing areas that do not have a contract with Western for Federal power resources or are not a member of a parent entity that has a contract with Western for Federal power resources.

D. The P–DP marketing area includes:

- All of the drainage area considered tributary to the Colorado River below a point 1 mile downstream from the mouth of the Paria River (Lee's Ferry).
- The State of Arizona, excluding that portion lying in the Upper Colorado River Basin, except for that portion of the Upper Colorado River Basin in which the Navajo Generating Station is located. The Navajo Generating Station is included in the power marketing area as a resource only.
- That portion of the State of New Mexico lying in the Lower Colorado River Basin and the independent Quemada Basin lying north of the San Francisco River drainage area.
- Those portions of the State of California lying in the Lower Colorado River Basin and in drainage basins of all streams draining into the Pacific Ocean south of Calleguas Creek.
- Those parts of the States of California and Nevada in the Lahontan Basin including and lying south of the drainages of Mono Lake, Adobe Meadows, Owens Lake, Amargosa River, Dry Lakes and all closed independent basins or other areas in southern Arizona not tributary to the Colorado River.

For a map of the P–DP marketing area, visit Western's Web site at *http://www.wapa.gov/dsw/pwrmkt.*

E. Western will base allocations made to qualified applicants on the actual loads in calendar year 2003 or the most recent 12 months of actual load data, if received by Western no later than April 1, 2006. Western will apply current marketing plan criteria and EPAMP criteria to these loads, except as stated in this notice.

F. Western will base allocations made to Native American tribes on their actual loads in calendar year 2003 or the most recent 12 months of actual load data, if received by Western no later than April 1, 2006. Western has the right to use estimated load values should actual load data not be available. Western will review and adjust, where necessary, inaccurate estimates received during the allocation process.

G. New contractors must execute electric service contracts within 6 months of receiving a contract offer from Western, unless Western agrees otherwise in writing.

H. The resource pool will be dissolved subsequent to the closing date for executing firm power contracts. Firm power not placed under contract will be offered on a pro rata basis to existing contractors up to the amount they contributed to the resource pool. Beyond that, any remaining power will be used as determined by Western.

I. The minimum allocation shall be 1,000 kilowatts (kW).

J. Applicants seeking an allocation as an aggregated group must demonstrate to Western's satisfaction the existence of a contractual aggregation arrangement by April 1, 2006. Members of an aggregated group must individually and collectively meet preference status and all other eligibility requirements.

K. If unanticipated obstacles to the delivery of hydropower benefits to Native American tribes arise, Western will allow the economic benefits of the resource to be directly provided to the tribes.

IV. General Contract Principles

Western will apply the following general contract principles to all applicants receiving an allocation of firm power under the Post-2008 Resource Pool Allocation Procedures.

A. Western reserves the right to reduce the withdrawable portion of a contractor's contract rate of delivery, upon a 2-year notice of a request by Reclamation for additional priority use power needed to serve project pumping requirements or irrigation pumping on certain Indian lands.

B. Western, at its discretion and sole determination, reserves the right to adjust the contract rate of delivery on 5 years' written notice in response to changes in hydrology and river operations. Such adjustments will only take place after Western conducts a public process.

C. Each applicant is ultimately responsible for arranging third-party delivery. Western may assist new applicants, upon request, in facilitating third-party transmission and/or displacement arrangements for delivery of firm power allocated under these contracts.

D. The Contractor shall not sell any of the firm electric power or energy allocation to any electric utility customer of the Contractor for resale by that utility customer. The Contractor may sell the electric power and energy allocation to its members on condition that said members not sell any of said power and energy to any customer of the members for resale by that customer.

E. Contracts entered into under the Post-2008 Resource Pool Allocation Procedures will provide for Western to furnish firm electric service effective from October 1, 2008, through September 30, 2028.

F. Contractors will be required to pay 1 month in advance for firm electric service. If both parties mutually agree, payments of more than 1 month in advance may be allowed.

G. To the extent existing contractors' power allocations are reduced to create the resource pool, new contractors will be required to reimburse existing contractors for undepreciated replacement advances.

H. Applicants that aggregate their loads will be required to enter into a single firm power contract with Western, with the aggregated group entity as the contracting Party.

I. Contracts entered into as a result of these final procedures will incorporate Western's standard provisions for power sales contracts, including integrated resource planning, and the General Power Contract Provisions.

VI. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

VII. Small Business Regulatory Enforcement Fairness Act

Western has determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

VIII. Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

IX. Environmental Compliance

Western has completed an environmental impact statement on EPAMP, following the National Environmental Policy Act of 1969 (NEPA). The Record of Decision was published in 60 FR 53181, October 12, 1995. Western's NEPA review assured all environmental effects related to these actions have been analyzed.

Dated: December 1, 2005.

Michael S. Hacskaylo,

Administrator.

[FR Doc. E5–7438 Filed 12–15–05; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6670–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared 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. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 1, 2005 (70 FR 16815).

Draft EISs

EIS No. 20050356, ERP No. D–FRC–G03028–00, Port Arthur Liquefield Natural Gas (LNG) Project, Construction and Operation, U.S. Army COE section 10 and 404 Permits, (FERC/EIS–0182D), Jefferson and Orange Counties, TX; and Cameron, Calcasieu, and Beauregard Parishes, LA.

Summary: EPA expressed environmental concerns and requested additional information to be included in the FEIS in the areas of air quality impacts, sediment analysis, dredged material placement for beneficial uses, habitat restoration and mitigation.

Rating EC2.

EIS No. 20050361, ERP No. D–FRC–L05232–WA, Rocky Reach Hydroelectric Project, (FERC/DEIS–0184D), Application for a New License for the Existing 865.76 Megawatt Facility, Public Utility District No. 1 (PUD), Columbia River, Chelan County, WA.

Summary: EPA does not object to the proposed project.

Rating LO.

EIS No. 20050388, ERP No. D–FRC–L05233–WA, Lewis River Hydroelectric Projects, Relicensing the Swift No. 1 (FERC No. 2111–018), Swift No. 2 (FERC No. 2213–011), Yale (FERC No. 2071–013), Merwin (FERC No. 935–053) Project, Application for Relicense, North Fork Lewis River, Cowlitz, Clark and Shamania Counties, WA.

Summary: EPA expressed environmental concerns about water quality impacts, and requested additional information regrading water quality impacts be included in the final EIS.

Rating EC2.

Final EISs

EIS No. 20050440, ERP No. F–SFW–L65451–AK, Alaska Peninsula and Becharof National Wildlife Refuges, Revised Comprehensive Conservation Plan, Implementation, AK.

Summary: EPA does not object to the project as proposed. No formal comment letter was sent to the preparing agency.

EIS No. 20050451, ERP No. F–AFS–L39061–WA, Fish Passage and Aquatic Habitat Restoration at Hemlock Dam, Implementation, Gifford Pinchot National Forest, Mount Adams District, Skamania County, WA.

Summary: No formal comment letter sent to the preparing agency.

EIS No. 20050464, ERP No. F–AFS–G65072–00, Ouachita National Forest,

Proposed Revised Land Resource Management Plan, Implementation, Several Counties, AR; and LeFlore and McCurtain Counties, OK.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050466, ERP No. F–COE–C39018–NJ, Liberty State Park Ecosystem Restoration Project, Hudson Raritan Estuary Study, To Address the Adverse Impacts Associated with Past Filling Activities, Port Authority of New and New Jersey City, Hudson County, NJ.

Summary: No formal comment letter sent to preparing agency.

EIS No. 20050467, ERP No. F–COE–C39017–NY, Montuak Point Storm Damage Reduction Project, Proposed Reinforcement of an Existing Stone Revetment Wall, Suffolk County, NY.

Summary: No comment letter was sent was sent to the proposing agency.

EIS No. 20050477, ERP No. F–COE–K36141–AZ, Santa Cruz River, Paseo de las Iglesias Feasibility Study, To Identify, Define and Solve Environmental Degradation, Flooding and Water Resource Problems, City of Tucson, Pima County, AZ.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20050352, ERP No. FS–NPS–L65264–WA, Elwha River Ecosystem Restoration Implementation Project, Updated Information, Olympic Peninsula, Challam County, WA.

Summary: No formal comment letter was sent to the preparing agency.

Dated: December 13, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E5–7444 Filed 12–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6670–3]

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 December 5, 2005 Through December 9, 2005

Pursuant to 40 CFR 1506.9.

EIS No. 20050515, Draft EIS, NPS, FL, Fort King National Historic Landmark, Special Resource Study, Implementation, Second Seminole War Site, City of Ocala, Marion County, FL, Comment Period Ends: January 30, 2006, Contact: Tim Bemisderfer 404–562–3124.

EIS No. 20050516, Draft Supplement, DOI, 00, Upper Mississippi River National Wildlife and Fish Refuge, Comprehensive Conservation Plan, A New Alternative E: Modified Wildlife and Integrated Public Use, Implementation, MN, WI, IL and IA, Comment Period Ends: February 3, 2005, Contact: Don Hultman 507–452–4232. This document is available on the Internet at *http://www.fws.gov/midwest/planning/uppermiss/index.html.*

EIS No. 20050517, Final EIS, FHW, PA, US–219 Improvements Project, Meyersdale to Somerset, SR 6219, Section 020, Funding, U.S. Army COE Section 404 Permit, Somerset County, PA, Wait Period Ends: January 23, 2006, Contact: James A. Cheatham 717–221–3461.

EIS No. 20050518, Draft EIS, BLM, WY, Atlantic Rim Natural Gas Field Development Project, Proposed Natural Gas Development to 2000 Wells, 1800 to Coal Beds and 200 to Other Formations, Carbon County, WY, Comment Period Ends: January 30, 2006, Contact: David Simons 307–328–4328

EIS No. 20050519, Final EIS, FHW, RI, U.S. Route 6/Route 10 Interchange Improvement Project, To Identify Transportation Alternative, Funding, City of Providence County, RI, Wait Period Ends: January 17, 2006, Contact: Ralph Rizzo 401–528–4548.

EIS No. 20050520, Draft EIS, BIA, OR, Coyote Business Park, Confederated Tribes of the Umatilla Indian Reservation, Proposes to Develop, Build and Manage a Light Industrial Commercial Business Park, Umatilla County, OR, Comment Period Ends: January 30, 2006, Contact: Jerry L. Lauer 541–278–3786.

EIS No. 20050521, Draft EIS, BLM, AZ, Arizona Strip Field Office Resource Management Plan, which includes: Vermilion Cliffs National Monument, Grand Canyon-Parashant National Monument (Parashant) BLM Portion, General Management Plan for the Grand Canyon-Parashant National Monument NPS Portion of Parashant, Implementation, AZ, Comment Period Ends: January 30, 2006, Contact: Diana Hawks 435–688–3266.

EIS No. 20050522, Final EIS, NPS, TX, Big Thicket National Preserve Oil and Gas Management Plan, Implementation, Hardin, Jefferson, Orange, Liberty, Tyler, Jasper and Polk Counties, TX, Wait Period Ends: January 17, 2006, Contact: Linda Dansby 505–988–6095.

Amended Notices

EIS No. 20050411, Draft EIS, IBR, CA, Central Valley Project, West San Joaquin Division, San Luis Unit Long-Term Water Service Contract Renewal, Cities of Avenal, Coalinga and Huron, Fresno, King and Merced Counties, CA, Comment Period Ends: January 17, 2006, Contact: Shane Hunt, 559–487–5138 Revision to FR Notice Published October 7, 2005: Comment Period Extend from November 25, 2005 to January 17, 2006.

Dated: December 13, 2005.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E5–7446 Filed 12–15–05; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0471; FRL–7753–1]

FIFRA Scientific Advisory Panel; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider the Review of Worker Exposure Assessment Methods.

DATES: The meeting will be held on February 14–16, 2006, from 8:30 a.m. to approximately 5:00 p.m. eastern time.

Comments. For the deadlines for the submission of requests to present oral comments and submission of written comments, see Unit I.E. of the **SUPPLEMENTARY INFORMATION**.

Nominations. Nominations of scientific experts to serve as ad hoc members of the FIFRA SAP for this meeting should be provided on or before December 28, 2005.

Special accommodations. For information on access or services for individuals with disabilities, and to request accommodation of a disability, please contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**, preferably at least 10– days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The meeting will be held at [the Holiday Inn Rosslyn at Key Bridge, 1900 North Fort Myer Drive, Arlington,

VA 22209. The telephone number for the Holiday Inn Rosslyn at Key Bridge is (703) 807–2000.

Comments. Written comments may be submitted electronically preferred, through hand delivery/courier, or by mail. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.**

Nominations, requests to present oral comments, and special accommodations: To submit nominations for ad hoc members of the FIFRA SAP for this meeting, requests for special accommodation arrangements, or requests to present oral comments, notify the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**. To ensure proper receipt by EPA, your request must identify docket ID number EPA–HQ–OPP–2005–0471 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Myrta R. Christian, DFO, Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8498; fax number: (202) 564–8382; e-mail addresses: *christian.myrta@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to persons who are or may be required to conduct testing of chemical substances under the Federal Food, Drug, and Cosmetic Act (FFDCA), FIFRA, and the Food Quality Protection Act of 1996 (FQPA). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the DFO listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action under docket ID number EPA–HQ–OPP–2005–0471. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although, a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

Agency Website. EDOCKET, EPA's electronic public docket and comment system was replaced on November 25, 2005, by an enhanced federal-wide electronic docket management and comment system located at *http://www.regulations.gov/*. Follow the on-line instruction.

EPA's position paper, charge/questions to the FIFRA SAP, FIFRA SAP composition (i.e., members and consultants for this meeting) and the meeting agenda will be available by mid-January 2006. In addition, the Agency may provide additional background documents as the materials become available. You may obtain electronic copies of these documents, and certain other related documents that might be available electronically, from the FIFRA SAP Internet Home Page at *http://www.epa.gov/scipoly/sap*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments in hard copy that are mailed or delivered to the docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

C. How and to Whom Do I Submit Comments?

You may submit comments electronically (preferred), through hand delivery/courier, or by mail. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed in this unit, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also, include this contact information on the outside of any disk

or CD ROM you submit, and in any cover letter accompanying the disk or CD ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number EPA–HQ–OPP–2005–0471. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number EPA–HQ–OPP–2005–0471. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

iii. *Disk or CD ROM*. You may submit comments on a disk or CD ROM that you deliver as described in Unit I.C.2 or mail to the address provided in Unit I.C.3. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number EPA–HQ–OPP–2005–0471. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

3. *By mail*. Due to potential delays in EPA's receipt and processing of mail, respondents are strongly encouraged to submit comments either electronically or by hand delivery or courier. We cannot guarantee that comments sent via mail will be received prior to the close of the comment period. If mailed, please send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number EPA–HQ–OPP–2005–0471.

D. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. Provide specific examples to illustrate your concerns.

5. Make sure to submit your comments by the deadline in this document.

6. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

E. How May I Participate in this Meeting?

You may participate in this meeting by following the instructions in this unit. To ensure proper receipt by EPA, it is imperative that you identify docket ID number EPA–HQ–OPP–2005–0471 in the subject line on the first page of your request.

1. *Oral comments*. Oral comments presented at the meetings should not be repetitive of previously submitted oral or written comments. Although requests to present oral comments are accepted until the date of the meeting (unless otherwise stated), to the extent that time permits, interested persons may be permitted by the Chair of the FIFRA SAP to present oral comments at the meeting. Each individual or group wishing to make brief oral comments to the FIFRA SAP is strongly advised to submit their request to the DFO listed under **FOR FURTHER INFORMATION CONTACT** no later than noon, eastern time, February 7, 2006, in order to be included on the meeting agenda. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audiovisual equipment (e.g., overhead projector, 35 mm projector, chalkboard). Oral comments before the FIFRA SAP are limited to approximately 5 minutes unless prior arrangements have been made. In addition, each speaker should bring 30 copies of his or her comments and presentation slides for distribution to the FIFRA SAP at the meeting.

2. *Written comments*. Although, written comments will be accepted until the date of the meeting (unless otherwise stated), the Agency encourages that written comments be submitted, using the instructions in Unit I.C., no later than noon, eastern time, January 31, 2006, to provide the FIFRA SAP the time necessary to consider and review the written comments. It is requested that persons submitting comments directly to the docket also notify the DFO listed under **FOR FURTHER INFORMATION CONTACT.** There is no limit on the extent of written comments for consideration by the FIFRA SAP.

3. *Seating at the meeting*. Seating at the meeting will be on a first-come basis. Individuals requiring special accommodations at this meeting, including wheelchair access and assistance for the hearing impaired, should contact the DFO at least 10 business days prior to the meeting using the information under **FOR FURTHER INFORMATION CONTACT** so that appropriate arrangements can be made.

4. *Request for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP for this meeting*. As part of a broader process for developing a pool of candidates for each meeting, the FIFRA SAP staff routinely solicit the stakeholder community for nominations of prospective candidates for service as ad hoc members of the FIFRA SAP. Any interested person or organization may nominate qualified individuals to be considered as prospective candidates for a specific meeting. Individuals nominated for this meeting should have expertise in one or more of the following areas: Occupational exposure assessment, occupational exposure monitoring, agricultural practices (especially hand labor practices), statistics, and risk assessment. Nominees should be scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments on the scientific issues for this meeting. Nominees should be identified by name,

occupation, position, address, and telephone number. Nominations should be provided to the DFO listed under **FOR FURTHER INFORMATION CONTACT** on or before December 28, 2005. The Agency will consider all nominations of prospective candidates for this meeting that are received on or before this date. However, final selection of ad hoc members for this meeting is a discretionary function of the Agency.

The selection of scientists to serve on the FIFRA SAP is based on the function of the panel and the expertise needed to address the Agency's charge to the panel. No interested scientists shall be ineligible to serve by reason of their membership on any other advisory committee to a Federal department or agency or their employment by a Federal department or agency (except the EPA). Other factors considered during the selection process include availability of the potential panel member to fully participate in the panel's reviews, absence of any conflicts of interest or appearance of lack of impartiality, independence with respect to the matters under review, and lack of bias. Though, financial conflicts of interest, the appearance of lack of impartiality, lack of independence, and bias may result in disqualification, the absence of such concerns does not assure that a candidate will be selected to serve on the FIFRA SAP. Numerous qualified candidates are identified for each panel. Therefore, selection decisions involve carefully weighing a number of factors including the candidates' areas of expertise and professional qualifications and achieving an overall balance of different scientific perspectives on the panel. In order to have the collective breadth of experience needed to address the Agency's charge for this meeting, the Agency anticipates selecting approximately 12 ad hoc scientists.

If a prospective candidate for service on the FIFRA SAP is considered for participation in a particular session, the candidate is subject to the provisions of 5 CFR part 2634, Executive Branch Financial Disclosure, as supplemented by the EPA in 5 CFR part 6401. As such, the FIFRA SAP candidate is required to submit a Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency (EPA Form 3110–48 5–02) which shall fully disclose, among other financial interests, the candidate's employment, stocks and bonds, and where applicable, sources of research support. EPA will evaluate the candidate's financial disclosure form to assess that there are no financial conflicts of interest, no appearance of lack of impartiality and no prior involvement with the development of the documents under consideration (including previous scientific peer review) before the candidate is considered further for service on the FIFRA SAP.

Those who are selected from the pool of prospective candidates, will be asked to attend the public meetings, and to participate in the discussion of key issues and assumptions at these meetings. In addition, they will be asked to review and to help finalize the meeting minutes. The list of FIFRA SAP members participating at this meeting will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

II. Background

A. Purpose of the FIFRA SAP

Amendments to FIFRA enacted November 28, 1975 (7 U.S.C. 136w(d)), include a requirement under section 25(d) of FIFRA that notices of intent to cancel, or reclassify pesticide registrations pursuant to section 6(b)(2) of FIFRA, as well as proposed and final forms of regulations pursuant to section 25(a) of FIFRA, be submitted to a SAP prior to being made public or issued to a registrant. In accordance with section 25(d) of FIFRA, the FIFRA SAP is to have an opportunity to comment on the health and environmental impact of such actions. The FIFRA SAP shall also make comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of analyses made by Agency scientists. Members are scientists who have sufficient professional qualifications, including training and experience, to be capable of providing expert comments as to the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) of FIFRA. The Deputy Administrator appoints seven individuals to serve on the FIFRA SAP for staggered terms of 4 years, based on recommendations from the National Institutes of Health and the National Science Foundation.

Section 104 of FQPA (Public Law 104–170) established the FQPA Science Review Board (SRB). These scientists shall be available to the FIFRA SAP on an ad hoc basis to assist in reviews conducted by the FIFRA SAP.

B. Public Meeting

The FIFRA SAP will meet to consider the Review of Worker Exposure Assessment Methods. The Agency issued its first occupational exposure testing guidelines in the early 1980s. These guidelines were intended to standardize the methodology used to conduct the studies necessary to allow the Agency to determine the potential exposures, and consequently risks, associated with the activities surrounding pesticide exposure. These activities included handling pesticides (i.e., mixing, loading and applying) as well as exposures resulting from working in fields following pesticide applications (e.g., harvesting, thinning, weeding). In the early 1990s, the Pesticide Handlers Exposure Data base was constructed in order to estimate exposures resulting from mixing/loading/applying pesticides. The studies assembled for use in this data base were taken from published literature as well as from industry-generated studies. This database has been used as the main source for estimating occupational exposures to workers handling pesticides for both registration and reregistration actions. In 1995, in order to develop a similar data base which could be used to address fieldworker exposures, the Agency issued a data call-in notice (DCI) for post-application farmworker exposure data. As a result of this DCI, every pesticide registrant who manufactured products that could lead to post-application farmworker exposures needed to generate data that could be used to quantify exposures to their products.

In response to the issuance of the 1995 DCI, most major pesticide registrants consolidated their efforts and formed the Agricultural Reentry Task Force (ARTF). For more details, see *www.exposuretf.com.* The ARTF has generated the vast majority of the post-application farmworker exposure monitoring data since that time. It follows that the bulk of the data that have been generated by ARTF include exposure monitoring studies for a variety of hand-labor practices in a range of crops.

The purpose of this meeting of the FIFRA Scientific Advisory Panel (SAP) is to evaluate certain methodologies used to generate exposure studies and how the Agency uses these and other studies to conduct occupational exposure assessments. Three key issues have been identified by the Agency as the focus of this review. These include:

- *Hand Exposure Methods.* Based upon review of the data, it appears that the hands are important contributors to overall exposure levels. In most monitoring studies used by the Agency, a wash technique, which is based on methods described in the scientific literature, is generally utilized to

measure exposure to the hands. The goal of this evaluation is to identify issues associated with the use of this technique and to make recommendations with regard to how these data should be interpreted for exposure assessment purposes based on factors such as chemical properties and exposure duration.

• *Predictive Capability Of Exposure Monitoring Techniques.* Most exposure data that are currently available are based on the use of passive dosimetry techniques (e.g., whole-body dosimeters and handwash). These data quantify the residues that result on the surface of the skin after completing a job task of some sort. The purpose of this evaluation is to characterize the performance of passive dosimetry as a predictive tool for risk assessment purposes (e.g., through comparison with biological monitoring data and other possible analyses).

• *Clustering Of Hand Labor Tasks For Exposure Assessment Purposes.* The crops in the United States that require hand labor for successful production are extremely varied and range from field crops such as lettuce (e.g., harvest is a key labor requirement) to tree fruit such as apples (e.g., thinning and harvest are key labor requirements). Based on the currently available data and a need to address exposures related to hand labor across agriculture, the Agency has created clusters or groups which represent categories of exposures that are believed to be similar for assessment purposes. These categories allow the Agency to develop risk estimates for a wide range of crops and were defined based on agronomic and ergonomic similarities in crops and workers, respectively. The purpose of this evaluation is to characterize the methods used to define a representative cluster and analyze the monitoring data that pertains to that group which are then used for exposure assessment purposes. An example, based on vineyard and trellis crops will be used for illustrative purposes.

C. FIFRA SAP Meeting Minutes

The FIFRA SAP will prepare meeting minutes summarizing its recommendations to the Agency in approximately 90 days after the meeting. The meeting minutes will be posted on the FIFRA SAP web site or may be obtained by contacting the PIRIB at the address or telephone number listed in Unit I.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: December 6, 2005.

Elizabeth Resek,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 05–24139 Filed 12–15–05; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Docket No. EPA–R04–SFUND–2005–0460; FRL–8009–2]

Sadler Drum Superfund Site, Mulberry, Polk County, FL; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under Section 122(h)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the United States Environmental Protection Agency is proposing to enter into a settlement for the partial reimbursement of past response costs concerning the Sadler Drum Superfund Site in Mulberry, Polk County, Florida, with Settling Parties, Hilton Sadler and Diane Sadler.

DATES: The Agency will consider public comments on the proposed settlement until January 17, 2006. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate.

ADDRESSES: Copies of the proposed settlement are available from Ms. Paula V. Batchelor. Submit your comments, identified by Docket ID No. EPA–RO4–SFUND–2005–0460 or Site name Sadler Drum, by one of the following methods:

• *www.regulations.gov:* Follow the on-line instructions for submitting comments.

• E-mail: *Batchelor.Paula@epa.gov.*

• Fax: (404) 562–8842.

• Mail: Ms. Paula V. Batchelor, U.S. EPA Region 4, WMD–SEIMB, 61 Forsyth Street, SW., Atlanta, Georgia 30303. ''In addition, please mail a copy of your comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attn: Desk Officer for EPA, 725 17th St., NW., Washington, DC 20503.''

Instructions: Direct your comments to Docket ID No. EPA–EPA–R04–SFUND–2005–0460. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. EPA Region 4 office located at 61 Forsyth Street, SW., Atlanta, Georgia 30303. Regional office is open from 7 a.m. until 6:30 p.m. Monday through Friday, excluding legal holidays.

Written comments may be submitted to Ms. Batchelor within 30 calendar days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: Paula V. Batchelor at 404/562–8887.

Dated: December 8, 2005.

Rosalind H. Brown,

Chief, Superfund Enforcement & Information Management Branch, Waste Management Division.

[FR Doc. E5–7452 Filed 12–15–05; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Unifreight Cargo Systems, Inc., 1512 Avenida De Aprisa, Camarillo, CA 93010. Officer: Rolando P. Gipulan, President (Qualifying Individual).

First Express Logistics Inc., 147–38 182nd Street, Suite 204, Jamaica, NY 11413. Officer: Chang U James Lee, President (Qualifying Individual).

Forman Shipping U.S.A. Inc., 145–38 157th Street, 1st Floor, Jamaica, NY 11434. Officer: Sl Yual An, President (Qualifying Individual).

DB Shipping (USA) Inc., 150–30 132nd Ave., Suite 309, Jamaica, NY 11434. Officers: Fang Fei, Vice President (Qualifying Individual). Ren Chang Wang, President.

Airgate International Corporation (Chicago), 2249 Windsor Court, Addiston, IL 60101. Officers: Linda Murphy, Asst. Secretary (Qualifying Individual). Frank P. Zambuto, President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

ADP Global Logistics, Inc. (USA), 6539 Whitelily Street, Corona, CA 92880. Officers: Yan Chen, CEO (Qualifying Individual). Hong Wang, Director.

All City Air and Ocean, Inc., 1605 John Street, Ste. 209, Ft. Lee, NJ 07024. Officer: Kathleen Dillon, Director (Qualifying Individual).

Titan Transport Services, LLC, 924 E. 20th Street, Hialeah, FL 33013. Officer: Yaquelin Rodriquez, President (Qualifying Individual).

Uninations Corporation, 57 Bernadette Road, Morganville, NJ 07751, Officer: Junlin Shen, President (Qualifying Individual).

Oxford Transport, Inc., 500 W. 140th Street, 1st Floor, Gardena, CA 90248. Officer: Soon Mi Kang, President (Qualifying Individual).

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicantz.

Confianza Import Clearance, 810 W. Commonwealth Avenue, Alhambra, CA 91801. Peter Pang, Sole Proprietor.

Dated: December 12, 2005.

Bryant L. VanBrakle,

Secretary.

[FR Doc. E5–7405 Filed 12–15–05; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 3, 2006.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. Joseph A. Riley, Princeton, New Jersey; to act in concert with the Mawn Family Group and, to acquire voting shares of Northern Bancorp, Inc., Woburn, Massachusetts, and thereby indirectly acquire voting shares of Northern Bank and Trust Company, Woburn, Massachusetts.

Board of Governors of the Federal Reserve System, December 13, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7442 Filed 12–15–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 2006.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer) 411 Locust Street, St. Louis, Missouri 63166-2034:

1. Boulevard Bancshares, Inc., Chesterfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of WestBridge Bank & Trust Company, Chesterfield, Missouri (in organization).

Board of Governors of the Federal Reserve System, December 13, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7441 Filed 12–15–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 12, 2006.

A. Federal Reserve Bank of New York (Jay Bernstein, Bank Supervision Officer) 33 Liberty Street, New York, New York 10045-0001:

1. Banco Santander Central Hispano, S.A., Madrid, Spain; to acquire 24.99 percent of the voting shares of Sovereign Bancorp, Inc., Wyomissing, Pennsylvania, and thereby indirectly acquire voting shares of Sovereign Bank, Wyomissing, Pennsylvania, and Independence Community Bank, Brooklyn, New York, and engage in operating savings associations, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, December 13, 2005.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E5–7440 Filed 12–15–05; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Charges for Certain Disclosures

AGENCY: Federal Trade Commission.

ACTION: Notice regarding charges for certain disclosures.

SUMMARY: The Federal Trade Commission announces that the ceiling on allowable charges under section 612(f) of the Fair Credit Reporting Act (''FCRA'') will increase from $9.50 to $10.00 on January 1, 2006. Under 1996 amendments to the FCRA, the Federal Trade Commission is required to increase the $8.00 amount referred to in paragraph (1)(A)(i) of section 612(f) on January 1 of each year, based proportionally on changes in the Consumer Price Index (''CPI''), with fractional changes rounded to the nearest fifty cents. The CPI increased 23.33 percent between September 1997, the date the FCRA amendments took effect, and September 2005. This increase in the CPI and the requirement that any increase be rounded to the nearest fifty cents results in an increase in the current maximum allowable charge to $10.00 effective January 1, 2006.

EFFECTIVE DATE: January 1, 2006.

ADDRESSES: Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Keith B. Anderson, Bureau of Economics, Federal Trade Commission, Washington, DC 20580, 202–326–3428.

SUPPLEMENTARY INFORMATION: Section 612(f)(1)(A) of the Fair Credit Reporting Act, which became effective in 1997, provides that a consumer reporting agency may charge a consumer a reasonable amount for making a disclosure to the consumer pursuant to section 609 of the Act.[1] The law states that, where a consumer reporting agency is permitted to impose a reasonable charge on a consumer for making a disclosure to the consumer pursuant to section 609, the charge shall not exceed $8 and shall be indicated to the consumer before making the disclosure. Section 612(f)(2) goes on to state that the Federal Trade Commission (''the Commission'') shall increase the $8.00 maximum amount on January 1 of each year, based proportionally on changes in the Consumer Price Index, with fractional changes rounded to the nearest fifty cents.

Section 211(a) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act'') adds a new section 612(a) to the FCRA that gives consumers the right to request free annual disclosures once every 12 months. The maximum allowable charge established by this Notice does not apply to requests made under that new provision. The charge will, however, apply where a consumer orders a file disclosure directly from one of the three nationwide consumer reporting agencies because the consumer has already received a free annual disclosure and does not otherwise qualify for an additional free disclosure.

The Commission considers the $8 amount referred to in paragraph (1)(A)(i) of section 612(f) to be the baseline for the effective ceiling on reasonable charges dating from the effective date of the amended FCRA, *i.e.*, September 30, 1997. Each year the Commission calculates the proportional increase in the Consumer Price Index (using the most general CPI, which is for all urban consumers, all items) from September 1997 to September of the current year. The Commission then determines what modification, if any, from the original base of $8 should be made effective on January 1 of the subsequent year, given the requirement that fractional changes be rounded to the nearest fifty cents.

Between September 1997 and September 2005, the Consumer Price Index for all urban consumers and all items increased by 23.33 percent—from an index value of 161.2 in September 1997 to a value of 198.8 in September 2005. An increase of 23.33 percent in the $8.00 base figure would lead to a new figure of $9.87. However, because the statute directs that the resulting figure be rounded to the nearest $0.50, the allowable charge should be $10.00.

The Commission therefore determines that the allowable charge for the year 2006 will be $10.00.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 05–24191 Filed 12–15–05; 8:45 am]

BILLING CODE 6750–01–P

[1] This provision, originally section 612(a), was added to the FCRA in September 1996 and became effective in September 1997. It was relabelled section 612(f) by section 211(a) of the Fair and Accurate Credit Transactions Act of 2003 (''FACT Act''), Public Law 108–159, which was signed into law on December 4, 2003.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS 1880/1882, CMS 10142 and CMS 10036]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

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), Department of Health and Human Services, 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 function; (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:* The Request for Certification as a Supplier of Portable X–Ray Services and Portable X–Ray Survey Report Form under the Medicare and Medicaid Program—Portable X–Ray Survey Report and Supporting Regulations under 42 CFR 486.100–486.110; *Form Number:* CMS–1880/1882 (OMB#: 0938–0027); *Use:* The Medicare program requires portable X-ray suppliers to be surveyed for health and safety standards. The CMS–1882 is the survey form that records survey results. The CMS–1880 is used by the surveyor to determine if a portable X-ray applicant meets the eligibility requirements. This information serves as a screen for the State survey agency to determine if the portable X-ray supplier has the basic capabilities to participate in the Medicare program. CMS will use this information to make certification decisions; *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit; *Number of Respondents:* 655; *Total Annual Responses:* 98; *Total Annual Hours:* 172.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage and Prescription Drug Plans (PDP) contained in 42 Code of Federal Regulation (CFR): 422.250, 422.252, 422.254, 422.256, 422.258, 422.262, 422.264, 422.266, 422.270, 422.300, 422.304, 422.306, 422.308, 422.310, 422.312, 422.314, 422.316, 422.318, 422.320, 422.322, 422.324, 423.251, 423.258, 423.265, 423.272, 423.279, 423.286, 423.293, 423.301, 423.308, 423.315, 423.322, 423.329, 423.336, 423.343, 423.346, 423.350; *Form Number:* CMS–10142 (OMB#: 0938–0944); *Use:* Under the Medicare Modernization Act, Medicare Advantage Organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing bid to CMS for approval. The BPT software is used by MAOs and PDPs to price their plan benefit package. The BPT software is used by CMS to review and approve the plan pricing proposed by each organization; *Frequency:* Reporting—On occasion, Annually and As required by new legislation; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 350; *Total Annual Responses:* 350; *Total Annual Hours:* 12,050.

3. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Inpatient Rehabilitation Assessment Instrument and Data Set for Prospective Payment System for Inpatient Rehabilitation Facilities and Supporting Regulations in 42 CFR Sections 412.23, 412.604, 412.606, 412.610, 412.614, 412.618, 412.626, 413.64; *Form Number:* CMS–10036 (OMB#: 0938–0842); *Use:* This is a request to use the Inpatient Rehabilitation Facilities-Patient Assessment Instrument (IRF–PAI) and its supporting manual for the implementation phase of the Inpatient Rehabilitation) Prospective Payment System (PPS). This payment system is to cover both operating and capital costs for inpatient rehabilitation hospital services. It will apply to rehabilitation units of acute care hospitals as well as to rehabilitation hospitals, both of which are exempt from the current Inpatient PPS which is generally applicable for inpatient hospital services. Use of this instrument will enable CMS to implement a classification and payment system for the legislatively mandated inpatient rehabilitation hospital and the aforementioned exempt units. *Frequency:* Recordkeeping, Third party disclosure and Reporting—On occasion; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 1,165; *Total Annual Responses:* 390,000; *Total Annual Hours:* 421,939.

To obtain copies of the supporting statement and any related forms for these paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/regulations/pra/,* 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 by the OMB Desk Officer at the address below, no later than 5 p.m. on January 17, 2006.

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, CMS Desk Officer, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: December 9, 2005.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 05–24112 Filed 12–15–05; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003N–0273]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Research Study Complaint Form

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 January 17, 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: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

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.

Research Study Complaint Form

Currently, FDA's Center for Drug Evaluation and Research, Division of Scientific Investigations (DSI), receives an average of about 150 unsolicited complaints per year about scientific misconduct in clinical research regulated by FDA through electronic mail, regular mail, phone, and personal contacts. DSI will continue to receive and process such complaints. The internet-based complaint form for consumer complaints on research studies will provide an additional convenient and efficient way for the public to submit complaints regarding misconduct in clinical research regulated by FDA. The complaint form asks questions about the individual, company, or organization that is the subject of the complaint, the event and the drug product(s) that prompted the complaint, and optional information about the person submitting the complaint. The complaint form will be accessible at *http://didit.devis.com/complaints* (username: public; password: fdapublic).

FDA will use the information collected through the complaint form to identify inadequacies in the current services and practices involving human subjects in clinical research and to improve and maintain high quality of services and practices for the affected public. The complaint form will be encrypted so that any information of a sensitive nature will not be unnecessarily or prematurely disclosed. The complaints will remain anonymous unless the complainant voluntarily discloses their identity. Participation is fully voluntary, and complainants will be able to complete, review, edit, and submit the form directly to the FDA. DSI will acknowledge the receipt of each complaint.

Initial analyses by DSI of the information from each complaint will be completed within 10 working days. Each complaint will be reviewed by a responsible person in DSI and then distributed to the appropriate unit in DSI or FDA for further action. DSI will contact the complainant if the complainant requests a followup contact. If the complainant does not request any followup contact, then no additional contact with the complainant is anticipated.

FDA estimates that approximately 144 persons will voluntarily complete the complaint form each year. The estimated time for completing each complaint form will be one hour, resulting in a total burden of 144 hours per year (144 complainants x 1 hour = 144 burden hours per year). The burden of this collection of information is estimated as follows:

TABLE 1.—ESTIMATED ONE-TIME REPORTING BURDEN[1]

Number of Respondents	Annual Frequency Per Response	Total Annual Responses	Hours per Response	Total Hours
144	1	144	1	144

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

In the **Federal Register** of June 30, 2003 (68 FR 38711), FDA requested comments on this information collection. FDA received 3 comments.

(Comment 1) One comment stated that the collection of information is not necessary for the proper performance of FDA's functions. The comment noted that FDA states that it currently receives 150 complaints per year related to alleged scientific misconduct in clinical research via e-mail, mail, and personal contacts, and will continue to accept complaints via these routes. The comment stated that the current system by which FDA accepts complaints spontaneously appears effective and that an additional route is not needed. The comment discouraged the use of an Internet form through which very few complaints may be expected to be filed. The comment stated that it is neither clear that an Internet collection would offer any advantage over existing routes, nor is it clear that it will facilitate the filing of complaints.

(Response) FDA initiates investigations to detect fraud and noncompliance in clinical research based on the complaints it receives. These investigations help FDA to assure that clinical research data submitted to the agency is truthful and accurate and, thereby, help FDA to protect the public by assuring the safety and efficacy of human drugs and biological products. Although the current system of receiving complaints via e-mail, mail, and personal contact, are effective, FDA is constantly attempting to improve its effectiveness by using innovative ideas and processes. Ease of access to an Internet-based complaint form, ability to submit complaints anonymously, and the ability to provide responses to pertinent and standard questions listed on the complaint form offer advantages over the current processes of collecting complaints. It is not possible to predict how many complaints will be submitted to FDA using the Internet-based complaint form. Once the Internet-based complaint form becomes available to the public and the public finds the form easy to use, FDA hopes that the form will become a much more standard means for the public to submit complaints that pertain to FDA-regulated research. The increased use of the Internet-based form will also relieve FDA staff from the time-consuming process of personally documenting each complaint.

The comment also noted that FDA estimates it will take respondents 1 hour to complete the form. The comment stated that while this estimate is reasonable, it may take longer for respondents to locate the form on the Internet. The comment stated that it is not obvious on which Web site(s) the form will appear (e.g., National Institutes of Health (NIH) clinical trial sites, HHS Web site (*http://www.hhs.gov*), FDA Web site(*http://www.fda.gov*)) and how easy it will be to locate.

(Response) The public will be able to access the Internet-based complaint form on the home page of DSI's Web site. The DSI Web site is accessible to the public at *http://www.fda.gov/cder/offices/dsi*. This Web site will include a prominent and direct link to the Internet-based complaint form, which will provide easy access and use of the complaint form. The location of the

complaint form will also be publicized through presentations made by DSI staff at seminars and conferences.

The comment stated that an ad hoc reporting of complaints offers a superior collection mechanism because it allows complaining parties to report alleged misconduct without steering the information offered by a form. The existing collections of information via phone, e-mail, fax, and mail are proven alternatives.

(Response) The complaint form is not intended to direct the complainant's answer. The form may help the complainant to provide more pertinent information to the agency than he/she might otherwise provide. Each complainant will voluntarily submit the complaint. The complainant has the option of providing as much information as desired. There are only two questions on the complaint form that must be answered: (1) Who is the complaint about? and (2) What is the complaint about? If the complainant does not know the answer to any other question in the complaint form, or if the complainant does not wish to provide any additional information, the complainant may leave blank (unanswered) the space following each question. FDA notes that the existing methods of collecting complaint-related information often result in incomplete information and hence should not be assumed to be an existing proven alternative.

The comment stated that if the Internet-based complaint form is used, it should be revised to improve the quality, utility, and clarity of the information to be collected as follows: The form should provide FDA with minimal information upon which to investigate a complaint. To this end, the form should be designed to facilitate its completion with readily available information. It may be unlikely that the reporter has the protocol number and full study title readily available.

(Response) The complaint form has been revised to only obtain minimal information that would be sufficient to facilitate an FDA investigation. As mentioned previously in this document, there are only two questions on the complaint form that must be answered: (1) Who is the complaint about? and (2) What is the complaint about? If the complainant does not know the answer to any other question in the complaint form, or if the complainant does not wish to provide any additional information, the complainant may leave blank (unanswered) the space following each question. If the complainant is aware of study-specific information such as a protocol number and study title, they will have the option of providing such details in the complaint form. Hence, a complainant will have the option of only providing information that is readily available.

The comment stated that the form should be accompanied by the following: (1) An introduction to the form, (2) an explanation as to how it is to be used, and (3) by instructions for its completion.

(Response) The introduction to the complaint form has been revised to read as follows:

DSI COMPLAINT FORM

If you wish to report adverse events (adverse effects or adverse reactions) to drugs or report (medical) product problems, contact MedWatch.

If your complaint is about a research study, please complete this form.

The purpose of this form is for collecting information about the potential scientific or research misconduct, or questionable research practices, involving the use of an FDA regulated drug product.

You must answer the following two questions: (1) Who are you complaining about? and, (2) What is your complaint? If you do not know the answer to any other question in the complaint form, or if you do not wish to provide any additional information, you may leave a blank (unanswered) space following each question.

WHO ARE YOU COMPLAINING ABOUT?

Please provide as much information as possible in this section. You must provide the name of a person, company, or organization about whom you are complaining. If you do not know the answer to any other question, or if you do not wish to provide any additional information, you may leave a blank (unanswered) space following each question.

Name of Person, Company, or Organization: (Required Information)

In addition, under the Complaint Information section, the following change will be made to the first question:

What is your complaint? (Required Information)

The comment stated that the form could be improved by reordering the sections so that they appear in the following order: (1) Reporter Information, (2) Complaint Description, and (3) Organization About Which Complaint Refers.

(Response) FDA has organized the sections based on the order of the importance of the information required for investigating a complaint. Hence, they appear in the following order: (1) The Organization That Is the Subject of the Complaint, (2) The Complaint Description, and (3) Reporter Information (which is optional).

The comment stated that although the **Federal Register** notice states that FDA will contact the complainant if the complainant requests a followup contact, the form lacks this question.

(Response) The optional reporter information section begins with the question ''May the FDA contact you for more information?'' If the answer is yes, the next question is ''How may we contact you? If by phone, please suggest times that are convenient for you.''

The comment stated that the form should use terms and explanations easily understood by the public at no more than a sixth grade reading level. Terms like ''bioequivalence,'' ''sponsor,'' and ''monitor'' should be avoided as they are not widely known except by persons associated with pharmaceutical development.

(Response) The complaint form was designed for the general public to understand. Terms like ''bioequivalence,'' ''sponsor,'' and ''monitor'' will not be understood by everyone, but an individual who does not see a familiar radio-button to select can go to the field titled ''other'' and type the information as they know it.

The comment stated that asking complaining parties to identify other study subjects does not seem consistent with the increased protections being afforded to the privacy of research subjects.

(Response) Requesting complainants to identify other persons (subjects or staff) whom they already know, and who may be able to provide corroborating information pertaining to a complaint, is consistent with current practice. It is also important to note that the complainant is not always a study subject, and the names identified could include study personnel who were involved in the studies under complaint and who may be willing to provide information. In addition, it is important to note that FDA is able to review and copy the records of subjects in studies regulated by FDA. When there is sufficient reason to suspect the validity of data pertaining to specific subjects involved in research, FDA obtains the names of study subjects.

After reviewing this section of the complaint form, FDA has revised the form to note that complainants should also be requested to provide any available contact information regarding those persons they identify as having the potential for providing additional complaint-related information. The complaint form question has been revised to read as follows: ''If you know the name(s) of other persons (subjects or

staff) who were involved in the study(ies), or anyone else who is willing to voluntarily provide information, please list them and include any available contact information (e.g. phone number, fax number, email address, mailing address, etc.).''

Section 704(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 374(a)) and the Bioresearch Monitoring (BIMO) regulations at 21 CFR 812.145(b), 21 CFR 312.68, and 21 CFR 56.115(b), permit FDA investigators at reasonable times to have access to, copy, and verify records. In addition, the subjects' informed consent forms are to include ''a statement describing the extent, if any, to which confidentiality of records identifying the subject will be maintained and that notes the possibility that the Food and Drug Administration may inspect the records'' (21 CFR 50.25(a)(5)). The disclosure of this information to FDA would be consistent with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health and Human Service's (HHS') implementing regulation on Standards for Privacy of Individually Identifiable Health Information (the Privacy Rule). HIPAA and the Privacy Rule only apply to covered entities (i.e., health plans, health care clearinghouses, and to any health care provider who transmits health information in electronic form in connection with transactions for which the Secretary of HHS has adopted standards under HIPAA). As such, many complainants would not be covered by the Privacy Rule. Covered entities may use or disclose protected health information (as defined in 45 CFR 164.501), without a written authorization, as specified in the Privacy Rule. For example, a covered entity may use or disclose protected health information to the extent such use or disclosure is required by law (45 CFR 164.512(a)). A covered entity may disclose protected health information to a public health authority authorized by law to collect or receive such information for the purposes (among others) of conducting public health surveillance, public health investigations, and public health interventions (45 CFR 164.512(b)(1)(i)). In addition, a covered entity may disclose protected health information to a health oversight agency for oversight activities authorized by law including audits, investigations, and inspections (45 CFR 164.512(d)). Accordingly, complainants (who are also covered entities) could submit the complaint form to FDA consistent with the Privacy Rule.

The comment stated that although the consent form for a clinical trial should indicate the number of subjects planned for enrollment, it seems unlikely that any one subject would know how many subjects were actually enrolled.

(Response) If a complainant does not know ''how many subjects were enrolled in the study(ies),'' they need not record any information in that field on the complaint form. It is important to note that the complainant is not always a study subject. Sometimes, study coordinators or monitors who are familiar with the number of subjects enrolled in a study may submit the complaint.

The comment objected to complainants being given the option to report anonymously. The comment stated that complainants should be willing to identify themselves to FDA and should be assured that their identities will not be disclosed.

(Response) FDA currently receives several anonymous complaints among the 150 complaints that it receives (via mail and phone contacts) each year regarding alleged scientific misconduct in clinical research. The complaint form does provide complainants the option to reveal their identity. However, FDA believes that complainants should also have the option to remain anonymous. Although FDA makes a good faith effort to protect the identities of complainants, no assurance can be given to complainants that their identity will never be disclosed. It is also important to note that the complainant is not always a study subject. Sometimes, study coordinators or monitors may submit the complaint and would like to remain anonymous for fear of retribution or retaliation.

The comment stated that although the use of an Internet-based form would appear to simplify the collection of complaints, the form as currently proposed would not do so. FDA would need to publicize the availability of the form, explain its intent, revise the form's content, and provide instructions for the form's completion in order to make the Internet-based form a viable addition to existing routes through which complaints are currently captured.

(Response) As mentioned previously in this document, FDA believes that the Internet-based complaint form will simplify the collection of complaints. In addition, work is in progress to automate the data transfer from valid complaint forms into a complaint database, which would save personnel resources that would otherwise be needed to manually record and track complaints. In addition, the automation would reduce the potential for transcription errors and enhance DSI's ability to track complaints. FDA will publicize the availability of the Internet-based complaint form, explain its intent, revise the form's content as necessary, and provide instructions for the form's completion in order to make the Internet-based complaint form a viable addition to existing routes through which complaints are currently captured. It is FDA's intention that the Internet-based complaint form will minimize the paperwork burden for complainants, minimize the cost to the Federal government of the collection, maintenance, use, and disposition of information, and ensure that information technology is used to improve performance of agency missions, including the reduction of information collection burdens on the public.

(Comment 2) A second comment suggested that we change the introductory statement from ''If you wish to report side effects to drugs or other medical products * * *'' to ''If you wish to report adverse reactions or medical product problems contact MEDWATCH.'' The comment stated that MEDWATCH is an adverse event and product problem reporting system, and is typically not used to report side effects that are listed in the product's labeling but rather report serious adverse events not included in the labeling or minimally described in the labeling.

(Response) The introduction to the complaint form has been revised as follows to state: ''If you wish to report adverse events (adverse effects or adverse reactions) to drugs or report (medical) product problems contact MedWatch.''

The comment recommended that the introduction to the form include a statement about the purpose of the form e.g., ''the purpose of this form is for the agency to collect important information about the potential scientific or research misconduct, or questionable research practices, involving the use of an FDA-regulated product.'' The comment stated that without this disclaimer, FDA will likely obtain irrelevant information that is not under FDA, specifically BIMO, purview.

(Response) The following statement of purpose has been added to the introduction in order to obtain more specific information: ''The purpose of this form is for collecting information about potential scientific or research misconduct, or questionable research practices, involving the use of a FDA regulated drug product.''

The comment suggested inserting an e-mail address field.

(Response) The complaint form as designed does provide a field for the complainant to provide an e-mail address. FDA has revised the form to add an option for a complainant to provide the email address of the person they are complaining about.

The comment asked whether FDA had a specific interest in collecting information about coinvestigators or subinvestigators.

(Response) FDA is interested in collecting complaints about subinvestigators and study personnel involved in the conduct of clinical investigations, and the complaint form provides the option for a complainant to provide ''Other'' information about persons or entities that are not specifically included as data fields with radio-buttons. Hence, there would be no need for adding additional radio-buttons for coinvestigators or subinvestigators.

The comment suggested using ''Clinical Study Site'' to be more clear.

(Response) The complaint form will be revised to replace the use of ''Clinical Site'' with ''Clinical Study Site''. In addition, the complaint form will be revised to replace ''Site Employee'' with ''Employee'' under the question ''What is your affiliation with the study?''

The comment asked whether the data collection is limited to good clinical practices (GCPs) and good laboratory practices (GLPs), and whether it pertains to current good manufacturing practices (CGMPs).

The comment recommended adding a check box so the complaint can be appropriately triaged to the correct office (e.g., that handles GCPs, GLPs, or CGMPs) within the appropriate Center.

(Response) It is anticipated that the complaints submitted to DSI will mostly pertain to GCPs and GLPs related to clinical studies involving FDA regulated drug products. The data collection is not intended to include CGMP issues. DSI will forward any complaints pertaining to CGMP issues to the appropriate divisions within FDA. Hence, the addition of a check box for CGMP does not offer any advantage and will not be added.

The comment suggested that FDA modify the question ''What is your complaint?'' to be more clear, and suggested that it be replaced with ''What information do you have that relates to questionable research or scientific misconduct with an FDA regulated product (biologic, device, drug, food, etc.).''

(Response) The question on the complaint form ''What is your complaint?'' is the most direct approach to eliciting the required information from a complainant. Hence, no modification of the question is necessary.

The comment recommended revising two existing questions to: ''What was the approximate timeframe related to the event to which you are reporting?''

(Response) The pertinent questions currently on the complaint form ''When did the event(s) take place?'' and ''When did you participate in the study?'' are the most direct approach to eliciting the required information from a complainant. Hence, no modification of these questions is necessary.

The comment suggested the insertion of a series of checkboxes, similar to the person or organization about which they are complaining, to indicate the type of regulated product. The comment stated that this will facilitate a quick triage to the appropriate center within FDA.

(Response) The form is for collecting complaints regarding FDA regulated drug products and is intended to be an adjunct to DSI's existing methods of collecting complaints. We do not anticipate receiving complaints about other FDA regulated products and hence do not need to insert additional checkboxes. If DSI receives complaints that pertain to other FDA regulated products, they will be forwarded to the appropriate center within FDA. The addition of check boxes is not likely to enhance or expedite this process.

The comment suggested using the question ''What is the name(s) of the medical products related to your report?'' to prompt the entry of brand name, trade name, generic name, and so forth.

(Response) The comment pertains to the complaint form question ''What is/are the name(s) of the study drug(s) or product(s), if known?'' The question currently on the complaint form is the most direct approach for eliciting the required information from a complainant. Modifying the question as suggested may unnecessarily confuse the complainant.

The comment suggested using the question ''What is the indication or intended use for the product?'' to query the intended use of the product. The comment noted that not all medical products are used to treat illness.

(Response) The comment pertains to the complaint form question ''What is the type of drug or for what illness is it used (e.g., a drug to treat chest pains, seizures, depression, etc.)?'' The question currently on the complaint form is the most direct approach to eliciting the required information from a complainant. The general population will not readily understand the use of words such as ''indication'' and ''intended use.''

The comment recommended that the complaint form be reformatted to use separate entry screens for e-mail, phone, fax, and so forth.

(Response) The comment pertains to the section of the complaint form entitled ''Your information.'' FDA agrees with the comment and will modify this section to include separate entry screens for e-mail, phone, and fax numbers. In addition, FDA will modify the same section to include separate entry screens for recording address(es), city, state or province, zip code, and country.

The comment suggested that the form should spell out such terms as ''Institutional Review Board'' and ''Contract Research Organization,'' and should also include ''clinical investigator.''

(Response) A radio button will be added for ''clinical investigator,'' and all abbreviations will be spelled out in the complaint form and as suggested by the comment.

(Comment 3) Another comment suggested that FDA use one research complaint form that would cover all FDA-regulated products. An example would be the MEDWATCH form. This would be much simpler for the public to use rather than each center within FDA creating their own form and related process. Additionally, it would bring research complaints associated with all FDA regulated investigational products to the agency's attention, thus making it easier to track and subsequently measure outcomes.

(Response) The purpose of this form is to collect information about potential scientific or research misconduct, or questionable research practices, involving the use of a FDA regulated drug product. It is anticipated that complaints submitted to DSI will mostly pertain to GCPs and GLPs related to clinical studies involving FDA regulated drug products. The data collection is not intended to include complaints pertaining to all FDA regulated products. DSI will forward any complaints regarding other FDA regulated products that are not under DSI's purview to appropriate divisions within FDA. The development of a universal research complaint form that covers all major FDA regulated products may offer advantages as suggested in the comment but would require substantial staff to redirect complaints.

Dated: December 8, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 05–24102 Filed 12–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2005N–0150]

Animal Drugs, Feeds, and Related Products; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 15 new animal drug applications (NADAs) because the products are no longer manufactured or marketed. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to remove portions reflecting approval of the NADAs.

DATES: Withdrawal of approval is effective December 27, 2005.

FOR FURTHER INFORMATION CONTACT: Pamela K. Esposito, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9067, e-mail: *pesposit@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: The following sponsors have requested that FDA withdraw approval of the 15 NADAs listed in table 1 of this document because the products are no longer manufactured or marketed:

TABLE 1.

Sponsor	NADA Number, Product (Drug)	21 CFR Section Affected (Sponsor Drug Labeler Code)
Bioproducts, Inc., 320 Springside Dr., Suite 300, Fairlawn, OH 44333–2435	NADA 119–063, Pyrantel Tartrate Ton Pack (pyrantel tartrate)	558.485 (051359)
Farmland Industries, Inc., Kansas City, MO 64116	NADA 138–656, BN Wormer—19.2 BANMINTH Premix (pyrantel tartrate)	558.485 (021676)
I.M.S. Inc., 13619 Industrial Rd., Omaha, NE 68137	NADA 129–395, HYGROMIX 0.6 Premix (hygromycin B) NADA 129–646, TYLAN 10 Sulfa-G (tylosin, sulfamethazine) NADA 136–601, Swine Guard-BN (pyrantel tartrate)	558.274 (050639) 558.630 (050639) 558.485 (050639)
J. & R. Specialty Supply Co., 310 Second Ave., SW,, P.O. Box 506, Waseca, MN 56093	NADA 96–780, TYLAN 10; TYLAN 40 (tylosin)	n/a (049768)
Kerber Milling Co., Box 152, 1817 E. Main St., Emmetsburg, IA 50536	NADA 98–687, Hy-Test Hy-Boost TY 5 Medicated (tylosin)	558.625 (029341)
M & M Livestock Products Co., Eagle Grove, IA 50533	NADA 96–837, M & M Tylosin Premix (tylosin)	558.625 (026282)
Nutra-Blend Corp., P.O. Box 485, Neosho, MO 64850	NADA 129–161, Nutra-Blend TYLAN 10 Sulfa Premix (tylosin, sulfamethazine) NADA 136–384, Swine Wormer-BN BANMINTH (pyrantel tartrate)	558.630 (050568) 558.485 (050568)
South St. Paul Feeds, Inc., 500 Farwell Ave., South St. Paul, MN 55075	NADA 136–369, Custom Ban Wormer 9.6 (pyrantel tartrate)	558.485 (001800)
Stockton Hay & Grain Co.	NADA 49–462, Rainbrook Broiler Premix No. 1 (ampolium, arsanilic acid, ethopabate, penicillin G procaine, streptomycin) NADA 91–646, Rainbow Broiler Base Concentrate (ampolium, bacitracin zinc, ethopabate) NADA 91–647, Broiler Base Concentrate (ampolium, chlortetracyline, ethopabate)	n/a (036541) n/a (036541) n/a (036541)
Triple ''F'', Inc., 10104 Douglas Ave., Des Moines, IA 50322	NADA 131–146, FLAVOMYCIN 0.4 (bambermycins)	558.95 (011490)

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADAs 49–462, 91–646, 91–647, 96–780, 96–837, 98–687, 119–063, 129–161, 129–395, 129–646, 131–146, 136–369, 136–384, 136–601, 138–656, and all supplements and

amendments thereto, is hereby withdrawn, effective December 27, 2005.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the animal drug regulations to reflect the withdrawal of approval of these NADAs.

Dated: December 7, 2005.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 05–24103 Filed 12–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Endocrinologic and Metabolic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Nonprescription Drugs Advisory Committee (NDAC) and the Endocrinologic and Metabolic Drugs Advisory Committee (EMDAC).

General Function of the Committees: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on January 23, 2006, from 8 a.m. to 5 p.m.

Location: Holiday Inn Select Bethesda, Versailles Ballrooms, 8120 Wisconsin Ave., Bethesda, MD. The hotel telephone number is 301–652–2000.

Contact Person: Darrell Lyons, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *lyonsd@cder.fda.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) codes 3014512541 or 3014512536. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committees will consider the safety and efficacy of new drug application (NDA) 21–887, proposing over-the-counter (OTC) use of ORLISTAT (tetrahydrolipstatin) capsules (60 milligrams (mg)), GlaxoSmithKline Consumer Healthcare, L.P., to promote weight loss in overweight adults when used along with a reduced calorie and low fat diet. The background material will become available no later than the day before the meeting and will be posted under NDAC or EMDAC's docket site at *http://www.fda.gov/ohrms/dockets/ac/acmenu.htm* (click on the year 2006 and scroll down to NDAC or EMDAC).

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committees. Written submissions may be made to the contact person by January 13, 2006. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 13, 2006, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Darrell Lyons at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 2, 2005.

Jason Brodsky,

Acting Associate Commissioner for External Relations.

[FR Doc. 05–24101 Filed 12–15–05; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–05–8000]

Memorandum of Understanding Between the United States Food and Drug Administration and the C–Path Institute

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the United States Food and Drug Administration and the C–Path Institute. The specific purpose of this MOU is to establish an overarching framework for collaboration between the parties. This framework will be based on mutually agreed upon programs and activities in the areas of applied scientific research and training/education to foster the development of new evaluation tools to inform medical product development. The parties shall each leverage its own expertise and resources to facilitate programs of shared interests across the diverse disciplines of therapeutics, biological sciences, engineering and medical devices in building applied research and training/education programs. The appropriate formal agreements will be executed as required by law for any activities that result from this collaboration.

DATES: The agreement became effective October 14, 2005.

FOR FURTHER INFORMATION CONTACT: *For C–Path Institute*: Raymond L. Woosley, The Critical Path Institute, 4280 N. Campbell Ave., #214, Tucson, AZ 85718, 520–547–3440, FAX: 520–547–3456, e-mail: *rwoosley@c-path.org*.

For The Food and Drug Administration: Mary I. Poos, Office of External Relations, Food and Drug Administration (HF–10), 5600 Fishers Lane, Rockville, MD 20857, 301–827–2825, FAX: 301–827–3042, e-mail: *mary.poos@fda.gov*.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this MOU.

Dated: December 7, 2005.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

225-05-8000

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES FOOD AND DRUG ADMINISTRATION
AND THE
C-PATH INSTITUTE

This Memorandum of Understanding (MOU) between the U.S. Food and Drug Administration (FDA) and the Critical Path Institute (C-Path) (hereafter termed "the Parties") formalizes an agreement between the two parties to develop collaborative activities in the areas of applied research, training and education to enhance safe and efficacious medical product development.

I. Purpose

The specific purpose of this MOU is to establish an overarching framework for collaboration between the Parties. This framework will be based on mutually agreed upon programs and activities in the areas of applied scientific research and training/education to foster the development of new evaluation tools to inform medical product development. The Parties shall each leverage its own expertise and resources to facilitate programs of shared interests across the diverse disciplines of therapeutics, biological sciences, engineering and medical devices in building applied research and training/education programs. The appropriate formal agreements will be executed as required by law for any activities that result from this collaboration.

II. Background

The FDA is responsible for reviewing clinical research to ensure that marketed human medical products (drugs, biologics, and medical devices) have been shown to be safe and effective.

The C-Path Institute is a non-profit research and education organization located in Tucson, Arizona. The Institute's purpose is to create innovative programs in education and research to enable safe acceleration of medical product development. It also serves as a 'neutral ground' for academia, industry and government to test ideas that will result in optimal (safe, effective, timely) drug development processes. C-Path brings together faculty from the UAZ Colleges of Pharmacy, Medicine, Agriculture and Life Sciences, and the School of Management as well as clinicians and researchers from the UAZ Comprehensive Cancer Center, the Sarver Heart Center, the Pima Community College, Arizona State University and the Translational Genomics Research Institute in programs related to pharmaceutical discovery and development, clinical research and good clinical practices (GCP) as well as scientific staff from SRI International (an independent, non-profit technology development organization), who have substantial experience in developing drugs for commercial manufacturing. SRI International is a contractor for NIH and has initiated a drug development consortium with other academic institutions, the purpose of which is to assist faculty investigators to translate research into clinical drug candidates.

III. Substance of Agreement

This MOU is intended as an overarching framework for joint collaboration between the Parties, toward the goal of developing new evaluative tools to inform medical product development. The areas of collaboration would include, but not be limited to:

Training/Education programs: Activities arising from complementary interests will be developed jointly by C-Path and FDA, and offered to academia, industry, and others as identified needs arise. The Parties will disseminate information through mutually agreed vehicles including training activities, meetings, and symposia.

Applied Research programs: Programs will be developed in areas of mutual complementary interest such as imaging, biomarkers and surrogate markers, proteomics and genomics, clinical trial design, and other areas that will enhance medical product development.

As specific topics for joint training/education and/or research are identified under this MOU they will be conducted under the appropriate formal agreements as required by law.

IV. Participation

It is anticipated that a wide range of faculty and graduate students, clinicians, and researchers from academic programs may participate in activities developed under this agreement, including, but not limited to, University of Arizona Comprehensive Cancer Care Center, the Sarver Heart Center, the Colleges of Pharmacy, Medicine, Management, and Agriculture and Life Sciences, Pima Community College, Arizona State University, Translational Genomics Research Institute, and SRI International. Other participants could include FDA staff, scientists from industry, field laboratories and others identified for joint training and outreach activities.

Each Party will appoint appropriate representatives to facilitate the planning, preparation, and implementation of the activities within the framework of this MOU. Meetings will be convened at a venue and time agreed between Parties, and each Party shall be responsible for its own expenses incurred in sending representatives to these meetings.

V. Resource Obligations

This MOU describes in general terms the basis upon which the Parties intend to cooperate. It does not create binding, enforceable obligations against any Party. All activities undertaken pursuant to the MOU are subject to the availability of personnel, resources, and appropriated funds. This MOU does not affect or supersede any existing or future agreements or arrangements among the Parties and does not affect the ability of the Parties to enter into other agreements or arrangements related to this MOU.

VI. Name and Address of Participating Parties and Liaisons

A. C-Path Institute
Raymond L. Woosley, M.D., Ph.D.
President
The Critical Path Institute
4280 N. Campbell Ave. # 214
Tucson, AZ 85718
Phone: 520-547-3440
Fax: 520-547-3456
Email: rwoosley@c-path.org

B. Food and Drug Administration
Mary I. Poos, Ph.D.
Director, Academic and Intellectual Partnerships
Office of External Relations
Food and Drug Administration
Parklawn Bldg, Room 14C-06 (HF-10)
5600 Fishers Lane
Rockville, MD 20857
Tel: (301) 827-2825
Fax: (301) 827-3042
Email: mary.poos@fda.gov

VII. Period of Agreement

This MOU becomes effective upon the date of the last Party to sign ("effective date") and will continue in effect for five years. It may be modified by mutual written consent or terminated by either party upon a 30-day advanced written notice to the other party. The Parties agree to evaluate the MOU periodically during the effective period, but at least once annually, on or before the anniversary of the effective date. Upon evaluation, either Party shall have the option of continuing, modifying, or canceling this agreement as provided for in Article VII of this MOU.

APPROVED AND ACCEPTED FOR THE C-PATH INSTITUTE

By Raymond L Woosley

Title President

Date September 14, 2005

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

By

Title Deputy Commissioner for Operations

Food and Drug Administration

Date 10/17/05

Cleared: R. Garwood, ORM 5/18/05
Reviewed and cleared: R. Springer, OM/OAGS 5/18/05
Reviewed and edited: L. Mahler, OCC 8/23/05
Reviewed and cleared: P. Stannard, OS 9/12/05

[FR Doc. 05–24100 Filed 12–15–05; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: November 2005

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of November 2005, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusions is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject name, address	Effective date
PROGRAM-RELATED CONVICTIONS	
BASONE, RENNAE AKRON, OH	12/20/2005
BERTIE, LIONEL TOLEDO, OH	12/20/2005
BRAVO, THERESA SAN DIEGO, CA	12/20/2005
BROUSSARD, JERRY BEAUMONT, TX	12/20/2005
BRUMBAUGH, JAY COLLINSVILLE, OK	12/20/2005
CABRERA, DAISY BRONX, NY	12/20/2005
CARTER, ANGELA OSKALOOSA, IA	12/20/2005
CHINI, JERI PORT CLINTON, OH	12/20/2005
CLOSE, CHRISTOPHER ATWATER, CA	12/20/2005
DYE, HEATHER MILWAUKEE, WI	12/20/2005
EDWARDS, TERRI GAHANNA, OH	12/20/2005
FRID, BORIS WOODLAND HILLS, CA	12/20/2005
GORELICK, STUART BLOOMFIELD HILLS, MI	12/20/2005
HARVEY, JAMES LAKEWOOD, WA	12/20/2005
HARVEY, RUBY LAKEWOOD, WA	12/20/2005
HATHAWAY, BRIAN REYNOLDSBURG, OH	12/20/2005
HOWARD, JULIE FULTON, MS	12/20/2005
KHANNA, ARUN STONE MOUNTAIN, GA	12/20/2005
LOCKE, STEPHANIE HOUSTON, TX	12/20/2005
MASON, CLINT FORK, SC	12/20/2005
MERRITT, RICKLEY GREER, SC	12/20/2005
MILLER, MICHELLE SHAKOPEE, MN	12/20/2005
MOORE, MERLYN RIALTO, CA	12/20/2005
MR J'S LIQUOR, INC LOS ANGELES, CA	12/20/2005
PABBATHI, RAMMOHAN TRENTON, NJ	12/20/2005
PROFESSIONAL AMBULANCE SVC OF NORWICH, INC NORWICH, CT	12/20/2005
PROVINCE, KIMBERLY CLARKSDALE, MS	12/20/2005
RINGGENBERG, JULIE OTTUMWA, IA	12/20/2005
ROBY, JARROD COLUMBUS, OH	12/20/2005
ROSEL, NICOLE COOPERSVILLE, MI	12/20/2005
SATTARI, PARI TARZANA, CA	12/20/2005
SAULTER, MONROE THREE RIVERS, TX	12/20/2005
SCHAEFER, CHRISTA MARICOPA, AZ	12/20/2005
TAMAYO, HEIROL MONTGOMERY, AL	12/20/2005
VALLE, LUIS GLENDALE, CA	12/20/2005
VUKASIN, ALAN COTTONWOOD, ID	12/20/2005
WEILAND, JEANETTE HURSON, SD	12/20/2005
WHITE, ROBERT WILSONVILLE, OR	12/20/2005
FELONY CONVICTION FOR HEALTH CARE FRAUD	
BUNKER, JASON SAN BERNARDINO, CA	12/20/2005
CATANZARO, DANIEL CARTERSVILLE, GA	12/20/2005
DENNETT, ROBIN AUGUSTA, ME	12/20/2005
HAMPTON, STACEY ST LOUIS, MO	12/20/2005
MOORE, MARK DAYTON, OH	12/20/2005
NJOROGE, GEOFFREY OKLAHOMA CITY, OK	12/20/2005
PALMER, CARLTON COLUMBUS, OH	12/20/2005
SIM, TOM SANTA CLARA, CA	12/20/2005
WHITE, JACQUESE MEMPHIS, TN	12/20/2005
FELONY CONTROL SUBSTANCE CONVICTION	
CHLYSTA, RUSSELL YANKTON, SD	12/20/2005
FERNANDEX, BRENDA NACOGDOCHES, TX	12/20/2005
GRAYS, SONYA WACO, TX	12/20/2005
HAAKE, DONNA BELLEVUE, NE	12/20/2005
HEIKENS, ANGELA BELLE FOURCHE, SD	12/20/2005
KUTZNER, JAMES LOUISVILLE, KY	12/20/2005
MARTENS, DALE LONDONDERRY, VT	12/20/2005
MCCARTNEY, LUANNE COAHOMA, TX	12/20/2005
NYMAN, CATHERINE DENVER, CO	12/20/2005
ODVODY, DAWN GREENVILLE, IL	12/20/2005
PALMER, MARTIN WASILLA, AK	12/20/2005
RIOJAS, JEANETTE DEER PARK, TX	12/20/2005
RYABIK, BRETT DORAVILLE, GA	12/20/2005
SCOTT, BRUCE QUINCY, IL	12/20/2005
SHULTZ, ALAN MOUNT STERLING, KY	12/20/2005
WAY, NANCY FT WORTH, TX	12/20/2005
WHITAKER, DARWIN HAZARD, KY	12/20/2005
PATIENT ABUSE/NEGLECT CONVICTIONS	
ANDERSON, ERNEIS CLINTON, SC	12/20/2005
BASSO, ALICIA ROCHESTER, NY	12/20/2005
CANTU, HELEN MADERA, CA	12/20/2005
CLARK, RUBY PIONEER, LA	12/20/2005
CLENDENEN, BRENDA HODGEN, OK	12/20/2005
COPES, RESHAWN LEESVILLE, LA	12/20/2005
HAWKINS, BRIAN FOUNTAIN HILLS, AZ	12/20/2005
JIMENEZ, ALICIA LOS ANGELES, CA	12/20/2005
LAMBERT, STEPHANIE JANESVILLE, WI	12/20/2005
MOENICH, KIM CLEVELAND, OH	12/20/2005
MOORE, MICHAEL HENNESSEY, OK	12/20/2005
NAVARRO, JEA VALLEJO, CA	12/20/2005
NORRIS, KIMBERLY CHILDRESS, TX	12/20/2005
POPPY, THOMAS SPRING HILL, FL	12/20/2005
PRADA, GERMAN SPRINGBORO, OH	12/20/2005
SAGUIBO, VERONICA	12/20/2005

Subject name, address	Effective date
WAIPAHU, HI	
TOLMAN, ERIC ..... MANTECA, CA	12/20/2005
TOMBOYEKE, IDRISA ..... SILVER SPRING, MD	12/20/2005
TROUTMAN, VICKIE ..... FORT VALLEY, GA	12/20/2005
WARREN, BARTON ..... BELTON, SC	12/20/2005
WELLS, KATHLEEN ..... KEYSTONE HEIGHTS, FL	12/20/2005
WITTIG, THOMAS ..... DELAVAN, WI	12/20/2005
CONVICTION FOR HEALTH CARE FRAUD	
HILDEBRANDT, HENRY ..... ANN ARBOR, MI	12/20/2005
CONTROLLED SUBSTANCE CONVICTIONS	
CHANCE, JAMIE ..... GRAHAM, TX	12/20/2005
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
ABBOTT, WINA ..... COALGOOD, KY	12/20/2005
ABRAHAM, AKIVA ..... CLIFTON PARK, NY	12/20/2005
ADAMS, DONNA ..... RIPLEY, MS	12/20/2005
ADAMS, VICKY ..... DIVIDE, CO	12/20/2005
ADKINS, ANTHONY ..... MOREHEAD, KY	12/20/2005
ANDERSON, BEVERLY ..... GLEN ALLEN, VA	12/20/2005
ANDERSON, JULIE ..... GREENWOOD, IN	12/20/2005
ANTONE, JENNIFER ..... SACATON, AZ	12/20/2005
AYALA, IRMA ..... EL CENTRO, CA	12/20/2005
BARNES, DONNA ..... ROCKPORT, TX	12/20/2005
BEACH, JACQUELINE ..... TUCSON, AZ	12/20/2005
BERNARD, TANYA ..... JACKSONVILLE, FL	12/20/2005
BIERNACKI, RICHARD ..... FAIRFAX, CA	12/20/2005
BONILLA, BLANCA ..... MONTEBELLO, CA	12/20/2005
BOOKOUT, CYNTHIA ..... PADUCAH, KY	12/20/2005
BOUCHARD, RANDEE ..... PORT CHARLOTTE, FL	12/20/2005
BOWERMAN, SHARI ..... YOUNGTOWN, AZ	12/20/2005
BROOKS, HARLAN ..... SANTA ANA, CA	12/20/2005
BROOKS, LORI ..... OLALLA, WA	12/20/2005
BUCKETT, ROSELIE ..... CUDJOE KEY, FL	12/20/2005
BUSSELL, JENNIFER ..... EWING, KY	12/20/2005
CALDERON, DEBORAH ..... SIERRA VISTA, AZ	12/20/2005
CAPRESECCO, CELINA ..... ORMOND BEACH, FL	12/20/2005
CARLTON, SALLIE ..... DAWSON SPRINGS, KY	12/20/2005
CARPINO, DEBRA ..... LAKE WORTH, FL	12/20/2005
CARRINGTON, DORIS ..... WINCHESTER, KY	12/20/2005
CASTLEBERRY, RHONDA ..... ALTHA, FL	12/20/2005
CHAPMAN, SHARON ..... MILTON, WA	12/20/2005
CHIOCO, VIVIAN ..... NATIONAL CITY, CA	12/20/2005
CLAIR, WILLIAM ..... PHILADELPHIA, PA	12/20/2005
COE, DENISE ..... PORT ORANGE, FL	12/20/2005
COLDIRON, HOWARD ..... BEDFORD, VA	12/20/2005
CONREY, THOMAS ..... GULF BREEZE, FL	12/20/2005
COX, LISA ..... WICHITA, KS	12/20/2005
CURTIS, SARAH ..... CULPEPER, VA	12/20/2005
DARE, DAVID ..... MONROEVILLE, NY	12/20/2005
DEL RICO, KIMBER ..... HEMET, CA	12/20/2005
DICKIE, JUDY ..... DIAMONDHEAD, MS	12/20/2005
DODSON, TAMMY ..... STANFORD, KY	12/20/2005
DOWNS, KEVIN ..... PITTSBURGH, NY	12/20/2005
ENTEZAMI, AHMAD ..... CHATSWORTH, CA	12/20/2005
EVANS, DELORES ..... LOMA LINDA, CA	12/20/2005
EVANS, MARGARET ..... FORT WAYNE, IN	12/20/2005
FLANNIGAN, DONNA ..... OAKLAND, CA	12/20/2005
FRENCH, CHRISTINA ..... ARLINGTON, KY	12/20/2005
FRIEZE, JOSEPH ..... JACKSON, MS	12/20/2005
FUENTES, EVANGELO ..... NEW YORK, NY	12/20/2005
GARDNER, DEBBRA ..... CHIPLEY, FL	12/20/2005
GARDNER, PHYLLIS ..... JACKSONVILLE, FL	12/20/2005
GARNER, DEBRA ..... GRAHAM, TX	12/20/2005
GARY, PENNY ..... MORGANTOWN, KY	12/20/2005
GIBBONS, MARY ..... WILMINGTON, NC	12/20/2005
GILBERT, MICHAEL ..... HELENA, OK	12/20/2005
GREENBERG, RICHARD ..... OCALA, FL	12/20/2005
HARLAN, CHARLES ..... NASHVILLE, TN	12/20/2005
HARRIS, RONALD ..... OPA LOCKA, FL	12/20/2005
HIGGINS, MARGARET ..... HERINGTON, KS	12/20/2005
HOETKER, MARY ..... LOUISVILLE, KY	12/20/2005
HOWLAND, CHRISTOPHER ... COLBERT, WA	12/20/2005
HUANG, LAURIE ..... LOS ALTOS, CA	12/20/2005
HUBNER, CAROL ..... LEESBURG, FL	12/20/2005
HULL, CYNTHIA ..... NAMPA, ID	12/20/2005
INMAN, ANGELA ..... CROSS CITY, FL	12/20/2005
JACKSON, APRIL ..... WELLINGTON, FL	12/20/2005
JACKSON, SANKEY ..... POLACCA, AZ	12/20/2005
JEFFREY, MARYELLEN ..... TUCSON, AZ	12/20/2005
JOHNSON, KEISHA ..... TAMPA, FL	12/20/2005
JOHNSTON, MARIA ..... SAN LEANDRO, CA	12/20/2005
JONES, VIOLA ..... DEL REY, CA	12/20/2005
KAHLER, BARBARA ..... NEWCOMERSTOWN, OH	12/20/2005
KENNEDY, ELLEN ..... SPRINGFIELD, MA	12/20/2005
KINNEY, TAMMIE ..... CLAYPOOL, AZ	12/20/2005
KIRBY, KEVIN ..... JACKSONVILLE, FL	12/20/2005
KOBEL, JUDITH ..... OVERLAND PARK, KS	12/20/2005
KRELOFF, SOFORA ..... CASPAR, CA	12/20/2005
LABON, SHERRY ..... ESCONDIDO, CA	12/20/2005
LAUTERBACH, DANA ..... DALLAS, TX	12/20/2005
LEACHMAN, CARLA ..... KISSIMMEE, FL	12/20/2005
LEHR, STEPHANIE ..... LONGVIEW, TX	12/20/2005
LEWIS, MICHELLE ..... LYNWOOD, IL	12/20/2005
LIM, PAUL ..... CHICAGO, IL	12/20/2005
LONG, WILLIAM ..... MOUNT JULIET, TN	12/20/2005
LOPER, SARAH ..... MILLSAP, TX	12/20/2005
LOVELL, REBECCA ..... PORT ORANGE, FL	12/20/2005
MANNY, GINA ..... TUCSON, AZ	12/20/2005
MARTIN, MELODY ..... YUCAIPA, CA	12/20/2005
MARTIN, SHARON ..... BULLHEAD CITY, AZ	12/20/2005
MAYNOR, PATRICIA ..... MIDDLEBURG, FL	12/20/2005
MCCAUSLAND, LAURA ..... HEREFORD, AZ	12/20/2005
MCCLELLAN, JULIE ..... ORLANDO, FL	12/20/2005
MCHALE, JANICE ..... FORT WRIGHT, KY	12/20/2005
MILLER, KATHY ..... FARGO, ND	12/20/2005
MITTERER, DANIEL ..... LONG BEACH, MS	12/20/2005
MOHR, DOROTHY ..... TAMPA, FL	12/20/2005
NABATMAMA, JEFFREY ..... LOS ANGELES, CA	12/20/2005
NEWBERN, JOSEPH ..... HERMITAGE, TN	12/20/2005
NEWMAN, REBECCA	12/20/2005

Subject name, address	Effective date
NEWTON, KS	
NICHOLS, NANCY ..... AMARILLO, TX	12/20/2005
NOBLE, LINDA ..... MIAMI, FL	12/20/2005
NOLEN, LEIGH ..... JACKSON, TN	12/20/2005
NORTON, ROBERT ..... FT PIERCE, FL	12/20/2005
OGUADIMMA, IKE ..... CHANDLER, AZ	12/20/2005
ONABANWO, ADENIYI ..... CENTRAL FALLS, RI	12/20/2005
OPATZ, KEVAN ..... WEST PALM BEACH, FL	12/20/2005
ORENDORFF, ERIKA ..... EXTON, PA	12/20/2005
OSAGIE, VICTOR ..... MIRAMAR, FL	12/20/2005
OSBORNE, ANGEL ..... ATCHISON, KS	12/20/2005
OSTAD, DAVID ..... OLD WESTBURY, NY	12/20/2005
PATRICK, AMY ..... PANAMA CITY, FL	12/20/2005
PECK, GREGORY ..... QUESTA, NM	12/20/2005
PELLEY, KRISTEN ..... YARMOUTHPORT, MA	12/20/2005
PERRONE, RUSSANNE ..... GILBERT, AZ	12/20/2005
PERRY, TERESA ..... EMPIRE, AL	12/20/2005
PETERSON, PHYLLIS ..... SAN FRANCISCO, CA	12/20/2005
PHILLIPS, MARY ..... LEES SUMMIT, MO	12/20/2005
PINKERTON, ROBIN ..... PROVIDENCE, RI	12/20/2005
RAINES, FRANCIS ..... LOMPOC, CA	12/20/2005
RAPP, THERESA ..... SARASOTA, FL	12/20/2005
REESE, BRENT ..... PHOENIX, AZ	12/20/2005
RICKETTS, L'PREE ..... STURGIS, KY	12/20/2005
RIVERA, JUAN ..... TITUSVILLE, FL	12/20/2005
RODRIGUEZ, NORMA ..... MIAMI, FL	12/20/2005
RODRIGUEZ, SONJA ..... VAN NUYS, CA	12/20/2005
ROSENDALE, GINA ..... MULVANE, KS	12/20/2005
SAAVEDRA, JESSICA ..... SCOTTSDALE, AZ	12/20/2005
SALLEE, KAREN ..... HUMBLE, TX	12/20/2005
SEGOVIA, EFRAIM ..... MESA, AZ	12/20/2005
SESTRICH, CAROL ..... KANSAS CITY, KS	12/20/2005
SIRINEK, MATTHEW ..... KANSAS CITY, MO	12/20/2005
SMITH, TERESA ..... TILINE, KY	12/20/2005
SMITH-DEEGAN, GAIL ..... LOS OSOS, CA	12/20/2005
SPEARS, VIRGINIA ..... ROSEVILLE, CA	12/20/2005
SPENCE, TERRIE ..... BAXTER SPRINGS, KS	12/20/2005
STEPHENS, GRACE ..... WICHITA, KS	12/20/2005
STRAUB, ANNETTE ..... OCALA, FL	12/20/2005
SVENDSEN, PAMELA ..... HICKSVILLE, NY	12/20/2005
TAIJERON, HELEN ..... YUCCA VALLEY, CA	12/20/2005
TAYLOR, CAROLYN ..... JACKSONVILLE, FL	12/20/2005
TESCH, AARON ..... SHEPHERDSVILLE, KY	12/20/2005
THOMPSON, ELIZABETH ..... CORONADO, CA	12/20/2005
TILLMAN, KATHERINE ..... TUCSON, AZ	12/20/2005
TREAT, TARA ..... GRENADA, MS	12/20/2005
VAUGHN, SARAH ..... LONG BEACH, CA	12/20/2005
VINAGRE, ARMANDO ..... APACHE JUNCTION, AZ	12/20/2005
WATTERS, YVETTE ..... MIDDLEBURG, FL	12/20/2005
WHITE, GLYNNA ..... LEXINGTON, KY	12/20/2005
WILSON, DIANE ..... OAKLAND, CA	12/20/2005
WORKMAN, REGINALD ..... LOUISVILLE, KY	12/20/2005
FRAUD/KICKBACKS/PROHIBITED ACTS/ SETTLEMENT AGREEMENTS	
CR CENTRO MEDICO ..... MIAMI, FL	6/1/2005
DESTINY BILLING ..... MIAMI, FL	6/1/2005
GACET, JAIDYS ..... MIRAMAR, FL	6/1/2005
MOIR, LISA ..... MORGANTON, NC	6/13/2005
RAMOS, CELSO ..... MIAMI, FL	6/1/2005
SAOUD, ALLEN ..... CLARKSBURG, WV	9/2/2005
OWNED/CONTROLLED BY CONVICTED ENTITIES	
JONATHAN FAMILY CHIRO-PRACTIC ..... MINNEAPOLIS, MN	12/20/2005
MEDICARE CENTER, LC ..... STUART, FL	12/20/2005
PAUL ELLIOT, D O, PA ..... STUART, FL	12/20/2005
PHYSICIANS HEALTH CARE, INC ..... STUART, FL	12/20/2005
PHYSICIANS HEALTH MED-CARE, INC ..... PEMBROKE PINES, FL	12/20/2005
PHYSICIANS MED-CARE, INC MIAMI, FL	12/20/2005
ROBERT J NORTON, MD, PA FT PIERCE, FL	12/20/2005
ST SIMONS ISLAND CLINIC, PC ..... ST SIMONS ISLAND, GA	12/20/2005
TOTAL NUTRITION, INC ..... MIAMI, FL	12/20/2005
DEFAULT ON HEAL LOAN	
CLARK, DOUGLAS ..... FLORENCE, KY	12/20/2005
MOORE, BERNADETTE ..... MELBOURNE, FL	12/20/2005
NEVAREZ-SOSTRE, EDGAR .. DORADO, PR	12/20/2005
POLLOCK, WILLIAM ..... AVONDALE, PA	12/20/2005
RAINES, S ..... MILTON, FL	12/20/2005

Dated: December 7, 2005.

Katherine B. Petrowski,

Director, Exclusions Staff, Office of Inspector General.

[FR Doc. E5–7454 Filed 12–15–05; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Antibodies and Immunotoxins that Target Human Glycoprotein NMB

Ira Pastan (NCI) et al.

U.S. Provisional Patent Application filed 31 Oct 2005 (HHS Reference No. E–003–2006/0–US–01).

Licensing Contact: Jesse Kindra; 301–435–5559; *kindraj@mail.nih.gov.*

The human transmembrane glycoprotein NMB (GPNMB) and a splice variant form are highly expressed in the cells of several forms of brain cancer when compared to normal brain cells. This invention combines Pseudomonas exotoxin (PE) attached to an Fv antibody fragment that targets cells expressing GPNMB but not GPNMB-negative or normal cells. Results show that this antibody-immunotoxin conjugate inhibits the growth of cells expressing human glycoprotein GPNMB, including glioblastoma multiform cells, anaplastic astrocytoma cells, anaplastic oligodendroglioma cells and melanoma cells.

Method of Screening for Hepatocellular Carcinoma

Xin Wei Wang (NCI) et al.
U.S. Provisional Application filed (HHS Reference No. E–333–2005/0–US–01).
Licensing Contact: David A. Lambertson; 301–435–4632; *lambertsond@mail.nih.gov.*

Hepatocellular Carcinoma (HCC) is a common and aggressive cancer with a high mortality rate. The high mortality rate stems from an inability to diagnose the cancer in patients, due to the lack of available biomarkers for HCC. Currently, HCC is diagnosed by measuring the levels of serum alpha-fetoprotein (AFP); however, AFP is not always present in HCC tumors, especially small tumors. As a result, there is a need for improved diagnostic tests for diagnosing HCC in subjects.

The instant technology relates to efficient methods of detecting HCC by using new biomarkers for HCC. The overexpression of Gpc3, Mdk, SerpinI1, PEG–10 and QP–C correlates with the presence of HCC, even in small tumors, and regardless of serum levels of AFP. By comparing the expression levels of at least three of these markers in subject samples with their expression levels in control samples, the presence of HCC can be diagnosed. The method can also be used to monitor the progression or regression of HCC in a subject after the initial diagnosis, or to identify compounds having anti-HCC activity by measuring the expression levels of Gpc3, Mdk, SerpinI1, PEG–10 and QP–C following the treatment of a sample with test compounds. Current claims are directed to methods for screening for HCC in a sample, methods for monitoring the progression or regression of HCC in a subject, methods for screening compounds as having anti-HCC activity, and arrays/kits comprising polynucleotide probes for detecting the level of Gpc3, Mdk, SerpinI1, PEG–10 and QP–C mRNA expression.

In addition to licensing, the technology (in conjunction with serum ELISA technologies) is available for further development through collaborative research opportunities with the inventors.

Mouse Polyclonal Antibodies to KAI1

Mary Custer et al. (NCI).
HHS Reference No. E–264–2005/0—Research Tool.
Licensing Contact: John Stansberry; 301/435–5236, *stansbej@mail.nih.gov.*

The invention relates to polyclonal antibodies to the mouse metastasis suppressor gene KAI1. KAI1 is down regulated in advanced stages of various human epithelial malignancies. For example, expression levels of KAI1 are inversely correlated with the metastasis potential of human prostate cancer. This antibody would be useful in the characterization of the normal function of the KAI1 protein and it would be useful in efforts to investigate KAI1 role in metastasis suppression in experimental animal models.

Dated: December 8, 2005.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. E5–7411 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Hyperaccelerated Award/Mechanisms in Immunomodulation Trials (January 2006).

Date: January 3, 2006.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Mercy R. PrabhuDas, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, 301–451–2615, *mp457n@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: December 9, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24120 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, NIDCD P30 Research Core Center.

Date: January 11, 2006.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shiguang Yang, PhD, DVM, Scientific Review Administrator, Division of Extramural Activities, NIDCD, NIH, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683.

Name of Committee: National Institute on Deafness and Other Communications

Disorders Special Emphasis Panel, Ear Pressure Regulation.

Date: January 18, 2006.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683. *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Aphasia Related Disorders.

Date: January 25, 2006.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, PhD., Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov*.

Name of Committee: National Institute on Deafness and Other Communications Disorders Special Emphasis Panel, Balance Disorder.

Date: January 30, 2006.

Time: 1 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683. *singhs@nidcd.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 9, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24121 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Deafness and Other Communication Disorders Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and 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 Deafness and Other Communication Disorders Advisory Council.

Date: January 20, 2006.

Closed: 8:30 a.m. to 10:45 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Open: 10:45 a.m. to 2:30 p.m.

Agenda: Staff reports on divisional, programmatic and special activities.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 6, Bethesda, MD 20892.

Contact Person: Craig A. Jordan, PhD, Director, Division of Extramural Activities, NIDCD, NIH, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892–7180, 301–496–8693, *jordanc@nidcd.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's home page: *http://www.nidcd.nih.gov/about/councils/ndcdac.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 9, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24122 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Initial Review Group. Biomedical Research Review Subcommittee.

Date: February 27–28, 2006.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sathasiva B. Kandasamy, PhD, Scientific Review Administrator, Office of Scientific Affairs, National Institute on Alcohol Abuse & Alcoholism, Extramural Review Branch, 5635 Fishers Lane, Bethesda, MD 20892–9304, (301) 443–2861, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: December 8, 2005.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24124 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Working Group on Chemical Information Resource Coordination, December 19, 2005, 8 a.m. to 4 p.m., National Library of Medicine, Building 38, Board Room, 2nd Floor, 8600 Rockville Pike, Bethesda, MD 20894, which was published in the **Federal Register** on December 8, 2005, 70 FR 73018.

The meeting location has changed to the National Institutes of Health, Building 45, Conference Room A, 8600 Rockville Pike, Bethesda, Maryland 20814. The meeting is open to the public.

Dated: December 8, 2005.

Anna Snouffer,

Acting Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 05–24123 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program; Liaison and Scientific Review Office; Meeting of the NTP Board of Scientific Counselors Nanotechnology Working Group

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH)

ACTION: Meeting Announcement.

SUMMARY: The National Toxicology Program (NTP) established the Nanotechnology Working Group (''the NWG'') to the NTP Board of Scientific Counselors in 2005 to enhance public and stakeholder input into the NTP nanotechnology research program. The second meeting of the NWG is scheduled for March 15, 2006 at the Holiday Inn-Rosslyn at Key Bridge (1900 N Fort Myer Drive, Arlington, VA 22209). This meeting is open to the public with time scheduled for oral public comment. The NTP also invites written comments on any topic discussed at the meeting. A copy of the agenda and any additional information about the meeting will be posted on the NTP website when available (see NTP Web site *http://ntp.niehs.nih.gov* select ''Meetings and Workshops'').

DATES: The working group meeting will be held March 15, 2006. The meeting will begin at 9 a.m. and end at approximately 4:30 p.m.

Comments: Written comments should be received by March 8, 2006, to allow time for adequate review before the meeting (see **FOR FURTHER INFORMATION CONTACT** below). Individuals wishing to make oral public comments are asked to contact Dr. Kristina Thayer (see **FOR FURTHER INFORMATION CONTACT** below) by March 8, 2006, and if possible, also to send a copy of the statement or talking points at that time.

Registration: Individuals who plan to attend are encouraged to register online at the NTP Web site *http://ntp.niehs.nih.gov/* select ''Meetings and Workshops.'' Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 voice, 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov*. Requests should be made at least 7 days in advance of the event.

ADDRESSES: The meeting will be held at the Holiday Inn-Rosslyn at Key Bridge (1900 N Fort Myer Drive, Arlington, VA 22209).

FOR FURTHER INFORMATION CONTACT: Correspondence should be submitted to Dr. Kristina Thayer (NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–5021, fax 919–541–0295; or e-mail: *thayer@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background

In recent years, nanotechnology has become an increasing focus of U.S. and global research and development efforts. The NTP is developing a broad-based research program to address potential human health hazards associated with the manufacture and use of nanoscale materials. This research program will include studies of nanoscale materials that apply existing and novel toxicological methods to assess potential health effects associated with exposure to these materials. In order to enhance public and stakeholder input into this program, the NTP has established the NWG to provide a structured and formal mechanism for bringing stakeholders together to learn about NTP nanotechnology research related to public health, address issues related to that research, and promote dissemination of those discussions to other federal agencies, nanotechnology stakeholders, and the public. Additional information on the NWG, including charge and roster, is available at the NTP Web site (*http://ntp.niehs.nih.gov/* select ''Advisory Board & Committees'').

Preliminary Agenda

NTP Board of Scientific Counselors Nanotechnology Working Group (NWG), March 15, 2006, Holiday Inn-Rosslyn at Key Bridge, 1900 N Fort Myer Drive, Arlington, VA, 22209

9 a.m.

- Call to Order, Introductions, and Welcome
- U.S Federal Agency Efforts in Nanotechnology
- National Institute of Standards and Technology
- National Cancer Institute at Frederick—National Characterization Laboratory

12 p.m.—Lunch Break

1 p.m.

- Environmental Protection Agency
- Nanotechnology Environmental Health Working Group Research Needs Document
- National Toxicology Program Update
- Public Comment
- General Discussion

4:30 p.m.—Adjourn

Request for Comments

Public input at this meeting is invited. Each organization is allowed one time slot per agenda topic. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting. If registering on-site and reading from written text, please bring 20 copies of the statement for distribution to the NWG and NIEHS/NTP staff and to supplement the record. Written comments received in response to this notice will be posted on the NTP website. Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Dated: December 5, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. E5–7409 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP), NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); Peer Panel Evaluation of In Vitro Pyrogenicity Testing Methods: Request for Comments, Nominations of Experts, and Submission of In Vivo and In Vitro Data

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes Of Health (NIH).

ACTION: Request for comments, nominations of scientific experts, and submission of data.

SUMMARY: NICEATM, in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM), is considering convening an independent peer review panel (hereafter, ''Panel'') to evaluate the validation status of five *in vitro* pyrogenicity test methods: (1) Human PBMC/IL–6 *in vitro* pyrogen test (PBMC/IL–6), (2) human whole blood/IL–1 *in vitro* pyrogen test (WB/IL–1), (3) human whole blood/IL–1 *in vitro* pyrogen test: application of cryopreserved human whole blood cryo (WB/IL–1), (4) the human whole blood/IL–6 *in vitro* pyrogen test (WB/IL–6), and (5) an alternative *in vitro* pyrogen test using the human monocytoid cell line MONO MAC–6 (MM6/IL6). NICEATM requests public comments as to the appropriateness and relative priority of this activity. In addition, NICEAM requests the nomination of expert scientists for consideration as potential Panel members in the event a Panel meeting occurs. Finally, NICEATM requests the submission of data from the rabbit pyrogenicity test, the bacterial endotoxin test (BET), and *in vitro* pyrogenicity testing with the methods listed above.

DATES: Comments, nominations of expert scientist, and data submissions should be received by January 17, 2006.

ADDRESSES: Correspondence should be sent by mail, fax, or email to Dr. William S. Stokes, NICEATM, NIEHS, P. O. Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) 919–541–2384, (fax) 919–541–0947, (e-mail) *niceatm@niehs.nih.gov*.

SUPPLEMENTARY INFORMATION:

Background

The European Committee on the Validation of Alternative Methods (ECVAM) conducted a validation study to independently evaluate the usefulness of five *in vitro* pyrogenicity assays (PBMC/IL–6, WB/IL–1, cryo WB/IL–1, WB/IL–6, and MM6/IL6). In June 2005, ECVAM submitted background review documents (BRDs) for these five methods to NICEATM for consideration as replacements for the currently required tests (i.e., rabbit pyrogen tests and the BET). ICCVAM and NICEATM reviewed the BRDs for completeness and concluded that these five *in vitro* test methods appear to have considerable potential for pyrogenicity testing, but the sponsors needed to provide additional information prior to a formal review by a Panel. Pending receipt and review of the requested information, ICCVAM and NICEATM will determine the priority of an evaluation of these test methods. If convened, the Panel would (1) peer review the BRDs for the test methods, and (2) determine whether the data cited in the BRDs support draft ICCVAM Test Method Recommendations regarding the proposed usefulness, limitations, and validation status of the test methods. If appropriate, the Panel might also formulate conclusions on the adequacy of any draft recommended performance standards, any proposed future validation studies, draft standardized test method protocols, and/or reference substances. In making their conclusions and recommendations, the Panel considers all available information including the scientific studies cited in the draft BRD, public comments, and any new information identified during the peer review.

Request for Public Comments and Nominations of Scientific Experts

NICEATM requests public comments on the appropriateness and relative priority of the proposed Panel review activity. In addition, NICEAM requests the nomination of scientists with relevant knowledge and experience to potentially serve on the Panel should it be convened. Areas of relevant expertise include, but are not limited to: physiology, pharmacology, immunology, pyrogenicity testing in animals, development and use of *in vitro* methodologies, biostatistical data analysis, knowledge of chemical data sets useful for validation of toxicity studies, and hazard classification of chemicals and products. Each nomination should include the person's name, affiliation, contact information (i.e., mailing address, e-mail address, telephone and fax numbers), and a brief summary of relevant experience and qualifications.

Request for Data

NICEATM invites the submission of data from standard *in vivo* rabbit pyrogen testing, the BET, and *in vitro* pyrogenicity testing using the methods detailed above. Although data can be accepted at any time, data submitted by the deadline listed in this notice would be considered during an evaluation of the validation status of the five pyrogenicity testing methods should this activity occur. Submitted data will be used to further evaluate the usefulness and limitations of *in vitro* pyrogenicity test methods and may be included in future NICEATM and ICCVAM reports and publications as appropriate. The data will also be included in a NICEATM database to support the investigation of other test methods for assessing pyrogenicity.

When submitting chemical and protocol information/test data, please reference this **Federal Register** notice and provide appropriate contact information (name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization, as applicable).

NICEATM prefers data to be submitted as copies of pages from study notebooks and/or study reports, if available. Raw data and analyses available in electronic format may also be submitted. Each submission for a chemical should preferably include the following information, as appropriate:

- Common and trade name
- Chemical Abstracts Service Registry Number (CASRN)
- Chemical class
- Product class
- Commercial source
- *In vitro* pyrogenicity test protocol used
- *In vitro* pyrogenicity test results
- BET test protocol used
- BET test results
- *In vivo* rabbit pyrogen test protocol used
- Individual animal responses
- The extent to which the study complied with national or international Good Laboratory Practice (GLP) guidelines
- Date and testing organization

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM conducts technical evaluations of new, revised, and alternative methods with regulatory applicability and promotes the scientific validation and regulatory acceptance of toxicological test methods that more

accurately assess the safety and hazards of chemicals and products and that refine, reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (Pub. L. 106–545, available at *http://iccvam.niehs.nih.gov/about/PL106545.htm*) establishes ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific and operational support for ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://www.iccvam.niehs.nih.gov.*

Dated: Decmeber 5, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. E5–7410 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Center for the Evaluation of Risks to Human Reproduction (CERHR); Announcement of the Genistein and Soy Formula Expert Panel Meeting; Availability of the Draft Expert Panel Reports on Genistein and Soy Formula and Request for Public Comment on the Draft Reports

AGENCY: National Institute for Environmental Health Sciences (NIEHS); National Institutes of Health (NIH).

ACTION: Meeting announcement and request for public comment.

SUMMARY: The Center for the Evaluation of Risks to Human Reproduction (CERHR) announces availability of the two draft expert panel reports on genistein and soy formula on January 16, 2006, from the CERHR Web site (*http://cerhr.niehs.nih.gov*) or in printed text from CERHR (see **ADDRESSES** below). CERHR invites public comments on sections 1–4 of both draft expert panel reports (see **SUPPLEMENTARY INFORMATION** below). An expert panel will meet on March 15–17, 2006, at the Radisson Hotel Old Town in Alexandria, Virginia to review and revise each draft expert panel report and reach conclusions regarding whether exposure to genistein or soy formula is a hazard to human development or reproduction. The expert panel will also identify data gaps and research needs. CERHR expert panel meetings are open to the public with time scheduled for oral public comment. Attendance is limited only by the available space in the meeting room. Following the expert panel meeting and completion of the expert panel reports, CERHR will post the final reports on its website and solicit public comment on them through a **Federal Register** notice.

DATES: The expert panel meeting for genistein and soy formula will be held on March 15–17, 2006. Sections 1–4 of both draft expert panel reports will be available for public comment on January 16, 2006. Written public comments on the draft report must be received by March 1, 2006. Time will be set-aside at the expert panel meeting on March 15, 2006, for oral public comments. Individuals wishing to make oral public comments are asked to contact Dr. Michael D. Shelby, CERHR Director, by March 8, 2006, and if possible, send a copy of their statement or talking points at that time. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 voice, 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov.* Requests should be made at least 7 days in advance of the meeting.

ADDRESSES: The expert panel meeting for genistein and soy formula will be held at the Radisson Hotel Old Town, 901 N. Fairfax Street, Alexandria, Virginia 22314–1501 (telephone: 703–683–6000, facsimile: 703–683–7597). Comments on the draft expert panel reports and any other correspondence should be sent to Dr. Michael D. Shelby, CERHR Director, NIEHS, P.O. Box 12233, MD EC–32, Research Triangle Park, NC 27709 (mail), (919) 316–4511 (fax), or *shelby@niehs.nih.gov* (e-mail). Courier address: CERHR, NIEHS, 79 T.W. Alexander Drive, Building 4401, Room 103, Research Triangle Park, NC 27709.

SUPPLEMENTARY INFORMATION:

Background

Genistein (CAS RN: 446–72–0) is a phytoestrogen found in some legumes, such as soybeans and clover, or in products obtained from animals ingesting genistein-containing feed. Phytoestrogens are non-steroidal, estrogenic compounds that occur naturally in plant products. Genistein is found in food and over-the-counter dietary supplements and is the primary phytoestrogen in soy formula. Soy formula is administered to infants as a supplement or replacement for maternal breast milk or cow's milk. CERHR selected genistein and soy formula for expert panel evaluation because of (1) the availability of numerous reproductive and developmental toxicity studies in laboratory animals and humans, (2) the availability of information on exposures in infants and women of reproductive age, and (3) public concern for effects on infant or child development.

At the meeting, the expert panel will review and revise the draft expert panel reports and reach conclusions regarding whether exposure to genistein or soy formula is a hazard to human reproduction or development. Each draft expert panel report has the following sections:

1.0 Chemistry, Use, and Human Exposure
2.0 General Toxicological and Biological Effects
3.0 Developmental Toxicity Data
4.0 Reproductive Toxicity Data
5.0 Summary, Conclusions, and Critical Data Needs (to be prepared at expert panel meeting)

Request for Comments

CERHR invites the submission of written public comments on sections 1–4 of the draft expert panel reports on genistein and soy formula. Any comments received will be posted on the CERHR Web site prior to the meeting and distributed to the expert panel and CERHR staff for their consideration in revising the draft reports and preparing for the expert panel meeting. Persons submitting written comments are asked to include their name and contact information (affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization, if any) and send them to Dr. Shelby (see **ADDRESSES** above) for receipt by March 1, 2006.

Time is set-aside on March 15, 2006, for the presentation of oral public comments at the expert panel meeting. Seven minutes will be available for each speaker (one speaker per organization). When registering to comment orally, please provide your name, affiliation, mailing address, telephone and facsimile numbers, e-mail, and sponsoring organization (if any). If possible, send a copy of the statement or talking points to Dr. Shelby by March 8, 2005. This statement will be provided to the expert panel to assist them in identifying issues for discussion and will be noted in the meeting record. Registration for presentation of oral comments will also be available at the meeting on March 15, 2006, from 7:30–8:30 a.m. Persons registering at the

meeting are asked to bring 20 copies of their statement or talking points for distribution to the expert panel and for the record.

Preliminary Agenda

The meeting begins each day at 8:30 a.m. . On March 15 and 16, it is anticipated that a lunch break will occur from noon-1 p.m. and the meeting will adjourn at 5–6 p.m. The meeting is anticipated to adjourn by noon on March 17; however, adjournment may occur earlier or later depending upon the time needed by the expert panel to complete its work. Anticipated agenda topics for each day are listed below.

March 15, 2006

- Opening remarks
- Oral public comments (7 minutes per speaker; one representative per group)
- Review of sections 1–4 of the draft expert panel reports on genistein and soy formula
- Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs

March 16, 2006

- Discussion of Section 5.0 Summary, Conclusions, and Critical Data Needs
- Preparation of draft summaries and conclusion statements

March 17, 2006

- Presentation, discussion of, and agreement on summaries, conclusions, and data needs
- Closing comments

Expert Panel Roster

The CERHR expert panel is composed of independent scientists selected for their scientific expertise in reproductive and/or developmental toxicology or other areas of science relevant for these evaluations.

Karl K. Rozman, Ph.D., D.A.B.T. (Chair)—University of Kansas Medical Center, Kansas City, KS

Jatinger Bhatia, M.B.B.S.—Medical College of Georgia, Augusta, GA

Antonia M. Calafat, Ph.D.—National Center for Environmental Health, Centers for Disease Control and Prevention, Atlanta, GA

Christina Chambers, Ph.D., M.P.H.—University of California San Diego Medical Center, San Diego, CA

Martine Culty, Ph.D.—Georgetown University Medical Center, Washington, DC

Ruth Ann Etzel, Ph.D.—Alaska Native Medical Center, Anchorage, AK

Jody Anne Flaws, Ph.D.—University of Maryland School of Medicine, Baltimore, MD

Deborah K. Hansen, Ph.D.—National Center for Toxicological Research, Jefferson, Arkansas

Patricia B. Hoyer, Ph.D.—University of Arizona, Tucson, AZ

Elizabeth Hutt Jeffery, Ph.D.—University of Illinois, Urbana, IL

James S. Kesner, Ph.D.—National Institute for Occupational Safety and Health, Cincinnati, OH

M. Sue Marty, Ph.D.—The Dow Chemical Company, Midland, MI

John A. Thomas, Ph.D.—University of Texas, San Antonio, TX

David M. Umbach, Ph.D.—National Institute of Environmental Health Sciences, Research Triangle Park, NC

Background Information on the CERHR

The NTP established CERHR in June 1998 [**Federal Register**, December 14, 1998 (Volume 63, Number 239, page 68782)]. CERHR is a publicly accessible resource for information about adverse reproductive and/or developmental health effects associated with environmental and/or occupational exposures. Expert panels conduct scientific evaluations of environmental chemicals, drugs, physical agents, or mixtures (collectively referred to as ''substances'') selected by the CERHR in public forums.

The CERHR invites the nomination of substances for expert panel evaluation or scientists for its expert registry. Information about CERHR and the nomination process can be obtained from its homepage (*http://cerhr.niehs.nih.gov*) or by contacting Dr. Shelby (see **ADDRESSES** above). CERHR selects substances for evaluation based upon several factors including production volume, potential for human exposure from use and occurrence in the environment, extent of public concern, and extent of data from reproductive and developmental toxicity studies.

CERHR follows a formal, multi-step process for review and evaluation of selected chemicals. The formal evaluation process was published in the **Federal Register** on July 16, 2001 (Volume 66, Number 136, pages 37047–37048) and is available on the CERHR Web site under ''About CERHR'' or in printed copy from the CERHR.

Dated: December 5, 2005.

David A. Schwartz,

Director, National Institute of Environmental Health Sciences and the National Toxicology Program.

[FR Doc. E5–7412 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program; Hormonally-Induced Reproductive Tumors: Relevance of Rodent Bioassays Workshop

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Workshop announcement.

SUMMARY: For more than a quarter century, the National Toxicology Program (NTP) testing program has provided extensive and useful scientific information for predicting human health hazards and protecting public health. The NTP periodically conducts reviews of animal models used in its bioassays to critically analyze their predictive power and determine whether the protocols for these studies should be altered. As part of this effort, the NTP is convening a workshop titled ''Hormonally-Induced Reproductive Tumors: Relevance of Rodent Bioassays.'' The 2½ day workshop will be held on May 22–24, 2006, at the Marriott Raleigh Crabtree Valley, 4500 Marriott Drive, Raleigh, NC 27612.

The workshop's overall goal is to determine the adequacy and relevance to human disease outcome of rodent models for four types of hormonally-induced reproductive tumors (ovary, mammary gland, prostate, and testis). Other topics for discussion include proposed modes of action (for each tumor type and for hormonal tumors in general), dose response for tumor induction, predictiveness of rodent pre-neoplastic events for humans, the importance of the inclusion of an *in utero exposure* in the etiology of specific tumors, and the concept of ''additivity to background'' when normal hormones are present with homeostatic control mechanisms. The program will include plenary sessions as well as four breakout group sessions for in-depth discussions.

This meeting is open to the public with time set aside for public comments. Attendance is limited by the space available to approximately 100 public attendees. Individuals may register to attend the workshop on a first-come, first-served basis per the procedures outlined below. A copy of the agenda and any additional information about the workshop, including background materials, public comments, and invited participants, will be posted on the NTP Web site when available (see NTP Web site

http://ntp.niehs.nih.gov select ''Meetings and Workshops'').

DATES: The workshop will be held on May 22–24, 2006. The workshop will begin each day at 8:30 a.m. and end at approximately 5 p.m. on May 22–23 and approximately 12 p.m. on May 24.

Comments: Written comments should be received by May 12, 2006, to allow time for adequate review before the meeting (see **FOR FURTHER INFORMATION CONTACT** below). Individuals wishing to make oral public comments are asked to contact Dr. Paul Foster (see **FOR FURTHER INFORMATION CONTACT** below) by March 12, 2006, and if possible, also to send a copy of the statement or talking points at that time.

Registration: Individuals who plan to attend are encouraged to register online at the NTP Web site *http://ntp.niehs.nih.gov/* select ''Meetings and Workshops'' as soon as possible because seating is limited to approximately 100 public attendees. Persons needing special assistance, such as sign language interpretation or other reasonable accommodation in order to attend, should contact 919–541–2475 voice, 919–541–4644 TTY (text telephone), through the Federal TTY Relay System at 800–877–8339, or by e-mail to *niehsoeeo@niehs.nih.gov.* Requests should be made at least 7 days in advance of the event.

ADDRESSES: The workshop will be held at the Marriott Raleigh Crabtree Valley, 4500 Marriott Drive, Raleigh, North Carolina 27612.

FOR FURTHER INFORMATION CONTACT: Correspondence should be submitted to Dr. Paul Foster (NIEHS, P. O. Box 12233, MD EC–34, Research Triangle Park, NC, 27709; telephone: 919–541–2513, fax: 919–541–4255; or e-mail: *foster2@niehs.nih.gov*).

SUPPLEMENTARY INFORMATION:

Background

The workshop will include plenary sessions as well as four simultaneous breakout group sessions for in-depth discussion of the topics mentioned above. Each breakout group will address the following topics for a specific tumor type (ovary, mammary gland, prostate, or testis), relevance to human disease outcome of rodent models, proposed modes of action, dose response for tumor induction, predictiveness of rodent pre-neoplastic events for humans, the importance of the inclusion of an in utero exposure in the etiology of specific tumors, and the concept of ''additivity to background'' when normal hormones are present with homeostatic control mechanisms. The NTP will prepare a workshop report following the meeting.

Request for Comments

Public input at this meeting is invited and time is set aside for the presentation of public comments during the plenary session on May 22, 2006. Each organization is allowed one speaker during the public comment period. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Registration for oral comments will also be available on-site, although time allowed for presentation by on-site registrants may be less than that for pre-registered speakers and will be determined by the number of persons who register at the meeting.

Written statements can supplement and may expand the oral presentation. If registering on-site and reading from written text, please bring 50 copies of the statement for distribution and to supplement the record. Written comments received in response to this notice will be posted on the NTP Web site (*http://ntp.niehs.nih.gov* select ''Meetings and Workshops''). Persons submitting written comments should include their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any) with the document.

Dated: December 5, 2005.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. E5–7414 Filed 12–15–05; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: Security Programs for Indirect Air Carriers

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by February 14, 2006.

ADDRESSES: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0004; Security Programs for Indirect Air Carriers, 49 CFR part 1548. This rule prescribes aviation security rules governing each person (including air freight forwarder and any cooperative shippers' association) engaged, or who intends to be engaged, indirectly in the air transportation of package cargo that is intended for carriage aboard a passenger-carrying air carrier aircraft inside the United States. TSA requires that such carriers maintain records of their security programs and make those documents available for inspection upon request by any TSA Inspector. The current estimated annual burden is 1,306 hours.

Issued in Arlington, Virginia, on December 8, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. E5–7406 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Approval From OMB of One New Public Collection of Information: Registered Traveler (RT) Program; Satisfaction and Effectiveness Measurement Data Collection Instruments

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on the new information collection requirement abstracted below that will be submitted to the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act of 1995.

DATES: Send your comments by February 14, 2006.

ADDRESSES: Comments may be delivered to Kurt Zobrist, Director, Registered Traveler Program, Office of Transportation Threat Assessment and Credentialing, TSA Headquarters, TSA–19, 601 South 12th Street, Arlington, VA 22202–4220; or by e-mail at *kurt.zobrist@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220; or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for submission of clearance of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

Purpose of Data Collection

TSA plans to conduct a domestic Registered Traveler (RT) program nation-wide in 2006. This program is designed to positively identify individuals participating in the program as registered travelers via advanced identification technologies, for the purposes of expediting those passengers' travel experience at the airport security checkpoints, and thereby enabling TSA to improve the allocation of security resources at TSA security checkpoints in the Nation's airports.

Description of Data Collection

Via a private sector enrollment provider, TSA will receive and retain a minimal amount of personal information from volunteers who choose to enroll in the RT Program. This information will be used to verify an applicant's claimed identity and complete a security threat assessment on each applicant prior to acceptance into the RT program.

In addition, TSA will administer two instruments to measure customer satisfaction and to collect data on the effectiveness of the program technologies and business processes. The first instrument will be a survey of a representative percentage of the RT Program participants. The second instrument will be an interview conducted with the key stakeholders (including airport authorities, air carriers and certified service providers) participating in the RT Program. All surveys and interviews will be voluntary and anonymous.

The collection of information from individuals who volunteer to participate in the RT Program will be gathered electronically. This not only fulfills the requirements of the Government Paperwork Elimination Act, but it also facilitates the collection and processing of the data and provides an efficient means of retrieving credential information. Due to practical considerations, the RT customer service surveys will be conducted electronically, when possible, and interviews will be conducted manually. Respondents to any service may freely choose not to participate. The respondents who choose to participate in the surveys will be asked to return the completed survey in less than 30 days from the time of receipt. They may choose not to comply with this request.

Key stakeholders involved in the RT Program will be asked to designate representative(s) to participate in short, individual interview sessions intended to evaluate the effectiveness of the RT Program from the stakeholders' perspective and to gather any additional feedback the stakeholder may wish to share. Interview sessions will be conducted on a one-on-one basis at mutually agreed upon locations. Stakeholders may choose not to participate in the interview sessions.

Burden Estimates of Data Collection

TSA expects a total of 600,000 respondents to participate per year and, based on an estimate of a 10-minute burden per respondent, a maximum total burden program-wide of 100,000 hours per year. This estimate is based on an expected program roll-out schedule modeled by TSA. The roll-out schedule assumes the number of airports that are approved to participate in the program, as well as the number of volunteers that will choose to enroll. It is expected that the overall burden of enrollment will decrease year to year based on the number of people already in the program. The Registered Traveler Program is a fully fee-based program. Volunteer enrollees will be required to pay an annual fee to cover the Government's costs of the program and to compensate private sector enrollment providers. The cost burden of enrollment will be the direct cost of collecting information and conducting a security threat assessment on the enrollee. This is estimated at $50 per enrollee for a total annual cost burden of $30,000,000.

Another source for data collection is customer survey submissions. TSA expects a total of 37,500 respondents (TSA will send surveys to approximately 25 percent of the population; with an expected e-survey return rate of 25 percent) and, based on an estimate of a 15-minute burden per respondent, a maximum total burden program-wide of 9,375 hours per year.

For the stakeholder interview sessions, TSA expects approximately 60 stakeholder representatives to participate per year (representatives from all participating airports, service providers, and interested air carriers) and, based on an estimate of a 60-minute burden per interview, a maximum total burden of 60 hours. There will be no cost burden to any survey respondent or stakeholder interviewee.

Thus, TSA estimates the total annual hour burden to be 109,435 hours.

Use of Results

TSA will use the results of the biographic and biometric data collection to verify an applicant's claimed identity and to perform a security threat assessment on the individual volunteering for the program and check immigration status to ensure eligibility for the program. The security threat assessment is essential for TSA to determine whether the applicant presents, or is suspected of presenting, a threat to transportation security. Individuals who do not pose, or are not suspected of posing, a threat to transportation security, and otherwise meet all other eligibility requirements for the RT program, will be afforded enhanced benefits at the TSA security checkpoints.

TSA Headquarters personnel and individual service providers, air carriers, and airports will use the results of the surveys and interviews to evaluate and improve customer service and operational efficiency of this program.

Issued in Arlington, Virginia, on December 12, 2005.

Lisa S. Dean,

Privacy Officer.

[FR Doc. E5–7407 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent to Request Renewal From OMB of One Current Public Collection of Information: Employment Standards

AGENCY: Transportation Security Administration (TSA), DHS.

ACTION: Notice.

SUMMARY: TSA invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act.

DATES: Send your comments by February 14, 2006.

ADDRESSES: Katrina Wawer, Information Collection Specialist, Office of Transportation Security Policy, TSA–9, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202–4220.

FOR FURTHER INFORMATION CONTACT: Katrina Wawer at the above address or by telephone (571) 227–1995 or facsimile (571) 227–2594.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995, (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a valid OMB control number. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

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

(2) Evaluate the accuracy of the agency's estimate of the burden;

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

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652–0006; Employment Standards, 49 CFR Parts 1542 and 1544. The Aviation and Transportation Security Act of 2001 (Pub. L. 107–71, 115 Stat. 597, Nov. 19, 2001), transferred the responsibility for civil aviation security, including the prescribing of employment standards as outlined above, from the Federal Aviation Administration (FAA) to TSA. In February 2002, TSA implemented its employment standards at 49 CFR parts 1542 and 1544, while the FAA 14 CFR parts 107 and 108 were repealed. Airport operators maintain records of compliance with part 1542 for those employees with access privileges to secure areas of the airport. Air carrier operators maintain records of compliance with part 1544 for selected crew and security employees. TSA civil aviation security inspectors review these records to ensure that the safety and security of the public is not compromised. TSA estimates the annual burden hours to be 130,005.

Issued in Arlington, Virginia, on December 12, 2005. .

Lisa S. Dean,

Privacy Officer.

[FR Doc. E5–7408 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4980–N–50]

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.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, room 7266, Department of Housing and Urban Development, 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 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where

property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Marsha Pruitt, Department of Agriculture, Reporters Building, 300 7th St., SW., Washington, DC 20250; (202) 720–4335; *Coast Guard:* Commandant, U.S. Coast Guard, Attn: Teresa Sheinberg, 2100 Second St., SW., Rm 6109, Washington, DC 20593–0001; (202) 267–6142; *Energy:* Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586–4548; *GSA:* Mr. John Kelly, Acting Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501–0084; *Navy:* Mr. Warren Meekins, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: December 8, 2005.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 12/16/2005

Suitable/Available Properties

Buildings (by State)

California

Indian Creek Tullis Property
Hwy 299
Douglas City Co: Trinity CA 96024–0162
Landholding Agency: GSA
Property Number: 54200540017
Status: Surplus
Comment: 919 sq. ft., residential bldg. and two garage/storage bldgs., off-site use only
GSA Number: 9–I–CA–1652

Nebraska

Federal Building
106 S. 15th Street
Omaha Co: Douglas NE 68102–
Landholding Agency: GSA
Property Number: 54200540018
Status: Excess
Comment: 120,431 sq. ft., 12 floors, possible asbestos/lead paint, most recent use—office, historic covenants will be required, needs rehab, Federal tenants to vacate in approximately 2 years
GSA Number: 7–G–ME–0520

Suitable/Unavailable Properties

Building (by State)

Maryland

Tower Site D
Fort Detrick
Damascus Co: Howard MD 20872–
Landholding Agency: GSA
Property Number: 54200540020
Status: Excess
Comment: 2.71 acre parcel with 3143 sq. ft. communications bldg., storage, steel tower, presence of asbestos/lead paint
GSA Number: 4–D–MD–0620

Unsuitable Properties

Buildings (by State)

Hawaii

Bldg. 158
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200540024
Status: Excess
Reason: Extensive deterioration

Bldg. 453, 454
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77200540025
Status: Excess
Reason: Extensive deterioration

Bldg. 437
Naval Magazine
West Loch Branch
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77200540026
Status: Unutilized
Reason: Extensive deterioration

Unsuitable Properties

Buildings (by State)

Hawaii

Bldg. 570, 571
Naval Magazine
West Loch Branch
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77200540027
Status: Unutilized
Reason: Extensive deterioration

Indiana

Bldg. 1820
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200540028
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2694
Naval Support Activity
Crane Co: Martin IN 47522–
Landholding Agency: Navy
Property Number: 77200540029
Status: Unutilized
Reason: Extensive deterioration

Unsuitable Properties

Buildings (by State)

New Jersey

Bldgs. 475, 476
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200540030
Status: Unutilized
Reason: Extensive deterioration

Bldgs. C–4, C–58
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200540031
Status: Unutilized
Reason: Extensive deterioration

Bldg. D–1A

Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200540032
Status: Unutilized
Reason: Extensive deterioration

Unsuitable Properties

Buildings (by State)

New Jersey

Bldgs. D–2, D–3, D–4
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200540033
Status: Unutilized
Reason: Extensive deterioration

Bldg. EA–1
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200540034
Status: Unutilized
Reason: Extensive deterioration

Bldg. HA–1A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200540035
Status: Unutilized
Reason: Extensive deterioration

Unsuitable Properties

Buildings (by State)

New Jersey

Bldg. S–31, S–219
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77200540036
Status: Unutilized
Reason: Extensive deterioration

North Carolina

RPFN 0S1
Group Cape Hatteras
Buxton Co: Dare NC 27902–
Landholding Agency: Coast Guard
Property Number: 88200540001
Status: Unutilized
Reason: Secure Area, Extensive deterioration

RPFN 053
Sector N.C.
Atlantic Beach Co: Carteret NC 28512–
Landholding Agency: Coast Guard
Property Number: 88200540002
Status: Unutilized
Reason: Secure Area, Extensive deterioration

Unsuitable Properties

Buildings (by State)

Oregon

Federal Office Building
511 N.W. Broadway
Portland Co: Multnomah OR 97205–
Landholding Agency: GSA
Property Number: 54200540019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–OR–0745

South Carolina

Bldg. 33
U.S. Vegetable Laboratory
Charleston Co: SC 29414–
Landholding Agency: Agriculture
Property Number: 15200540001
Status: Unutilized
Reason: Extensive deterioration

Texas

4 Bldgs.
NNSA Pantex Plant
Amarillo Co: Carson TX 79120–
12–009, 12–009A, 12–R–009A, 12–R–009B
Landholding Agency: Energy
Property Number: 41200540002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable Properties

Buildings (by State)

Texas

Bldg. 12–011A
NNSA Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200540003
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material Secured Area

Bldg. 12–097
NNSA Pantex Plant
Amarillo Co: Carson TX 79120–
Landholding Agency: Energy
Property Number: 41200540004
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Unsuitable Properties

Land (by State)

New Jersey
Laboratory
986 Jersey Avenue
New Brunswick Co: NJ 08903–
Landholding Agency: GSA
Property Number: 54200540021
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 1–B–NJ–0656

[FR Doc. 05–23980 Filed 12–15–05; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Indian Arts and Crafts Board

Proposed Agency Information Collection with Indian Artist/Artisan Survey; Comment Request

AGENCY: Indian Arts and Crafts Board, Interior.

ACTION: Notice.

SUMMARY: The Indian Arts and Crafts Board (IACB) announces an information collection to generate baseline numbers for the Strategic Plan, as well as other statistics to be used for evaluating and strengthening our Congressional mandate. Comments on this collection are requested form the public. After the public review, the IACB will submit the information collection to OIRA–OMB for review and approval as required by the Paperwork Reduction Act of 1995.

DATES: Submit comments on or before February 14, 2006.

ADDRESSES: Send your written comments to Attention: Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C Street, NW., MS–2058 MIB, Washington, DC 20240. If you wish to submit comments by facsimile, the number is (202) 308–5196, or you may send them by e-mail to ''*iacb@ios.doi.gov*''. Please mention that your comments concern the Indian Artist/Artisan Survey, OMB control # 1085–0003.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the Indian Artist/Artisan Survey, OMB Control # 1085–0003, i.e., the information collection instrument, should be directed to Meridith Z. Stanton, Director, Indian Arts and Crafts Board, 1849 C Street, NW., MS 2058 MIB, Washington, DC. 20240. You may also call (202) 208–3773 (not a toll free call), or sent your request by e-mail to ''*iacb@ios.doi.gov*'' or by facsimile to (202) 208–5196.

SUPPLEMENTARY INFORMATION:

I. Abstract

The IACB is responsible for promoting the development of American Indian and Alaska Native Arts and crafts, improving the economic status of members of Federally recognized Tribes, and helping to develop and expand marketing opportunities for arts and crafts produced by Native American Indians and Alaska Natives. This year, the Secretary of the Interior has mandated that each department complete a Strategic Plan. In conjunction with this plan, the Commissioners for the IACB have requested that the IACB generate baseline numbers that will be included in the Strategic Plan, as well as other statistics that will be used for evaluating and strengthening our Congressional mandate. The IACB has designed a questionnaire that would produce valid and reliable results that can be generalized to the entire universe of study. It is directed toward the Native American Indian and Alaska Native artist/artisan constituency. The questionnaire is to be utilized at Indian markets across the country, which is where most artists and artisans served by the IACB sell their work. Recently, the IACB learned that it would be able to participate in the Santa Fe Indian Market, the largest event in the

Southwest, and felt this would be an excellent opportunity to utilize the questionnaire. In order to do this, it requested emergency approval of the Indian Artist/Artisan Survey; OMB approved the survey under OMB Control Number 1085–0003. The IACB is planning to extend the information collection approval for the standard three years and to add additional surveys in other regions necessary to establish a national baseline.

II. Data

(1) *Title:* Indian Artist/Artisan Survey.

OMB Control Number: 1085–0003.

Current Expiration Date: February 28, 2006.

Type of Review: Information Collection Renewal.

Affected Entities: Businesses or other for-profit entities; Tribes.

Estimated annual number of respondents: 400.

Frequency of response: Annual.

(2) Annual reporting and record keeping burden.

Total annual reporting per respondent: 10 minutes.

Total annual reporting: 67 hours.

(3) *Description of the need and use of the information:* This information is required to generate baseline numbers for our Strategic Plan, as well as other statistics to be used for evaluating and strengthening our Congressional mandate.

III. Request for Comments

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

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

All written comments will be available for public inspection in Room 2058 of the Main Interior Building, 1849 C Street, NW., Washington, DC from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. A valid picture identification is required for entry into the Department of the Interior. the comments, with names and addresses, will be available for public view during regular business hours. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law.

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 Office of Management and Budget control number.

Dated: December 9, 2005.

Meridith Z. Stanton,

Director, Indian Arts and Crafts Board.

[FR Doc. 05–24105 Filed 12–15–05; 8:45 am]

BILLING CODE 4310–RK–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Proposed Agency Information Collection With Applicant Background Survey; Comment Request

AGENCY: Office of Civil Rights.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Civil Rights, Office of the Secretary, Department of the Interior (DOI), announces the proposed extension of a public information collection and seeks public comments on the provisions thereof.

DATES: Consideration will be given to all comments received by February 14, 2006.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of Civil Rights, Attn: Samuel Bowser, Department of the Interior, 1849 C St., NW., Washington, DC 20240. Individuals providing comments should reference OMB control #1091–0001, Applicant Background Survey.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instrument, please write to the above address, or call Samuel Bowser, (202) 208–5549. The collection instrument is also available on the Internet at: *http://www.doi.gov/diversity/doc/di_1935.pdf.*

SUPPLEMENTARY INFORMATION:

I. Abstract

DOI is below parity with the Relevant Civilian Labor Force representation for many mission critical occupations. The Department's Strategic Human Capital Management Plan identifies the job skills that will be needed in its current and future workforce. The job skills it will need are dispersed throughout its eight bureaus and include, among others, making visitors welcome to various facilities, such as parks and refuges, processing permits for a wide variety of uses of the public lands, collecting royalties for minerals extracted from the public lands, rounding-up and adopting-out wild horses and burros found in the west, protecting archeological and cultural resources of the public lands, and enforcing criminal laws of the United States. As a result of this broad spectrum of duties and services, the Department touches the lives of most Americans.

The people who deal with the Department bring with them a wide variety of backgrounds, cultures, and experiences. A diverse workforce enables the Department to provide a measure of understanding to its customers by relating to the diverse background of those customers. By including employees of all backgrounds, all DOI employees gain a measure of knowledge, background, experience, and comfort in serving all of the Department's customers.

In order to determine if there are barriers in our recruitment and selection processes, DOI must track the demographic groups that apply for its jobs. There is no other statistically valid method to make these determinations, and no source of this information other than directly from applicants. The data collected is not provided to selecting officials and plays no part in the merit staffing or the selection processes. The data collected will be used in summary form to determine trends covering the demographic make-up of applicant pools and job selections within a given

occupation or organizational group. The records of those applicants not selected are destroyed in accordance with DOI's records management procedures.

II. Data

(1) *Title:* Applicant Background Survey.

OMB Control Number: 1091–0001.

Current Expiration Date: March 31, 2006.

Type of Review: Information Collection Renewal.

Affected Entities: Applicants for DOI jobs.

Estimated annual number of respondents: 668,905.

Frequency of response: once per job application.

(2) Annual reporting and record keeping burden.

Average reporting burden per application: 5 minutes.

Total annual reporting: 55,746 hours.

(3) *Description of the need and use of the information:* This information is required to obtain the source of recruitment, ethnicity, race, and disability data on job applicants to determine if the recruitment is effectively reaching all aspects of relevant labor pools and to determine if there are proportionate acceptance rates at various stages of the recruitment process. Response is optional. The information is used for evaluating recruitment only, and plays no part in the selection of who is hired.

III. Request for Comments

Request for Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance 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.

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

All written comments will be available for public inspection in the Main Interior Building, 1849 C Street, NW., Washington, DC from 9 a.m. until 3 p.m., Monday through Friday, excluding legal holidays. For an appointment to inspect comments, please contact Samuel Bowser by telephone on (202) 208–5549, or by e-mail at *Samuel_S_Bowser@ios.doi.gov.* A valid picture identification is required for entry into the Department of the Interior. If you wish us to withhold your personal information, you must prominently state at the beginning of your comment what personal information you want us to withhold. We will honor your request to the extent allowable by law.

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 Office of Management and Budget control number.

Dated: December 12, 2005.

Samuel Bowser,

Assistant Director for Workforce Diversity, Department of the Interior.

[FR Doc. 05–24106 Filed 12–15–05; 8:45 am]

BILLING CODE 4310–RE–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Sent to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; 1018–0119; Policy for Evaluation of Conservation Efforts When Making Listing Decisions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (Fish and Wildlife Service, Service) have sent a request to OMB to renew approval for the collection of information associated with our Policy for Evaluation of Conservation Efforts When Making Listing Decisions (PECE). We use the information that we collect as part of the basis for identifying conservation efforts that can contribute to a decision not to list a species under the Endangered Species Act (ESA) or to list a species as threatened rather than endangered.

DATES: You must submit comments on or before January 17, 2006.

ADDRESSES: Send your comments and suggestions on this information collection renewal to the Desk Officer for the Department of Interior at OMB–OIRA at (202) 395–6566 (fax) or *OIRA_DOCKET@OMB.eop.gov* (e-mail). Please provide a copy of your comments to Hope Grey, Information Collection Clearance Officer, Fish and Wildlife Service, MS 222–ARLSQ, 4401 North Fairfax Drive, Arlington, Virginia 22203 (mail); (703) 358–2269 (fax); *hope_grey@fws.gov* (e-mail).

FOR FURTHER INFORMATION CONTACT: To request a copy of the proposed information collection requirement, related forms, or explanatory material, contact Hope Grey at the addresses above or by phone at (703) 358–2482.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). Currently, we have approval to collect this information under OMB Control Number 1018–0119, which expires on December 31, 2005. We are asking OMB to renew approval for a 3-year term. OMB has up to 60 days to approve or disapprove our request; however, OMB may respond as early as 30 days after our submittal. To ensure consideration, send your comments to OMB by the date listed in the **DATES** section. We 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.

On August 15, 2005, we published in the **Federal Register** (70 FR 47845) a notice of our intent to request renewal of this information collection authority from OMB. In that notice, we solicited public comments for 60 days, ending on October 14, 2005. We did not receive any comments.

Section 4 of the ESA specifies the process by which we can list species as threatened or endangered. When we consider whether or not to list a species, the ESA requires us to take into account the efforts being made by any State or any political subdivision of a State to protect such species. We also take into account the efforts being made by other entities. States or other entities often formalize conservation efforts in conservation agreements, conservation plans, management plans, or similar documents. The conservation efforts recommended or called for in such documents could prevent some species

from becoming so imperiled that they meet the definition of a threatened or endangered species under the ESA.

PECE encourages the development of conservation agreements/plans and provides certainty about the standard that individual conservation efforts contained in an agreement/plan must meet so that we can consider that such efforts contribute to forming a basis for a listing determination. PECE applies to ''formalized conservation efforts'' that have not been implemented or have been implemented but have not yet demonstrated effectiveness in contributing to the reduction or removal of one or more threats to a species. Under PECE, formalized conservation efforts are defined as conservation efforts (specific actions, activities, or programs designed to eliminate or reduce threats or otherwise improve the status of a species identified in a conservation agreement, conservation plan, management plan, or similar document (68 FR 15100)). The development of such agreements/plans is voluntary and there is no requirement that the individual conservation efforts included in such documents be designed to meet the standard in PECE.

PECE specifies that to consider that a conservation effort contributes to forming a basis for not listing a species or listing a species as threatened rather than endangered, we must find that the 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. To gauge whether or not this standard has been met, PECE includes criteria for evaluating the certainty of implementation and the certainty of effectiveness of individual conservation efforts.

One criterion for evaluating the certainty of effectiveness of a conservation effort is that the agreement/plan contains provisions for monitoring and reporting progress on implementation and effectiveness of the effort. Also, if we make a decision not to list a species or to list the species as threatened rather than endangered based in part on the contributions of formalized conservation efforts that were subject to the policy, we must (1) track the status of the effort, including the progress of implementation and effectiveness of the efforts, and (2) if necessary, reevaluate the status of species and consider whether or not initiating the listing process is necessary. The nature and frequency of the monitoring and reporting will vary according to the species addressed, land ownership, specific conservation efforts, expertise of participants, and other factors. Generally monitoring and reporting occurs annually for several years as the conservation efforts are implemented and their effectiveness is evaluated. The information collected through monitoring is invaluable to the Service, the States, and other entities implementing agreements and plans, and to others concerned about the welfare of the species covered by the agreements/plans.

Title: Policy for Evaluation of Conservation Efforts When Making Listing Decisions.

OMB Control Number: 1018–0119.

Form Number: None.

Frequency: Occasional.

Description of Respondents: Federal agencies, States, tribes, local governments, individuals, not-for-profit institutions.

Total Annual Responses: 11 (4 original agreements; 7 monitoring/reporting).

Annual Burden Hours: 13,040 hours (2,000 hours per original agreement; 600 hours per agreement for monitoring; 120 hours per agreement for reporting).

When a State or other entity voluntarily decides to develop a conservation agreement or plan with the specific intent of making listing the subject species unnecessary, the criteria and the standard identified in PECE can be construed as a requirement placed on the development of that agreement/plan, and the entity must satisfy the monitoring and reporting requirements to obtain and retain the desired benefit (e.g., making listing of a species as threatened or endangered unnecessary). Thus, the development of such an agreement/plan with the involvement of the Service and the monitoring and reporting elements are the basis for this information collection. Those agreements/plans developed with the intent of influencing a listing decision and with involvement of the Service constitute an information collection that requires OMB approval under the Paperwork Reduction Act. Estimating the hours associated with developing such a conservation agreement or plan is difficult because:

(1) Development and associated monitoring of conservation efforts are completely voluntary, and we cannot predict who will decide to develop these efforts, how many entities they might involve, or the type and extent of the planning, monitoring, and reporting processes they might use.

(2) We cannot predict which species are certain to become the subjects of conservation efforts, and, therefore, cannot predict the nature and extent of conservation efforts and monitoring that might be included in conservation agreements/plans designed with the intent of influencing a decision regarding listing a species.

(3) Many agreements/plans, such as agency land management plans, are developed to satisfy requirements of other laws or for other purposes, and we cannot predict whether or the extent to which some of these plans may be expanded to attempt to make listing unnecessary.

Consequently, we must base our estimates of the amount of work associated with developing conservation agreements or plans, and monitoring and reporting of conservation efforts, on information from conservation agreements developed in the past. To prepare this estimate we contacted two representatives of entities involved in conservation agreements containing conservation efforts that were subject to PECE and were a key basis for Service determinations that listing the covered species was not necessary. We also reviewed the number of conservation agreements and plans developed since the publication of the final PECE on March 28, 2003 (68 FR 15100), through FY 2005, in which the Service was substantially involved. Of 27 such agreements/plans prepared during that period, 9 were developed with the specific intent of influencing a decision to list species, for an average of 3 to 4 such agreements per year. On average, conservation efforts subject to PECE in one to two agreements/plans per year contributed substantially to determinations that listing species was unnecessary. We expect these averages to continue, based on the number of draft conservation plans/agreements currently in preparation. Thus we estimate that four agreements/plans with the intent of making listing unnecessary will be completed annually. We further estimate that an average of two such agreements/plans will contain conservation efforts that meet the standard in PECE and contribute substantially to a decision that listing a species is unnecessary, and that the States or other entities will carry through with monitoring and reporting the efforts in such agreements in order to keep the covered species off the lists of endangered or threatened species. Monitoring and reporting occurs for a period of years until the efforts have been implemented and demonstrate effectiveness. We estimate that monitoring and reporting will occur for an average of seven agreements annually.

The hour burden estimated for preparation of a conservation agreement/plan varies from approximately 500 hours to 4,000 hours.

The variability is related to differences in the size and scope of the areas covered by these plans, the number of entities involved in developing them, and the complexity of the conservation issues involving a given species. We estimate the public reporting burden for the information collection covered by this renewal to average 2,000 hours for developing one agreement with the intent to preclude a listing (one-time burden). We further estimate 600 hours for annual monitoring under one agreement, and 120 hours for one annual report, for a total of 720 hours annually for monitoring and reporting per agreement. We estimate that monitoring and reporting will occur for seven agreements annually. Based on our estimate of four plans prepared per year and seven plans for which monitoring and reporting will occur per year, the total annual burden is estimated at 13,040 hours.

We again invite comments on this information collection renewal on: (1) Whether or not the collection of information is necessary for the proper performance of our management functions involving PECE, including whether or not the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of records covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: December 2, 2005.

Hope Grey,

Information Collection Clearance Officer, Fish and Wildlife Service.

[FR Doc. E5–7436 Filed 12–15–05; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Draft Environmental Impact Statement for the Confederated Tribes of the Umatilla Indian Reservation's Proposed Coyote Business Park, Umatilla County, OR

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Bureau of Indian Affairs (BIA) intends to file a Draft Environmental Impact Statement (DEIS) with the U.S. Environmental Protection Agency for the proposed lease and development of an industrial park of up to 142 acres of land held in trust by the United States for the benefit of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in Umatilla County, Oregon, and that the DEIS is now available for public review. The purpose of the proposed project, the Coyote Business Park, is to help meet economic development needs on the Umatilla Indian Reservation. This notice also announces a hearing for the public to provide comments on the DEIS.

DATES: Written comments on the DEIS must arrive by January 30, 2006. The public hearing will be held January 19, 2006, starting at 7 p.m.

ADDRESSES: You may mail written comments to Jerry L. Lauer, Acting Superintendent, Bureau of Indian Affairs, Umatilla Agency, P.O. Box 520, Pendleton, Oregon, 97801; or hand carry written comments to Mr. Lauer at the Umatilla Agency, 46807 B Street, Mission, Oregon.

The public meeting will be held at the Tamastslikt Cultural Institute, 72789 Highway 331, Pendleton, OR 97801.

To obtain a copy of the DEIS, please contact Jerry L. Lauer by mail at the above mailing address or by telephone at the number provided below. Copies of the DEIS are available for public review at the Umatilla Agency (street address above), at the Pendleton Public Library, 500 SW Dorian, Pendleton, Oregon, and on the Web site *http://www/efw/bpa.gov/cgi-bin/PSA/NEPA/SUMMARIES/Coyote Business Park*. Copies of the DEIS have also been sent to agencies and individuals who participated in the scoping process and to all others who had requested copies.

FOR FURTHER INFORMATION CONTACT: Jerry L. Lauer, (541) 278–3786.

SUPPLEMENTARY INFORMATION: The DEIS, prepared with the cooperation of the Bonneville Power Administration (BPA) and CTUIR, analyzes the impacts of the proposed leasing of Indian trust land for the purpose of constructing and managing a light industrial and commercial business park. The proposed Coyote Business Park would be situated on 142 contiguous acres of a 520 acre parcel of trust land located south of Interstate 84 at Exit 216 and west of South Market Road, approximately 7 miles east of Pendleton, Oregon, on the Umatilla Indian Reservation.

The proposed action is to construct infrastructure for the business park, including domestic water service, sanitary sewer service, storm water drainage, roads, and utilities to lots which would be leased by the CTUIR to individual business owners for the construction of light industrial and/or commercial facilities. The CTUIR may also construct such facilities for lease to private operators. Anticipated light industrial operations include warehouses or distribution facilities and assembly of previously manufactured components.

Water under the proposed action would be supplied to the business park from the Mission Water System. Wastewater would be handled by connection to the Mission Wastewater Collection System, which is treated through a cooperative agreement by the city of Pendleton. Storm water drainage would be retained on-site. Access to the site would be from South Market Road, which would be improved to an industrial standard and provided with a dedicated right hand turn lane into the site. Commercial utilities would be provided through extensions of existing services which are located either adjacent to, or within one-fourth mile of the site. Support structures would also be replaced on the high-voltage BPA transmission line that crosses the site.

Potential impacts to Patawa Creek as well as nearby residences have been considered in the design of the business Park. Mitigation includes a storm water drainage collection system that isolates storm water from Patawa Creek; creation of a Riparian Management Zone along Patawa Creek to establish native vegetation and reduce sedimentation and erosion; incorporation of best management practices to reduce impacts to groundwater; incorporation of landscaping and night lighting design to reduce visual impact and night light pollution; and construction of a new bridge across Patawa Creek to provide access to the Oregon Department of Transportation's gravel shed and the Tribal Environmental Recovery Facility, thus eliminating the need for the existing gravel road to these facilities.

The DEIS analyzes the proposed action (Alternative E), the no action alternative (A) and three other action alternatives (B, C, and D). The proposed action is the preferred alternative. The action alternatives differ primarily in: (1) The size (21–142 acres) of the proposed business park; (2) whether domestic water would be provided through the drilling of a new well or through the extension of an existing community water system; and (3) whether sanitary sewer service would be provided by installation of septic tanks and drain fields or by connection to an existing municipal sewer system.

Public participation has occurred throughout the development of this DEIS. The Notice of Intent was

published in the **Federal Register** on January 9, 2002 (66 FR 1191). A public scoping meeting was held in Pendleton, Oregon, on January 23, 2003, to solicit comments and ideas. On November 6, 2003, an open house was held in Pendleton, Oregon, to update the public on the National Environmental Policy Act compliance process for the proposed project. All comments presented throughout the process have been considered.

Public Comment Availability

Comments, including names and addresses of respondents, will be available for public review at the mailing address shown in the **ADDRESSES** section during regular business hours, 7:30 a.m. to 4 p.m., Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish us to withhold your name and/or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public inspection in their entirety.

Authority

This notice is published in accordance with section 1503.1 of the Council on Environmental Quality regulations (40 CFR Parts 1500 through 1508) implementing the procedural requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), and the Department of Interior Manual (516 DM 1–6), and is in the exercise of authority delegated to the Principal Deputy Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: December 8, 2005.

Michael D. Olsen,

Acting Principal Deputy Assistant Secretary—Indian Affairs.

[FR Doc. E5–7413 Filed 12–15–05; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–079–06–1010–PH]

Notice of Public Meeting, Western Montana Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM), the Western Montana Resource Advisory Council will meet as indicated below.

DATES: The next two regular meetings of the Western Montana RAC will be held February 22, 2006 at the Butte Field Office, 106 N. Parkmont, Butte, Montana and May 11, 2006 at the Missoula Field Office, 3255 Fort Missoula Road, Missoula, Montana beginning at 9 a.m. The public comment period for both meetings will begin at 11:30 a.m. and the meetings are expected to adjourn at approximately 3 p.m.

FOR FURTHER INFORMATION CONTACT: For the Western Montana RAC, contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in western Montana. At the February 22 meeting, topics we plan to discuss include: a Montana Challenge presentation by Montana Fish, Wildlife, and Parks, election of officers, an update on the Recreation RACs, a briefing on the White House Conservation Conference and impacts related to the Pombo Mining Bill (if passed). Topics for the May 11 meeting will be determined at the February meeting.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allocated for hearing public comments. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance, such as sign language interpretation, or other reasonable accommodations, should contact the BLM as provided below.

Dated: December 12, 2005.

Steven Hartmann,

Acting Field Manager.

[FR Doc. E5–7459 Filed 12–15–05; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1098 (Preliminary)]

Liquid Sulfur Dioxide From Canada

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission (Commission) determines,[2] pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act), that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury, or that the establishment of an industry in the United States is materially retarded, by reason of imports from Canada of liquid sulfur dioxide, provided for in subheading 2811.23.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On September 30, 2005, a petition was filed with the Commission and the U.S. Department of Commerce (Commerce) by Calabrian Corp., Kingwood, TX, alleging that an industry in the United States is materially injured by reason of LTFV imports of liquid sulfur dioxide from Canada. Accordingly, effective September 30, 2005, the Commission instituted antidumping duty investigation No. 731–TA–1098 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of October 7, 2005 (70 FR 58747). The conference was held in Washington, DC, on October 20, 2005, and all persons who requested the

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Chairman Stephen Koplan dissenting.

opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on December 12, 2005. The views of the Commission are contained in USITC Publication 3826 (December 2005), entitled Liquid Sulfur Dioxide from Canada: Investigation No. 731–TA–1098 (Preliminary).

By order of the Commission.

Issued: December 12, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7449 Filed 12–15–05; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–340–E and H (Second Review)]

Solid Urea From Russia And Ukraine

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (Commission) determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on solid urea from Russia and Ukraine would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on October 1, 2004 (69 FR 58957) and determined on January 4, 2005 that it would conduct full reviews (70 FR 2882, January 18, 2005). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on April 13, 2005 (70 FR 19502). The hearing was held in Washington, DC, on September 22, 2005, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these reviews to the Secretary of Commerce on December 13, 2005. The views of the Commission are contained in USITC Publication 3821 (December 2005), entitled Solid Urea from Russia and Ukraine: Investigations Nos. 731–TA–340–E & H (Second Review).

By order of the Commission.

Issued: December 13, 2005.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E5–7445 Filed 12–15–05; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Vice Chairman Deanna Tanner Okun, Commissioner Jennifer A. Hillman, and Commissioner Shara L. Aranoff dissenting.

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *The title of the information collection:* Billing Instructions for NRC Cost Type Contracts.

2. *Current OMB approval number:* 3150–0109.

3. *How often the collection is required:* Monthly and on occasion.

4. *Who is required or asked to report:* NRC Contractors.

5. *The number of annual respondents*: 55.

6. *The number of hours needed annually to complete the requirement or request:* The total annual contractor burden for the Billing Instructions and License Fee Recovery Cost Summary for NRC cost type contracts is estimated to be 1,070 hours. Billing burden is 754 hours plus 316 hours for License Fee Recovery Cost burden.

7. *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 for supporting data that must be submitted for NRC review. The review of this information ensures that all payments made by the NRC are for valid and reasonable costs in accordance with the contract terms and conditions.

Submit, by February 14, 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?

1. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

2. 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 homepage 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 (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail to *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this *12th* day of December 2005.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E5–7451 Filed 12–15–05; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. PROJ0734, PROJ0735, PROJ0736, POOM–32]

Draft Interim Concentration Averaging Guidance for Waste Determinations

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Draft Interim Guidance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing draft interim guidance on concentration averaging for public comment. The NRC is currently in the process of preparing a Standard Review Plan (SRP) to provide guidance to NRC staff regarding reviews of waste determinations

submitted by the U.S. Department of Energy (DOE). The NRC staff held a public scoping meeting on the draft SRP on November 10, 2005, to obtain stakeholder input on the contents of the SRP. The draft SRP is expected to be released for public comment in 2006 and will include, among other things, guidance on evaluating concentration averaging in those cases that are specific to the types of waste and situations typically evaluated in waste determinations. Because several stakeholders are interested in obtaining NRC guidance on concentration averaging as soon as practicable, the NRC is issuing this draft interim guidance prior to completion and public release of the entire draft SRP. This draft interim guidance is applicable only to waste determinations at DOE sites. This guidance will eventually be incorporated into the draft SRP and any comments received on this guidance will be evaluated at the same time as other public comments that are received following the release of the draft SRP.

DATES: The public comment period on the draft interim guidance begins with publication of this notice and continues until January 31, 2006. Written comments should be submitted as described in the **ADDRESSES** section of this notice. Comments submitted by mail should be postmarked by that date to ensure consideration. Comments received or postmarked after that date will be considered to the extent practical. Note that a subsequent public comment period will also be held after publication of the draft SRP in 2006.

ADDRESSES: Members of the public are invited and encouraged to submit comments to the Chief, Rules Review and Directives Branch, Mail Stop T6-D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please note Docket Nos. PROJ0734, PROJ0735, PROJ0736, and POOM–32 when submitting comments. Comments will also be accepted by e-mail at *NRCREP@nrc.gov* or by facsimile to (301) 415–5397, Attention: Anna Bradford.

FOR FURTHER INFORMATION CONTACT: Ms. Anna Bradford, Senior Project Manager, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Materials Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, MD 20852. Telephone: (301) 415–5228; fax number: (301) 415–5397; e-mail: *AHB1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (NDAA) provides criteria for determining whether certain waste resulting from the reprocessing of spent nuclear fuel is not high-level waste (HLW). Criteria 3(A) and 3(B) of Section 3116(a) of the NDAA require that the waste be disposed of in compliance with the performance objectives contained in NRC regulations at 10 CFR 61, Subpart C. The applicability of either 3(A) or 3(B) is dependent upon whether the waste exceeds Class C concentration limits, thus the classification of waste residuals must be determined in order to apply the NDAA criteria.

NRC's regulation, ''Licensing Requirements for Land Disposal of Radioactive Waste,'' 10 CFR Part 61, provides waste classification tables (Tables 1 and 2 of 10 CFR 61.55) to ensure suitability of radioactive waste for near-surface disposal. The waste classification (along with other provisions such as waste segregation and intruder barriers) was developed in part to provide protection to individuals from inadvertent intrusion into the waste after disposal. To determine waste classification, 10 CFR part 61 allows for the averaging of the concentration of radionuclides in waste over the volume or weight of the waste, depending on the units used to express the limits for the radionuclides. The guidance provided in NRC's Branch Technical Position (BTP) on Concentration Averaging and Encapsulation (January 17,1995) represents acceptable methods by which specific waste streams or mixtures of these waste streams may be compared to the tabulated concentration values in Tables 1 and 2 of 10 CFR 61.55. The concentration averaging BTP was written to address a subset of acceptable classification or encapsulation practices and was not intended to address all cases. For example, the concentration averaging BTP was not written to address residual contamination of large underground or buried structures or systems.

Waste classification was developed to ensure that waste concentrations would not exceed the values provided in Tables 1 and 2 of 10 CFR 61.55, without special authorization, to provide protection of individuals from inadvertent intrusion into the waste. The waste classification tables were developed from performance assessment calculations for a variety of intruder scenarios considering the types of waste and disposal technologies that would likely be utilized for near-surface commercial disposal of low-level waste. The term ''near-surface disposal'' indicates disposal in the uppermost portion, or approximately the top 30 meters, of the earth's surface. Waste that would decay to acceptable levels within 100 years was defined as Class A or B waste, and institutional controls were believed to be effective at limiting inadvertent intruder risk from these classes of waste. Waste that would decay to acceptable levels for an inadvertent intruder within 500 years was defined as Class C waste. Class C waste was envisioned to be segregated from other classes of waste, to be protected with 100 years of institutional control, to be disposed of deeper than Class A and B wastes, and to be disposed of with an intruder barrier that would prevent contact with the waste for 500 years. It was also recognized that waste exceeding Class C limits for which form and disposal methods must be different, and in general more stringent, than those specified for Class C waste would not generally be suitable for near-surface disposal. However, it was recognized that there may be instances where waste with concentrations greater than permitted for Class C would be acceptable for near-surface disposal with special processing or design. These would be evaluated on a case-by-case basis.

Guidance on acceptable methods for performing concentration averaging to determine waste classification is presented in this draft interim guidance. Interpretation and examples of implementation of the BTP on concentration averaging and encapsulation as it applies to the types of waste and situations typically evaluated in waste determinations are provided. This guidance is only applicable to waste determinations at DOE sites; other uses may be authorized with permission of the NRC.

II. Proposed Concentration Averaging Guidance

The guidance contained herein does not replace the guidance contained in the BTP on concentration averaging and encapsulation for the purposes of waste classification for the commercial disposal of low-level waste. The guidance is not intended to address all unique situations at DOE sites. However, the guidance contained herein is generally applicable to the following scenarios:

(1) Underground waste storage tanks including heels, cooling coils, and residuals adhering to walls and other surfaces,

(2) Infrastructure used to support underground waste storage tanks such

as transfer lines, transfer pumps, and diversion boxes,

(3) Waste removed from tanks that is processed or treated for disposal in a near surface disposal facility, and

(4) Other scenarios relating to waste determinations proposed by the DOE and accepted by the NRC.

Although the concentration averaging BTP was not written to address residual contamination of underground or buried structures or systems, the fundamental principles contained within the BTP are applicable to these systems. This guidance clarifies the fundamental principles presented in the BTP and provides specific examples that may be pertinent to DOE waste determinations. The acceptable methods for concentration averaging for the purposes of waste classification for waste determinations are based on the following fundamental principles introduced in the BTP.

(1) Measures are not to be undertaken to average extreme quantities of uncontaminated materials with residual waste solely for the purpose of waste classification.

(2) Mixtures of residual waste and materials can use a volume or mass-based average concentration if it can be demonstrated that the mixture is reasonably well-mixed.

(3) Credit can be taken for stabilizing materials added for the purpose of immobilizing the waste (not for stabilizing the contaminated structure) even if it can not be demonstrated that the waste and stabilizing materials are reasonably well-mixed, when the radionuclide concentrations are likely to approach uniformity in the context of applicable intruder scenarios.

(4) Other provisions for the classification of residual waste may be acceptable if, after evaluation of the specific characteristics of the waste, disposal site and method of disposal, conformance of waste disposal with the performance objectives in Subpart C of 10 CFR part 61 can be demonstrated with reasonable assurance.

(5) Regardless of the averaging that is performed for waste classification purposes, the performance assessment or other approach used to demonstrate compliance with the performance objectives of 10 CFR part 61, subpart C, must consider the actual distribution of residual contamination in the system when estimating release rates to the environment and exposure rates to inadvertent intruders. Conservative assumptions regarding the distribution of contamination are appropriate.

The purpose of these principles is to prevent arbitrary or incorrect classification of materials that may result in near-surface disposal of materials that are not suitable for near-surface disposal. Appropriate concentration averaging may indicate that waste exceeds Class C concentration limits. Waste that exceeds Class C concentration limits may be suitable for near-surface disposal, but the evaluation of the suitability must involve independent analyses such as would be performed by the NRC under 10 CFR 61.58. The methods that follow can be used to determine the waste classification of waste residuals. As indicated by the first principle above, extreme measures should not be taken when performing concentration averaging to determine waste classification. Extreme measures include: (1) Deliberate blending of lower concentration waste streams with high activity waste streams to achieve waste classification objectives, or (2) averaging over stabilizing material volume or masses that are not needed to stabilize the waste per the 10 CFR 61.56 stability requirement or are not homogeneous from the context of the intruder scenarios. This guidance presents three categories of calculations of the concentrations of radionuclides in waste. The first pertains to cases in which the waste can be mixed and is fairly homogeneous. The second pertains to cases in which the waste cannot be removed or well mixed, and is stabilized in place to satisfy the requirements of 10 CFR 61.56. The third pertains to the concentrations used in performance assessment calculations to determine the suitability of near-surface disposal according to 10 CFR 61.58 and does not pertain to the determination of whether a waste is Class A, Class B, Class C, or greater than Class C as defined in 10 CFR 61.55.

Category 1. Physical Homogeneity

In general, waste will have been processed to the maximum extent practical and will have been stabilized so that there is reasonable assurance that the performance objectives of 10 CFR 61, Subpart C, can be achieved. The concentrations of radionuclides in the waste for waste classification can be based on the average concentration calculated from the total volume or mass of the waste and processing or stabilizing materials if the materials are reasonably well-mixed. For Category 1, the weight or volume of the container should not be included in the calculation of average concentrations. The primary consideration is whether the distribution of radionuclides within the final wasteform is reasonably homogeneous. Technical basis should be provided (e.g., sampling results, engineering experience, operational constraints) to demonstrate that the waste is reasonably well-mixed. The preferred method to demonstrate homogeneity would be to provide a statistical measure of the variability of concentration within the waste, although it is recognized that this may not always be practical. For homogeneous mixtures, the classification of waste residuals may be based on the total volume or mass of the final wasteform. If additional averaging (e.g., as in the examples in Category 2) is not applied, waste with radionuclide concentrations after mixing that are greater than the values provided in Tables 1 and 2 of 10 CFR 61.55 would be considered to be greater than Class C waste.

Mixing within waste or of waste with stabilizing materials may be needed for a variety of reasons. Mixing of waste and stabilizing materials may be advantageous to reduce release rates in order to achieve the performance objectives. As defined with respect to the principles of the BTP, mixing with excessive amounts of stabilizing materials solely to reduce the waste concentrations to alter waste classification should not be performed. In most cases, the ratio of the unstabilized to stabilized radionuclide concentrations would not be significantly greater than a factor of 10 for waste classification purposes. For unstabilized waste that can not be selectively treated or removed, mixing (within waste, not between waste streams) to facilitate homogenization of radionuclide concentrations is appropriate. For example, mixing may be used to reduce the variability in concentrations within a layer of tank waste that can not be removed for further treatment.

Example 1–1. Liquid waste is removed from a tank and additional fluids are added in order to adjust the chemistry for processing. Cement and fly ash are mixed with the resultant liquid in an industrial mixer to form a grout that is placed in disposal containers. The concentration of radionuclides for determining waste classification is based on the total volume or mass of the final wasteform.

Example 1–2. Reducing grout is added to stabilize a tank heel. The waste residuals in the tank are flocculated solids suspended in a liquid phase that can be mobilized with the tank transfer equipment. However, the solids can not be removed with the existing equipment. The reducing grout has a relatively high viscosity, such that the flocculated solid residuals and remaining waste liquids can be mixed with the grout prior to setting with the transfer equipment. The concentration of radionuclides for waste classification is based on the total volume or mass of the waste and the reducing grout in

which the waste is mixed. Additional reducing grout into which little or no waste is mixed should not be included in the total mass or volume used for concentration averaging.

Category 2. Stabilization To Satisfy 10 CFR 61.56

Stabilization is a factor in limiting exposure to an inadvertent intruder because it provides a recognizable and non-dispersible waste. For solidified liquids and solids, Section 3.2 of the BTP provides for the concentration of the radionuclides to be determined based on the volume or weight of the solidified mass, which is defined here to be the amount of material needed to stabilize the liquids or dispersible solids to satisfy 10 CFR 61.56. Liquid waste must be solidified or packaged in sufficient absorbent material to absorb twice the volume of the liquid (10 CFR 61.56). However, the stabilizing material is not to be interpreted as bulk material added to fill void space. Stabilization is determined with respect to the waste and not the entire disposal system or unit. While stabilization of the entire disposal unit (e.g., a tank) may be necessary to meet the performance objectives, it generally would not be needed to make the residual waste recognizable and non-dispersible.

Waste concentrations are calculated based on the volume or mass of material needed to be added to liquids or dispersible solids in order to solidify or encapsulate them. The concentration of the stabilized waste (waste plus stabilizing material) should generally be within a factor of 10 of the concentration on either a mass or volume basis in the unstabilized waste. The factor of 10 is derived from consideration that most stabilization techniques commonly envisioned use cementitious materials, and most cementitious wasteforms can readily achieve a ten mass percent waste loading. Additional stabilizing materials would in general not be needed for waste stabilization but may be needed for stabilization of the system or structures.

For thin layers of contamination on surfaces, especially vertical surfaces, the average concentration may be based on the volume or mass of the structure in direct contact with the contamination plus a layer of stabilizing material that would be needed to stabilize the waste, as discussed above. This is not to be interpreted that averaging can be performed over all materials added to fill void space in the structure or over the portions of the structure that are essentially uncontaminated. This approach is justified because the concentrations would be expected to approach homogeneity with respect to the intruder scenarios, and the main justification for the classification system is to provide protection to the inadvertent intruder. The concentration values found in Tables 1 and 2 of 10 CFR 61.55 were derived assuming the total volume of waste exhumed by the intruder is at those concentrations, therefore a thin layer of more concentrated material averaged over the same exhumed volume would achieve a similar level of protection. Specific averaging volumes are not provided in this guidance because of the site-specific nature of the waste and site-specific considerations for intruder scenarios.

Example 2–1. A tank contains a heel that is 2.5 cm thick, and is composed of liquids and dispersible solids. A 20 cm thick layer of reducing grout is needed to stabilize the waste, and an additional 300 cm of high-strength grout is added to fill void space and to provide an intruder barrier. The concentration of radionuclides would be calculated by averaging over the 20 cm thick layer of reducing grout. Use of a 20 cm layer of reducing grout in the concentration calculation is based on the amount of grout that would be needed to stabilize the waste if it could be removed from the tank and made into a stable wasteform. The concentration of the stabilized waste (waste plus stabilizing material) would generally be within a factor of 10 of the concentration in the unstabilized waste on either a mass or volume basis.

Example 2–2. The walls of a waste storage tank have a thin layer (0.1 cm) of residual contamination that is not easily removed. The tank walls are 1 cm thick and the tank is contained within a 0.5 m thick vault. The contamination is distributed on the lower 5 m of the vertical surface. The contamination is not easily dispersed into the environment and is located underground. Closure of the storage tank will involve filling the tank and all void space with grout. The concentration of the waste for waste classification is calculated based on the thickness of the tank wall over the lower 5 m of the tank, the thickness of the contamination, and a 1 cm thick layer of stabilizing grout. Use of a 1 cm layer of grout in the concentration calculation is based on the assumption that formation of a stable waste form is accomplished by incorporating the 0.1 cm layer of residual waste into a cementitious waste form at a mass loading of approximately 10%. The concentrations of the thin layer would be reduced by a factor of 20 for estimating waste classification if a volume basis were used.

Category 3. Other Provisions

10 CFR part 61.58 allows the Commission to authorize other provisions for the classifications and characteristics of waste, if after evaluation of the specific characteristics of the waste, disposal site, and method of disposal, it finds reasonable assurance of compliance with the performance objectives in subpart C. Demonstration that the performance objectives can be satisfied would involve a site-specific analysis (e.g., performance assessment). 10 CFR part 61.58 was intended to allow the NRC to establish alternate waste classification schemes when justified by site-specific conditions, and does not affect the generic waste classifications established in 10 CFR 61.55. Thus, if the results of concentration calculations performed in a manner consistent with the principles and examples described previously in this document indicate that radionuclide concentrations in the waste exceed Class C limits, then the waste is greater than Class C waste for waste classification purposes. If it can be demonstrated that the performance objectives of 10 CFR part 61.58 can be satisfied, then the waste would be suitable for near surface disposal.

For the performance assessment calculations, the waste should be represented as it is physically expected to be present, and not averaged over the stabilizing and encapsulating materials unless the estimated doses to the public and inadvertent intruders were conservative as a result of averaging. Otherwise, every attempt should be made to represent the expected distribution of activity within the disposal system. If the 10 CFR 61 subpart C performance objectives can be met with reasonable assurance, then the waste is considered to be acceptable for near surface disposal.

When performing the intruder calculations, it is not appropriate to calculate an average dose factoring in the likelihood of the occurrence of the scenario. The likelihood of the intruder scenario occurring is already represented in the higher limit (e.g., 500 mrem/yr) applied for inadvertent intruder regulatory analysis.

Example 3–1. A waste heel remains in a HLW tank. Reducing grout is added to the heel, displacing some material to the center of the tank, while a fraction of the waste remains on the tank surfaces encapsulated by the reducing grout. A high strength grout is placed over the reducing grout as an intruder barrier and to limit water contact. The top of the waste residuals are 10 meters below the ground surface.

An intruder scenario is evaluated in which a well-driller places a well through the disposal system. In this case, the intruder is exposed to drill cuttings (waste). The average concentration of the waste used in the performance assessment calculations should be calculated by assuming mixing over the volume of well cuttings exhumed because the cuttings are expected to be well-mixed when spread on the land surface. This average

concentration is applicable only to the performance assessment and not to the determination of waste classification.

Because the rate of erosion at the site is relatively high, a second intruder scenario is evaluated in which most of the cover is eroded over the analysis time period. Some cover is expected to remain. The intruder constructs a home in the area over the tank. Because the direct exposure pathway is the only major contributing pathway for this scenario, the actual waste distribution can be used in the performance assessment. Alternatively, the average concentration of waste over the stabilizing materials can be used in the performance assessment because there would be less shielding for this calculation and the doses would likely be conservative.

The doses to a public receptor who is offsite when institutional controls are in place and at the edge of a buffer zone near the closed tanks after institutional controls end is evaluated with an all-pathways performance assessment. The performance assessment represents expected degradation of the system over time. The modeling of the source term represents the waste as two zones, one zone of higher hydraulic conductivity and reducing conditions that persist for 500 years and one zone of lower hydraulic conductivity and reducing conditions that persist for the entire analysis period (10,000 years). The first zone represents waste between the tank surface and the added grout which may be exposed to increased moisture flow/oxidation because of shrinkage effects or degradation of the grout itself over time from various attack mechanisms. The second zone represents waste that was immobilized in the center of the reducing grout by the pour sequence of the tank closure operations. The concentrations of radionuclides in both zones should be represented in the performance assessment by the expected distribution of contamination within the zones, or distributions that can be demonstrated to be conservative with respect to release and exposure modeling. The potential pathways of water to the waste may depend on the discrete features of the system (e.g., cooling coils, shrinkage effects, fractures).

III. Further Information

Documents related to NRC's reviews of waste determinations are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. Recent documents related to reviews of NRC waste determinations can be found under Dockets Numbers PROJ0734, PROJ0735, PROJ0736, and POOM–32. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, MD this 5th day of December, 2005.

For the Nuclear Regulatory Commission.

Scott Flanders,

Deputy Director, Environmental and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. E5–7450 Filed 12–15–05; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of December 19, 2005:

A Closed Meeting will be held on Tuesday, December 20, 2005 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters may also be present.

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), (3), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a), (3), (5), (7), (8), 9(ii) and (10) permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the Closed Meeting scheduled for Tuesday, December, 20, 2005 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; and

Post-argument discussion.

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: December 13, 2005.

Jonathan G. Katz,

Secretary.

[FR Doc. 05–24186 Filed 12–14–05; 11:09 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52940; File No. SR–Amex–2005–059]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of a Proposed Rule Change and Amendments No. 1 and 2 Thereto Relating to the Listing and Trading of the DB Commodity Index Tracking Fund

December 12, 2005.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 27, 2005, the American Stock Exchange LLC (''Amex'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On September 15, 2005, the Amex filed Amendment No. 1 to the proposed rule change.[3] On November 15, 2005, the Amex filed Amendment No. 2 to the proposed rule change.[4] 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 Exchange proposes to add new Commentary .07 to Amex Rule 1202 to permit the listing and trading of shares of trust issued receipts (''TIRs'') that invest in shares or securities (the ''Investment Shares'') of a trust, partnership, commodity pool or other similar entity that holds investments comprising, or otherwise based on, any combination of securities, futures contracts, swaps, forward contracts,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Partial Amendment dated September 15, 2005 (''Amendment No. 1''). In Amendment No. 1, the Amex made clarifying changes to the purpose section.

[4] *See* Partial Amendment dated November 15, 2005 (''Amendment No. 2'').

options on futures contracts, commodities or portfolios of investments. Also in this proposal, the Exchange, pursuant to proposed Commentary .07 to Amex Rule 1202, seeks to list and trade the DB Commodity Index Tracking Fund (the ''Trust'' or ''Fund'').

Below is the text of the proposed rule change. Proposed new language is in *italics.*

* * * * *

Trading of Trust Issued Receipts

Rules 1200–1201. No Change.

Rule 1202(a) through (e). No Change.

Commentary

.01 through .06 No Change

.07 (a) The provisions of this Commentary apply only to Trust Issued Receipts where the trust holds ''Investment Shares'' as defined below. Rules that reference Trust Issued Receipts shall also apply to Trust Issued Receipts investing in Investment Shares.

(b) Definitions. The following terms as used in this Commentary shall, unless the context otherwise requires, have the meanings herein specified:

(1) Investment Shares. The term ''Investment Shares'' means a security (a) that is issued by a trust, partnership, commodity pool or other similar entity that invests in any combination of futures contracts, options on futures contracts, forward contracts, commodities, swaps or high credit quality short-term fixed income securities or other securities; and (b) issued and redeemed daily at net asset value in amounts correlating to the number of receipts created and redeemed in a specified aggregate minimum number.

(2) Futures Contract. The term ''futures contract'' is commonly known as a ''contract of sale of a commodity for future delivery'' set forth in Section 2(a) of the Commodity Exchange Act.

(3) Forward Contract. A forward contract is a contract between two parties to purchase and sell a specific quantity of a commodity at a specified price with delivery and settlement at a future date. Forwards are traded over-the-counter (''OTC'') and not listed on a futures exchange.

(c) Designation. The Exchange may list and trade Trust Issued Receipts investing in Investment Shares. Each issue of a Trust Issued Receipt based on a particular Investment Share shall be designated as a separate series and shall be identified by a unique symbol.

(d) Initial and Continued Listing. Trust Issued Receipts based on Investment Shares will be listed and traded on the Exchange subject to application of the following criteria:

(1) Initial Listing—The Exchange will establish a minimum number of receipts required to be outstanding at the time of commencement of trading on the Exchange.

(2) Continued Listing—The Exchange will remove from listing Trust Issued Receipts based on an Investment Share under any of the following circumstances:

(i) if following the initial twelve month period following the commencement of trading of the shares, (A) the Issuer has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of Trust Issued Receipts for 30 or more consecutive trading days; (B) if the Issuer has fewer than 50,000 securities or shares issued and outstanding; or (C) if the market value of all securities or shares issued and outstanding is less than $1,000,000;

(ii) if the value of an underlying index or portfolio is no longer calculated or available on at least a 15-second delayed basis or the Exchange stops providing a hyperlink on its website to any such asset or investment value;

(iii) if the Indicative Value is no longer made available on at least a 15-second delayed basis; or

(iv) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

Upon termination of the trust, the Exchange requires that Trust Issued Receipts issued in connection with such trust be removed from Exchange listing. A trust may terminate in accordance with the provisions of the trust prospectus, which may provide for termination if the value of the trust falls below a specified amount.

(3) Term—The stated term of the trust shall be as stated in the prospectus. However, such entity may be terminated under such earlier circumstances as may be specified in the trust prospectus.

(4) Trustee—The following requirements apply:

(i) The trustee of a trust must be a trust company or banking institution having substantial capital and surplus and the experience and facilities for handling corporate trust business. In cases where, for any reason, an individual has been appointed as trustee, a qualified trust company or banking institution must be appointed co-trustee.

(ii) No change is to be made in the trustee of a listed issue without prior notice to and approval of the Exchange.

(5) Voting—Voting rights shall be as set forth in the applicable trust prospectus.

(e) Rule 175(c) shall be deemed to prohibit an equity specialist, his member organization, or any other member, limited partner, officer, or approved person thereof from acting as a market maker or functioning in any capacity involving market-making responsibilities in an underlying asset or commodity, related futures or options on futures, or any other related derivatives. However, an approved person of an equity specialist that has established and obtained Exchange approval of procedures restricting the flow of material, non-public market information between itself and the specialist member organization pursuant to Rule 193, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Trust Issued Receipts on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

(f) In connection with the Trust Issued Receipts listed under this Commentary, Commentaries .01, .02 and .07 of Rule 170 shall not apply to the trading of receipts for the purpose of bringing the price of the receipt into parity with the value of the underlying asset or commodity on which the receipts are based, with the net asset value of the receipts or with a futures contract on the underlying asset or commodity on which the receipts are based. Such transactions must be effected in a manner that is consistent with the maintenance of a fair and orderly market and with the other requirements of this rule and the supplementary material herein.

(g)(1) The member organization acting as specialist in Trust Issued Receipts is obligated to conduct all trading in the receipts in its specialist account, subject only to the ability to have one or more investment accounts, all of which must be reported to the Exchange (See Rule 170). In addition, the member organization acting as specialist in the Trust Issued Receipts must file, with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, which the member organization acting as specialist may have or over which it may exercise investment discretion. No member organization acting as specialist in the Trust Issued Receipts shall trade in the underlying physical

asset or commodity, related futures or options on futures, or any other related derivatives, in an account in which a member organization acting as specialist, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by this Rule.

(2) In addition to the existing obligations under Exchange rules regarding the production of books and records (See, e.g. Rule 31), the member organization acting as a specialist in Trust Issued Receipts shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any member, member organization, limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying physical asset or commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

(3) In connection with trading the underlying physical asset or commodity, related futures or options on futures or any other related derivative (including Trust Issued Receipts), the specialist registered as such in Trust Issued Receipts shall not use any material nonpublic information received from any person associated with a member, member organization or employee of such person regarding trading by such person or employee in the physical asset or commodity, futures or options on futures, or any other related derivatives.

(h) Neither the Exchange nor any agent of the Exchange shall have any liability for damages, claims, losses or expenses caused by any errors, omissions, or delays in calculating or disseminating any underlying asset or commodity value, the current value of the underlying asset or commodity if required to be deposited to the trust in connection with issuance of Trust Issued Receipts; net asset value; or other information relating to the purchase, redemption or trading of Trust Issued Receipts, resulting from any negligent act or omission by the Exchange or any agent of the Exchange, or any act, condition or cause beyond the reasonable control of the Exchange or its agent, including, but not limited to, an act of God; fire; flood; extraordinary weather conditions; war; insurrection; riot; strike; accident; action of government; communications or power failure; equipment or software malfunction; or any error, omission or delay in the reports of transactions in an underlying asset or commodity.

(i) The Exchange will file separate proposals under Section 19(b) of the Securities Exchange Act of 1934 before listing and trading Trust Issued Receipts based on separate Investment Shares.

* * * * *

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 Amex 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, and the most significant aspects of such statements are set forth in Sections A, B, and C below.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Commentary .07 to Amex Rule 1202 for the purpose of permitting the listing and trading of TIRs where the trust holds shares (''Investment Shares'') that are issued by a trust, partnership, commodity pool, or other similar entity that holds investments in any combination of securities, futures contracts, options on futures contracts, swaps, forward contracts, commodities or portfolios of investments. Additionally, in this proposal, the Amex initially proposes to list and trade the shares (the ''Shares'') of a specific trust that invests in the securities of a commodity pool (the ''Fund''). The Fund will invest substantially all of its assets in the common units of beneficial interests of DB Commodity Index Tracking Master Fund (the ''Master Fund''). The Master Fund is a trust created under Delaware law that will consist primarily of futures contracts on the commodities comprising the Deutsche Bank Liquid Commodity Index™—Excess Return (the ''DBLCI'' or ''Index''). Both the Fund and the Master Fund are commodity pools operated by DB Commodity Services LLC (the ''Managing Owner''). The Managing Owner will be registered as a commodity pool operator (the ''CPO'') and commodity trading advisor (the ''CTA'') with the Commodity Futures Trading Commission (''CFTC'')[5] and a member of the National Futures Association (''NFA'').

The Managing Owner will serve as the CPO and CTA of the Fund and the Master Fund. In this particular case, the Managing Owner of the Master Fund will manage only the futures contracts in order to track the performance of the Index. The Master Fund may also include U.S. Treasury securities for margin purposes and other high credit quality short-term fixed income securities. However, the Exchange states that the Master Fund is not ''actively managed,'' which typically involves effecting changes in the composition of a portfolio on the basis of judgment relating to economic, financial and market considerations with a view to obtaining positive results under all market conditions, but instead, seeks to track the performance of the Index.

Introduction

In September 1999, the Exchange adopted rules for the listing and trading of TIRs.[6] TIRs are negotiable receipts issued by trusts that represent investors' discrete identifiable and undivided beneficial ownership interest in the securities deposited into the trust. Since that time the Exchange has listed seventeen (17) TIRs under the trade name of HOLDRS, representing a wide variety of industry sectors and the market as a whole.

Under Amex Rule 1201, the Exchange may list and trade TIRs based on one or more securities. The securities that are included in a series of a TIR are required to be selected by the Exchange or its agent, a wholly owned subsidiary of the Exchange, or by such other person as shall have a proprietary interest in such TIRs. Pursuant to this Amex Rule 1201, the Exchange may designate the Shares for trading.

In January 2005, the Exchange adopted rules (Amex Rule 1200A *et seq.*) for the listing and trading of Commodity-Based Trust Shares.[7] Commodity-Based Trust Shares are TIRs based on an underlying commodity. The Exchange listed and traded the iShares® COMEX Gold Trust under new Amex Rule 1200A as the first Commodity Based Trust Share. Recently, the Exchange commenced the trading of shares of the streetTRACKS® Gold Trust (GLD) pursuant to Amex Rule 1000B on an unlisted trading privileges (''UTP'') basis.[8] This proposal seeks to expand

[5] *See* Part 4 of CFTC Regulation, 17 CFR 4.1 *et al.*

[6] *See* Securities Exchange Act Release No. 41892 (September 21, 1999), 64 FR 52559 (September 29, 1999) (''TIR Approval Order'').

[7] *See* Securities Exchange Act Release No. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005).

[8] *See* Securities Exchange Act Release No. 51446 (March 29, 2005), 70 FR 17272 (April 5, 2005).

the ability of the Exchange to list and trade securities based on a portfolio of underlying investments that may not be ''securities.''

Under proposed Commentary .07(c) to Amex Rule 1202, the Exchange would list and trade TIRs where the trust holds ''Investment Shares.'' For each separate Investment Share, the Exchange would submit a filing pursuant to Section 19(b) of the Act.

The Shares will conform to the initial and continued listing criteria under proposed Commentary .07(d) to Amex Rule 1202.[9] The Fund will be formed as a Delaware statutory trust pursuant to a Certificate of Trust and a Declaration of Trust and Trust Agreement among Wilmington Trust Company, as trustee, the Managing Owner and the holders of the Shares.[10]

The Exchange notes that the Commission has permitted the listing and trading of products linked to the performance of a commodity or commodities.[11]

Index Description

DBLCI is intended to reflect the performance of certain commodities. The Index tracks the performance of futures contracts on crude oil, heating oil, aluminum, gold, corn and wheat, and the notional amounts of each commodity included in the Index are approximately in proportion to historical levels of the world's production and supplies of such commodities. The sponsor of the Index is Deutsche Bank AG London (''DB London'').

The Index value is calculated by DB London during the trading day on the basis of the most recently reported trade price for the relevant futures contract relating to each of the Index commodities. Therefore, the market value of each Index commodity during the trading day will be equal to the number of futures contracts of each commodity represented in the Index multiplied by the real-time futures contract price (*i.e.*, the most recently reported trade price).[12] The Index value will be calculated and disseminated every 15 seconds. The closing level of the Index is calculated by DB London on the basis of closing prices for the applicable futures contracts relating to each of the Index commodities, and applying such prices to the relevant notional amount. For each Index commodity, the market value will be equal to the number of futures contracts represented in the Index multiplied by the futures contract closing price. The Index includes provisions for the replacement of expiring futures contracts. This replacement takes place over a period of time in order to lessen the impact on the market for such Index commodity. Such replacements occur monthly (other than in November) during the first week of the month in the case of futures contracts relating to crude oil and heating oil and annually in November in the case of futures contracts relating to aluminum, gold, corn and wheat.

The Index is adjusted annually in November to rebalance its composition to ensure that each of the Index commodities are weighted in the same proportion that such commodities were weighted on December 1, 1988 (the ''Base Date''). The Index has been calculated back to the Base Date. On the Base Date, the closing level was 100.

The following table reflects the index base weights (''Index Base Weights'') of each Index commodity on the Base Date:

Index commodity	Index base weight (%)
Crude Oil	35.00
Heating Oil	20.00
Aluminum	12.50
Gold	10.00
Corn	11.25
Wheat	11.25
Closing Level on Base Date	100.00

The composition of the Index may be adjusted in the event that the Index Sponsor is not able to calculate the daily and/or closing price for the Index commodities.

The Managing Owner represents that it will seek to arrange to have the Index calculated and disseminated on a daily basis through a third party if DB London ceases to calculate and disseminate the Index. If, however, the Managing Owner is unable to arrange the calculation and dissemination of the Index (or a Successor Index), the Exchange will undertake to delist the Shares.[13]

Commodity Futures Contracts and Related Options

Crude Oil. Crude oil is the world's most actively traded commodity. The Light Sweet Crude Oil futures contract traded on the New York Mercantile Exchange (''NYMEX'') is the world's most liquid forum for crude oil trading, as well as the world's most liquid futures contract on a physical commodity.[14] Due to the excellent liquidity and price transparency of the futures contract, it is used as a principal international pricing benchmark.

Heating Oil. The heating oil futures contract, listed and traded at the NYMEX, trades in units of 42,000 gallons (1,000 barrels) and is based on delivery in New York harbor, the principal cash market center.[15] The heating oil futures contract is also used to hedge diesel fuel and jet fuel, both of which trade in the cash market at an often stable premium to the heating oil futures contract.

Gold. NYMEX is the world's largest physical commodity futures exchange and the dominant market for the trading of energy and precious metals.[16]

Aluminum. Aluminum is the most heavily produced and consumed non-ferrous metal in the world. Its low

[9] Proposed Commentary .07(d) to Rule 1202 for listing the Shares is substantially similar to current Rule 1202A relating to Commodity-Based Trust Shares.

[10] The Exchange states that the Trust is not a registered investment company under the Investment Company Act of 1940 (''1940 Act'') and is not required to register under the 1940 Act.

[11] *See* Securities Exchange Act Release Nos. 51058 (January 19, 2005), 70 FR 3749 (January 26, 2005) (approving the listing and trading of the iShares® COMEX Gold Trust); 50603 (October 28, 2004), 69 FR 64614 (November 5, 2004) (approving the listing and trading of streetTRACKS® Gold Shares); 39402 (December 4, 1997), 62 FR 65459 (December 12, 1997) (approving the listing and trading of commodity index preferred or debt securities (ComPS) on various agricultural futures contracts and commodities indexes); 36885 (February 26, 1996), 61 FR 8315 (March 4, 1996) (approving the listing and trading of ComPS linked to the value of single commodity); 35518 (March 21, 1995), 60 FR 15804 (March 27, 1995) (approving the listing and trading of commodity indexed notes or COINs); and 43427 (October 10, 2000), 65 FR 62783 (October 19, 2000) (approving the listing and trading of inflation indexed securities). *See also* Central Fund of Canada (Registration No. 033–15180) (closed-end fund listed and traded on the Amex that invests in gold) and Salmon Phibro Oil Trust (Registration No. 033–33823) (trust units listed and traded on the Amex that held the right to a forward contract for the delivery of crude oil).

[12] Quote information and last sale information is available from the applicable futures markets and from data vendors.

[13] If the Index is discontinued or suspended, Managing Owner, in its sole discretion, may substitute the Index with an index substantially similar to the discontinued or suspended Index (the ''Successor Index''). The Successor Index may be calculated and/or published by any other third party. *See also* note 32 and accompanying text.

[14] In 2004, ADTV on NYMEX for futures contracts on light sweet crude oil were 212,382 (with each contract representing 1,000 barrels); ADTV through August 2005 was 241,673. Annual contracts traded on NYMEX on light sweet crude oil in 2004 were 52.8 million; annual contracts traded through August 2005 were 40.6 million.

[15] In 2004, ADTV on NYMEX for futures contracts on heating oil were 51,745 (with each contract representing 1,000 barrels); ADTV through August 2005 was 52,413. Annual contracts traded on NYMEX on heating oil in 2004 were 12.8 million; annual contracts traded through August 2005 were 8.8 million.

[16] In 2004, ADTV on NYMEX for futures contracts on gold were 60,079 (with each contract representing 100 troy ounces); ADTV through August 2005 was 61,085. Annual contracts traded on NYMEX on gold in 2004 were 14.9 million; annual contracts traded through August 2005 were 10.2 million.

density and malleability has been recognized and championed by the industrial world. In 2001, world primary refined production totaled over 24 million tonnes. The total turnover for the London Metal Exchange (''LME'') primary aluminum futures and options in 2001 was over 25 million lots or 625 million tonnes. The LME has the most liquid aluminum contracts in the world.[17]

Corn. Corn futures are traded on the Chicago Board of Trade (''CBOT'') with a unit of trading of 5,000 bushels.[18]

Wheat. Wheat futures are traded on the CBOT with a unit of trading of 5,000 bushels.[19]

Structure of the Fund

Fund. The Fund is a statutory trust formed pursuant to the Delaware Statutory Trust Act and will issue units of beneficial interest or shares that represent units of fractional undivided beneficial interest in and ownership of the Fund. Unless terminated earlier, the Fund will expire on December 31, 2055. The investment objective of the Fund is to reflect the performance of the DBLCI less the expenses of the operation of the Fund and the Master Fund. The Fund will pursue its investment objective by investing substantially all of its assets in the Master Fund. The Fund will hold no investment assets other than Master Fund Units.[20] Each Share will correlate with a Master Fund share issued by the Master Fund and held by the Fund.

Master Fund. The Master Fund is a statutory trust formed pursuant to the Delaware Statutory Trust Act and will issue units of beneficial interest or shares that represent units of fractional undivided beneficial interest in and ownership of the Master Fund. Unless terminated earlier, the Master Fund will expire on December 31, 2055. The investment objective of the Master Fund is to reflect the performance of the DBLCI less the expenses of the operations of the Fund and the Master Fund. The Master Fund will pursue its investment objective by investing primarily in a portfolio of futures contracts on the commodities comprising the DBLCI. In addition, the Master Fund will also hold cash and U.S. Treasury securities for deposit with futures commission merchants (''FCMs'') as margin and other high credit quality short-term fixed income securities.

Trustee. Wilmington Trust Company is the trustee of the Fund and the Master Fund. The trustee has delegated to the Managing Owner the power and authority to manage and operate the day-to-day affairs of the Fund and the Master Fund.

Managing Owner. The Managing Owner is a Delaware limited liability company that will be registered with the CFTC as a CPO and CTA and is an affiliate of Deutsche Bank AG, the sponsor of the Fund and Master Fund. The Managing Owner will serve as the CPO and CTA of the Fund and the Master Fund and will manage and control all aspects of the business of the Funds. As a registered CPO and CTA, the Exchange states that the Managing Owner is required to comply with various regulatory requirements under the Commodity Exchange Act and the rules and regulations of the CFTC and the NFA, including investor protection requirements, anti-fraud prohibitions, disclosure requirements, reporting and recordkeeping requirements and is subject to periodic inspections and audits by the CFTC and NFA.

Clearing Broker. Deutsche Bank Securities, Inc., the Clearing Broker, is an affiliate of the Managing Owner and is registered with the CFTC as an FCM. The Clearing Broker will execute and clear each of the Master Fund's futures contract transactions and will perform certain administrative services for the Master Fund.

Administrator. The Bank of New York is the administrator for both the Fund and the Master Fund (the ''Administrator''). The Administrator will perform or supervise the performance of services necessary for the operation and administration of the Fund and the Master Fund. These services include, but are not limited to, investment accounting, financial reporting, broker and trader reconciliation, net asset value (''NAV'') calculation,[21] risk transparency, and receiving and processing orders from Authorized Participants (as defined below), and coordinating the processing of orders with the Managing Owner and the Depository Trust Company (''DTC'').

Product Description

Issuances of the Shares will be made only in baskets of 200,000 Shares or multiples thereof (the ''Basket Aggregation'' or ''Basket''). The Fund will issue and redeem the Shares on a continuous basis, by or through participants that have entered into participant agreements (each, an ''Authorized Participant'')[22] with the Fund and its Managing Owner at the NAV per Share determined shortly after 4 p.m. ET or the last to close futures exchanges on which the Index Commodities are traded, whichever is later, on the business day on which an order to purchase the Shares in one or more Baskets is received in proper form. Following issuance, the Shares will be traded on the Exchange similar to other equity securities.

The procedures for creating a Basket are as follows. On any business day, an Authorized Participant may place an order with the Distributor, ALPS Distributors, Inc. (the ''Distributor''), to create one or more Baskets. Purchase orders must be placed by 10 a.m. ET and are irrevocable. By placing a purchase order, and prior to delivery of such Basket(s), an Authorized Participant's DTC account will be charged the non-refundable $500 transaction fee due for the purchase order, regardless of the number of Baskets to be created in connection with such order.

The total payment required to create a Basket during the continuous offering period is the cash amount equal to the NAV per Share times 200,000 Shares (the ''Basket Amount'') on the purchase order date. Thus the Basket Amount usually will be determined on each business day by the Administrator shortly after 4 p.m. ET. Baskets are issued as of 12 noon ET, on the business day immediately following the purchase order date (T+1) at NAV per Share on the purchase order date if the required payment has been timely received.

Authorized Participants that have placed a purchase order to create a

[17] In 2004, ADTV on LME for futures contracts on aluminum were 116,004 (with each contract representing 25 tonnes); ADTV through August 2005 was 113,743. Annual contracts traded on LME on aluminum in 2004 were 29.2 million; annual contracts traded through August 2005 were 18.9 million.

[18] In 2004, ADTV on CBOT for futures contracts on corn were 95,390 (with each contract representing 5,000 bushels); ADTV through August 2005 was 120,237. Annual contracts traded on CBOT on corn in 2004 were 24.038 million; annual contracts traded through August 2005 were 20.19 million.

[19] In 2004, ADTV on CBOT for futures contracts on wheat were 31,568 (with each contract representing 5,000 bushels); ADTV through August 2005 was 41,249. Annual contracts traded on CBOT on wheat in 2004 were 7.95 million; annual contracts traded through August 2005 were 6.92 million.

[20] *See* Pre-Effective Amendment No. 4 to the Fund's Form S–1, Registration No. 333–125325, dated October 26, 2005.

[21] NAV is the total assets of the Master Fund less total liabilities of the Master Fund, determined on the basis of generally accepted accounting principles. NAV per Master Fund share is the NAV of the Master Fund divided by the number of outstanding Master Fund shares. This will be the same for the Shares of the Fund because of a one-to-one correlation between the Shares and the shares of the Master Fund.

[22] An ''Authorized Participant'' is a person, who at the time of submitting to the trustee an order to create or redeem one or more Baskets, (i) is a registered broker-dealer, (ii) is a DTC Participant, and (iii) has in effect a valid Participant Agreement with the Fund issuer.

Basket must transfer the Basket Amount to the Administrator (the ''Cash Deposit Amount'') by 10 a.m. the next day. Authorized Participants that wish to redeem a Basket will receive cash in exchange for each Basket surrendered in an amount equal to the NAV per Basket (the ''Cash Redemption Amount'') through a similar procedure. The Clearing Broker will be the custodian for the Master Fund and responsible for safekeeping the Master Fund's assets.

Because orders to purchase Baskets must be placed by 10 a.m. ET, but the total payment required to create a Basket will not be determined until shortly after 4 p.m. ET, on the date the purchase order is received, Authorized Participants will not know the total amount of the payment required to create a Basket at the time they submit an irrevocable purchase order. This is similar to exchange-traded funds and mutual funds. The Fund's prospectus discloses that NAV and the total amount of the payment required to create a Basket could rise or fall substantially between the time an irrevocable purchase order is submitted and the time the amount of the purchase order is determined.

On each business day, the Administrator will make available immediately prior to the opening of trading on the Amex, an estimate of the Cash Deposit Amount for the creation of a Basket. The Amex will disseminate every 15 seconds throughout the trading day, via the facilities of the Consolidated Tape Association, an amount representing, on a per Share basis, the current value (intra-day) of the Basket Amount (the ''Indicative Fund Value''). It is anticipated that the deposit of the Cash Deposit Amount in exchange for a Basket will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Baskets are then separable upon issuance into identical Shares that will be listed and traded on the Amex.[23] The Shares are expected to be traded on the Exchange by professionals, as well as institutional and retail investors. Shares may be acquired in two (2) ways: (1) Through a deposit of the Cash Deposit Amount with the Administrator during normal business hours by Authorized Participants, or (2) through a purchase on the Exchange by investors.

Shortly after 4 p.m. ET each business day, the Administrator will determine the NAV for the Fund and Master Fund, utilizing the current day's settlement value of the particular commodity futures contracts in the Master Fund's portfolio and the value of the Master Fund's cash and high-credit quality, short-term fixed income securities. However, if a futures contract on a trading day cannot be liquidated due to the operation of daily limits or other rules of an exchange upon which such futures contract is traded, the settlement price on the most recent trading day on which the futures contract could have been liquidated will be used in determining the Fund's and the Master Fund's NAV. Accordingly, for both U.S. and non-U.S. futures contracts, the Administrator will typically use that day's futures settlement price for determining NAV.

The NAV for the Fund is total assets of the Master Fund less total liabilities of the Master Fund. The NAV is calculated by including any unrealized profit or loss on futures contracts and any other credit or debit accruing to the Master Fund but unpaid or not received by the Master Fund. This preliminary NAV is then used to compute all NAV-based fees (including the management and administrative fees, accrued through and including the date of publication) that are calculated from the value of Master Fund assets. The Administrator will calculate the NAV per Share by dividing the NAV by the number of Shares outstanding. Then once the final, published NAV is determined, shortly after 4 p.m. ET each business day, the Administrator also will determine the Basket Amount for orders placed by Authorized Participants received by 10 a.m. ET that day.

Shortly after 4 p.m. ET each business day, the Administrator, Amex, and Managing Owner will disseminate the NAV for the Shares and the Basket Amount (for orders placed during the day). The NAV and the Basket Amount are available at the same time and will be disseminated accordingly. The Basket Amount and the NAV are communicated by the Administrator to all Authorized Participants via facsimile or electronic mail message and will be publicly available on the DB London's (Index Sponsor) Web site at *https://gm-secure.db.com/CommoditiesIndices*. The Amex will also publicly disclose via its Web site at *http://www.amex.com* the NAV and Basket Amount (for orders placed that day). The Exchange also will disseminate the Basket Amount by means of CTA/CQ High Speed Lines.

The Basket Amount necessary for the creation of a Basket will change from day to day. On each day that the Amex is open for regular trading, the Administrator will adjust the Cash Deposit Amount as appropriate to reflect the prior day Fund NAV and newly accrued expenses.

The Exchange believes that the Shares will not trade at a material discount or premium to NAV due to potential arbitrage opportunities in the event of any discrepancy between the two. Due to the fact that the Shares can be created and redeemed daily only in Basket Aggregations at NAV by Authorized Participants, the Exchange submits that arbitrage opportunities should provide a mechanism to diminish the effect of any premiums or discounts that may exist from time to time.

The Shares will not be individually redeemable but will only be redeemable in Basket Aggregations. To redeem, an Authorized Participant will be required to accumulate enough Shares to constitute a Basket Aggregation (*i.e.*, 200,000 Shares). An Authorized Participant redeeming a Basket Aggregation will receive the Cash Redemption Amount. Upon the surrender of the Shares and payment of applicable redemption transaction fee, taxes or charges, the Administrator will deliver to the redeeming Authorized Participant the Cash Redemption Amount.

Shares will be registered in book entry form through DTC. Trading in the Shares on the Exchange will be effected from 9:30 a.m. until 4:15 p.m. ET each business day. The minimum trading increment for such Shares will be $.01.

Dissemination of the Index and Underlying Futures Contracts Information

DB London as the sponsor of the Index will publish the value of the Index at least every fifteen (15) seconds during Amex trading hours through Bloomberg, Reuters, and other market data vendors. In addition, the Index value will be available on the DB London Web site at *http://www.dbcfund.db.com* on a twenty (20) minute delayed basis. The closing level will similarly be provided by DB London. In addition, any adjustments or changes to the Index will also be provided by DB London and the Exchange on their respective Web sites.[24]

[23] The Shares are separate and distinct from the shares of the Master Fund. The Master Fund's assets will consist of long positions in the futures contracts on the commodities comprising the DBLCI. The Exchange expects that the number of outstanding Shares will increase and decrease from time to time as a result of creations and redemptions of Baskets.

[24] The Index Sponsor has in place procedures to prevent the improper sharing of information

Continued

The closing prices and daily settlement prices for the futures contracts held by the Master Fund are publicly available on the Web sites of the futures exchanges trading the particular contracts. The particular futures exchange for each futures contract with Web site information is as follows: (i) aluminum—London Metal Exchange (LME) at *http://www.lme.com*; (ii) corn and wheat—Chicago Board of Trade (CBOT) at *http://www.cbot.com*; and (iii) crude oil, heating oil and gold—New York Mercantile Exchange (NYMEX) at *http://www.nymex.com*. The Exchange on its Web site at *http://www.amex.com* will include a hyperlink to the Index Sponsor's Web site at *https://gm-secure.db.com/CommoditiesIndices*, which will contain hyperlinks to each of the futures exchanges Web sites for the purpose of disclosing futures contract pricing. In addition, various data vendors and news publications publish futures prices and data. The Exchange represents that futures quotes and last sale information for the commodities underlying the Index are widely disseminated through a variety of market data vendors worldwide, including Bloomberg and Reuters. In addition, the Exchange represents that complete real-time data for such futures is available by subscription from Reuters and Bloomberg. The CBOT, LME, and NYMEX also provide delayed futures information on current and past trading sessions and market news free of charge on their respective Web sites. The specific contract specifications for the futures contracts are also available from the futures exchanges on their Web sites as well as other financial informational sources.

Availability of Information Regarding the Shares

The Web site for the Fund, which will be publicly accessible at no charge, will contain the following information: (a) The prior business day's NAV and the reported closing price; (b) the mid-point of the bid-ask price [25] in relation to the NAV as of the time the NAV is calculated (the ''Bid-Ask Price''); (c) calculation of the premium or discount of such price against such NAV; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Bid-Ask Price against the NAV, within appropriate ranges for each of the four (4) previous calendar quarters; (e) the prospectus; and (f) other applicable quantitative information.

As described above, the NAV for the Fund will be calculated and disseminated daily. The Amex also intends to disseminate, during Amex trading hours, for the Fund on a daily basis by means of Consolidated Tape Association/Consolidated Quotation High Speed Lines information with respect to the Indicative Fund Value (as discussed below), recent NAV, and Shares outstanding. The Exchange will also make available on its Web site daily trading volume, closing prices, and the NAV.

Dissemination of Indicative Fund Value

As noted above, the Administrator calculates the NAV of the Fund once each trading day. In addition, the Administrator causes to be made available on a daily basis the Cash Deposit Amount to be deposited in connection with the issuance of the Shares in Basket Aggregations. In addition, other investors can request such information directly from the Administrator.

In order to provide updated information relating to the Fund for use by investors, professionals and persons wishing to create or redeem the Shares, the Exchange will disseminate through the facilities of CTA an updated Indicative Fund Value. The Indicative Fund Value will be disseminated on a per Share basis every 15 seconds from 9:30 a.m. to 4:15 p.m. ET.[26] The Indicative Fund Value will be calculated based on the cash required for creations and redemptions (*i.e.*, NAV × 200,000) adjusted to reflect the price changes of the Index commodities through investments held by the Master Fund, *i.e.*, futures contracts.

The Indicative Fund Value will not reflect price changes to the price of an underlying commodity between the close of trading of the futures contract at the relevant futures exchange and the close of trading on the Amex at 4:15 p.m. ET. The value of a Share may accordingly be influenced by non-concurrent trading hours between the Amex and the various futures exchanges on which the futures contracts based on the Index commodities are traded. While the Shares will trade on the Amex from 9:30 a.m. to 4:15 p.m. ET, the table below lists the trading hours for each of the Index commodities underlying the futures contracts.

Index commodity	Futures exchange	Trading hours (ET)
Aluminum	LME	6:55 a.m.–12:00 p.m.
Gold	COMEX	8:20 a.m.–1:30 p.m.
Crude Oil	NYMEX	10:00 a.m.–2:30 p.m.
Heating Oil	NYMEX	10:05 a.m.–2:30 p.m.
Corn	CBOT	10:30 a.m.–2:15 p.m.
Wheat	CBOT	10:30 a.m.–2:15 p.m.

While the market for futures trading for each of the Index commodities is open, the Indicative Fund Value can be expected to closely approximate the value per Share of the Basket Amount. However, during Amex trading hours when the futures contracts have ceased trading, spreads and resulting premiums or discounts may widen, and therefore, increase the difference between the price of the Shares and the NAV of the Shares. Indicative Fund Value on a per Share basis disseminated during Amex trading hours should not be viewed as a real time update of the NAV, which is calculated only once a day.

The Exchange believes that dissemination of the Indicative Fund Value based on the cash amount required for a Basket Aggregation provides additional information that is not otherwise available to the public and is useful to professionals and investors in connection with the Shares trading on the Exchange or the creation or redemption of the Shares.

between different affiliates and departments. Specifically, an information barrier exists between the personnel within DB London that calculate and reconstitute the Index and other personnel of the Index Sponsor, including but not limited to the Managing Owner, sales and trading, external or internal fund managers, and bank personnel who are involved in hedging the bank's exposure to instruments linked to the Index, in order to prevent the improper sharing of information relating to the recomposition of the Index.

[25] The bid-ask price of Shares is determined using the highest bid and lowest offer as of the time of calculation of the NAV.

[26] Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Kate Robbins, Attorney, Division of Market Regulation, Commission, on November 28, 2005.

Termination Events

The Fund will be terminated if any of the following circumstances occur: (1) The Shares are delisted from the Amex and are not listed for trading on another national securities exchange within five business days from the date the Shares are delisted; (2) holders of at least 50% of the outstanding Shares notify the Managing Owner that they elect to terminate the Trust; (3) the trustee resigns and no successor trustee is appointed within 60 days from the date the trustee provides notice to the Managing Owner of its intent to resign; (4) the SEC finds that the Fund should be registered as an investment company under the Investment Company Act of 1940, and the trustee has actual knowledge of the SEC finding; (5) the aggregate market capitalization of the Fund, based upon the closing price for the Shares, was less than $10 million on each of five (5) consecutive trading days and the trustee receives, within six (6) months from the last of those trading days, notice that the sponsor has decided to terminate the Fund; or (6) the Fund fails to qualify for treatment, or ceases to be treated, as a grantor trust for U.S. federal income tax purposes and the trustee receives notice that the sponsor has determined that the termination of the Fund is advisable.

If not terminated earlier by the trustee, the Fund will terminate on December 31, 2055. Upon termination of the Fund, holders of the Shares will surrender their Shares and receive from the Administrator, in cash, their portion of the value of the Fund.

Criteria for Initial and Continued Listing

The Fund will be subject to the criteria in proposed Commentary .07(d) of Amex Rule 1202 for initial and continued listing of the Shares. The proposed continued listing criteria provides for the delisting or removal from listing of the Shares under any of the following circumstances:

- Following the initial twelve month period from the date of commencement of trading of the Shares: (i) If the Fund has more than 60 days remaining until termination and there are fewer than 50 record and/or beneficial holders of the Shares for 30 or more consecutive trading days; (ii) if the Fund has fewer than 50,000 Shares issued and outstanding; or (iii) if the market value of all Shares is less than $1,000,000.
- If the value of the underlying index or portfolio is no longer calculated or available on at least a 15-second basis, or the Exchange stops providing a hyperlink on its Web site to any such asset or investment value.
- The Indicative Fund Value is no longer made available on at least a 15-second basis.
- If such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.

It is anticipated that a minimum of 2,000,000 Shares will be required to be outstanding at the start of trading. It is anticipated that the initial price of a Share will be approximately $25. The Fund expects to accept subscriptions for Shares in Basket Aggregations (*i.e.*, $5 million) from Authorized Participants during an initial offering period with a finite term of approximately six (6) months, subject to earlier termination. After the initial offering period has closed and trading commences, the Fund will then issue Shares in the normal Basket Aggregations of 200,000 Shares to Authorized Participants. Once the initial offering period has closed and trading commences, the Master Fund will issue shares in Master Fund Baskets (200,000 shares) to the Fund continuously at NAV. The Master Fund will be owned by the Fund and the Managing Owner.[27] Each Share issued by the Fund will correlate with a Master Fund share issued by the Master Fund and held by the Fund. The Exchange believes that the anticipated minimum number of Shares outstanding at the start of trading is sufficient to provide adequate market liquidity and to further the Fund's objective to seek to provide a simple and cost effective means of accessing the commodity futures markets.

The Exchange represents that it prohibits the initial and/or continued listing of any security that is not in compliance with Rule 10A–3 under the Securities Act of 1934.[28]

Original and Annual Listing Fees

The Amex original listing fee applicable to the listing of the Fund is $5,000. In addition, the annual listing fee applicable under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of Shares in all series of the Fund outstanding at the end of each calendar year.

Purchase and Redemptions in Basket Aggregations

In the Information Circular (described below), members and member organizations will be informed that procedures for purchases and redemptions of Shares in Basket Aggregations are described in the prospectus and that Shares are not individually redeemable but are redeemable only in Basket Aggregations or multiples thereof.

Trading Rules

The Shares are equity securities subject to Amex Rules governing the trading of equity securities, including, among others, rules governing priority, parity and precedence of orders, specialist responsibilities and account opening and customer suitability (Amex Rule 411). Initial equity margin requirements of 50% will apply to transactions in the Shares. Shares will trade on the Amex until 4:15 p.m. ET each business day and will trade in a minimum price variation of $0.01 pursuant to Amex Rule 127. Trading rules pertaining to odd-lot trading in Amex equities (Amex Rule 205) will also apply.

Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto) the price of which is derivatively based upon another security or index of securities, may with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary .04(c)(i–v). The Exchange has designated the Shares as eligible for this treatment.[29]

The Shares will be deemed ''Eligible Securities'', as defined in Amex Rule 230, for purposes of the Intermarket Trading System Plan and therefore will be subject to the trade through provisions of Amex Rule 236 which require that Amex members avoid initiating trade-throughs for ITS securities.

Specialist transactions of the Shares made in connection with the creation and redemption of Shares will not be subject to the prohibitions of Amex Rule 190.[30] Unless exemptive or no-action relief is available, the Shares will be subject to the short sale rule, Rule 10a–

[27] The Managing Owner will own 1% or less of the Master Fund and will share pro rata in the income and expenses of the Master Fund.

[28] *See* Rule 10A–3(c)(7), 17 CFR 240.10A–3(c)(7) (stating that a listed issuer is not subject to the requirements of Rule 10A–3 if the issuer is organized as a trust that does not have a board of directors or other unincorporated association and the activities of the issuer are limited to passively owning or holding securities or other assets on behalf of or for the benefit of the holders of the listed securities).

[29] *See* Securities Exchange Act Release No. 29063 (April 10, 1991), 56 FR 15652 (April 17, 1991) at note 9, regarding the Exchange's designation of equity derivative securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

[30] *See* Commentary .05 to Amex Rule 190.

1 under the Act.[31] If exemptive or no-action relief is provided, the Exchange will issue a notice detailing the terms of the exemption or relief. The Shares will generally be subject to the Exchange's stabilization rule, Amex Rule 170, except that specialists may buy on ''plus ticks'' and sell on ''minus ticks,'' in order to bring the Shares into parity with the underlying commodity or commodities and/or futures contract price. Proposed Commentary .07(f) to Amex Rule 1202 sets forth this limited exception to Amex Rule 170.

The adoption of Commentary .07(e) to Amex Rule 1202 relating to certain specialist prohibitions will address potential conflicts of interest in connection with acting as a specialist in the Shares. Specifically, Commentary .07(e) provides that the prohibitions in Amex Rule 175(c) apply to a specialist in the Shares so that the specialist or affiliated person may not act or function as a market maker in an underlying asset, related futures contract or option or any other related derivative. An affiliated person of the specialist consistent with Amex Rule 193 may be afforded an exemption to act in a market making capacity, other than as a specialist in the Shares on another market center, in the underlying asset, related futures or options or any other related derivative. In particular, proposed Commentary .07(e) provides that an approved person of an equity specialist that has established and obtained Exchange approval for procedures restricting the flow of material, non-public market information between itself and the specialist member organization, and any member, officer, or employee associated therewith, may act in a market making capacity, other than as a specialist in the Shares on another market center, in the underlying asset or commodity, related futures or options on futures, or any other related derivatives.

Adoption of Commentary .07(g) to Amex Rule 1202 will also ensure that specialists handling the Shares provide the Exchange with all the necessary information relating to their trading in physical assets or commodities, related futures contracts and options thereon or any other derivative. As a general matter, the Exchange has regulatory jurisdiction over its members, member organizations and approved persons of a member organization. The Exchange also has regulatory jurisdiction over any person or entity controlling a member organization as well as a subsidiary or affiliate of a member organization that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities or futures contracts would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory organizations of which such subsidiary or affiliate is a member.

Trading Halts

Prior to the commencement of trading, the Exchange will issue an Information Circular (described below) to members informing them of, among other things, Exchange policies regarding trading halts in the Shares. First, the circular will advise that trading will be halted in the event the market volatility trading halt parameters set forth in Amex Rule 117 have been reached. Second, the circular will advise that, in addition to the parameters set forth in Amex Rule 117, the Exchange will halt trading in the Shares if trading in the underlying related futures contract(s) is halted or suspended. Third, with respect to a halt in trading that is not specified above, the Exchange may also consider other relevant factors and the existence of unusual conditions or circumstances that may be detrimental to the maintenance of a fair and orderly market. Additionally, the Exchange represents that it will cease trading the Shares if the conditions in Amex Rule 1202(d)(2)(ii) or (iii) exist (*i.e.*, if there is a halt or disruption in the dissemination of the Indicative Fund Value and/or underlying Index value).[32]

Suitability

The Information Circular (described below) will inform members and member organizations of the characteristics of the Fund and of applicable Exchange rules, as well as of the requirements of Amex Rule 411 (Duty to Know and Approve Customers).

The Exchange notes that pursuant to Amex Rule 411, members and member organizations are required in connection with recommending transactions in the Shares to have a reasonable basis to believe that a customer is suitable for the particular investment given reasonable inquiry concerning the customer's investment objectives, financial situation, needs, and any other information known by such member.

Information Circular

The Amex will distribute an Information Circular to its members in connection with the trading of the Shares. The Information Circular will inform members and member organizations, prior to commencement of trading, of the prospectus delivery requirements applicable to the Fund. The Exchange notes that investors purchasing Shares directly from the Fund (by delivery of the Cash Deposit Amount) will receive a prospectus. Amex members purchasing Shares from the Trust for resale to investors will deliver a prospectus to such investors.

The Information Circular also will discuss the special characteristics and risks of trading this type of security. Specifically, the Information Circular, among other things, will discuss what the Shares are, how a Basket is created and redeemed, the requirement that members and member firms deliver a prospectus to investors purchasing the Shares prior to or concurrently with the confirmation of a transaction, applicable Amex rules, dissemination of information regarding the per Share Indicative Fund Value, trading information and applicable suitability rules. The Information Circular will also explain that the Fund is subject to various fees and expenses described in the registration statement.

The Information Circular will also reference the fact that there is no regulated source of last sale information regarding physical commodities and that the SEC has no jurisdiction over the trading of physical commodities such as aluminum, gold, crude oil, heating oil, corn and wheat, or the futures contracts on which the value of the Shares is based.

The Information Circular will also notify members and member organizations about the procedures for purchases and redemptions of Shares in Baskets, and that Shares are not individually redeemable but are redeemable only in Basket-size aggregations or multiples thereof. The Information Circular will also discuss any relief, if granted, by the Commission or the staff from any rules under the Act.

The Information Circular will disclose that the NAV for Shares will be calculated shortly after 4 p.m. ET each trading day.

[31] The Fund expects to seek relief, in the near future, from the Commission in connection with the trading of the Shares from the operation of certain Exchange Act rules.

[32] In the event the Index value or Indicative Fund Value is no longer calculated or disseminated, the Exchange would immediately contact the Commission to discuss measures that may be appropriate under the circumstances. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on November 22, 2005.

Surveillance

The Exchange represents that its surveillance procedures are adequate to monitor Exchange trading of the Shares and to detect violations of applicable rules and regulations. Exchange surveillance procedures applicable to trading in the proposed Shares will be similar to those applicable to TIRs, Portfolio Depository Receipts and Index Fund Shares currently trading on the Exchange. The Exchange currently has in place an Information Sharing Agreement with the NYMEX and the CBOT for the purpose of providing information in connection with trading in or related to futures contracts traded on the NYMEX and CBOT, respectively. The Exchange also notes that the CBOT is a member of the Intermarket Surveillance Group (''ISG''). As a result, the Exchange asserts that market surveillance information is available from the CBOT, if necessary, due to regulatory concerns that may arise in connection with the CBOT futures. In addition, the Exchange has negotiated a Memorandum of Understanding with the LME for the purpose of providing information in connection with the trading in or related to futures contracts traded on the LME.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act [33] in general and furthers the objectives of section 6(b)(5) [34] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

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.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

[33] 15 U.S.C. 78f.

[34] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Amex 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.[35]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Amex–2005–059 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–Amex–2005–059. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of the Amex. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–059 and should be submitted on or before January 3, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[36]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7419 Filed 12–15–05; 8:45 am]

BILLING CODE 8010–01–P

[35] The Amex 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. Telephone conversation between Jeffrey Burns, Associate General Counsel, Amex, and Florence Harmon, Senior Special Counsel, Division of Market Regulation, Commission, on November 22, 2005.

[36] 17 CFR 200.30–30(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–52934; File No. SR–ISE–2005–53]

Self-Regulatory Organizations; International Securities Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto Relating to Fee Changes

December 9, 2005.

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 November 22, 2005, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE.[3] On November 29, 2005, ISE filed Amendment No. 1 to the proposed rule change.[4] The ISE has designated this

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that the proposed rule filing submitted by ISE on November 22, 2005 contained a typo in the file number included in Exhibit 1. This notice reflects the correct file number.

[4] Amendment No. 1 made a technical change to the text of Exhibit 5 (ISE's Schedule of Fees). The

Continued

proposal as one establishing or changing a due, fee, or other charge imposed by the ISE under Section 19(b)(3)(A)(ii) of the Act,[5] and Rule 19b–4(f)(2) thereunder,[6] which renders the proposal effective upon filing with the Commission. 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 ISE is proposing to amend its Schedule of Fees to extend, for one year, until November 30, 2006, a pilot program that (i) caps and waives execution and comparison fees for transactions in options on the Nasdaq 100 Tracking Stock (''QQQQ'') when a member transacts a certain number of QQQQ option contracts, and (ii) reduces and waives the facilitation execution and comparison fees when a member transacts a certain number of contracts through the Exchange's Facilitation Mechanism. The text of the proposed rule change, as amended, is available on the ISE's Web site (*http://www.iseoptions.com/legal/proposed_rule_changes.asp*), at the principal office of the ISE, 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 ISE 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 ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend the ISE Schedule of Fees to extend, for one year, until November 30, 2006, a pilot program that (i) caps and waives execution and comparison fees for transactions in options on the QQQQ when a member transacts a certain number of QQQQ option contracts, and (ii) reduces and waives the facilitation execution and comparison fees when a member transacts a certain number of contracts through the Exchange's Facilitation Mechanism (when firms provide liquidity for the customers' block-sized orders).[7]

Discount on QQQQ Execution and Comparison Fees

Under the QQQQ pilot program, when a member's monthly average daily volume (''A.D.V.'') in QQQQ options reaches 8,000 contracts, the member's execution fee for the next 2,000 QQQQ option contracts is reduced by $.10 per contract.[8] Further, when a member's monthly A.D.V. in QQQQ options reaches 10,000 contracts, the Exchange waives the entire execution fee and the comparison fee for each QQQQ option contract traded thereafter. The Exchange instituted this pilot program in November 2003 for a six month period, expiring in May 2004.[9] The Exchange extended the pilot program in May 2004 for an additional six month period, expiring in November 2004.[10] In November 2004, the Exchange extended the pilot program, this time for a one year period, which is set to expire on November 30, 2005.[11] The Exchange now proposes to further extend the pilot program for a one-year period, expiring on November 30, 2006. The Exchange seeks to extend this pilot program for competitive reasons. This pilot program was initiated and extended in an attempt to increase the Exchange's market share in the QQQQ option product.

Discount on Facilitation Mechanism Fees

Under the Facilitation Mechanism pilot program, the structure of the reduction and waiver of the facilitation execution fee and the comparison fee is based on the structure of the reduction and waiver of the QQQQ execution fee and comparison fee noted above. That is, when a member's monthly A.D.V. in the Facilitation Mechanism reaches 8,000 contracts, the member's facilitation execution fee for the next 2,000 contracts transacted in the Facilitation Mechanism would be reduced by $.10 per contract. Further, when a member's monthly A.D.V. in the Facilitation Mechanism reaches 10,000 contracts, the Exchange would waive the entire facilitation execution fee and the comparison fee for each contract transacted in the Facilitation Mechanism thereafter. As with the QQQQ incentives, the Exchange is proposing to extend this pilot program for a one-year period to encourage members to use the Facilitation Mechanism.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b)(4) of the Act,[12] which requires that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. In particular, the fee changes proposed hereby will enable the Exchange to continue offering competitively priced products and services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(2)[14] thereunder because it changes a fee imposed by the Exchange. At any time within 60 days of the filing of such

correction to Exhibit 5 does not affect the fees for transactions in options on the QQQQ but only corrects the order of the excerpted items appearing in Exhibit 5.

[5] 15 U.S.C. 78s(b)(3)(A)(ii).

[6] 17 CFR 240.19b–4(f)(2).

[7] Telephone conversation between Samir Patel, Assistant General Counsel, ISE, Richard Holley III, Special Counsel, and Jan Woo, Attorney, Division of Market Regulation, Commission, on November 29, 2005.

[8] Telephone conversation between Samir Patel, Assistant General Counsel, ISE, Richard Holley III, Special Counsel, and Jan Woo, Attorney, Division of Market Regulation, Commission, on November 29, 2005 (clarifying that the A.D.V. threshold is calculated on a monthly basis).

[9] *See* Securities and Exchange Commission Release No. 49147 (January 29, 2004), 69 FR 5629 (February 5, 2004) (SR–ISE–2003–32).

[10] *See* Securities and Exchange Commission Release No. 49853 (June 14, 2004), 69 FR 35087 (June 23, 2004) (SR–ISE–2004–15).

[11] *See* Securities and Exchange Commission Release No. 50900 (December 21, 2004), 69 FR 78075 (December 29, 2004) (SR–ISE–2004–36).

[12] 15 U.S.C. 78f(b)(4).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 19b–4(f)(2).

amended 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.[15]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File No. SR–ISE–2005–53 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–9303.

All submissions should refer to File Number SR–ISE–2005–53. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–ISE–2005–53 and should be submitted on or before January 6, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Jonathan G. Katz,

Secretary.

[FR Doc. E5–7418 Filed 12–15–05; 8:45 am]

BILLING CODE 8010–01–P

[15] The effective date of the original proposed rule is November 22, 2005. The effective date of Amendment No. 1 is November 29, 2005. For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on November 29, 2005, the date on which the ISE submitted Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

[16] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13, the Paperwork Reduction Act of 1995, effective October 1, 1995. The information collection packages that may be included in this notice are for new information collections, approval of existing information collections, revisions to OMB-approved information collections, and extensions (no change) of OMB-approved information collections.

SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility, and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology. Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer. The information can be mailed and/or faxed to the individuals at the addresses and fax numbers listed below:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA. Fax: 202–395–6974.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1333 Annex Building, 6401 Security Blvd., Baltimore, MD 21235. Fax: 410–965–6400.

The information collections listed below are pending at SSA and will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–0454 or by writing to the address listed above.

Certification of Low Birth Weight for SSI Eligibility—20 CFR 416.931, 416.926a (m) (7) & (8) and 416.924—0960–NEW

Form SSA–3830 is designed to assist hospitals and claimants who file on behalf of low birth weight infants in providing local field offices (FOs) and Disability Determination Services (DDSs) with medical information for determining disability of low birth weight infants. FOs use the forms as protective filing statements, and the medical information for making presumptive disability findings, which allow expedited payment to eligible claimants. DDSs use the medical information to formally determine disability and to establish the most appropriate continuing disability review diaries. The respondents are hospitals that have information identifying low birth weight babies and medical conditions those babies may have. We estimate it will take 10 to 15 minutes to complete the form. Below, we use the higher number for our public burden computation.

Type of Request: New information collection.

Number of Respondents: 24,000.

Frequency of Response: 1

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 6,000 hours.

Dated: December 8, 2005.

Elizabeth A. Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 05–24096 Filed 12–15–05; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 5247]

Culturally Significant Objects Imported for Exhibition Determinations: ''Samuel Palmer (1805–1881): Vision and Landscape''

Summary: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority

No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Samuel Palmer (1805–1881): Vision and Landscape'', imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about March 6, 2006, until on or about May 28, 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 objects, contact Wolodymyr Sulzynsky, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8050). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: December 5, 2005.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E5–7447 Filed 12–15–05; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) 23–24, Airworthiness Compliance Checklists for Common Part 23 Supplemental Type Certificate (STC) Projects

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of issuance of advisory circular.

SUMMARY: This notice announces the issuance of Advisory Circular (AC) 23–24, Airworthiness Compliance Checklists for Common Part 23 Supplemental Type Certificate (STC) Projects. The AC standardizes compliance checklists for common Title 14 of the Code of Federal Regulations (14 CFR) part 23 STC projects. These checklists may be used to fulfill some of the requirements for a Certification Plan for STC projects. The standard compliance checklists show typical methods of compliance with the regulations and cross-references related guidance material. Checklists created using the information in the AC complement the guidance in the Guides for Certification of Part 23 Airplanes (ACs 23–8B, 23–16A, 23–17B, and 23–19) and other project-specific guidance. The checklists may contain complete certification requirements or may be used as a starting place when applying for an STC that may be beyond the scope of the checklists.

DATES: Advisory Circular 23–24 was issued by the Manager of the Small Airplane Directorate on August 23, 2005.

How To Obtain Copies: You may obtain a paper copy of AC 23–24 by writing to the U.S. Department of Transportation, Subsequent Distribution Office, DOT Warehouse, M–30, Ardmore East Business Center, 3341Q 75th Avenue, Landover, MD 20785, telephone (301) 322–4779, or by faxing your request to the warehouse at (301) 386–5394.

Identify the publication as AC 23–24, Airworthiness Compliance Checklists for Common Part 23 Supplemental Type Certificate (STC) Projects, Stock Number 050–007–01371–0. The cost is $10.00 per copy for orders mailed within the U.S. and $14.00 for orders mailed outside the U.S. Send a check or money order, made payable to Superintendent of Documents, with your request. No c.o.d. orders are accepted.

The AC will also be available on the Internet at: *http://www.faa.gov/certification/aircraft/*

Issued in Kansas City, Missouri on December 5, 2005.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E5–7415 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Public Notice for Waiver of Aeronautical Land-Use Assurance; Southern Illinois Airport, Carbondale-Murphysboro, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent of waiver with respect to land.

SUMMARY: The Federal Aviation Administration (FAA) is giving notice that 1.29 + / − acres (Parcel P–1R) of the airport property located at Southern Illinois Airport, Carbondale-Murphysboro, Illinois, will be released. This acreage is adjacent to the Airport Entrance Road and in close proximity to Airport Road and Fox Farm Road. It is in the southern part of Tract P–1, which is 11.024 acres.

Tract P–1 was originally acquired in fee on August 20, 1975, with partial federal funding of Grant 7–17–00077–02. The proposed sale of will facilitate the construction of a centralized 911 emergency dispatch center, which will serve all of Jackson County. It will combine the current emergency dispatch functions of the cities of Carbondale and Murphysboro, Jackson County and Southern Illinois University. This center will position first responders and mutual aid providers near the airport for the needs of the airport.

The land use of the property is currently agricultural, which provides minimal income to the airport. This one-time sale will generate income for airport improvement purposes and build a better rapport with the surrounding communities and their officials.

The future use of this release will be required to comply with part 77 surfaces, and in conformity with FAA Deed Restrictions as required in Appendix 3 of PPM 5190.6.

The Exhibit 'A' Property Line Map (Exhibit 1) and the Airport Layout Plan (Exhibit 2) depicts the exchange.

In accordance with section 47107(h) of title 49, United States Code, this notice is required to be published in the **Federal Register** 30 days before modifying the land-use assurance that requires that property to be used for an aeronautical purpose.

DATES: Comments must be received on or before January 17, 2006.

FOR FURTHER INFORMATION CONTACT: E. Lindsay Butler, Program Manager, 2300 East Devon Avenue, Des Plaines, IL 60018. Telephone Number 847–294–7723/ FAX Number 847–294–7046. Documents reflecting this FAA action may be reviewed at this same location or at the Southern Illinois Airport, Carbondale-Murphysboro, Illinois.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA intends to authorize the exchange of the subject airport property at Southern Illinois Airport, Carbondale-Murphysboro, Illinois. Approval does not constitute a commitment by the FAA to financially assist in exchange of the subject airport property nor a determination that all measures covered by the program are eligible for grant-aid-funding from the FAA. If appropriate, the disposition of proceeds from the exchange of the airport property will be in accordance FAA's Policy and Procedures

Concerning the Use of Airport Revenue, published in the **Federal Register** on February 16, 1999.

Issued in Des Plaines, Illinois on December 5, 2005.

Larry H. Ladendorf,

Acting Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 05–24127 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Reinstatement of 1980 Public Comment Procedures for Requests for Interpretation of the Flight Time, Rest and Duty Period Regulations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA receives several requests for interpretation of the Flight Time, Rest and Duty Period regulations. The FAA has decided that it would be beneficial to follow the procedures announced in the May 8, 1980 **Federal Register** Notice (45 FR 30424) to request public comments on the requesters' questions, before the FAA issues its responses. Copies of requests from members of the public will be posted on the DOT public electronic docket, using a specified FAA docket number.

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

FOR FURTHER INFORMATION CONTACT: Constance M. Subadan, Regulations Division, AGC–200, Office of the Chief Counsel, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202–267–3073.

SUPPLEMENTARY INFORMATION: The FAA has decided to use the public comment procedures it announced and described in 1980. Recently, Continental Airlines proposed that the FAA reinstate, for all requests for interpretation of the flight time, rest and duty period regulations, the procedures that were first described and announced in 1980. Under those procedures, when the FAA received certain requests for interpretation of the flight time, rest and duty period regulations, the FAA was to provide an opportunity to interested persons outside the FAA to present additional facts and to offer their expertise on flight time, rest and duty period issues.

The FAA intends to follow the procedures announced in 1980, subject to the following limitations:

1. Because implementation of the procedures themselves could prove to be extremely time consuming and labor intensive, the FAA intends to observe them in case presenting new issues, i.e., not for ''repetitive type questions.'' *See* 45 FR at 30425.

2. Even in situations not involving repetitive type questions, the agency specifically recognized that an interpretation could be issued immediately, without pre-issuance comments. *Id.* In such a situation, post-issuance comments would be solicited.

3. As noted in the 1980 document, the agency reserves the right to modify or discontinue the use of the procedures at any time at the election of the Office of the Chief Counsel. *Id.*

Dated: Issued in Washington, DC on December 12, 2005.

Rebecca B. MacPherson,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 05–24128 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Southwest Florida International Airport, Ft. Myers, FL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Southwest Florida International Airport under the provisions of 49 U.S.C. 47501 *et. seq* (the Aviation Safety and Noise Abatement Act hereinafter referred to as ''the Act'') and 14 CFR part 150 by the Lee County Port Authority. This program was submitted subsequent to a determination by FAA that the associated noise exposure maps submitted under 14 CFR part 150 for Southwest Florida International Airport were in compliance with applicable requirements effective February 11, 2005. The proposed noise compatibility program will be approved or disapproved on or before May 29, 2006.

DATES: The effective date of the start of FAA's review of the associated noise compatibility program is December 1, 2005. The public comment period ends January 31, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Bonnie Baskin, Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822, (407) 812–6331. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Southwest Florida International Airport which will be approved or disapproved on or before May 29, 2006. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA has formally received the noise compatibility program for Southwest Florida International Airport, effective on December 1, 2005. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 29, 2006.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, section 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety or create an undue burden on interstate or foreign commerce, and whether they are reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persona are invited to comment on the proposed program with specific reference to these factors. All comments relating to these factors, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the

FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, Florida 32822.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Dated: Issued in Orlando, Florida December 2, 2005.

W. Dean Stringer,

Manager, Orlando Airports District Office.

[FR Doc. 05–23890 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Extension of the Public Comment Period for the Draft Supplemental Environmental Assessment for the Proposed Modification to the Four Corner-Post Plan at Las Vegas McCarran International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Extension of public comment period.

SUMMARY: This notice advises the public that the comment period for the Draft Supplemental Environmental Assessment (DSEA) for the proposed modification to the Four Corner-Post Plan at Las Vegas McCarran International Airport, Las Vegas, Nevada is extended.

DATES: The comment period of the DSEA, ending on December 30, 2005, is extended to January 13, 2006.

SUPPLEMENTARY INFORMATION: On November 22, 2005, the Federal Aviation Administration (FAA) issued a notice of the availability of the DSEA for the Las Vegas McCarran International Airport. The notice, published on December 5, 2005, 70 FR 72497, also announced the schedule for public workshops regarding the DSEA, and advised that the public comment period would close Friday, December 30, 2005. While the public workshops will be held as scheduled on November 12 and 13, 2005, the public comment period on the DSEA is extended.

All written comments are to be submitted to Ms. Sara Hassert, Landrum & Brown, Inc., 8755 W. Higgins Rd., Ste. 850, Chicago, IL 60631, fax: 773–628–2901, E-mail: *shassert@landrum-brown.com* and the comments must be postmarked and e-mail/fax must be sent by no later than midnight, Friday, January 13, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Higgins, Environmental Specialist, Western Terminal Service Area Office, FAA Western Terminal Operations, 15000 Aviation Blvd., Lawndale, CA 90261, Ph. 310–725–6597, E-mail: *kathryn.higgins@faa.gov.*

Dated: Issued in Lawndale, California on December 9, 2005.

Anthony DiBernardo,

Manager, Program Operations, Western Terminal Service Area.

[FR Doc. 05–24129 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Tier 1 Environmental Impact Statement: Lafayette Parish, LA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Tier 1 Environmental Impact Statement (EIS) will be prepared for a proposed toll highway facility in the vicinity of Lafayette, Louisiana.

FOR FURTHER INFORMATION CONTACT: Mr. William Farr, Program Operations Manager, Federal Highway Administration, 5304 Flanders Drive, Suite A, Baton Rouge, Louisiana 70808, Telephone: (225) 757–7615, or Mr. Michael Mangham, Commission Chairperson, Lafayette Metropolitan Expressway Commission, 406 Audubon Boulevard, Lafayette, Louisiana 70503, Telephone: (337) 233–6200, or Dr. Eric Kalivoda, Assistant Secretary, Office of Planning and Programming, Louisiana Department of Transportation and Development, PO Box 94245, Baton Rouge, LA 70804–9245. Project information may be obtained from the project Internet Web site at *http://www.lafayettexpressway.com/project.htm.*

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Lafayette Metropolitan Expressway Commission (LMEC), and the Louisiana Department of Transportation and Development (LADOTD), will prepare a Tier 1 EIS on corridor alternatives for the proposed Lafayette Metropolitan Expressway to connect on new location to I–49 north of Lafayette, LA, I–10 west of Lafayette, LA, and US 90 south of Lafayette, LA. The proposed facility would be a controlled access toll road on new location with interchanges with I–10, I–49, and Johnston Street. Interchanges with other connecting cross streets will also be considered. The proposed facility would initially have four lanes with provision to expand to six lanes.

The new facility is considered necessary to provide for existing and future traffic demand and to improve the hurricane evacuation system.

At a minimum, the current project will examine, in addition to the no build alternative, three corridor build alternatives that were identified in the Lafayette Metropolitan Expressway Feasibility Study. Three corridors were identified in the study that ranged in length from 31 to 38 miles. The implementation cost estimate, including planning, design, right of way acquisition, and construction, was generally about the same for the various corridors ($760 million in 2005 dollars).

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, local agencies, tribes, elected officials and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public meetings will be held. In addition, a public hearing will be held. Public notice will be given of the time and place of the public meetings and public hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal scoping meeting will be held upon initiation of this project. Public scoping meetings will be scheduled to provide the public with information about the project and an opportunity to assist in formulating the scope of the study.

To ensure that the full range of issues related to this proposed project are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities, apply to this program.)

Authority: 23 U.S.C. 315;23 CFR 771.123.

Issued on: December 2, 2005.

Joe A. Bloise,

Acting Division Administrator, FHWA, Louisiana Division.

[FR Doc. 05–24111 Filed 12–15–05; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Material Safety Administration

Office of Hazardous Materials Safety; Notice of Application for Special Permits

AGENCY: Pipeline and Hazardous Material Safety Administration, DOT.

ACTION: List of applications for special permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each Mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before January 17, 2006.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If Confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington DC or at *http://dms.dot.gov*.

This notice of receipt of applications for special permits is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 12, 2005.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Special Permits & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
		NEW SPECIAL PERMITS		
14283–N	PHMSA–23246	U.S. Department of Energy (DOE), Washington, DC.	49 CFR Part 172, Subparts E, F; 171.15; 171.16; 172.202; 172.203(c)(1)(i)''; 172.203(d)(1); 172.310; 172.316(a)(7); 172.331(b)(2); 172.332; 173.403(c); 173.425(c)(1)(iii); 173.425(c)(5); 173.443(a); 174.24; 174.25; 174.45; 174.59; 174.700; 174.715; 177.807; 177.843(a).	To authorize the transportation in commerce of low specific activity radioactive materials (uranium mill tailings) under special conditions in non-DOT specification packagings without labeling and placarding (Modes 1, 2)
14285–N		INO Therapeutics LLC, Port Allen, LA.	49 CFR 173.301(1)	To authorize the transportation in commerce of non-DOT specification foreign aluminum cylinders containing a Division 2.2 nitric oxide mixture for export only. (Modes 1, 3, 4)
14286–N		EF Products, Inc.	49 CFR 173.304(d)	To authorize the manufacture, mark, sale and use of a non-refillable, non-DOT specification inside metal container similar to a DOT 2Q container for the transportation of certain hazardous materials. (Modes 1, 2, 3, 4)
14287–N		Troxler Electronic Laboratories, Inc., Research Triangle Park, NC.	49 CFR 173.431	To authorize the transportation in commerce of certain radioactive materials exceeding the quantity that may be transported in a Type A packaging. (Modes 1, 4)
14289–N		City Machine & Welding, Inc.	49 CFR 180.209	To authorize the transportation in commerce of certain DOT Specification 3AA, 3AAX and 3T cylinders which have been alternatively ultrasonically retested. (Modes 1, 2, 3)

[FR Doc. 05–24130 Filed 12–15–05; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Special Permit

AGENCY: Pipeline and Hazardous Materials Safety Administration, DOT.

ACTION: List of applications for modification of special permit.

SUMMARY: In accordance with the procedures governing the application for, and the processing of special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Request of modifications of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' demote a modification request. There applications have been separated from the new

applications for special permits to facilitate processing.

DATES: Comments must be received on or before January 3, 2006.

Address Comments To

Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, Nassif Building, 400 7th Street, SW., Washington DC or at *http://dms.dot.gov.*

This notice of receipt of applications for modification of special permits is published in accordance with part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on December 12, 2005.

R. Ryan Posten,

Chief, Special Permits Program, Office of Hazardous Materials Special Permits & Approvals.

Application No.	Docket No.	Applicant	Regulation(s) affected	Modification of special permit	Nature of special permit thereof
MODIFICATION SPECIAL PERMITS					
10788–M	.....	P.S.I. Plus, Inc., East Hampton, CT.	49 CFR 173.302(a)(1); 175.3; 178.65–2; 178.65–5(a)(4).	10788	To modify the special permit to authorize the use of DOT specification 39 cylinders for all Division 1.2 gases.
11281–M	.....	E.I. du Pont de Nemours & Company, Wilmington, DE.	49 CFR 172.101, Column 7, Special Provisions B14, T38.	11281	To modify the special permit to allow the minimum thickness for Type 316L stainless steel tanks to be changed to 0.250″, and to allow transportation in container-on-flat-cars.
11513–M	.....	ATK Thiokol, Inc., Brigham City, UT.	49 CFR 172.101	11513	To modify the special permit to authorize transportation of aerial flares (flare candles), propellant samples, and wet cut propellant in non-DOT specification containers.
12677–M	RSPA–01–9375	Austin Powder Illinois Company, Cleveland, OH.	49 CFR 177.835(c)(3); 177.823; 177.848(e)(2); 177.848(g); 173.202.	12677	To modify the special permit to authorize the use of the motor vehicle compartments and non-DOT specification cargo tanks for transporting various hazardous materials currently authorized under DOT–SP 12677.
12706–M	RSPA–01–9731	RAGASCO AS, Raufoss, NO.	49 CFR 173.34; 173.201; 173.301; 173.304.	12706	To modify the special permit to authorize the addition of certain Division 2.2 hazardous materials.
14004–M	RSPA–04–19657 ...	Praxair, Inc., Danbury, CT.	49 CFR 179.13	14004	To modify the special permit to allow transportation of certain Division 2.2 gases in DOT specification 105J500W tank cars with a maximum weight on rail greater than 263,000 pounds but not greater than 286,000 pounds.

[FR Doc. 05–24131 Filed 12–15–05; 8:45 am]
BILLING CODE 4909–60–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel will be held. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, January 10, 2006, from 1 p.m. to 5 p.m. and Wednesday, January 11, 2006, from 8 a.m. to 11 a.m., Eastern Time.

FOR FURTHER INFORMATION CONTACT: LaVerne Walker at 1–866–602–2223.

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 of the Taxpayer Advocacy Panel will be held Tuesday, January 10, 2006, from 1 p.m. to 5 p.m. and Wednesday, January 11, 2006, from 8 a.m. to 11 a.m., Eastern Time. If you would like to have the Taxpayer Advocacy Panel consider a written statement, please call 1–866–602–2223, or write to LaVerne Walker at 1111 Constitution Avenue, NW., Room 7704, Washington, DC 20224. Or you can contact us at *http://www.improveirs.org.* Ms. Walker can be reached at 1–866–602–2223 or by FAX at 202–622–6143.

The agenda will include the following: discussion of various IRS issues.

Dated: December 9, 2005.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E5–7401 Filed 12–15–05; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0128]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed existing collection in use without an OMB control number, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine claimants' eligibility to reinstate lapsed Government Life Insurance policy.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 14, 2006.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov*. Please refer to ''OMB Control No. 2900–0128'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Notice of Lapse—Government Life Insurance, VA Form 29–389.

b. Application for Reinstatement, VA Form 29–389–1.

OMB Control Number: 2900–0128.

Type of Review: Existing collection in use without an OMB control number.

Abstract: VA Forms 29–389 and 29–389–1 are used to inform claimants that their government life insurance has lapsed or will lapse due to non payment of premiums. The claimant must complete the application to reinstate the insurance and to elect to pay the past due premiums. VA uses the data collected to determine the claimant's eligibility for reinstatement of such insurance.

Affected Public: Individuals or Households.

Estimated Annual Burden: 4,459 hours.

a. VA Form 29–389—3,399 hours.

b. VA Form 29–389–1—1,060 hours.

Estimated Average Burden Per Respondent:

a. VA Form 29–389—12 minutes.

b. VA Form 29–389–1—10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 23,352.

a. VA Form 29–389—16,993.

b. VA Form 29–389–1—6,359.

Dated: November 29, 2005.

By direction of the Secretary:

Denise McLamb,

Program Analyst, Records Management Service.

[FR Doc. E5–7404 Filed 12–15–05; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Disability Benefits Commission; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Veterans' Disability Benefits Commission has scheduled a meeting for January 19–20, 2006 at the Embassy Suites DC Convention Center, 900 10th Street, NW., Washington, DC. The meeting will begin each day at 9:30 a.m. On January 19, the meeting will end at 4:45 p.m., and on January 20 the meeting will end at 3 p.m. The meeting is open to the public.

The purpose of the Commission is to carry out a study of the benefits under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and death attributable to military service.

The agenda for the meeting will include updates on the proposed work plans of the Center for Naval Analyses (CNA) and the Institute of Medicine (IOM), firsthand accounts of disabled service members and veterans, an overview of the VA benefit claims appellate process and a discussion of future field visits to be conducted by Commission members during calendar year 2006.

Interested persons may attend and present oral statements to the Commission. Oral presentations will be limited to five minutes or less, depending on the number of participants. Interested parties may provide written comments for review by the Commission prior to the meeting, by e-mail to *veterans@vetscommission.intranets.com* or by mail to Mr. Ray Wilburn, Executive Director, Veterans' Disability Benefits Commission, 1101 Pennsylvania Avenue, NW., 5th Floor, Washington, DC 20004.

Dated: December 9, 2005.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 05–24108 Filed 12–15–05; 8:45 am]

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Federal Register

Friday,

December 16, 2005

Part II

Environmental Protection Agency

40 CFR Part 60

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[EPA–HQ–OAR–2003–0156; FRL–8005–5]

RIN 2060–AG31

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Other Solid Waste Incineration Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating new source performance standards (NSPS) and emission guidelines for new and existing ''other'' solid waste incineration units (OSWI). The final rules for OSWI units fulfill the requirements of sections 111 and 129 of the Clean Air Act (CAA), which require EPA to promulgate NSPS and emission guidelines for solid waste incineration units. The final rules, which address only the incineration of nonhazardous solid wastes, will protect public health by reducing exposure to air pollution.

DATES: Amendments to § 60.17 are effective February 14, 2006. The standards for new sources in subpart EEEE of 40 CFR part 60 (sections 60.2880 through 60.2977) are effective June 16, 2006. The incorporation by reference of certain publications listed in the NSPS is approved by the Director of the Federal Register as of June 16, 2006. The emission guidelines for existing sources in subpart FFFF of 40 CFR part 60 (sections 60.2980 through 60.3078) are effective February 14, 2006. The incorporation by reference of certain publications listed in the emission guidelines is approved by the Director of the Federal Register as of February 14, 2006.

ADDRESSES: Docket. EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2003–0156. 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 EPA Docket Center (EPA/DC), EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Johnson, Combustion Group, Emission Standards Division (C439–01), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–5025; e-mail address: *johnson.mary@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Categories and entities potentially regulated by the final rules are very small municipal waste combustion (VSMWC) units and institutional waste incineration (IWI) units. The final OSWI emission guidelines and NSPS potentially affect the following categories of sources:

Category	NAICS code	SIC code	Examples of potentially regulated entities
Any State, local, or Tribal government using a VSMWC unit as defined in the regulations.	562213, 92411	4953, 9511	Solid waste combustion units burning municipal waste collected from the general public and from residential, commercial, institutional, and industrial sources.
Institutions using an IWI unit as defined in the regulations.	922, 6111, 623, 7121	9223, 8211, 7999	Correctional institutions, primary and secondary schools, camps and national parks.
Any Federal government agency using an OSWI unit as defined in the regulations.	928	9711	Department of Defense (labs, military bases, munitions facilities).
Any college or university using an OSWI unit as defined in the regulations.	6113, 6112	8221, 8222	Universities, colleges and community colleges.
Any church or convent using an OSWI unit as defined in the regulations.	8131	8661	Churches and convents.
Any civic or religious organization using an OSWI unit as defined in the regulations.	8134	8641	Civic association and fraternal associations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by the final rules. To determine whether your facility is regulated by the final rules, you should examine the applicability criteria in the NSPS for new sources located at 40 CFR 60.2885 through 60.2888 of subpart EEEE, and in the emission guidelines for existing sources located at 40 CFR 60.2991 through 60.2994 of subpart FFFF. If you have any questions regarding the applicability of the final rules to a particular entity, contact the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Docket. The docket number for the final NSPS (40 CFR part 60, subpart EEEE) and emission guidelines (40 CFR part 60, subpart FFFF) is Docket ID No. EPA–HQ–OAR–2003–0156.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the final rules is available on the WWW through the Technology Transfer Network Website (TTN Web). Following signature, EPA will post a copy of the final rules 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 CAA section 307(b)(1), judicial review of the final rules is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia by February 14, 2006. Under CAA section 307(d)(7)(B), only an objection to the final rules that was raised with reasonable specificity during the period for public comment can 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 proceedings brought by EPA 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 the EPA 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 the 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 preceding **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.

Organization of This Document. The following outline is provided to aid in locating information in this preamble.

I. Background
II. Summary of the Final Rules
A. Do the final rules apply to me?
B. What emission limits must I meet?
C. What operating limits must I meet?
D. What are the other requirements?
E. What are the requirements for air curtain incinerators?
F. What title V permit requirements must I meet?
III. What are the changes to the rules since proposal?
IV. Significant Issues and Changes-Public Comments
A. Applicability
B. Definitions
C. MACT Floors and Emission Limits
D. Title V Operating Permits
E. Testing
F. Impacts
V. Impacts of the Final Rules
A. What are the impacts for new units?
B. What are the impacts for existing units?
VI. Statutory and Executive Order Reviews
A. Executive Order 12866, Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act
J. Congressional Review Act

I. Background

Section 129 of the CAA, entitled ''Solid Waste Combustion,'' requires EPA to develop and adopt NSPS and emission guidelines for solid waste incineration units pursuant to CAA section 111. Section 111(b) of the CAA requires EPA to establish NSPS for new sources, and CAA section 111(d) requires EPA to establish procedures for States to submit plans for implementing emission guidelines for existing sources. Under CAA section 111, NSPS and emission guidelines must be developed for new and existing stationary sources that cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health or welfare.

Congress specifically added section 129 to the CAA to address concerns about emissions from solid waste combustion units. Section 129(a)(1) of the CAA identifies five categories of solid waste incineration units:

(1) Units with a capacity of greater than 250 tons per day (tpd) combusting municipal waste;

(2) Units with a capacity equal to or less than 250 tpd combusting municipal waste;

(3) Units combusting hospital, medical and infectious waste;

(4) Units combusting commercial or industrial waste; and

(5) Unspecified ''other categories of solid waste incineration units.''

Section 129(g)(1) of the CAA identifies several types of units that are not solid waste incineration units, including units required to have a permit under section 3005 of the Solid Waste Disposal Act (SWDA); materials recovery facilities; certain qualifying small power production facilities or qualifying cogeneration facilities which burn homogeneous waste; and certain air curtain incinerators that meet opacity limitations established by EPA.

For each category of incineration unit identified under CAA section 129, EPA must establish numerical emission limits for at least nine specified pollutants (particulate matter (PM), sulfur dioxide (SO_2), hydrogen chloride (HC1), nitrogen oxides (NO_X), carbon monoxide (CO), lead (Pb), cadmium (Cd), mercury (Hg), and dioxins and dibenzofurans), and for opacity as appropriate. Section 129 of the CAA provides EPA with the discretion to establish emission limitations for other pollutants as well. (See CAA section 129(a)(4).)

Under CAA section 129, the NSPS and emission guidelines adopted for solid waste combustion units must reflect the maximum achievable control technology (MACT). Accordingly, EPA=s standards under CAA section 129 must ''reflect the maximum degree of reduction in emissions of [the listed] air pollutants * * * that the Administrator, taking into consideration the cost of achieving such emissions reductions, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing units in each category * * *.'' (See CAA section 129(a)(2).) However, the standards for new units must not be less stringent than the emissions control that is achieved in practice by the best controlled similar unit, and the standards for existing sources must not be less stringent than the average emissions limitations achieved by the best performing 12 percent of units in the category.

EPA previously developed regulations for each of the listed categories of solid waste incineration unit except for the undefined ''other categories of solid waste incineration units.'' Four notices have been published regarding OSWI regulatory development (58 FR 31358, June 2, 1993; 58 FR 58498, November 2, 1993; 65 FR 67367, November 9, 2000; 69 FR 71472, December 9, 2004). In the November 9, 2000 notice, EPA revised the OSWI regulatory schedule to include a November 2005 date for promulgation of final regulations. This deadline was subsequently incorporated into a consent decree, requiring that EPA propose regulations for the OSWI source category by November 30, 2004, and promulgate final rules by November 30, 2005. On December 9, 2004, EPA proposed NSPS and emission guidelines for OSWI units (69 FR 71472). EPA received 26 public comment letters from a variety of sources, consisting mainly of government agencies, environmental organizations, incinerator manufacturers, and various incinerator owners/operators. By today's notice EPA promulgates final regulations for ''other'' (or OSWI) units.

II. Summary of the Final Rules

A. Do the final rules apply to me?

The final OSWI rules apply to you if you own or operate either of the following:

(1) An incineration unit with a capacity less than 35 tpd burning municipal solid waste (MSW) (as defined in CAA section 129, 40 CFR 60.2977 of subpart EEEE, and 40 CFR 60.3078 of subpart FFFF); or

(2) An incineration unit located at an institutional facility burning institutional waste (as defined in 40 CFR 60.2977 of subpart EEEE and 40 CFR 60.3078 of subpart FFFF) generated at that facility.

Requirements for air curtain incineration units that would otherwise be VSMWC or IWI units, but for the fact

that they burn certain materials, are discussed later in this preamble. If your incineration unit is currently meeting emission limitations and other requirements of another CAA section 129 regulation (i.e., small or large municipal waste combustion (MWC) units; hospital, medical, infectious waste incineration (HMIWI) units; or commercial and industrial solid waste incineration (CISWI) units), the final OSWI rules do not apply to you. Likewise, if an institutional combustion unit is covered under the CAA section 112 national emission standards for hazardous air pollutants (NESHAP) for industrial, commercial, and institutional boilers and process heaters (boilers NESHAP), it is not subject to the final OSWI rules. Certain types of combustion units listed in 40 CFR 60.2887 of subpart EEEE and 40 CFR 60.2993 of subpart FFFF are also excluded from the final OSWI rules.

If you began construction of your incineration unit on or before December 9, 2004, it is considered an existing unit and is subject to the emission guidelines (40 CFR part 60, subpart FFFF). If you began construction of your incineration unit after December 9, 2004, it is considered a new unit and is subject to the NSPS (40 CFR part 60, subpart EEEE).

If you began reconstruction or modification of your incineration unit prior to June 16, 2006, it is considered an existing unit and is subject to the emission guidelines. Likewise, if you begin reconstruction or modification of your incineration unit on or after June 16, 2006, it is considered a new unit and is subject to the NSPS.

B. What emission limits must I meet?

As the owner or operator of a new OSWI unit, you must meet the emission limits specified in table 1 of this preamble. You must conduct an initial performance test to show compliance within 60 days after a new OSWI unit reaches the charge rate at which it will operate, but no later than 180 days after the unit's initial startup.

As the owner or operator of an existing OSWI unit, you must meet the emission limits specified in table 1 of this preamble within 3 years after the effective date of State plan approval or by a compliance date to be established when EPA promulgates a Federal plan, but no later than December 16, 2010. The December 16, 2010 deadline is set by the statute. (See CAA section 129(f)). Thus, if EPA approves a State plan in 2009, December 16, 2010 will still be the deadline for complying. EPA plans to promulgate a Federal plan that will require compliance by December 16, 2010 in those areas that fail to submit an approvable State plan.

TABLE 1.—EMISSION LIMITS FOR NEW AND EXISTING OSWI UNITS

For these pollutants	You must meet these emission limits [a]	And determine compliance using these methods [b c]
Cd	18 micrograms per dry standard cubic meter (μg/dscm).	EPA Method 29.
CO	40 parts per million dry volume (ppmdv)	EPA Methods 10, 10A or 10B.
Dioxins/Furans (total mass basis)	33 nanograms per dry standard cubic meter (ng/dscm).	EPA Method 23.
HCl	15 ppmdv	EPA Method 26A.
Pb	226 μg/dscm	EPA Method 29.
Hg	74 μg/dscm	EPA Method 29.
Opacity	10%	EPA Method 9.
NO_X	103 ppmdv	EPA Methods 7, 7A, 7C, 7D, or 7E. [d]
PM	0.013 grains per dry standard cubic foot (gr/dscf).	EPA Method 5 or 29.
SO_2	3.1 ppmdv	EPA Method 6 or 6C. [e]

[a] All emission limits (except opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] These methods are in 40 CFR part 60, appendix A.
[c] Compliance with the CO emission limit is determined on a 12-hour rolling average basis using continuous emission monitoring system data. Compliance for the other emission limits is determined by stack testing.
[d] ASME PTC 19–10–1981–Part 10 is an acceptable alternative to only Methods 7 and 7C.
[e] ASME PTC 19–10–1981–Part 10 is an acceptable alternative to only Method 6.

C. What operating limits must I meet?

If you use a wet scrubber to comply with the emission limits, you must establish the maximum and minimum site-specific operating limits indicated in table 2 of this preamble. You must then operate the OSWI unit so that the charge rate does not exceed the established maximum charge rate. You must operate the wet scrubber so that the pressure drop or amperage, scrubber liquor flow rate, and scrubber liquor pH do not fall below the minimum established operating limits.

TABLE 2.—OPERATING LIMITS FOR NEW AND EXISTING OSWI UNITS USING WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitor continuously using these recording times
Charge rate	Maximum charge rate	Every hour.
Pressure drop across the wet scrubber, or amperage to the wet scrubber.	Minimum pressure drop or amperage	Every 15 minutes.
Scrubber liquor flow rate	Minimum flow rate	Every 15 minutes.
Scrubber liquor pH	Minimum pH	Every 15 minutes.

Note: Compliance is determined on a 3-hour rolling average basis, except charge rate for batch incinerators, which is determined on a 24-hour basis.

If you use an air pollution control device other than a wet scrubber to comply with the emission limits, you must petition the EPA for approval of other site-specific operating limits to be established during the initial performance test and continuously monitored thereafter. The information you must include in your petition is described in 40 CFR 60.2917 of subpart EEEE and 40 CFR 60.3024 of subpart FFFF.

D. What are the other requirements?

As the owner or operator of a new or existing OSWI unit, you must meet the following additional requirements.

Siting Analysis (new units only):

- Submit a report that evaluates site-specific air pollution control alternatives that minimize potential risks to public health or the environment, considering costs, energy impacts, non-air environmental impacts, or any other factors related to the practicability of the alternatives.

Waste Management Plan:

- Submit a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream to reduce or eliminate toxic emissions from incinerated waste.

Operator Training and Qualification Requirements:

- Qualify operators or their supervisors (at least one per facility) by ensuring that they complete an operator training course and annual review or refresher course.

Testing Requirements:

- Conduct initial performance tests for Cd, CO, dioxins/furans, HCl, Pb, Hg, NO_X, opacity, PM, and SO_2 and establish operating limits (i.e., maximum or minimum values for operating parameters).
- Conduct annual performance tests for all nine pollutants and opacity. (An owner or operator may conduct less frequent testing if the facility demonstrates that it is in compliance with the emission limits for three consecutive performance tests.)

Monitoring Requirements:

- Continuously monitor CO emissions.
- If using a wet scrubber to comply with the emission limits, continuously monitor the following operating parameters: charge rate, pressure drop across the wet scrubber (or amperage), and scrubber liquid flow rate and pH.
- If using something other than a wet scrubber to comply with the emission limits, monitor other operating parameters, as approved by the EPA.

Recordkeeping and Reporting Requirements:

- Maintain for 5 years records of the initial performance tests and all subsequent performance tests, operating parameters, any maintenance, the siting analysis (for new units only), and operator training and qualification. Each record must be kept on site for at least 2 years. The records may be kept off site for the remaining 3 years.
- Submit the results of the initial performance tests and all subsequent performance tests and values for the operating parameters.
- Submit annual compliance reports and semiannual reports of any deviations from the emission limits, operating limits, or other requirements.
- Apply for and obtain a title V operating permit.

E. What are the requirements for air curtain incinerators?

The final OSWI rules establish opacity limitations for air curtain incineration units that would otherwise meet the definitions of IWI or VSMWC units, but burn only:

- 100 percent wood wastes;
- 100 percent clean lumber;
- 100 percent yard waste; or
- 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

The opacity limit is 10 percent. However, 35 percent opacity is allowed during startup periods that are within the first 30 minutes of operation. Air curtain incinerators burning only these materials must meet the opacity limits and certain monitoring, recordkeeping, and reporting requirements, and must apply for and obtain a title V operating permit.

Air curtain incinerators burning other institutional waste or municipal waste must meet the requirements of the final OSWI rules including all emission limits in table 1 of this preamble and the associated testing, permitting, monitoring, recordkeeping, and reporting requirements.

F. What title V permit requirements must I meet?

All new and existing OSWI units and air curtain incinerators regulated by the final OSWI rules must apply for and obtain a title V operating permit. These title V operating permits assure compliance with all applicable Federal requirements for regulated incineration units, including all applicable CAA section 129 requirements. (See 40 CFR 70.6(a)(1), 70.2, 71.6(a)(1) and 71.2.)

The permit application deadline for a CAA section 129 source applying for a title V operating permit depends on when the source first becomes subject to the relevant title V permits program. If a regulated incineration unit is a new unit and is not subject to an earlier permit application deadline, a complete title V permit application must be submitted on or before the relevant date below:

(1) For a unit that commenced operation as a new source on or before December 16, 2005, a complete title V permit application must be submitted not later than December 18, 2006; or

(2) For a unit that does not commence operation as a new source until after December 16, 2005, a complete title V permit application must be submitted not later than 12 months after the date the unit commences operation as a new source. (See CAA section 503(c) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).)

If your incineration unit is an existing unit and is not subject to an earlier permit application deadline, a complete title V permit application must be submitted by the earlier of the following dates:

(1) Twelve months after the effective date of any applicable EPA-approved CAA section 111(d)/129 plan (i.e., an approved State or Tribal plan that implements the OSWI emission guidelines);

(2) Twelve months after the effective date of any applicable Federal plan; or

(3) December 16, 2008.

For any existing incineration unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of 40 CFR part 60, subpart FFFF, applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable CAA section 111(d)/129 plan is approved by EPA and becomes effective. (See CAA sections 129(e), 503(c), 503(d), and 502(a) and 40 CFR 70.5(a)(1)(i) and 71.5(a)(1)(i).)

If your incineration unit is subject to title V as a result of some triggering requirement(s) other than those mentioned above (for example, a unit may be a major source or part of a major source), then you may be required to apply for a title V operating permit for that unit prior to the deadlines specified above. If more than one requirement triggers a source's obligation to apply for a title V operating permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement which first causes the source to be subject to title V. (See CAA section 503(c) and 40 CFR 70.3(a) and (b), 70.5(a)(1)(i), 71.3(a) and (b), and 71.5(a)(1)(i).)

For additional background information on the interface between CAA section 129 and title V, including EPA's interpretation of CAA section 129(e), information on updating existing

title V operating permit applications and reopening existing title V permits, see the final Federal Plan for Commercial and Industrial Solid Waste Incinerators, October 3, 2003 (68 FR 57518, 57532), as well as the ''Summary of Public Comments and Responses'' document in the OSWI docket (EPA–HQ–OAR–2003–0156).

III. What are the changes to the rules since proposal?

We made several revisions to the OSWI rules since proposal. As previously stated, a summary of public comments and EPA's responses to those comments is located in the docket. The following is a summary of the most significant changes.

Definitions

- *Institutional facility*. Replaced the term ''institution,'' as defined at proposal, with the term ''institutional facility'', which was the term we intended to define. Clarified that the term ''institutional facility'' means land-based facility.
- *Institutional waste*. Revised the definition of ''institutional waste'' to be clearer and to eliminate redundancy while maintaining the same meaning as the proposed definition.
- *IWI unit and MWC unit*. Revised the definitions of ''institutional waste incineration unit'' and ''municipal waste combustion unit'' by adding ''cyclonic burn barrel'' as another example of an incinerator design.
- *Clean lumber and wood waste*. Clarified that the definitions of ''clean lumber'' and ''wood waste'' exclude wood products that contain adhesives.
- *Administrator and EPA*. Revised the definition of ''Administrator'' and added a definition for the term ''EPA'' to clarify our intent with respect to implementation of the final OSWI rules. ''Administrator'' now means (1) For approved and effective State section 111(d)/129 plans, the Director of the State air pollution control agency, or his or her delegatee; (2) For Federal section 111(d)/129 plans, the Administrator of the EPA, an employee of the EPA, the Director of the State air pollution control agency, or employee of the State air pollution control agency to whom the authority has been delegated by the Administrator of the EPA to perform the specified task; and (3) For NSPS, the Administrator of the EPA, an employee of the EPA, the Director of the State air pollution control agency, or employee of the State air pollution control agency to whom the authority has been delegated by the Administrator of the EPA to perform the specified task. ''EPA'' means the Administrator of the EPA or employee of the EPA that is delegated the authority to perform the specified task.
- *Waste heat recovery*. Clarified that ''waste heat recovery'' occurs outside of the combustion firebox.

Exclusions

- *Rural IWI exclusion*. Revised the rural IWI exclusion such that in addition to the proposed requirement that the unit must be more than 50 miles from the boundary of the nearest Metropolitan Statistical Area (MSA), the unit must also be in an area ''where alternative disposal options are not available or are economically infeasible.'' Also added provisions to require a facility to apply for the rural IWI exclusion and reapply for this exclusion every 5 years.
- *Temporary-use exclusion*. Added ice storms and high winds to the list of example disasters. Clarified that this exclusion includes air curtain incinerators. Restricted the exclusion to areas where a local, State, or Federal declaration of emergency or disaster has been proclaimed. Also revised the exclusion to require all temporary-use incinerators to submit notification if they will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the current disaster area.
- *Prohibited goods exclusion*. Limited the exclusion to incinerators ''owned and/or operated by,'' not merely ''used by'' government agencies. Clarified that the exclusion applies only to goods confiscated by a government agency.
- *National security exclusion*. Determined that any IWI units used solely during military training field exercises to destroy national security materials integral to the field exercises are not subject to the final OSWI rules. Added a provision to allow other IWI units to apply for an exclusion if the units are used solely to destroy national security materials and a reliable alternative to incineration that would ensure acceptable destruction is not available.

Emission Limits

- *Carbon monoxide (CO) limit*. Revised the limit from 5 parts per million by volume (ppmv) to 40 ppmv on a 12-hour rolling average basis.
- *Hydrogen chloride (HCl) limit*. Revised the limit from 3.7 ppmv to 15 ppmv.

Testing

- Added procedures to follow when performing Method 26A tests that will improve accuracy for testing wet scrubber-equipped incinerators.
- Clarified annual testing requirements for air curtain incinerators. If an air curtain incinerator has been out of operation for more than 12 months, it must be tested upon startup.

Technical Corrections and Clarifications

- In addition to the listed revisions, EPA made several technical revisions to correct cross-referencing and typographical errors and to improve clarity of the rules.

IV. Significant Issues and Changes—Public Comments

A. Applicability

We received several comments on the scope and applicability of the proposed OSWI rules. These comments ranged from very specific ones dealing with a certain category of units, to more overarching comments concerning applicability of the OSWI rules in general. The following paragraphs contain the major discussions regarding applicability; additional details may be found in the summary of public comments and responses document in the docket.

1. General Applicability of OSWI Rules

Two commenters expressed concern that the applicability of the proposed rules is not broad enough and that too many source categories are excluded or exempt from regulation. One commenter contended that EPA's OSWI regulation must include CAA section 129 standards for every category of solid waste incinerator that is not already regulated under CAA section 129. The commenter contended that the CAA requires EPA to set section 129 standards for any facility that combusts any solid waste, with the exception of facilities specifically exempted under CAA section 129(g)(1). The commenter made similar comments on most of the excluded types of units, stating that they should be subject to regulation under OSWI if they burn any nonhazardous waste. On the other hand, another commenter expressed support for the rationale regarding which sources will be regulated as OSWI units. The commenter urged EPA to avoid any significant changes to this stated rationale.

The CAA is ambiguous regarding what categories of solid waste incineration units must be regulated under section 129(a)(1)(E). After discussing timelines for very specific categories of solid waste incinerators (e.g., large and small municipal waste

combustors, commercial and industrial waste incinerators, and hospital and medical waste incinerators), the CAA states only that EPA must publish a schedule for promulgating standards for ''other categories of solid waste incineration units.'' The statute does not unambiguously require, as implied by commenters, that the OSWI standards must apply to every other possible type of incineration unit burning any type of solid waste. If Congress had intended such a clear directive, it could have instructed EPA to regulate ''every'' other solid waste incineration unit. Yet Congress did not use such unambiguous language, leaving it to EPA to interpret the CAA in a reasonable manner. Moreover, the position adopted by commenters would lead to absurd results. Under their interpretation, a homeowner burning leaves in a barrel in his or her backyard must be subject to a CAA section 129 rule because the barrel is a unit combusting solid waste material. Congress cannot have intended that EPA regulate such sources under section 129, with all the attendant requirements. The language of section 129 suggests that Congress wanted to focus EPA's attention to specific, larger incineration units (e.g., MWC units and CISWI units). Under this commenter's interpretation of section 129, however, EPA would have to establish MACT floors and emissions standards for dozens of different types of small incineration units with potentially minimal emissions.[1] It takes an enormous effort and use of resources to develop a MACT floor and write a section 129 standard, and Congress cannot have meant that EPA would undertake that substantial effort a multitude of times merely by instructing EPA to address ''other'' categories of solid waste incineration units (assuming EPA even has the resources to undertake such efforts). Moreover, sources subject to section 129 standards must obtain title V operating permits and undertake extensive testing, monitoring, and recordkeeping even if EPA does not require additional controls under the section 129 standard, and regardless of the level of emissions from the sources. As noted elsewhere, EPA estimates that the costs of these requirements alone can more than quadruple the costs of owning and operating an incinerator. Again, Congress cannot have intended that every ''incineration'' unit as defined by the commenter, regardless of its size or its impact on public health and the environment, would have to shoulder these burdens merely by referencing an undefined ''other'' category of incineration units at section 129(a)(1)(E). Thus, the instructions to EPA to promulgate standards for ''other categories'' of solid waste incinerators inherently include the authority for EPA to reasonably delineate those ''other'' categories of solid waste incineration units.

Thus, appropriately, the first step in EPA's rulemaking process was determining what universe of sources will be subject to the regulations. The statutory provisions of CAA sections 129(a), (g) and (h) make it clear that EPA must, as a part of the regulatory process, define which combustion units should be subject to regulation under CAA section 129 and hence, to which categories of solid waste combustion units the standards for ''other categories of solid waste incineration units'' apply. For example, the reference in CAA section 129(g)(1) to a permit issued under section 3005 of the SWDA, refers to units burning hazardous solid waste. This effectively limits the scope of EPA's authority under CAA section 129 to the regulation of solid waste incineration units that burn nonhazardous solid waste. In determining the scope of OSWI, EPA collected and analyzed data to identify potential OSWI units and determined that the regulations should focus on two categories of waste combustion units that are not regulated elsewhere: IWI units and VSMWC units. In the proposed rules, we also clarified that certain types of units are not regulated by the OSWI rules. Some of these units are specifically excluded by CAA section 129 (e.g. hazardous waste combustion, small power production facilities, cogeneration facilities burning homogeneous waste). We also clarify that units are not covered under OSWI if they are already regulated under other CAA section 129 or CAA section 112 standards (e.g., small and large MWC, HMIWI, CISWI, boilers, cement kilns). The language of CAA section 129(h) makes clear the Congressional intent for CAA regulations under section 129 or section 112 to be mutually exclusive. Accordingly, sources subject to CAA section 112 standards are not OSWI units. Absence of regulation under CAA section 112, however, is not determinative of whether a unit is subject to the final OSWI rules.

Moreover, we do not agree that the ''small power production facilities'' or ''qualifying cogeneration facilities'' described in CAA section 129(g)(1) are the only types of energy recovery facilities that are properly excluded from the OSWI category. We do not read section 129(g)(1) to establish an exclusive list of excluded sources. (See *National Wildlife Federation* v. *Gorsuch,* 693 F.2d 156, 172 (D.C.Cir.1982) (use of the term ''includes'' allows for additional, unstated meanings); *Chemehuevi Indian Tribe* v. *California St. Bd. of Equalization,* 757 F.2d 1047, 1054 (9th Cir.1985), rev'd on different grounds, 106 S.Ct. 289 (1985) (''includes'' is a term of enlargement, not of limitation); *United States* v. *Huber,* 603 F.2d 387, 394 (2d Cir. 1979), cert. denied, 100 S.Ct. 1312 (1980) (use of the word ''includes,'' rather than a more restrictive term such as ''means,'' indicates that the list is not exhaustive but merely illustrative).)

As stated earlier, the final OSWI rules regulate IWI and VSMWC units. However, we determined that some subclasses of OSWI units should be handled differently due to unusual circumstances (e.g., unique geographic locations or climatic factors, temporary emergency use) that would prevent owners or operators of these units from having a feasible alternative waste disposal method. The availability of technically and economically feasible waste disposal alternatives is important because, as stated in the preamble to the proposed rules, CAA section 129 rules must contain testing, permitting, monitoring, recordkeeping, and reporting requirements. These requirements alone would easily double or triple the cost of operating a smaller incinerator like those covered by the final OSWI rules. Therefore, we expect CAA section 129 rules (even if they did not require air pollution controls) to force many incinerators to shut down and utilize alternative waste disposal options. However, for unique subclasses of units where such alternatives are not available, compliance with a rule would be infeasible yet shutdown of these units also is not an acceptable alternative. We excluded certain such subclasses from the final OSWI rules for the reasons described in the preamble to the proposed rules and in responses to comments. Of course, EPA and States may still regulate these subclasses under other provisions of the CAA, as necessary. (See CAA section 110(a)(2).)

2. Units With Energy Recovery and Other Types of Combustors

Two commenters questioned the rationale of excluding incinerators (one commenter specified IWI units) with energy recovery from the definition of solid waste incinerators, and believe that an incinerator burning waste should be regulated as a waste

[1] Total emissions of the regulated air pollutants from all units in the two subcategories regulated by the final OSWI rules are estimated to total only 2,272 tons per year.

incinerator, no matter how the produced heat is used.

First, we note that the energy recovery comment applies to IWI units, as all VSMWC units, with or without energy recovery, are subject to the final OSWI regulations. Those MWC units that recover energy serve dual purposes: (1) The disposal of municipal solid waste, and (2) energy recovery from the combustion of the waste. As a result of these dual purposes, MWC units are often boilers by design. The inclusion of a specific definition of ''municipal waste'' in CAA section 129 and other indications of Congressional intent support EPA's position that all MWC units should be regulated under section 129 of the CAA regardless of whether the MWC unit serves another purpose. The regulatory boundaries established in the rules for the large and small MWC units are quite clear that MWC units, regardless of their configuration, are regulated under section 129 of the CAA. Our intent is to maintain this interpretation in our regulation of VSMWC units under the final OSWI regulations. In summary, VSMWC units that are incinerators without energy recovery, incinerators with waste heat recovery, and boilers are all regulated under the final OSWI rules. See below for further discussion.

The regulatory boundaries for IWI units, however, are not clearly defined by the CAA. As we have discussed, for the IWI subcategory of OSWI, EPA must define which types of sources should be included in the subcategory. In the process of developing the OSWI rules, developing the boilers NESHAP (promulgated at 69 FR 55218, September 13, 2004), developing rules for area source boilers, promulgating requirements for electric utility steam generating units (70 FR 28606, May 18, 2005), and establishing rules applicable to other combustion sources, EPA must map the regulatory boundaries that identify which units are subject to section 129.

The distinction between IWI units and non-IWI combustion units is not readily apparent. For example, there is general agreement that coal that is combusted in a boiler is not waste, because coal is commonly thought of as a fuel. However, there are many other materials that are burned in institutional boilers for energy recovery. Such materials could include wood, paper, other biomass, plastics, and other items. Combustion of such materials, when burned in a boiler with energy recovery, is addressed under CAA section 112 regulations for boilers. EPA has determined that for purposes of the IWI subcategory of OSWI units, the critical consideration in determining whether the unit is burning institutional waste is the primary function of the combustion unit; and the primary indicator of function is whether or not a unit is designed and operated for energy recovery. On one hand, boiler units are specifically designed to recover the maximum amount of heat from combustion of a material. The boilers NESHAP covers combustion units at institutional facilities that burn solid materials and recover heat in the combustion firebox. Incineration units, on the other hand, are designed to discard materials by burning them at high temperatures and leaving as little residue as possible. Although incineration units do not have energy recovery in the combustion firebox, they may be followed by waste heat recovery units. Combustion units at institutional facilities that burn solid materials and do not recover heat in the combustion firebox, but do recover waste heat from the hot combustion gases following the combustion firebox, would not be covered by the boilers NESHAP. Waste heat recovery units are designed to cool the exhaust gas stream from an incineration unit, and/or recover, indirectly, the useful heat remaining in the exhaust gas. The presence of a waste heat recovery unit on the exhaust gas does not change the fact that the unit combusting the material is primarily an incineration unit burning waste for disposal purposes. EPA does not consider it appropriate to regulate such units as boilers. Therefore, we have determined that IWI units are those units that combust materials with only waste heat recovery (i.e., heat recovery outside of the combustion firebox) or without energy recovery.

Our focus on the primary function of the unit to identify institutional waste is consistent with the provisions in section 129 of the CAA that apply to MWC units. In section 129, Congress specifically defined municipal waste as ''refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources * * *.'' (See 42 U.S.C. section 7429(g)(5).) This definition goes on to list specific materials included in municipal waste and exclude incineration units combusting 30 percent or less municipal waste from the MWC standards. This definition of municipal waste provides more specific meaning to the phrase ''solid waste * * * from the general public'' set forth in section 129(g)(1) of the CAA. Based on the definition of municipal waste in section 129(g)(5), EPA has interpreted section 129 to cover all MWC units, including waste-to-energy facilities that have energy recovery as part of their integral design. When CAA section 129 was developed, EPA had already taken steps to promulgate new source performance standards and emissions guidelines for MWC units under section 111 of the CAA. Thus, by defining ''municipal waste'' in this manner in section 129(g)(5), Congress determined that MWC units should be regulated as under section 129 even if the MWC unit serves another purpose (e.g., energy recovery). This determination is consistent with our approach in the final OSWI rules because a primary function of a MWC unit is waste disposal.

In contrast, Congress did not define ''other solid waste incineration unit'' or other types of ''waste.'' Thus, the CAA is ambiguous regarding whether every unit that burns material for energy recovery should be regulated under section 129 of the CAA. We have interpreted the CAA to allow EPA to consider the primary function of the combustion units in making the determination of whether particular units should be subject to CAA section 129. For reasons discussed earlier, this question is harder to answer in the context of institutional facilities where certain combustion units have been historically considered boilers, rather than incinerators, based on the combustion of solid materials commonly regarded as fuels. However, in the case of municipal waste combustors, there has been little or no disagreement among industry, government agencies, and environmental groups on the meaning of MSW and the fact that the section 129 rules cover all MWC units. Thus, we did not have to address this issue at length in the MWC rules. (See 69 FR 7394, n.5.)

One of the commenters also contended that EPA has not proposed standards for all solid waste combustion technologies. The commenter listed pyrolysis, thermal oxidation, catalytic cracking, plasma arcs, catalytic oxidation, flameless thermal oxidizers, and gasification as technologies that have been used to combust solid waste, despite not having the name ''incineration.''

EPA notes that the commenter did not provide any details regarding these other technologies or the materials that are processed by these technologies. Some of these types of units may well be covered under the CAA section 129 final OSWI rules. For example, pyrolysis/combustion units (two chamber incinerators with a starved air primary chamber followed by an

afterburner to complete combustion) within the VSMWC and IWI subcategories are considered OSWI units. In addition, thermal oxidizers, catalytic oxidizers, and flameless thermal oxidizers, if used to combust solid waste, could be subject to the final OSWI rules or other section 129 rules if they meet the appropriate applicability requirements. It is important to note, however, that these types of units often are used to combust uncontained gases (generally from industrial processes) and are not used to dispose of solid waste. Such units would not be subject to the final OSWI rules. The other types of units mentioned by the commenter appear to be either: (1) part of industrial processes (e.g. catalytic cracking) and are regulated under CAA section 112 and other standards for the specific industrial process; (2) noncombustion thermal technologies that operate with an external heat source (e.g. plasma arc); or (3) technologies that are specifically designed to prevent combustion reactions, and, instead are used to produce fuel or chemical feedstocks via controlled chemical reactions (e.g. gasification). Any of these technologies that are used to process hazardous waste are excluded from CAA section 129, and any of these technologies that are regulated as site remediation units under CAA section 112 are also not subject to section 129.

3. Potential OSWI Subcategories Where No Units Could Be Identified

One commenter contended that EPA's failure to identify any units burning manure or livestock bedding, wood waste, or construction and demolition waste does not excuse EPA from setting emission standards for such units.

EPA made significant attempts to identify incinerators in determining which types of sources to regulate under the final OSWI rules. As part of the industrial combustion coordinated rulemaking (ICCR), we sent a questionnaire to nearly 12,000 facilities identified as having a combustion unit (including boilers, heaters, and incinerators) burning non-fossil materials. This included every facility we could identify from Federal and State databases and stakeholder input. We received responses from the vast majority of these facilities, although many were no longer operating their incinerators. These responses provided design and operating information on over 1,100 combustion units burning wood. However, all of these sources were either boilers or process heaters with integral energy recovery that are being addressed under CAA section 112, or commercial or industrial incineration units that are appropriately regulated under CISWI. We are not aware of, nor has the commenter provided any information on, any other wood-fired units remaining for consideration as potential OSWI units.

Similarly, a few units were identified that combust agricultural residues such as bagasse, rice hulls, etc. for the purpose of energy recovery, and, thus, are all boilers and are being addressed under CAA section 112. Prior to proposal of the OSWI rules, we updated the ICCR list of potential OSWI units by searching the latest version of the national emissions inventory (NEI), which contains the latest data from State databases and various Federal programs, for incineration units burning non-fossil materials. We also contacted State agriculture departments to request information on agricultural incineration; contacted trade associations; contacted incinerator vendors to determine what types of incinerators they have been selling and to what markets; and performed Web searches. After these extensive efforts, we were not able to locate any incineration units in several potential subclasses described in the preamble to the proposed rules. This result is not surprising because vendor contacts and feedback from facilities that used to operate OSWI units have shown us that the use of incineration for waste disposal is declining, especially where the units do not recover energy. Given our prior efforts to identify these types of units and the trends in incineration, we do not believe that these types of units currently operate. Furthermore, public commenters on the proposed rules have not provided specific information on any such sources. Because we are unable to locate such units and have no data on them, we are not, and indeed cannot regulate them at this time.

Public commenters on the proposed rules have not provided any information demonstrating that there are agricultural waste incinerators, construction or demolition incinerators, or wood waste incinerators that are not boilers. EPA cannot set a standard under CAA section 129 without adequate operating, emissions, and control technology information for sources within the category. Thus, contrary to the commenter=s suggestion, EPA could not speculate or estimate and set a CAA section 129 standard Ajust in case.'' Therefore, because we are unable to locate any such units and have no data on how such hypothetical units, if used in the future, may operate, we are not including agricultural waste, construction or demolition, or wood waste incinerators as subcategories of OSWI.

4. Rural Institutional Waste Incinerators

Two commenters suggested that the exemption for rural IWI units is too broad. One commenter contended that the locations proposed to be exempted include many areas where solid waste collection and disposal services are readily available at reasonable cost, and, therefore, the exemption is not justified. The commenter also contended that this raises questions regarding environmental justice, as the exemption implies that economically disadvantaged communities should have worse air quality standards because they are economically disadvantaged. Furthermore, the commenter pointed out that U.S. Government facilities (i.e., Department of Defense) do not have the limited tax base and, therefore, EPA's reasons for the rural exemption do not apply. Both commenters recommended that the rural exemption be narrowed further to include only those areas where landfills or other nonincineration options are not available or feasible.

To address commenters' concerns, EPA is narrowing the rural IWI exclusion to apply only to those IWI units that are more than 50 miles from the boundary of the nearest MSA and where alternative disposal options are not available or are economically infeasible. In the final OSWI rules, there are provisions that specify how a facility may apply for this exclusion. For existing units, the application must be submitted to the Administrator at least 1 year before the final compliance date to ensure that there is adequate time for any additional dialogue necessary to determine if an exclusion is warranted, and, if the exclusion is denied, adequate time for the facility to install controls or otherwise arrange for disposal of their waste. For new units, the application must be submitted to and approved by the Administrator prior to initial startup.

By narrowing the exclusion to include only those areas Awhere alternative disposal options are not available or are economically infeasible,'' we have addressed the commenter=s concern that we should not exempt sources located where waste disposal alternatives are available at a reasonable cost. Our analysis of remote institutional waste disposal costs indicates that a 50 mile distance to dispose of waste is approximately the distance where the costs of operating an incinerator (without control technology) would equal those of taking the waste to a landfill, transfer station, or small or

large MWC unit. As such, we believe that 50 miles from a MSA is a minimum point where institutional facilities would be able to make a legitimate case that they qualify for the exclusion. To clarify the geographical criteria, the MSA definitions that will be used as one component of the exclusion are based upon those found in AUpdated Statistical Definitions and Their Uses' OMB Bulletin 05–02, February 22, 2005.

We realize that, over time, population density changes may cause revisions to the definitions of MSA that would affect the rural status of a rural IWI unit. Furthermore, there may be situations where alternative waste disposal options become available such that the unit may not be able to demonstrate adverse economic impacts of using an alternative means of disposal or the IWI unit is no longer necessary to the institutional facility. To address these situations, we are adding provisions that require sources granted an exclusion as a rural IWI unit to reapply for the exclusion every 5 years following the date the exclusion is granted by the Administrator. If the Administrator finds that the IWI unit no longer qualifies for the exclusion, then the unit is given 3 years to comply with the requirements of the final OSWI rules.

In response to the second issue put forth by the commenter, we disagree that we are implying that economically disadvantaged communities should have worse air quality. As we have discussed in the preamble to the proposed rules, some disposal alternatives to incineration, such as open burning, are worse for air quality than incineration. If the rural institutional facility is unable to afford compliance and there are no other disposal alternatives (*e.g.*, landfills, MWC), then the facility may resort to open burning, littering, or dumping. Open burning presents not only air pollution problems, but can also lead to an increased likelihood of accidental fires. Littering and dumping pose problems such as potential contamination of streams or other water bodies, and attracting vermin and wild animals, which could contribute to disease transmission. The facility, in applying for the rural IWI exclusion, must make a case that suitable alternatives, such as landfilling or hauling waste to a MWC unit, are not available or are not economically feasible. Although we discussed concerns about the local tax base for school districts in the preamble to the proposed rules, it was but one reason for the exclusion which applies to all rural IWI units, not just those located at schools. Thus, other institutions (*e.g.*, Federal facilities, churches) may apply for the exclusion, although we note that certain institutions with larger budgets may have a harder time showing that alternative waste disposal options are economically infeasible.

5. Alaskan Exclusion

Three commenters requested that the exclusion for incinerators in isolated areas of Alaska be broadened. Two commenters expressed concern that the proposed rules do not exempt VSMWC units used to combust municipal-type waste generated at oil-field base operations facilities and remote camps on Alaskan oil fields.

EPA stresses that the final OSWI rules apply only to VSMWC and IWI units, and they provide an exclusion for units used at solid waste disposal sites in Alaska that are classified as Class II or Class III municipal solid waste landfills. If the incinerators operated by the commenters meet the definition of VSMWC units and are used at solid waste disposal sites in Alaska that are classified as Class II or Class III municipal solid waste landfills, then they would be excluded from the final OSWI rules. We have insufficient information about the units operated by these commenters (e.g., operating at an oil exploration site or oil-field base camp) to determine if they are VSMWC units, but they appear to be operated by industrial or commercial entities and would likely not meet the definitions of a VSMWC or IWI unit in the final OSWI rules. To be a VSMWC unit under the final OSWI rules, the incinerator must be burning municipal solid waste collected from multiple sites. To be an IWI unit under the final OSWI rules, the incinerator must be located at an institutional facility (i.e., land-based facility owned and/or operated by an organization having a governmental, educational, civic, or religious purpose) and be burning waste generated at that institutional facility. Incinerators at an industrial or commercial facility that burn only waste generated on site at that facility are not VSMWC or IWI units. If the commenter's units are not VSMWC or IWI units, they would not be subject to the final OSWI rules. We recognize that the final CISWI rules do not currently cover commercial/industrial-owned/operated incinerators that burn only municipal-type waste. EPA intends to address regulation of such combustion units under future revisions to the final CISWI rules.

A commenter also expressed concern that the proposed definitions of institution and institutional waste are excessively restrictive and do not fit the unique situations that arise in Alaska. The commenter gave examples such as the existence of Aunorganized'' boroughs that have no local government or tax base.

EPA's understanding of the local government structure in Alaska is that there are two types of local government structures: boroughs and unorganized areas. Boroughs, like counties, are collections of one or more municipalities joined in a regional government. Unorganized areas are the non-borough areas where there is either (1) no intermediate government between the State and the tribal, village, or city council, and local government is strictly at the municipal level or (2) no governing body other than the State. We have provided an exclusion for units used at solid waste disposal sites in Alaska that are classified as Class II or Class III municipal solid waste landfills. The State of Alaska does not consider the local government structure in determining the class of a municipal solid waste landfill or waste disposal site. The Class II and III determinations are based on the anticipated waste volume and location of the waste disposal site. Further, the incinerators that dispose of municipal solid waste Acollected from'' these boroughs and unorganized areas would be VSMWC units, rather than IWI units, so the commenter's concerns regarding the definitions of institution and institutional waste with respect to incinerators serving these local government structures are not relevant.

We would also like to clarify that an incinerator operated by a commercial entity that is burning municipal solid waste that is Acollected from'' multiple residences and any local businesses would be considered a VSMWC unit subject to OSWI regulation, provided that it had a capacity of less than 35 tpd of municipal solid waste. This situation is quite common among the small and large MWC units, as several municipalities have contracted or partnered with commercial operators in the construction and operation of their local MWC facility.

In summary, the final OSWI rules apply only to VSMWC and IWI units. As previously described, we have provided an exclusion for units used at solid waste disposal sites in Alaska that are classified as Class II or Class III municipal solid waste landfills, as well as an exclusion for rural IWI units (for IWI located more than 50 miles from the boundary of the nearest MSA and where alternative disposal options are not available or are economically infeasible). These exclusions fully address small OSWI units in remote areas of Alaska that do not have

technically or economically feasible disposal alternatives, so the concerns raised by the commenters are addressed in the final OSWI rules.

6. Temporary-Use Incinerators

Exclusion Requirements. Commenters contended that the proposed requirements for temporary-use incinerators used in disaster recovery are too lax and invite abuse. The commenters pointed out that the Stafford Act, which provides for a State of Emergency or a major disaster to be declared by a State government or the President of the U.S., does not contain any provisions for declaring that the State of Emergency or disaster has ended. As such, under the proposed rules, these incinerators arguably would be allowed to operate indefinitely without any restrictions. One of these commenters contended that, under the proposed rules, operators of portable incinerators could declare Aemergencies' or Adisasters' at their discretion, and travel from place to place burning any sort of debris without any pollution controls, restrictions of location, or public and agency notification requirements. Another commenter stated that the exemption would allow an uncontrolled unit to operate for up to 8 weeks without adequate cause or approval from the proper authority and suggested earlier notification.

EPA agrees that incinerator owner/operators should not be allowed to declare their own Aemergencies' and that was not our intent. We have adjusted the rules as proposed to exclude temporary-use incinerators used to combust debris for a limited period of time from most requirements of these subparts only if they are used in areas that have been declared a State of Emergency by a State or local government, or if the President, under the authority of the Stafford Act, has declared that an emergency or major disaster exists in the area. The inclusion of local disaster area declarations in this exclusion encompasses those disasters that severely affect a municipality or county and require the local government to undertake disaster recovery actions, but where the economic losses are not large enough or sufficiently widespread to require extensive State or Federal financial assistance.

EPA also agrees that some notification and oversight should be required to avoid temporary-use incinerators being operated indefinitely in areas that are declared States of Emergency by the State, local or Federal government. The final rules require that operators of temporary-use incinerators combusting debris in declared emergency or disaster areas notify the Administrator if it is necessary for the units to combust debris within the boundaries of a given emergency or disaster area for more than 8 weeks from the date the units began operation, and request permission to continue to operate. EPA's intent is that if a unit is used during a period that begins on the date the unit started operation and lasts 8 weeks or less, then that unit is excluded from the requirements of the final rules. A unit that operates intermittently for 8 weeks or less over a period longer than 8 weeks from the date the unit started operation (e.g., over a 12-week period) does not meet the requirement for exclusion.

The notification must be submitted in writing by the date 8 weeks after the temporary-use incinerator begins operating within the boundaries of the current emergency or disaster area. The notification must contain the date the incinerator began operation within the current emergency or disaster area, identification of the disaster or emergency for which the incinerator is being used, a description of the types of materials being burned, information on the size and design of the incinerator, the reasons the incinerator must be operated for more than 8 weeks, and the additional amount of time for which permission to operate is requested, including a date for ceasing operation. Upon submittal of the notification, the temporary-use incinerator automatically may operate for another 8 weeks (a total of 16 weeks from the date the unit started operation). At the end of 16 weeks, the temporary-use incinerator must cease operation or comply with the OSWI emission limits and other requirements of the final OSWI rules unless the Administrator has approved the request to continue operation.

Given these changes, 16 weeks will be the maximum length of time a temporary-use incinerator can operate in a given area declared a State of Emergency or major disaster without specific permission to continue operation from the Administrator. The approval of the request to continue operating must establish a site-specific date to cease operation. We have chosen this approach, rather than setting a uniform maximum amount of time because a case-by-case approval process allows EPA and States to set the appropriate time limits for the specific situation.

We decided that the notification should be provided within 8 weeks after the start of operation to be consistent with the timing in the proposed rules for areas that had not been declared emergencies or major disasters by the State or Federal government. In emergency situations, quick removal of debris is of utmost importance to maintain public health and safety, and temporary-use incinerators may be best suited to dispose of debris. We have elected not to regulate incinerators used on a short-term basis to recover from an emergency or disaster under the final OSWI rules, because regulation would hinder the recovery effort and this impact would outweigh the benefits from regulation of the units. Recent events in the Gulf States due to Hurricanes Katrina, Rita, and Wilma have illustrated the importance of immediate recovery action following a disaster. This proactive approach, which addresses the terms for use of a temporary-use incinerator during declared emergencies or disasters, is better than an approach that requires EPA and others to react during or immediately after such an emergency or disaster strikes. We also point out that States and the Federal government have specific procedures that are followed in declaring an area a State of Emergency or a major disaster area. Their procedures involve extensive involvement by local, State, and Federal officials to conduct a preliminary damage assessment, develop debris removal plans, and coordinate and manage disaster assistance activities. Further information on the processes can be found on individual State Web sites and on the Federal Emergency Management Agency (FEMA) Web site (*http://www.fema.gov*). Given that there is already a coordination process and we do not intend to regulate temporary-use incinerators operated for 8 weeks or less, an earlier notification requirement in the final OSWI rules is not necessary or productive.

Finally, in responding to a separate comment regarding air curtain incinerators, we reviewed and clarified the exclusions for which air curtain incinerators may qualify. In doing this review, we realized that air curtain incinerators were not specifically mentioned in the exclusion for temporary-use incinerators used in disaster or emergency recovery efforts. To remedy this, we are clarifying that the temporary-use incinerators used in disaster or emergency recovery efforts exclusion includes air-curtain incinerators used for these purposes. We realize that air curtain incinerators may be particularly useful in disaster recovery efforts, and intend that they may also qualify for this particular exclusion.

Control Feasibility. Another commenter contended that EPA has not

explained why it is infeasible for temporary-use incinerators to include air pollution controls or how requiring controls would delay commencement of operation. Therefore, the commenter concluded, EPA has provided no basis for the assumption that controlling emissions from temporary-use incinerators would hinder recovery efforts.

Declared States of Emergency and major disasters are, by definition, serious events. In emergency situations, quick removal of debris is of utmost importance to maintain public health and safety. Depending on the type of emergency and the local situation, there may be no reasonable and safe alternatives to incineration. Regulation, under the final OSWI rules, of temporary-use incinerators used for disaster recovery efforts would discourage use of such incinerators, potentially hindering recovery efforts and impairing public health and safety. The emission limits in the final OSWI rules are based on wet scrubbing for any IWI and VSMWC units other than air curtain incinerators burning only clean lumber, wood waste, and yard waste. The annual cost of a wet scrubber and the monitoring, recordkeeping, and reporting required by the rules (including annualized capital cost of the scrubber and monitoring equipment, and annual operation and maintenance (O&M), permitting and reporting costs) may be more than six times the cost of owning and operating an uncontrolled incinerator. Even if the final OSWI rules were to require no add-on control of such incinerators, it is estimated that the annual cost of the testing, monitoring, recordkeeping and reporting required by CAA section 129 could more than quadruple the cost of owning and operating the incinerator. These sharp increases in regulatory compliance costs relative to the current cost of incineration would discourage use of incinerators. Furthermore, as evidenced by the recent recovery efforts due to Hurricanes Katrina, Rita, and Wilma, the water supply, handling and treatment capabilities required to operate the wet scrubber may be unavailable for long periods of time in the disaster areas, while the need for recovery is immediate. In such situations, the incinerator cannot stand idly by while awaiting ancillary services to operate the scrubber.

We also point out that the exclusion for emergency cleanup activities of short duration is not unique to the final OSWI rules. Other CAA programs and rules recognize the need to make allowances for similar situations. For example, the site remediation NESHAP (40 CFR part 63, subpart GGGGG) provide an exclusion for site remediation activities that are completed within 30 consecutive calendar days. The preamble for the proposed rule explained that, ''This exemption is intended to apply to contamination commonly caused by a spill where the cleanup is initiated soon after the spill event and is of very short duration (i.e., typically 30 days or less). The purpose of this exemption is to encourage prompt attention to remediating contaminant spills and leakages'' (67 FR 49407, June 30, 2002). Similarly, the OSWI exclusion of temporary-use incinerators encourages prompt clean-up of debris from emergencies and disasters and excludes only temporary-use incinerators that operate for a limited period of time within a declared disaster area.

7. Sewage Sludge Incinerators

Two commenters were unsure how the proposed rules treat sludge incinerators. Both commenters requested that EPA clarify if, and how, commercial and municipal sludge incinerators are addressed by the final OSWI standards.

Sewage sludge incinerators (SSI) are a source category that is being addressed under CAA section 112. As early as April 2000, EPA indicated that it no longer intended to regulate SSI under section 129 of the CAA:

> The Agency has decided not to regulate sewage sludge incinerators as a category under Section 129 of the Clean Air Act * * *. The Agency believes that sewage sludge generated by publicly-owned treatment works (POTWs) and combusted in SSIs is ''solid waste.'' However, this sludge is from a municipal source, and not from ''commercial or industrial establishments or the general public.'' Therefore, SSIs that combust this sludge are not ''solid waste incineration units'' and section 129 does not apply to them. Virtually all of the SSIs that would be candidates for regulation combust sludge from POTWs, and thus are not covered under Section 129.

(Unified Agenda, 65 FR 23459–01 (April 24, 2000).) In addition, EPA's intent to regulate these sources under CAA section 112 was made clear when SSI were included as an additional area source category listed pursuant to CAA sections 112(c)(3) and 112(k)(3)(B)(ii) in the June 26, 2002 **Federal Register** (67 FR 43113). As discussed previously, source categories regulated by CAA section 112 may not also be subject to a CAA section 129 regulation. In previous regulatory activities, EPA was unable to identify any SSI that were major sources. (See 67 FR 6521, February 12, 2002.) Therefore, the entire SSI source category consists of area sources, and will be addressed by the CAA sections 112(c) and 112(k) regulations. Sewage sludge incinerators do not meet the definitions of IWI or VSMWC units in the final OSWI rules and, thus, are not regulated as OSWI units.

8. National Security Incineration Units

In the preamble to the proposed OSWI rules, EPA requested comment on whether a subclass of IWI units that burn national security documents should be excluded from the final OSWI regulations. Three commenters opposed excluding incinerators that burn national security documents from regulation and contended that EPA did not explain or justify the reason to exclude these units. However, another commenter expressed concern that there could be situations in which the only viable alternative for the destruction of classified materials would be the use of an OSWI unit. Another commenter requested EPA provide an exclusion to the final OSWI rules for units used for sanitization of classified or otherwise sensitive materials by the U.S. Armed Forces, the Department of Energy, and other similar agencies.

We have determined that any IWI units used solely during military training field exercises to destroy national security materials integral to the field exercises are not subject to the final OSWI rules. We have determined that an outright exclusion for other IWI units used to destroy national security materials will not be provided in the final OSWI rules. However, the final rules contain provisions such that individual sources may apply for this type of exclusion as necessary. We understand that mechanical destruction or other alternatives to incineration are available for most, if not all, categories of national security materials. Thus, we think that, as a general matter, few incineration units will meet this exclusion on a long-term basis. Nonetheless, this exclusion is needed for two reasons. First, the government could change the acceptable means of disposing of one or more types of national security materials in the future. Second, there may be unexpected circumstances when mechanical or other alternative means of destruction are temporarily unavailable, requiring the use of backup incineration units during those periods. To be granted an exclusion, a source/governmental entity must demonstrate that the unit is used solely to incinerate national security materials and that a reliable alternative to ensure acceptable destruction of national security materials is unavailable on either a permanent or

temporary basis. An ''acceptable'' level of destruction is one that meets applicable regulations, guidelines, or instructions for the destruction of national security materials. For existing units, the request must be submitted to the Administrator prior to 1 year before the final compliance date, and the Administrator will either grant or deny the request for exclusion. For new units, the request must be submitted to and approved by the Administrator prior to initial startup. The final rules contain specific provisions for applying for this exclusion.

9. Various Other Applicability Issues

Cyclonic Burn Barrels. One commenter asked if cyclonic burn barrels are subject to the OSWI regulations. The commenter recommended that EPA explicitly include these devices as regulated entities subject to all the requirements of the final OSWI regulations.

It was our intent to regulate cyclonic burn barrels that meet the definition of an IWI unit or VSMWC unit under the final OSWI rules. An IWI unit is a combustion unit, regardless of size, located at an institutional facility (i.e., land-based facility owned and/or operated by an organization having a governmental, educational, civic, or religious purpose) that burns solid waste generated at that institutional facility. A VSMWC unit is a combustion unit that has the capacity to burn less than 35 tpd of municipal solid waste collected from residential, commercial, institutional, and industrial sources. We agree that cyclonic barrel burners are a type of incinerator because they provide an enclosure (barrel) in which the waste is burned and include a fan to provide high-velocity air flow and an exhaust outlet, and we did not exclude them in the proposal. To clarify our intent to regulate this type of OSWI unit, we are including ''cyclonic burn barrel'' as another example of an incinerator design in the final rules' definitions of IWI unit and MWC unit. We would like to note that the final OSWI rules regulate only IWI and VSMWC units. For example, if a cyclonic burn barrel is used at a commercial or industrial facility to burn commercial or industrial solid waste, then it would not be subject to the final OSWI rules.

Human Crematories. Two commenters objected to the exemption of human crematories from the proposed rules. Both commenters argued that the incineration of human bodies emits significant quantities of mercury and other hazardous air pollutants. One commenter objected to EPA's conclusion that human bodies are not solid waste and noted that EPA defines solid waste under the SWDA as any ''discarded material.'' The definition also clarifies that a material is ''discarded'' if it is ''burned or incinerated.''

Clean Air Act section 129 regulations deal solely with solid waste combustion units. As noted in the preamble to the proposed rules, in considering the nature of human crematories, EPA has determined that the human body should not be labeled or considered ''solid waste.'' Therefore, human crematories are not solid waste combustion units, and are not a subcategory of OSWI for regulation.

We disagree with the commenter's assertions that human bodies are discarded and that CAA section 129 rules must consider a material to be ''discarded'' if it is ''burned or incinerated.'' The definition of ''discarded'' referred to by the commenter is found in 40 CFR part 261, which defines ''hazardous waste'' for the purpose of implementing the hazardous waste program authorized by the SWDA. In defining ''hazardous waste,'' 40 CFR part 261 also defines ''solid waste'' and elaborates on the meaning of ''discarded,'' which is a term used in the definition of solid waste. However, in doing so, 40 CFR part 261 states explicitly in 40 CFR 261.1(b)(1) that this definition of solid waste is only for the purpose of materials that are hazardous wastes. Much of the complexity and specificity of the 40 CFR part 261 definitions is needed to assure that hazardous waste is properly identified, tracked, transported, and disposed of, and is not inappropriately discarded or abandoned. The 40 CFR part 261 details on the meaning of solid waste and discarded are not found in solid waste definitions within the Resource Conservation and Recovery Act (RCRA) rules pertaining to nonhazardous wastes (e.g., 40 CFR part 240 through 40 CFR 259). The regulatory definitions of ''solid waste'' and ''discarded'' found in 40 CFR part 261, therefore, do not apply to nonhazardous solid wastes. Section 129 of the CAA regulates only nonhazardous solid wastes. As described in previous **Federal Register** notices pertaining to the proposed and final CISWI rules (64 FR 67104, November 30, 1999 and 65 FR 75342, December 1, 2000) EPA has adopted, under the joint authority of the CAA and RCRA, a definition of solid waste that is used solely to identify nonhazardous solid waste for the regulatory programs authorized by CAA section 129, such as the final CISWI and OSWI rules. The definition of discarded cited by the commenter is not applicable to CAA section 129 rules. However, as stated in the preamble to the proposed OSWI rules, if EPA or States determine in the future that human crematories should be considered for regulation, they would be addressed under other authorities.

Animal Crematories. One commenter expressed support for the proposed decision to exclude animal crematories as a regulated subcategory of the proposed OSWI rules and supports the proposed exclusion of pathological waste incineration units. The commenter pointed out that the other alternatives to incineration, such as rendering, burial, composting or feeding of the carcass to exotic animals does not address the need for disposal of animal carcasses with an infectious disease. Another commenter contended that animal crematories are solid waste incineration units that must be regulated under CAA section 129.

EPA has not changed our decision to exclude animal crematories and pathological waste incineration units, based on our analysis of their emissions and the adverse impacts that would occur if these units were regulated under the final OSWI rules, as fully described in the preamble to the proposed rules and in the response to comments document.

Additional Possible Subcategories of OSWI Units. In the preamble to the proposed rules, we requested comment on whether other subclasses of OSWI units existed and if any special and/or extenuating circumstances existed that warranted their exclusion from regulation under OSWI. We received only one communication related to this request.

The U.S. Coast Guard (USCG) informed EPA that they were concerned that the rules, as proposed, could be interpreted to include incinerators located on ships. According to the USCG, some of its largest cutter classes have small shipboard solid waste incinerators that are used to dispose of solid waste generated aboard ship while the ship is at sea. The USCG indicated that they believed these incinerators should not be subject to the final OSWI rules.

It was never EPA's intent to regulate incinerators aboard USCG patrol ships or other ships, and EPA's analyses supporting the final OSWI rules have not included information about shipboard incinerators. Thus, EPA has not only replaced the definition of ''institution'' with ''institutional facility'' to be consistent with terminology used elsewhere in the final OSWI rules, but we also have defined

''institutional facility'' to apply to land-based incinerators.

We note that the use of wet scrubbers on ships raises the question of whether it is even technically feasible to locate wet scrubbers on ships (including the availability of fresh water for the scrubber systems), and, moreover, begs the question of how the ships would then dispose of the wastewater generated by the scrubbers. If a shipboard incinerator could not meet the standards, the incinerator would have to shut down. Yet, many ships have onboard incinerators to dispose of the solid waste generated on these ships while at sea (e.g., patrolling U.S. borders), without having to come into port or otherwise change their route in order to dispose of the solid waste using an alternative means.[2]

B. Definitions

1. ''Clean Lumber'' and ''Wood Waste'' Definition

Two commenters suggested that the definitions of ''clean lumber'' and ''wood waste'' found in 40 CFR 60.2977 and 40 CFR 60.3078 should explicitly exclude manufactured wood products containing adhesives. Examples of such products include plywood, particle board, flake board, and oriented-strand board (OSB). One commenter noted that questions regarding whether manufactured wood products are considered ''clean lumber'' or ''wood waste'' continue to arise, and recommended that EPA improve the final rules by specifically excluding these adhesive-treated wood products from the definitions of ''clean wood'' and ''wood waste.''

These definitions are important in the final OSWI rules because there are reduced requirements for air curtain incinerators that burn only clean lumber or wood waste. We agree with the commenter, and our intent was to exclude wood products manufactured with adhesives and resins from the definitions of ''clean lumber'' and ''wood waste.'' The proposed definition of ''clean lumber'' excluded wood that has been painted, stained or pressure-treated; and the proposed definition of ''wood waste'' limited wood waste to ''untreated'' wood and wood products, but did not specify the meaning of ''untreated.'' Adhesives, like paints, can contain hazardous pollutants and we did not intend for air curtain incinerators burning these materials to qualify for the reduced requirements. To clarify our intent, we have expanded the second sentence in the definition of clean lumber to state, ''Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).'' We have also revised the definition of ''wood waste'' by adding a fourth item to the list of items that wood waste does not include: ''(4) Treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).''

2. Municipal Solid Waste

One commenter noted that the definition of MSW in the proposed OSWI regulations is not the same definition used in previous CAA section 129 regulations (i.e., MWC regulations found in 40 CFR part 60, subparts Ea, Eb, AAAA, and BBBB). The commenter understands that EPA is using language from CAA section 129(g)(5) for the definition of MSW, but disagreed with the proposal's use of ''collected from'' in the definition of MSW. The commenter noted that units at apartment complexes or retail stores, or units located at industrial sites burning office paper are not covered as VSMWC units because of the ''collected from'' language in the proposed OSWI rules, and they are not covered by the final CISWI rules. The commenter contended that this would leave a very important type of incinerator unregulated, noting especially incinerators located at grocery stores.

We are retaining the proposed definition of ''municipal solid waste'' in the final OSWI rules to be consistent with CAA section 129, which defines ''municipal waste'' as ''refuse (and refuse derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber and other combustible materials and non-combustible materials such as metal, glass and rock * * *.'' To be a VSMWC unit that is subject to the final OSWI rules, a unit must combust waste that is ''collected from'' multiple establishments. Under this definition, incinerators owned/operated by commercial businesses, such as grocery stores or apartments, that burn waste generated on site rather than collected from multiple establishments are not considered VSMWC units and are not covered by the final OSWI rules.

As the commenter points out, the final CISWI rules (40 CFR part 60, subparts CCCC and DDDD) currently exclude units burning MSW as defined in the final large and small MWC rules (40 CFR part 60, subparts Ea, Eb, AAAA, and BBBB). These other rules do not include the ''collected from'' language in their definitions of MSW. Therefore, the final CISWI rules currently exclude some industrial and commercial units that burn wastes such as paper, cardboard, and food wastes that are generated on site but are not associated with the manufacturing process. The commenter is concerned that such units will not be subject to any CAA section 129 rules. As stated in the preamble to the proposed OSWI rules (69 FR 71480, December 9, 2004), under the CAA section 129 definition of ''municipal waste,'' small incinerators that are located at commercial businesses (such as stores, restaurants and apartments) or industrial sites are not VSMWC units because they do not burn waste which has been ''collected from.'' Such units are properly addressed under the final CISWI rules, because of their location at commercial and industrial sites. EPA intends to address regulation of such combustion units under future revisions to the final CISWI rules.

C. MACT Floors and Emission Limits

1. MACT Floors

New Units. One commenter stated that EPA must base floors on emission levels achieved by the best controlled unit, not on the technology that the unit uses or emission levels that EPA deems achievable with such technology, and contended that EPA did not consider the effect of waste composition on a unit's performance when setting the MACT floor for new units. The commenter argues that because EPA has not demonstrated that medical waste is comparable to the waste combusted in a VSMWC or IWI unit, EPA has not supported the assumption that the average performance of a medical waste incinerator equipped with a wet scrubber is representative of the actual performance of the best performing VSMWC or IWI unit.

In the preamble to the proposed rules, we noted that EPA does not have emissions test data for the OSWI units

[2] In order to effectively police U.S. borders, help secure national security and carry out research activities, many of these ships must have the maximum flexibility to stay at sea as long as is necessary to accomplish their mission, with a minimum of disruption, such as having to come into port to dispose of solid waste.

in the OSWI inventory. Therefore, we were unable to determine the best controlled OSWI unit based on OSWI emission levels. However, our OSWI inventory indicated that only one OSWI unit contained an add-on control device. This control device is identified as a ''medium efficiency wet scrubber.'' EPA utilized information on control devices to help categorize the category of similar units whose actual emissions data would then be used to set the floor (i.e., the best performing similar unit, or an incinerator equipped with a medium efficiency wet scrubber in this case). As we discussed in the preamble to the proposed rules, we do have emissions test data for HMIWI units, which are similar to OSWI units. Our emissions data for HMIWI indicates whether the unit is equipped with a wet scrubber, but does not indicate the efficiency (e.g., low, medium, or high) for which the scrubber is designed. Therefore, to develop emission limits that are representative of what a medium efficiency wet scrubber can achieve, we averaged all emissions data for HMIWI units equipped with wet scrubbers. In using this approach, we have also accounted for the variability of emissions testing for waste combustion units. Any single emission test is merely a ''snapshot'' of the emission level from the unit. The same unit tested a month later may have a lower or higher emission rate. Thus, selecting the best single emission test (the lowest ''snapshot'') does not reflect the emission limit that is continuously achieved over time. Taking the average of emission tests from multiple units of similar design with wet scrubbers accounts for the inherent variability of the data. By taking the average of all performance data, we have considered data from wet scrubber-equipped units that are both better than, and worse than, the proposed emission limits, but should nonetheless be continuously achieved by a unit equipped with a medium efficiency wet scrubber. For perspective, we also note that this floor analysis approach results in limits for most pollutants that are more stringent than the limits for HMIWI units and large and small MWC units.

Although the data we used to develop the emission limits are from HMIWI units, the commenter does not contend that HMIWI and OSWI units are not similar in size, design, or operation. While the commenter argues that medical waste may not be comparable to MSW or institutional waste, they do not provide any data to support their concern or to demonstrate that emissions from OSWI units are lower than emissions from HMIWI units with the same control technology. To address these concerns, we have further considered the compositions of medical waste and MSW. Both types of waste contain a range of materials including paper, plastics, metal, glass, food waste, and other materials. However, within both categories there can be a wide variety of composition depending on the specific sources that generated the waste, geographic location, and any separation practices used prior to combustion. Given the variability within each waste type, we cannot conclude that incinerating one or the other would result in higher emissions. We find the wastes to be generally similar in composition based on the general types of materials contained in the waste and the very limited data available on the proportions of paper, plastic, metals, and other materials contained in the waste. Considering the similarities in combustion unit size, design, operations, and waste composition, we have determined that the emission levels actually achieved by HMIWI units equipped with wet scrubbers are an appropriate basis for setting the MACT floor for new OSWI units. Therefore, in the absence of emissions data on OSWI units, we have determined that HMIWI units are a similar source and we plan to continue to use the emission limits based on the HMIWI data as proposed, with the exception of revisions to the CO and HCl emission limits that were necessary to address other comments (discussed later in this section).

Existing Units. In a comment similar to that for new units, one commenter stated that floors for existing units do not reflect the average emission level achieved by the best performing 12 percent of units in each category or subcategory. The commenter argued that EPA's MACT floor approach for existing units ignored the effect of waste input on emissions performance. As an example, the commenter specifically points out that the lead floor level of 4,300 μg/dscm would be worse than the actual performance of an OSWI unit burning waste that did not contain lead, and that EPA has not provided any reason to believe that these units would burn any waste containing that level of lead.

As previously stated, we do not have data on actual emissions from OSWI units, thus we had to use emissions data from similar, existing units. EPA utilized information on control devices used at the best performing 12 percent of existing OSWI units not to set the floor number itself (as the commenter suggests), but to help characterize the category of similar units whose actual emissions data would then be used to set the floor—small, uncontrolled, modular/starved air MWC units.

With regard to the commenter's contention that, in determining the floor, EPA did not consider the effect of waste input on emissions performance, OSWI units combust diverse and heterogeneous mixtures of wastes. For example, VSMWC units burn MSW that contains metals including lead in varying amounts, and materials separation techniques cannot achieve complete removal of lead or other compounds. In setting emission limits for large and small MWC units under CAA sections 129 and 111, EPA examined materials separation techniques and proposed materials separation requirements, but ultimately decided not to require materials separation prior to combustion. We stated that ''the variable and heterogeneous nature of municipal solid waste makes quantification of such emission reductions associated with removal of various materials technically infeasible'' (56 FR 5496, February 11, 1991). Subsequent revisions of the section 129 large and small MWC rules in 1995, 1997, and 2000 also did not require materials separation or use it as the basis for determining the MACT floors. The same waste variability and materials separation considerations and constraints that applied in development of the final large and small MWC rules also apply to the final OSWI rules.

We acknowledge that there are limited emissions data available for the floor level of control (i.e., uncontrolled two-chamber incineration units), but also point out that we have gone beyond the floor in the selection of emission limits based upon the use of a wet scrubber. From a practical standpoint, any potential change in the floor emission levels would not have any effect on the final emission limits selected. Therefore, we do not see a need to re-evaluate the floor emission levels used in our prior analysis because it would most likely not lead us to establish different MACT limits.

Combined Subcategories. In the preamble to the proposed rules, we requested comment on whether we should combine the two subcategories (i.e., IWI and VSMWC) and determine a single MACT floor and emission limits for new OSWI units. Likewise, we made a similar request regarding combination of subcategories for existing units. We did not receive any public comments in response to these requests. We have not changed the subcategories or approach to determining the MACT floors.

2. Carbon Monoxide

Two commenters considered the CO emission limit of 5 parts per million (ppm) (at 7 percent oxygen (O_2)) to be unrealistically low. Another commenter contended that a medium efficiency wet scrubber cannot reduce CO to 5 ppm, as CO is not water soluble and water will not affect the concentration.

We agree with the commenters' assertions that a wet scrubber is not an effective control device for CO emissions. As we have discussed previously, we used emissions test data for wet scrubber-equipped HMIWI units to develop the proposed emission limits for new and existing OSWI units. As one commenter observed, the CO emission limit for HMIWI is 40 ppmv. The HMIWI emission limit was based on data from CO continuous emission monitoring systems (CEMS), and was determined to be the emission limit continuously achieved on a 12-hour rolling average basis. However, when we developed the proposed OSWI emission limits, we used performance test data from HMIWI units instead of CEMS data to develop CO and other pollutant emission limits. Although this approach for CO was simple and consistent with the other pollutants, it was not adequate to address the large quantity of data, including its variability, that was considered when the HMIWI CO emission limit was developed. Because CO is the only pollutant for which the final OSWI rules require CEMS for existing and new units, we are revising the emission limit to better account for the large volume of data generated by the CEMS and the amount of inherent variability that occurs when generating continuous data. The new CO limit is 40 ppmv over a 12-hour rolling average. This limit is consistent with a previously promulgated HMIWI emission limit for a source category similar to OSWI, and is also the lowest CO emission limit of any of the CAA section 129 rules.

3. Hydrochloric Acid

One commenter believes the proposed HCl standard is unachievable and should be revised to no lower than 20 ppm because EPA Method 26A generally is not adequate for demonstrating compliance with an HCl standard below 20 ppm at sources with wet scrubbers.

We have considered the commenter's assertion that EPA Method 26A is not adequate for demonstrating compliance with a HCl standard below 20 ppm when sampling sources with wet scrubbers. Although it is not evident that there is an outright problem, we now have a more mature understanding of applicability of EPA Method 26A in certain environments. Therefore, we acknowledge that a tester may need to take certain precautions to ensure that there is no bias when sampling streams with HCl concentrations at or below the 3.7 ppmv emission limit as proposed. For example, there is the need to precondition the filter with stack gas because the filter may absorb, adsorb, or react with some of the HCl in the stack gas resulting in a number biased low. Water droplets may also affect the results of the test. Additional procedures may be required to eliminate any droplets within the sampling train. As we discussed previously, we used test data from wet scrubber-equipped HMIWI units to develop the proposed emission limits for OSWI units. Unfortunately, we do not know if the personnel conducting the HMIWI compliance emission tests that we used to develop the 3.7 ppmv proposed OSWI emission limit took special precautions to prevent a low bias when sampling and testing for HCl. To address this uncertainty in the data and the commenter's concerns, we are amending the HCl emission limits in the final OSWI rules to 15 ppmv. This is the same limit contained in the final HMIWI rules, and HMIWI units equipped with wet scrubbers are demonstrating compliance with a 15 ppmv limit.

We also note that there were no public comments received on testing concerns for the 15 ppmv emission limit in the final HMIWI rules. Although this is higher than the proposed HCl emission limit, it is the lowest HCl emission limit of any CAA section 129 rule and is clearly achievable by wet scrubber-equipped units similar to OSWI units. To ensure that there is no bias in compliance test data, we are including provisions in the final OSWI rules that require sources to condition the filter before testing, and use a cyclone and post test purge if water droplets may be present.

D. Title V Operating Permits

1. Air Curtain Incinerators

We received a number of comments regarding air curtain incinerators and the title V operating permit requirements of the proposed OSWI rules. The majority of these pertained to air curtain incinerators burning only wood waste, clean lumber, and yard waste. For instance, several commenters contended that the requirement for air curtain incinerators burning only wood waste, clean lumber, and yard waste to obtain a title V operating permit is not justified either legally or in terms of environmental outcome and is inconsistent with previously promulgated solid waste combustion regulations.

We disagree with the commenters' conclusions and so noted in our response to similar comments in the final rule for the CISWI Federal plan (68 FR 57518, October 3, 2003). During proposal for the CISWI Federal plan, we clearly stated our interpretation that the CAA requires permitting under title V for sources subject to rules written pursuant to CAA sections 129 and 111. As is the case here, commenters questioned our position on this matter by contending that by not specifically referring to title V requirements in prior rulemakings, we were indirectly expressing our position that title V regulations were not applicable. To the contrary, we knew that 40 CFR part 70 or 40 CFR part 71 title V requirements would apply to any rules written under CAA section 129 or 111 and presumed no additional language was needed in those rules to convey the need to meet the title V requirements. Given prior comments to the effect that such presumptions were misplaced, we responded by first saying that we were specific in the proposal about the need for title V operating permits for air curtain incinerators subject to the CISWI Federal plan for the purpose of clarifying that need. We did so in order to clearly present EPA's view of such sources' title V obligations, and to answer questions such as those voiced by the prior commenters due to the absence of such specific language in the CISWI emission guidelines and NSPS. Those prior comments are similar to the comments now under discussion. At 68 FR 57527, we stated that EPA has consistently maintained that operating permits are needed for air curtain incinerators subject to NSPS and to State plans drafted pursuant to emission guidelines. However, communications we received following promulgation of the CISWI emission guidelines and NSPS pointed to the advisability of specifically clarifying the matter in the preamble to the CISWI Federal plan and in the final rule itself. Thus, to facilitate the application of title V to these sources, we specifically included in the CISWI Federal plan language describing the need for title V operating permits. To further eliminate any doubt as to the need for OSWI air curtain incinerators to obtain title V operating permits, as is the case for all other classes of air curtain incinerators, we clearly restated that requirement in 40 CFR 60.2994, subpart FFFF, as proposed.

Two commenters concluded that the term ''solid waste incineration unit'' is

defined in CAA section 129(g)(1) to specifically exclude ''air curtain incinerators provided that such incinerators only burn wood wastes, yard wastes and clean lumber and that such air curtain incinerators comply with opacity limitations to be established by the Administrator by rule.'' As a result, this means that permitting or other requirements applicable to ''solid waste incineration units'' in CAA section 129 do not apply to such air curtain incinerators in the same way that they do not apply to hazardous waste combustors, materials recovery facilities, and qualifying small power production facilities, all of which also are specifically excluded from the definition of ''solid waste incineration unit.'' In addition to questioning EPA's use of authority under CAA section 129 to require title V operating permits, commenters were cognizant that in the **Federal Register** notice promulgating the CISWI Federal plan that we had also expressed an opinion that section 129 also invokes authority of CAA section 111, thus triggering the provisions of CAA section 502. Section 502 of the CAA requires that sources subject to section 111 must obtain title V operating permits. Commenters expressed a number of opinions about the interplay of CAA section 502 to the purpose of trying to make a case that the section 502 provision for exempting classes of nonmajor sources should be applied in the case of OSWI air curtain incinerators.

EPA believes that a facility should have a title V operating permit in order to avail itself of the air curtain incinerator exclusion. Absent this exclusion and demonstrated compliance with the opacity limit therein, air curtain incinerators would be ''solid waste incineration units'' and, therefore, subject to a plethora of requirements under CAA section 129, including the requirement to obtain a title V operating permit. The initial step in effectuating the exemption is for EPA to use available statutory authority to establish applicable opacity limits. In this case, EPA clearly stated in the preamble to the proposed OSWI rules (69 FR 71482, December 9, 2004) that it is relying on the authority of CAA section 129 to establish these limits. Once EPA has established applicable opacity limits, it must have a mechanism for tracking compliance with the limit(s) and with the restrictions on the types of materials the air curtain incinerator unit in question can burn. The mechanism available through section 129 is an operating permit issued in accordance with title V of the CAA. Congress clearly evidenced an intent to require all units subject to requirements established pursuant to CAA section 129 to obtain a title V operating permit in enacting section 129(e) of the CAA, thus it is appropriate for EPA to use such permits to ensure that units which claim to be entitled to the benefit of the provision in section 129(g)(1) are in fact so entitled.

Two commenters requested that EPA acknowledge a distinction between air curtain incinerators that are ''portable'' and those that are ''stationary.'' One commenter noted that in the States that are using this approach, the ''portable'' unit is brought to a site and used on waste material generated on that site and a ''stationary'' unit has waste material brought to the unit from off site. The commenter suggested that ''portable'' applications should be subject to a simple permitting process that is no more complicated than an open burning permit. The other commenter asked that EPA clarify its position on whether air curtain incinerators are temporary or stationary sources.

First, regardless of whether an air curtain incinerator subject to CAA section 129 is transported from site to site or is used at the same site on a continuous basis, it is considered a stationary source under 40 CFR part 70 and 40 CFR part 71 and is required to obtain a title V operating permit. Air curtain incinerators that are transported from site to site are considered temporary sources as long as their operations are temporary and they are moved at least once during the term of their permits. (See 40 CFR 70.6(e) and 40 CFR 71.6(e).) Temporary-use incinerators (whether they are air curtain incinerators or other types of incinerators) used in disaster recovery and that meet the requirements of 40 CFR 60.2969 or 40 CFR 60.3061 are not, however, required to obtain a title V operating permit. This is because the exclusion-allowing provisions noted above (or a section 111(d) plan developed pursuant to them) do not trigger the requirement to apply for a title V permit. If the requirements in 40 CFR 60.2969 or 40 CFR 60.3061 are met, only temporary-use incinerators that are otherwise subject to title V permitting would be required to apply for and obtain a title V permit.

As to the commenter's concern regarding the process for permitting air curtain incinerators which are temporary sources, a permitting authority may issue a single permit to the owner or operator of these incinerators, thereby authorizing emissions by the same source owner or operator at multiple temporary locations. (See section 504(e) of the CAA and 40 CFR 70.6(e) and 40 CFR 71.6(e).) In order to track the location of temporary sources, the owners or operators of these sources must notify the relevant permitting authority at least 10 days in advance of each change in location. For more information regarding the requirements for temporary sources, see the statutory and regulatory cites noted above.

As mentioned earlier, there were a number of comments on air curtain incinerators and title V operating permits. While the above discussion covers the majority of the issues regarding these units and title V requirements, we encourage interested parties to review the response to comments document for a complete discourse on the title V comments we received and our response to those comments.

2. Unit Closure and Title V Operating Permits

One commenter expressed a concern that units planning to close within the 3 years allowed by the proposed emission guidelines would potentially have to apply for title V operating permits. The commenter asked EPA to clarify in the final rules that sources either need to close by the time their title V permit application is due or that a title V permit application is not required for sources closing by the final compliance date.

The timing of title V permit application deadlines is established by law (see sections 129(e), 503(c), 503(d), and 502(a) of the CAA). As such, EPA has no authority to exempt from this requirement sources planning to close. Sources planning to close after the permit application deadline may continue operations until the closure deadline as long as the permit application deadline is met. Sources cannot legally operate after the initial title V permit application deadline without having submitted a complete title V application by this deadline (see CAA section 503(c) and 40 CFR 70.5(a)(1)(i), 71.5(a)(1)(i), 70.7(b), and 71.7(b)). Sources planning to close can explain the procedures and timing associated with their closures in their title V permit applications. Such an explanation will provide the permitting authority with much needed information and will allow the permitting authority to take an anticipated closure into account as it drafts the source's title V permit.

E. Testing

One commenter noted that air curtain incinerators normally operate for a few weeks at any one project site. For these units, the commenter noted that the proposed rules require an initial test for opacity within 180 days after the final compliance date and annual tests to be conducted no more than 12 months following the date of the previous test. For stationary units or units frequently in operation, this may be acceptable, but for units that may go months or years between uses it is not clear when the opacity test would be required. As an addendum, the commenter also asked who would be responsible for conducting the test because these units are usually rented.

We acknowledge the commenter's concern regarding annual testing requirements for air curtain incinerators that may not be used for months or years. To address this, we are amending the testing requirements for air curtain incinerators that burn only wood waste, clean lumber and yard waste to require opacity testing upon startup if the unit has been unused and out of operation for more than 12 months following the last opacity test.

Regarding the commenter's question on testing responsibility if the unit is rented, we would generally expect the owner (lessor) of the unit to perform testing and maintain records of compliance testing for the unit being rented. In this situation, the operator (lessee) is responsible for obtaining all necessary documentation (e.g., performance test data) demonstrating that the unit is in compliance from the owner (lessor) and maintaining the documentation on site with the air curtain incinerator. The operator (lessee) in all situations is responsible for correctly operating the unit, burning only allowable materials, being aware of all compliance requirements (i.e., testing, monitoring, recordkeeping and reporting), and making sure the unit is in compliance while operating the unit. However, given the various arrangements that may exist between owners and operators, different lengths of time a unit may be operated at a particular site, etc., EPA and State regulatory and enforcement agencies have discretion to determine which of the parties is responsible for compliance activities or noncompliance issues on a case-by-case basis.

F. Impacts

One commenter contended that EPA's use of national average costs and ''typical'' units in determining impacts may have overlooked the impact that the OSWI rules would have on small local governments, school districts and small nonprofit organizations. The commenter expressed concern that EPA's certification that the rules, as proposed, will not have a significant economic impact on a substantial number of small entities is not based on an adequate analysis of IWI units operated by small entities.

The final OSWI rules provide exclusions for some sources that may find it unreasonably costly to comply with the rules or utilize alternative disposal options. These exclusions include such sources as rural IWI units and incinerators in isolated areas of Alaska. These, and the other exclusions, should provide relief for many small entities for which a reasonable disposal alternative is unavailable. For example, a small, rural school may apply for the rural IWI exclusion if they are located more than 50 miles from the boundary of the nearest MSA and can demonstrate that suitable waste disposal alternatives do not exist or are economically infeasible considering their budget. A small school located in an urban area will most likely find that alternative disposal options are readily available, and that they would incur no additional cost or perhaps a slight savings by shutting down their waste combustion unit. The exclusions provided should adequately cover those certain situations where feasible alternatives to incineration do not exist.

As for areas where alternatives to incineration do exist, we have found that the typical cost of incineration is the same as, or greater than, that of using a landfill or sending waste to a larger MWC (see tables 5 and 7 of OSWI Unit Control Options and Costs memorandum, Docket item EPA–HQ–OAR–2003–0156–0012). An additional, more detailed analysis of over 150 OSWI units was conducted to verify that this is the case. The analysis used parameters appropriate for each OSWI unit, including incinerator throughput, distance to nearby landfills, and landfill tipping fees. The analysis confirmed our initial belief that in the vast majority of cases an OSWI facility would incur no additional cost when switching to a landfill. This was also true for small entities. Information about this analysis is in the docket (see Impacts of Other Solid Waste Incinerator Rule on Affected Small Entities, November 2005).

There are several likely reasons that existing OSWI units have continued to operate rather than close and use a less expensive waste disposal method. Some sources may simply be unaware of other viable waste disposal options and their costs. The attention of other sources may be focused on their day-to-day operations, of which the incineration of waste represents a small piece, both with respect to overall operations and budget. Until an unanticipated event, such as a significant maintenance or repair expense or, in this instance, new regulatory requirements, causes a source to focus on the question of whether to continue to incinerate versus turn to another waste disposal method, the source may not have a reason to consider whether they are using the most economical waste disposal method. Moreover, some sources may not have considered other waste disposal options in lieu of incineration due to concerns regarding the nature of their waste stream (e.g., confidentiality or liability concerns).

As we point out in the preamble to the proposed rules, the OSWI population has been steadily declining over the past several years, and this trend would likely continue in the absence of an OSWI regulation. To ensure that the affected sources were aware of the proposed rules, EPA sent fact sheets to 361 of the existing OSWI units in our inventory (we were unable to determine the mailing address for the remaining 11 units in our inventory). The fact sheets explained the proposed regulations, the anticipated costs and impacts to their facilities, and how they could submit comments. None of these facilities submitted comments on the proposed rules and, in fact, about one-third of these facilities informed us that they no longer own or operate an incineration unit. In addition to the letters to the existing sources, we also identified 125 trade organizations and interest groups that represented potential OSWI owners/operators, such as school system administrators, private school headmasters, correctional facility administrators, religious organizations, associations of city and county governments, etc. and sent them copies of the fact sheet. None of these interest groups submitted comments on the proposed OSWI rules or on the cost or other impacts EPA anticipated due to the rules. We believe that this closure trend in absence of regulation exhibited by existing OSWI units, paired with the lack of comment on our impacts analysis by the soon-to-be regulated community, supports our analysis that it is often more economical to shut down OSWI units and use an alternative waste disposal method, and, therefore, that the final rules do not pose a significant impact to a substantial number of small entities.

However, to further address the commenter's concern, small entity

outreach surveys were sent to eight entities associated with schools (e.g., State-affiliated department of education, office of school facilities). The surveys requested information regarding the use of solid waste incinerators at schools the entities represent or are associated with. All responses, with one exception, indicate that incinerators are not being used by the respondents. The one exception regards an institution that owns/operates pathological waste incinerators, which are excluded from regulation under the subparts.

V. Impacts of the Final Rules

A. What are the impacts for new units?

As stated in the preamble to the proposed rules, information provided to EPA indicates that no or negative growth has been the trend for OSWI units for the past several years. The information indicates that this trend is expected to continue even in the absence of a regulation. Furthermore, as our experience with other CAA section 129 regulations has shown, sources will likely respond to the final rules by choosing not to construct new waste incineration units and will utilize alternative waste disposal options rather than incur the costs of compliance. The only potential new units identified by a public commenter were a type of unit that, as described by the commenter, would be an industrial unit rather than an OSWI unit or would qualify for the exclusion for units in isolated areas of Alaska.

Considering this information, EPA does not anticipate the construction of any new OSWI units that would be required to meet the emission limits. Therefore, EPA expects no impacts of the final NSPS for new units. However, for the sake of demonstrating that emissions reductions would result from the NSPS in the unlikely event that a new unit is constructed, EPA presented the expected emissions reductions for four OSWI model plants in the preamble to the proposed rules (69 FR 71490, December 9, 2004).

Since proposal, the emission limits for CO and HCl have been revised in response to comments, which result in different estimated emissions reductions than those that were shown at proposal. The expected emissions reductions for four OSWI model plants have been recalculated and are shown in table 3 of this preamble. There were no changes to the estimated cost, water, solid waste, and energy impacts on new OSWI units since proposal.

TABLE 3.—EMISSIONS REDUCTIONS ON A MODEL PLANT BASIS

Pollutant	Emission reduction for OSWI model plants tons per year (tpy)			
	1 tpd capacity	5 tpd capacity	15 tpd capacity	30 tpd capacity
Cd	3.8×10^{-4}	1.9×10^{-3}	5.6×10^{-3}	1.1×10^{-2}
CO	1.5×10^{-2}	7.5×10^{-2}	0.22	0.45
Dioxins/furans	3.5×10^{-7}	1.7×10^{-6}	5.1×10^{-6}	1.0×10^{-5}
HCl	0.97	4.7	14	28
Pb	5.4×10^{-3}	2.6×10^{-2}	7.8×10^{-2}	0.16
Hg	5.6×10^{-4}	2.7×10^{-3}	8.2×10^{-3}	1.6×10^{-2}
NO_X	0.28	1.4	4.1	8.2
PM	0.26	1.3	3.8	7.7
SO_2	0.69	3.4	10	20
Total	2.2	11	33	65

B. What are the impacts for existing units?

Information provided to EPA indicates that many existing OSWI units have closed in recent years. In fact, since proposal we have learned that at least one-third of the existing OSWI units in our inventory are no longer operating. As we stated at proposal, this trend is expected to continue even in the absence of a regulation. Furthermore, as our experience with other CAA section 129 regulations has shown, sources will likely respond to the final OSWI rules by choosing to shut down existing waste incineration units and will utilize alternative waste disposal options rather than incur the costs of compliance.

EPA's objective is not to encourage the use of alternatives or to discourage continued use of VSMWC units or IWI units; rather EPA's objective is to adopt emission guidelines for existing OSWI units that fulfill the requirements of CAA section 129. In doing so, the primary outcome associated with adoption of these emission guidelines is projected to be an increase in the use of alternative waste disposal and a decrease in the use of VSMWC units and IWI units. Consequently, EPA acknowledges and incorporates this outcome into the analyses of cost, environmental, and energy impacts associated with the emission guidelines, as discussed in the preamble to the proposed rules (69 FR 71490, December 9, 2004).

To account for the existing OSWI unit closure information (123 facilities indicated after proposal that they no longer own or operate an OSWI unit), we have reanalyzed the national emissions, cost, energy, and solid waste impacts presented in the preamble to the proposed rules.

1. What are the changes to the air impacts since proposal?

As discussed earlier, emission limit values for CO and HCl have been revised since proposal due to public comments. EPA then revised emission reduction estimates for each model unit, which are presented in table 3 of this preamble. Furthermore, as discussed above, EPA has learned since proposal that 123 of the existing OSWI units in our inventory at proposal were already closed. Both of these changes affected the estimated national emissions reductions presented in table 8 of the preamble to the proposed rules (69 FR 71491, December 9, 2004). Therefore, these emission reduction estimates were recalculated and are presented in table 4 of this preamble. As shown, total emissions reductions would be over 1,900 tpy if all the remaining existing units in the OSWI inventory complied with the emission guidelines by adding controls.

TABLE 4.—NATIONAL EMISSIONS REDUCTIONS IF ALL EXISTING OSWI UNITS COMPLY WITH THE EMISSION GUIDELINES

Pollutant	Emission reduction (tpy)		
	VSMWC	IWI	Total
Cd	6.1×10^{-2}	0.27	0.33
CO	2.4	11	13
Dioxins/furans	5.6×10^{-5}	2.5×10^{-4}	3.0×10^{-4}
HCl	154	684	837
Pb	0.85	3.8	4.6
Hg	8.9×10^{-2}	0.40	0.49
NO_X	45	199	245
PM	42	185	227
SO_2	110	488	598
Total	353	1,572	1,925

However, as we stated in the preamble to the proposed rules, EPA anticipates that most existing OSWI units will elect to shut down and utilize alternative waste disposal options (e.g., send waste to a landfill or a large or small MWC unit). If the remaining existing OSWI units closed and the waste was sent to a landfill, the anticipated emissions reductions would be over 400 tpy for VSMWC units and over 1,800 tpy for IWI units, which totals over 2,200 tpy for all OSWI units. These reductions occur despite a slight increase in landfill emissions due to the additional waste being landfilled rather than incinerated. By using EPA's Landfill Gas Emission Model (LandGEM), we calculated an increase of 27 tpy of emissions of the regulated pollutants would occur from landfills if all OSWI units closed and the waste was sent to landfills. However, as stated above, this results in net emissions reductions of 2,200 tpy from closure of all OSWI units.

2. What are the changes to the water and solid waste impacts since proposal?

At proposal, EPA estimated that the water impacts of the OSWI rule would be negligible. We have not changed this assessment of water impacts. At proposal, we estimated that the national OSWI population is used to dispose of approximately 85,000 tpy of solid waste. As mentioned before, we anticipate that most, if not all, OSWI units will shut down and the waste will be disposed of in alternative ways. At the time, we concluded that the amount of additional waste that would be sent to landfills due to adoption of the emission guidelines is insignificant. Due to the information we have received on OSWI unit closures since proposal, we have revised our estimate to approximately 60,000 tpy of waste being disposed of in OSWI units. This revision results in even less potential solid waste being diverted to landfills and large or small MWC units due to promulgation of the emission guidelines. For perspective, over 100 million tpy of municipal waste is disposed of in landfills. Therefore, we continue to maintain that the amount of additional waste that will be sent to landfills is insignificant.

3. What are the changes to the energy impacts since proposal?

At proposal, we concluded that the energy impacts would be negligible since we anticipated that most units would shut down rather than install and operate wet scrubbers. Since proposal, our inventory of existing OSWI units has decreased. Therefore, our assessment of negligible energy impacts at proposal remains unchanged.

4. What are the changes to the cost and economic impacts since proposal?

At proposal, EPA's analysis showed that the national total costs for all existing OSWI units to comply with the emission guidelines would be approximately $63 million a year. As discussed previously, we have learned that 123 of the existing OSWI units in our inventory at proposal are permanently shut down. The revised national total cost for the remaining existing OSWI units to comply with the emission guidelines is approximately $42 million.

The remainder of our cost and economic impact discussion in the preamble to the proposed rules (69 FR 71491, December 9, 2004), however, is unaffected by the revised national cost estimate, and remains valid for the final emission guidelines. As previously stated in this preamble, as well as in the preamble to the proposed rules, the cost of landfilling is less than the cost of incineration for most, if not all, OSWI units. Since there is a chance some potentially affected sources will obtain exemptions, we expect most of the affected VSMWC units and IWI units will close and utilize an economical alternative waste disposal method. Consequently, the net effect of the final emission guidelines will be a net decrease in costs to the universe of affected sources.

VI. 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 the regulatory action is ''significant'' and, therefore, subject to review by OMB 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 the final rules a ''significant regulatory action'' within the meaning of the Executive Order. Consequently, the final rules were submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record.

B. Paperwork Reduction Act

The information collection requirements in the final rules have been submitted for approval to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq*. The Information Collection Request (ICR) documents have been prepared by EPA (ICR No. 2163.02 for subpart EEEE and 2164.02 for subpart FFFF), and copies may be obtained from Susan Auby by mail at the Collection Strategies Division, EPA (2822), 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.* The information collection requirements are not enforceable until OMB approves them.

The final rules contain monitoring, reporting, and recordkeeping requirements. The information will be used by EPA to identify any new, modified, or reconstructed incineration units subject to the NSPS and to ensure that any new incineration units undergo a siting analysis and comply with the emission limits and other requirements. Similarly, the information specified in the emission guidelines will be used by States or EPA to identify existing units subject to the State or Federal plans that implement the emission guidelines, and to ensure that these units comply with their emission limits and other requirements. Records and reports are necessary to enable EPA or States to identify waste incineration units that may not be in compliance with the requirements. Based on reported information, EPA will decide which units and what records or processes should be inspected.

These recordkeeping and reporting requirements are specifically authorized by CAA section 114 (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to EPA policies in 40 CFR part 2, subpart B, Confidentiality of Business Information.

EPA estimates that there is no burden for the first 3 years after promulgation of the NSPS for industry and the implementing agency. This is because EPA expects no new OSWI units to be constructed over this 3-year period.

The estimated average annual burden for the first 3 years after promulgation of the emission guidelines for industry and the implementing agency is outlined below.

Affected entity	Average annual hours	Labor costs	Capital costs	O&M costs	Total annual costs
Industry	3,818	$175,408	$0	$0	$174,703
Implementing agency	383	17,611	0	0	17,611

EPA expects the emission guidelines to affect a maximum of 248 OSWI units over the first 3 years. There are no capital, start-up, or operation and maintenance costs for existing units during the first 3 years, because compliance with the emission guidelines is not required until 5 years after promulgation of the emission guidelines (or 3 years after the effective date of approval of a State or Federal plan to implement the guidelines). Costs in the first 3 years include time to review the guidelines and the State or Federal plan. The implementing agency will not incur any capital or start-up costs.

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 and 48 CFR chapter 15. When the ICRs are approved by OMB, EPA will publish a technical amendment to 40 CFR part 9 in the **Federal Register** to display the OMB control numbers for the approved information collection requirements contained in the final rules.

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

For purposes of assessing the impacts of the final rules on small entities, small entity is defined as follows:

1. A small business that is an ultimate parent entity in the regulated industry that has a gross annual revenue less than $6.0 million (this varies by industry category, ranging up to $10.5 million for North American Industrial Classification System (NAICS) code 562213 (VSMWC)), based on Small Business Administration's 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; or

3. A small organization that is any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

After considering the economic impacts of the final rules on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. The economic impacts on small entities will not be significant because the cost of the final rules is expected to range from negligible to actual cost savings. EPA expects that the majority of these entities may realize a cost savings under the likely response to the final rules (closure and using alternative waste disposal method).

Alternative waste disposal methods, such as landfilling, are available for OSWI units. Our analysis using model plants and a supplemental analysis using site specific data both support the idea that the annual cost to landfill waste is typically less than the annual cost of using an OSWI unit for waste disposal. Thus, the likely response to the final rules will be for small entities that own and operate OSWI units to close the units and use an alternative

waste disposal method. More detailed information about these analyses is available in the docket (see Revised Economic Analysis for Other Solid Waste Incineration (OSWI) Units, November 2005; and Impacts of Other Solid Waste Incinerator Rule on Affected Small Entities, November 2005).

The Small Business Administration's Office of Advocacy (SBA) expressed concerns that EPA's certification that the proposed standards and guidelines would not have a significant economic impact on a substantial number of small entities is not based on an adequate analysis of IWI units operated by small entities. In response to SBA's public comment, we conducted further detailed analyses (as summarized in this preamble and available in the docket) and sent small entity outreach surveys requesting information regarding the use of solid waste incinerators at schools to eight entities (identified by SBA) associated with schools. All responses from the small entity outreach survey, with one exception, indicate that incinerators are not being used by the respondents. The one exception regards an institution that owns/operates pathological waste incinerators, which are excluded from regulation under the standards and guidelines.

Although the final rules will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of the rules on small entities. The final rules provide various exclusions for some sources that may find it unreasonably costly to comply with the rules or utilize alternative disposal options. These exclusions should provide relief for many small entities for which a reasonable disposal alternative is unavailable.

In addition, to ensure that affected sources were aware of the proposed rules, EPA sent fact sheets to 361 existing OSWI units in our inventory and an additional 125 fact sheets to trade organizations and interest groups that represented potential OSWI unit owners/operators. The fact sheets explained the proposed regulations, the anticipated costs and impacts to their facilities, and how they could submit comments. None of the facilities or interest groups submitted comments on the proposed OSWI rules or on the cost or other impacts EPA anticipated due to the rulemaking and, in fact, about one-third of the 361 facilities informed us that they no longer own or operate an incineration unit.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995, 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 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 EPA 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, EPA must develop a small government agency plan under section 203 of the UMRA. 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's regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rules 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. The total annual cost, in any 1 year, for all OSWI units to comply with today's final rules is estimated at $42 million. However, as previously stated in this preamble, most OSWI units are expected to close and utilize an economical alternative waste disposal method rather than complying with the final rules. Therefore, the cost impacts are expected to be negligible. Thus, the final rules are not subject to the requirements of section 202 and 205 of the UMRA. In addition, EPA has determined that the final rules contain no regulatory requirements that might significantly or uniquely affect small governments because the burden is small and the regulations do not unfairly apply to small governments. Therefore, the final rules are not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

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

The final rules 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 Executive Order 13132. The final rules will not impose substantial direct compliance costs on State or local governments, and will not preempt State law. Thus, Executive Order 13132 does not apply to the final rules.

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

Executive Order 13175, (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' ''Policies that have Tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.''

The final rules do not have Tribal implications, as specified in Executive Order 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to the final rules.

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 EPA considered.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. The final rules are not subject to Executive Order 13045 because they are based on technology performance and not on health and safety risks.

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

Executive Order 13211 (66 FR 28355, May 22, 2001) requires agencies to prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as ''significant energy actions.'' Section 4(b) of Executive Order 13211 defines ''significant energy actions'' as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action * * *.'' Although the final rules are considered to be a significant regulatory action under Executive Order 12866, they are not a ''significant energy action'' because they are not likely to have a significant adverse effect on the supply, distribution, or use of energy. The basis for the determination follows.

EPA expects that few, if any, OSWI facilities will elect to continue to operate OSWI units, and that most facilities will respond to the final rules by closing existing OSWI units and using alternative waste disposal techniques. This response is likely because the annual cost of landfilling, an alternative waste disposal method, is typically less expensive than the annual cost of using an OSWI unit for waste disposal. In the few cases where an OSWI facility elects to comply with the final rules by installing a wet scrubber, the operation of the scrubber will result in a small increase in power consumption. However, due to the small size of these units (and the likelihood that very few of them will continue to operate), the energy impacts will be negligible.

Given the negligible change in energy consumption resulting from the final rules, EPA does not expect any price increase for any energy type. The cost of energy distribution should not be affected by the final rules at all since the final rules do not affect energy distribution facilities. EPA also expects that there would be no impact on the import of foreign energy supplies, and EPA does not expect other adverse outcomes to occur with regards to energy supplies.

Therefore, EPA concludes that the final rules are not likely to have a significant adverse effect on the supply, distribution, or use of energy.

I. National Technology Transfer Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. No. 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 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 directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

The final rules involve technical standards. EPA cites the following standards in the final rules: EPA Methods 1, 2, 3A, 3B, 4, 5, 6 or 6C, 7 or 7A, 7C, 7D, or 7E, 9, 10, 10A or 10B, 23, 26A, and 29 of 40 CFR part 60, appendix A.

Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 7D and 9. The search and review results have been documented and are in the docket for the final rules. One voluntary consensus standard was identified as an acceptable alternative to EPA test methods for the purposes of the final rules. The voluntary consensus standard ASME PTC 19–10–1981—Part 10, ''Flue and Exhaust Gas Analyses,'' is cited in the final rules for its manual methods for measuring the nitrogen oxide, oxygen, and sulfur dioxide content of exhaust gas. These parts of ASME PTC 19–10–1981—Part 10 are acceptable alternatives to Methods 3B, 6, 7, and 7C.

The search for emissions measurement procedures identified 26 voluntary consensus standards potentially applicable to the final rules. EPA determined that 24 of the 26 candidate standards identified for measuring emissions of Cd, CO, dioxins/furans, HCl, Hg, Pb, PM, NO_X, and SO_2 subject to the emission limits were impractical alternatives to EPA test methods for the purposes of the final rules. Therefore, EPA does not intend to adopt the standards for this purpose. (See Docket ID No. EPA–HQ–OAR–2003–0156 for further information on the methods.) Two of the 26 voluntary consensus standards identified in this search were not available at the time the review was conducted because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, ''Flow Measurement by Velocity Traverse,'' for EPA Method 2 (and possibly 1); and ASME/BSR MFC 12M, ''Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters,'' for EPA Method 2.

Tables 1 and 3 to subpart EEEE of 40 CFR part 60 and tables 2 and 4 to subpart FFFF of 40 CFR part 60 list the EPA testing methods included in the final rules. Under 40 CFR 60.8(b) and 60.13(i) of subpart A (General Provisions), a source may apply to EPA for permission to use alternative test methods or alternative monitoring requirements in place of any of the EPA testing methods, performance specifications, or procedures.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. EPA will submit a report containing the final rules 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 rules in the **Federal Register**. The final rules are not ''major rules'' as defined by 5 U.S.C. 804(2). The final NSPS will be effective on June 16, 2006. The final emission guidelines are effective on February 14, 2006.

List of Subjects in 40 CFR Part 60

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 30, 2005.

Stephen L. Johnson,

Administrator.

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

PART 60—[AMENDED]

■ 1. The authority citation for part 60 continues to read as follows:

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

Subpart A—[Amended]

■ 2. Section 60.17 is amended by revising paragraph (h) introductory text and adding paragraph (h)(4) to read as follows:

§ 60.17 Incorporation by Reference.

* * * * *

(h) The following material is available for purchase from the American Society of Mechanical Engineers (ASME), Three Park Avenue, New York, NY 10016–5990.

* * * * *

(4) ANSI/ASME PTC 19.10–1981, Flue and Exhaust Gas Analyses [Part 10, Instruments and Apparatus], IBR approved for Tables 1 and 3 of subpart EEEE, and Tables 2 and 4 of subpart FFFF of this part.

* * * * *

■ 3. Part 60 is amended by adding subpart EEEE to read as follows:

Subpart EEEE—Standards of Performance for Other Solid Waste Incineration Units for Which Construction Is Commenced After December 9, 2004, or for Which Modification or Reconstruction Is Commenced on or After June 16, 2006.

Introduction

Sec.

60.2880 What does this subpart do?
60.2881 When does this subpart become effective?

Applicability

60.2885 Does this subpart apply to my incineration unit?
60.2886 What is a new incineration unit?
60.2887 What combustion units are excluded from this subpart?
60.2888 Are air curtain incinerators regulated under this subpart?
60.2889 Who implements and enforces this subpart?
60.2890 How are these new source performance standards structured?
60.2891 Do all components of these new source performance standards apply at the same time?

Preconstruction Siting Analysis

60.2894 Who must prepare a siting analysis?
60.2895 What is a siting analysis?

Waste Management Plan

60.2899 What is a waste management plan?
60.2900 When must I submit my waste management plan?
60.2901 What should I include in my waste management plan?

Operator Training and Qualification

60.2905 What are the operator training and qualification requirements?
60.2906 When must the operator training course be completed?
60.2907 How do I obtain my operator qualification?
60.2908 How do I maintain my operator qualification?
60.2909 How do I renew my lapsed operator qualification?
60.2910 What site-specific documentation is required?
60.2911 What if all the qualified operators are temporarily not accessible?

Emission Limitations and Operating Limits

60.2915 What emission limitations must I meet and by when?
60.2916 What operating limits must I meet and by when?
60.2917 What if I do not use a wet scrubber to comply with the emission limitations?
60.2918 What happens during periods of startup, shutdown, and malfunction?

Performance Testing

60.2922 How do I conduct the initial and annual performance test?
60.2923 How are the performance test data used?

Initial Compliance Requirements

60.2927 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?
60.2928 By what date must I conduct the initial performance test?

Continuous Compliance Requirements

60.2932 How do I demonstrate continuous compliance with the emission limitations and the operating limits?
60.2933 By what date must I conduct the annual performance test?
60.2934 May I conduct performance testing less often?
60.2935 May I conduct a repeat performance test to establish new operating limits?

Monitoring

60.2939 What continuous emission monitoring systems must I install?
60.2940 How do I make sure my continuous emission monitoring systems are operating correctly?
60.2941 What is my schedule for evaluating continuous emission monitoring systems?
60.2942 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?
60.2943 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?
60.2944 What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?
60.2945 Is there a minimum amount of operating parameter monitoring data I must obtain?

Recordkeeping and Reporting

60.2949 What records must I keep?
60.2950 Where and in what format must I keep my records?
60.2951 What reports must I submit?
60.2952 What must I submit prior to commencing construction?
60.2953 What information must I submit prior to initial startup?
60.2954 What information must I submit following my initial performance test?
60.2955 When must I submit my annual report?
60.2956 What information must I include in my annual report?
60.2957 What else must I report if I have a deviation from the operating limits or the emission limitations?
60.2958 What must I include in the deviation report?
60.2959 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?
60.2960 Are there any other notifications or reports that I must submit?
60.2961 In what form can I submit my reports?
60.2962 Can reporting dates be changed?

Title V Operating Permits

60.2966 Am I required to apply for and obtain a title V operating permit for my unit?
60.2967 When must I submit a title V permit application for my new unit?

Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery

60.2969 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

Air Curtain Incinerators That Burn Only Wood Waste, Clean Lumber, and Yard Waste

60.2970 What is an air curtain incinerator?

60.2971 What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?
60.2972 How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?
60.2973 What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?
60.2974 Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?

Equations

60.2975 What equations must I use?

Definitions

60.2977 What definitions must I know?

Tables to Subpart EEEE of Part 60

Table 1 to Subpart EEEE of Part 60—Emission Limitations
Table 2 to Subpart EEEE of Part 60—Operating Limits for Incinerators and Wet Scrubbers
Table 3 to Subpart EEEE of Part 60—Requirements for Continuous Emission Monitoring Systems (CEMS)
Table 4 to Subpart EEEE of Part 60—Summary of Reporting Requirements

Subpart EEEE—Standards of Performance for Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.

Introduction

§ 60.2880 What does this subpart do?

This subpart establishes new source performance standards for other solid waste incineration (OSWI) units. Other solid waste incineration units are very small municipal waste combustion units and institutional waste incineration units.

§ 60.2881 When does this subpart become effective?

This subpart takes effect June 16, 2006. Some of the requirements in this subpart apply to planning the incineration unit and must be completed even before construction is initiated on the unit (i.e., the preconstruction requirements in §§ 60.2894 and 60.2895). Other requirements such as the emission limitations and operating limits apply when the unit begins operation.

Applicability

§ 60.2885 Does this subpart apply to my incineration unit?

Yes, if your incineration unit meets all the requirements specified in paragraphs (a) through (c) of this section.

(a) Your incineration unit is a new incineration unit as defined in § 60.2886.

(b) Your incineration unit is an OSWI unit as defined in § 60.2977 or an air curtain incinerator subject to this subpart as described in § 60.2888(b). Other solid waste incineration units are very small municipal waste combustion units and institutional waste incineration units as defined in § 60.2977.

(c) Your incineration unit is not excluded under § 60.2887.

§ 60.2886 What is a new incineration unit?

(a) A new incineration unit is an incineration unit subject to this subpart that meets either of the two criteria specified in paragraphs (a)(1) or (2) of this section.

(1) Commenced construction after December 9, 2004.

(2) Commenced reconstruction or modification on or after June 16, 2006.

(b) This subpart does not affect your incineration unit if you make physical or operational changes to your incineration unit primarily to comply with the emission guidelines in subpart FFFF of this part. Such changes do not qualify as reconstruction or modification under this subpart.

§ 60.2887 What combustion units are excluded from this subpart?

This subpart excludes the types of units described in paragraphs (a) through (q) of this section, as long as you meet the requirements of this section.

(a) *Cement kilns.* Your unit is excluded if it is regulated under subpart LLL of part 63 of this chapter (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry).

(b) *Co-fired combustors.* Your unit, that would otherwise be considered a very small municipal waste combustion unit, is excluded if it meets the five requirements specified in paragraphs (b)(1) through (5) of this section.

(1) The unit has a Federally enforceable permit limiting the combustion of municipal solid waste to 30 percent of the total fuel input by weight.

(2) You notify the Administrator that the unit qualifies for the exclusion.

(3) You provide the Administrator with a copy of the Federally enforceable permit.

(4) You record the weights, each calendar quarter, of municipal solid waste and of all other fuels combusted.

(5) You keep each report for 5 years. These records must be kept on site for at least 2 years. You may keep the records off site for the remaining 3 years.

(c) *Cogeneration facilities.* Your unit is excluded if it meets the three requirements specified in paragraphs (c)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) You notify the Administrator that the unit meets all of these criteria.

(d) *Commercial and industrial solid waste incineration units.* Your unit is excluded if it is regulated under subparts CCCC or DDDD of this part and is required to meet the emission limitations established in those subparts.

(e) *Hazardous waste combustion units.* Your unit is excluded if it meets either of the two criteria specified in paragraph (e)(1) or (2) of this section.

(1) You are required to get a permit for your unit under section 3005 of the Solid Waste Disposal Act.

(2) Your unit is regulated under 40 CFR part 63, subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(f) *Hospital/medical/infectious waste incinerators.* Your unit is excluded if it is regulated under subparts Ce or Ec of this part (New Source Performance Standards and Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators).

(g) *Incinerators and air curtain incinerators in isolated areas of Alaska.* Your incineration unit is excluded if it is used at a solid waste disposal site in Alaska that is classified as a Class II or Class III municipal solid waste landfill, as defined in § 60.2977.

(h) *Rural institutional waste incinerators.* Your incineration unit is excluded if it is an institutional waste incineration unit, as defined in § 60.2977, and the application for exclusion described in paragraphs (h)(1) and (2) of this section has been approved by the Administrator.

(1) Prior to initial startup, an application and supporting documentation demonstrating that the institutional waste incineration unit meets the two requirements specified in paragraphs (h)(1)(i) and (ii) of this section must be submitted to and approved by the Administrator.

(i) The unit is located more than 50 miles from the boundary of the nearest Metropolitan Statistical Area,

(ii) Alternative disposal options are not available or are economically infeasible.

(2) The application described in paragraph (h)(1) of this section must be revised and resubmitted to the Administrator for approval every 5 years following the initial approval of the exclusion for your unit.

(3) If you re-applied for an exclusion pursuant to paragraph (h)(2) of this section and were denied exclusion by the Administrator, you have 3 years from the expiration date of the current exclusion to comply with the emission limits and all other applicable requirements of this subpart.

(i) *Institutional boilers and process heaters.* Your unit is excluded if it is regulated under 40 CFR part 63, subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters).

(j) *Laboratory Analysis Units.* Your unit is excluded if it burns samples of materials only for the purpose of chemical or physical analysis.

(k) *Materials recovery units.* Your unit is excluded if it combusts waste for the primary purpose of recovering metals. Examples include primary and secondary smelters.

(l) *Pathological waste incineration units.* Your institutional waste incineration unit or very small municipal waste combustion unit is excluded from this subpart if it burns 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 60.2977 and you notify the Administrator that the unit meets these criteria.

(m) *Small or large municipal waste combustion units.* Your unit is excluded if it is regulated under subparts AAAA, BBBB, Ea, Eb, or Cb, of this part and is required to meet the emission limitations established in those subparts.

(n) *Small power production facilities.* Your unit is excluded if it meets the three requirements specified in paragraphs (n)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) You notify the Administrator that the unit meets all of these criteria.

(o) *Temporary-use incinerators and air curtain incinerators used in disaster recovery.* Your incineration unit is excluded if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism and you comply with the requirements in § 60.2969.

(p) *Units that combust contraband or prohibited goods.* Your incineration unit is excluded if the unit is owned or operated by a government agency such as police, customs, agricultural inspection, or a similar agency to destroy only illegal or prohibited goods such as illegal drugs, or agricultural food products that can not be transported into the country or across State lines to prevent biocontamination. The exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities.

(q) *Incinerators used for national security.* Your incineration unit is excluded if it meets the requirements specified in either (q)(1) or (2) of this section.

(1) The incineration unit is used solely during military training field exercises to destroy national security materials integral to the field exercises.

(2) The incineration unit is used solely to incinerate national security materials, its use is necessary to safeguard national security, you follow the exclusion request requirements in paragraphs (q)(2)(i) and (ii) of this section, and the Administrator has approved your request for exclusion.

(i) The request for exclusion and supporting documentation must demonstrate both that the incineration unit is used solely to destroy national security materials and that a reliable alternative to incineration that ensures acceptable destruction of national security materials is unavailable, on either a permanent or temporary basis.

(ii) The request for exclusion must be submitted to and approved by the Administrator prior to initial startup.

§ 60.2888 Are air curtain incinerators regulated under this subpart?

(a) Air curtain incinerators that burn less than 35 tons per day of municipal solid waste or air curtain incinerators located at institutional facilities burning any amount of institutional waste generated at that facility are subject to all requirements of this subpart, including the emission limitations specified in Table 1 of this subpart.

(b) Air curtain incinerators that burn only less than 35 tons per day of the materials listed in paragraphs (b)(1) through (4) of this section collected from the general public and from residential, commercial, institutional, and industrial sources; or, air curtain incinerators located at institutional facilities that burn only the materials listed in paragraphs (b)(1) through (4) of this section generated at that facility, are required to meet only the requirements in §§ 60.2970 through 60.2974 and are exempt from all other requirements of this subpart.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§ 60.2889 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by the U.S. Environmental Protection Agency (EPA), or a delegated authority such as your State, local, or tribal agency. If EPA has delegated authority to your State, local, or tribal agency, then that agency (as well as EPA) has the authority to implement and enforce this subpart. You should contact your EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency, the authorities contained in paragraphs (b)(1) through (6) of this section are retained by EPA and are not transferred to the State, local, or tribal agency.

(1) Approval of alternatives to the emission limitations in Table 1 of this subpart and operating limits established under § 60.2916 and Table 2 of this subpart.

(2) Approval of petitions for specific operating limits in § 60.2917.

(3) Approval of major alternatives to test methods.

(4) Approval of major alternatives to monitoring.

(5) Approval of major alternatives to recordkeeping and reporting.

(6) The status report requirements in § 60.2911(c)(2).

§ 60.2890 How are these new source performance standards structured?

These new source performance standards contain nine major components, as follows:

(a) Preconstruction siting analysis.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limitations and operating limits.

(e) Performance testing.

(f) Initial compliance requirements.

(g) Continuous compliance requirements.

(h) Monitoring.

(i) Recordkeeping and reporting.

§ 60.2891 Do all components of these new source performance standards apply at the same time?

No, you must meet the preconstruction siting analysis and waste management plan requirements before you commence construction, reconstruction, or modification of the OSWI unit. The operator training and qualification, emission limitations, operating limits, performance testing and compliance, monitoring, and most recordkeeping and reporting requirements are met after the OSWI unit begins operation.

Preconstruction Siting Analysis

§ 60.2894 Who must prepare a siting analysis?

(a) You must prepare a siting analysis if you commence construction, reconstruction, or modification of an OSWI unit after June 16, 2006.

(b) If you commence construction, reconstruction, or modification of an OSWI unit after December 9, 2004, but before June 16, 2006, you are not required to prepare the siting analysis specified in this subpart.

§ 60.2895 What is a siting analysis?

(a) The siting analysis must consider air pollution control alternatives that minimize, on a site-specific basis, to the maximum extent practicable, potential risks to public health or the environment. In considering such alternatives, you may consider costs, energy impacts, nonair environmental impacts, or any other factors related to the practicability of the alternatives.

(b) Analyses of your OSWI unit's impacts that are prepared to comply with State, local, or other Federal regulatory requirements may be used to satisfy the requirements of this section, provided they include the consideration of air pollution control alternatives specified in paragraph (a) of this section.

(c) You must complete and submit the siting requirements of this section as required under § 60.2952(c) prior to commencing construction, reconstruction, or modification.

Waste Management Plan

§ 60.2899 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 60.2900 When must I submit my waste management plan?

You must submit a waste management plan prior to commencing construction, reconstruction, or modification.

§ 60.2901 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures and implement those measures the source considers practical and feasible, considering the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Operator Training and Qualification

§ 60.2905 What are the operator training and qualification requirements?

(a) No OSWI unit can be operated unless a fully trained and qualified OSWI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified OSWI unit operator may operate the OSWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified OSWI unit operators are temporarily not accessible, you must follow the procedures in § 60.2911.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the thirteen subjects listed in paragraphs (c)(1)(i) through (xiii) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Methods to monitor pollutants (including monitoring of incinerator and control device operating parameters) and monitoring equipment calibration procedures, where applicable.

(viii) Actions to correct malfunctions or conditions that may lead to malfunction.

(ix) Bottom and fly ash characteristics and handling procedures.

(x) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(xi) Pollution prevention.

(xii) Waste management practices.

(xiii) Recordkeeping requirements.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that may serve as reference material following completion of the course.

§ 60.2906 When must the operator training course be completed?

The operator training course must be completed by the latest of the three dates specified in paragraphs (a) through (c) of this section.

(a) Six months after your OSWI unit startup.

(b) December 18, 2006.

(c) The date before an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.

§ 60.2907 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.2905(c).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 60.2905(c)(2).

§ 60.2908 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 60.2909 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.2908.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.2907(a).

§ 60.2910 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all OSWI unit operators that addresses the nine topics described in paragraphs (a)(1) through (9) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the operating limits established under this subpart.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 60.2899 through 60.2901.

(9) Procedures for handling ash.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each incinerator operator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by December 18, 2006 or prior to an employee's assumption of responsibilities for operation of the OSWI unit, whichever date is later.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted not later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of OSWI unit operators who have completed review of the information in paragraph (a) of this section as required by paragraph (b) of this section, including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of the OSWI unit operators who have completed the operator training requirements under § 60.2905, met the criteria for qualification under § 60.2907, and maintained or renewed their qualification under § 60.2908 or § 60.2909. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 60.2911 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (i.e., not at the facility and not able to be at the facility within 1 hour), you must meet one of the three criteria specified in paragraphs (a) through (c) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for 12 hours or less, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed review of the information specified in § 60.2910(a) within the past 12 months. You do not need to notify the Administrator or include this as a deviation in your annual report.

(b) When all qualified operators are not accessible for more than 12 hours, but less than 2 weeks, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed a review of the information specified in § 60.2910(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 60.2956.

(c) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (c)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible, and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to EPA every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from EPA to continue operation of the OSWI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (c)(1) of this section. If EPA notifies you that your request to continue operation of the OSWI unit is disapproved, the OSWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 60.2905(a).

(ii) You notify EPA that a qualified operator is accessible and that you are resuming operation.

Emission Limitations and Operating Limits

§ 60.2915 What emission limitations must I meet and by when?

You must meet the emission limitations specified in Table 1 of this subpart 60 days after your OSWI unit reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

§ 60.2916 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in Table 2 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraphs (a)(1)(i) or (ii) of this section, as appropriate.

(i) For continuous and intermittent units, maximum charge rate is the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is the charge rate measured during the most recent performance test

demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride and sulfur dioxide emission limitations.

(b) You must meet the operating limits established during the initial performance test 60 days after your OSWI unit reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

§ 60.2917 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber or limit emissions in some other manner to comply with the emission limitations under § 60.2915, you must petition EPA for specific operating limits, the values of which are to be established during the initial performance test and then continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by EPA. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters that will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 60.2918 What happens during periods of startup, shutdown, and malfunction?

The emission limitations and operating limits apply at all times except during OSWI unit startups, shutdowns, or malfunctions.

Performance Testing

§ 60.2922 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) All performance tests must be conducted using the methods in Table 1 of this subpart.

(c) All performance tests must be conducted using the minimum run duration specified in Table 1 of this subpart.

(d) Method 1 of appendix A of this part must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of appendix A of this part must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of appendix A of this part must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 in ''60.2975.

(g) Method 26A of appendix A of this part must be used for hydrogen chloride concentration analysis, with the additional requirements specified in paragraphs (g)(1) through (3) of this section.

(1) The probe and filter must be conditioned prior to sampling using the procedure described in paragraphs (g)(1)(i) through (iii) of this section.

(i) Assemble the sampling train(s) and conduct a conditioning run by collecting between 14 liters per minute (0.5 cubic feet per minute) and 30 liters per minute (1.0 cubic feet per minute) of gas over a one-hour period. Follow the sampling procedures outlined in section 8.1.5 of Method 26A of appendix A of this part. For the conditioning run, water can be used as the impinger solution.

(ii) Remove the impingers from the sampling train and replace with a fresh impinger train for the sampling run, leaving the probe and filter (and cyclone, if used) in position. Do not recover the filter or rinse the probe before the first run. Thoroughly rinse the impingers used in the preconditioning run with deionized water and discard these rinses.

(iii) The probe and filter assembly are conditioned by the stack gas and are not recovered or cleaned until the end of testing.

(2) For the duration of sampling, a temperature around the probe and filter (and cyclone, if used) between 120 °C (248 °F) and 134 °C (273 °F) must be maintained.

(3) If water droplets are present in the sample gas stream, the requirements specified in paragraphs (g)(3)(i) and (ii) of this section must be met.

(i) The cyclone described in section 6.1.4 of Method 26A of appendix A of this part must be used.

(ii) The post-test moisture removal procedure described in section 8.1.6 of Method 26A of appendix A of this part must be used.

§ 60.2923 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 1 of this subpart.

Initial Compliance Requirements

§ 60.2927 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under § 60.8, to determine compliance with the emission limitations in Table 1 of this subpart and to establish operating limits using the procedure in § 60.2916 or § 60.2917. The initial performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in § 60.2922.

§ 60.2928 By what date must I conduct the initial performance test?

The initial performance test must be conducted within 60 days after your OSWI unit reaches the charge rate at which it will operate, but no later than 180 days after its initial startup.

Continuous Compliance Requirements

§ 60.2932 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for all of the pollutants in Table 1 of this subpart for each OSWI unit to determine compliance with the

emission limitations. The annual performance test must be conducted using the test methods listed in Table 1 of this subpart and the procedures in 60.2922.

(b) You must continuously monitor carbon monoxide emissions to determine compliance with the carbon monoxide emissions limitation. Twelve-hour rolling average values are used to determine compliance. A 12-hour rolling average value above the carbon monoxide emission limit in Table 1 of this subpart constitutes a deviation from the emission limitation.

(c) You must continuously monitor the operating parameters specified in § 60.2916 or established under § 60.2917. Three-hour rolling average values are used to determine compliance with the operating limits unless a different averaging period is established under § 60.2917. A 3-hour rolling average value (unless a different averaging period is established under § 60.2917) above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Operating limits do not apply during performance tests.

§ 60.2933 By what date must I conduct the annual performance test?

You must conduct annual performance tests within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§ 60.2934 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least three consecutive annual tests, and all performance tests for the pollutant over that period show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the 3rd year and no more than 36 months following the previous performance test.

(b) If your OSWI unit continues to meet the emission limitation for the pollutant, you may choose to conduct performance tests for that pollutant every 3rd year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for any pollutant, you must conduct annual performance tests for that pollutant until three consecutive annual performance tests for that pollutant all show compliance.

§ 60.2935 May I conduct a repeat performance test to establish new operating limits?

Yes, you may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

Monitoring

§ 60.2939 What continuous emission monitoring systems must I install?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for carbon monoxide and for oxygen. You must monitor the oxygen concentration at each location where you monitor carbon monoxide.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the ''Monitoring Requirements'' in § 60.13.

§ 60.2940 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure carbon monoxide and oxygen.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 60 days after your OSWI unit reaches the maximum load level at which it will operate, but no later than 180 days after its initial startup.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your carbon monoxide and oxygen continuous emission monitoring systems. To validate carbon monoxide concentration levels, use EPA Method 10, 10A, or 10B of appendix A of this part. Use EPA Method 3 or 3A to measure oxygen. Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 3 of this subpart shows the required span values and performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. The procedures include daily calibration drift and quarterly accuracy determinations.

§ 60.2941 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 12 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

§ 60.2942 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for carbon monoxide are in parts per million by dry volume at 7 percent oxygen. Use the 1-hour averages of oxygen data from your continuous emission monitoring system to determine the actual oxygen level and to calculate emissions at 7 percent oxygen.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you have deviated from the data collection requirement regardless of the emission level monitored.

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations.

(f) If continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements, refer to Table 3 of this subpart. It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

§ 60.2943 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?

(a) Use Equation 1 in § 60.2975 to calculate emissions at 7 percent oxygen.

(b) Use Equation 2 in § 60.2975 to calculate the 12-hour rolling averages for concentrations of carbon monoxide.

§ 60.2944 What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitations under § 60.2915, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 2 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 2 of this subpart at all times.

(b) You must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of any stack that could be used to bypass the control device. The measurement must include the date, time, and duration of the use of the bypass stack.

(c) If you are using a method or air pollution control device other than a wet scrubber to comply with the emission limitations under § 60.2915, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 60.2917.

§ 60.2945 Is there a minimum amount of operating parameter monitoring data I must obtain?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the OSWI unit is operating.

(b) You must obtain valid monitoring data for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(c) If you do not obtain the minimum data required in paragraphs (a) and (b) of this section, you have deviated from the data collection requirement regardless of the operating parameter level monitored.

(d) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

Recordkeeping and Reporting

§ 60.2949 What records must I keep?

You must maintain the 15 items (as applicable) as specified in paragraphs (a) through (o) of this section for a period of at least 5 years.

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (8) of this section.

(1) The OSWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For OSWI units that establish operating limits for controls other than wet scrubbers under § 60.2917, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) All 1-hour average concentrations of carbon monoxide emissions.

(7) All 12-hour rolling average values of carbon monoxide emissions and all 3-hour rolling average values of continuously monitored operating parameters.

(8) Records of the dates, times, and durations of any bypass of the control device.

(c) Identification of calendar dates and times for which continuous emission monitoring systems or monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the pollutant emissions or operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which monitoring data show a deviation from the carbon monoxide emissions limit in Table 1 of this subpart or a deviation from the operating limits in Table 2 of this subpart or a deviation from other operating limits established under § 60.2917 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) Calendar dates when continuous monitoring systems did not collect the minimum amount of data required under §§ 60.2942 and 60.2945.

(g) For carbon monoxide continuous emissions monitoring systems, document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of this part.

(h) Records of the calibration of any monitoring devices required under § 60.2944.

(i) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations and a description of the types of waste burned during the test.

(j) All documentation produced as a result of the siting requirements of §§ 60.2894 and 60.2895.

(k) Records showing the names of OSWI unit operators who have completed review of the information in § 60.2910(a) as required by § 60.2910(b), including the date of the initial review and all subsequent annual reviews.

(l) Records showing the names of the OSWI unit operators who have completed the operator training requirements under § 60.2905, met the criteria for qualification under § 60.2907, and maintained or renewed their qualification under § 60.2908 or § 60.2909. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(m) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(n) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(o) The information listed in § 60.2910(a).

§ 60.2950 Where and in what format must I keep my records?

(a) You must keep each record on site for at least 2 years. You may keep the records off site for the remaining 3 years.

(b) All records must be available in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 60.2951 What reports must I submit?

See Table 4 of this subpart for a summary of the reporting requirements.

§ 60.2952 What must I submit prior to commencing construction?

You must submit a notification prior to commencing construction that includes the five items listed in paragraphs (a) through (e) of this section.

(a) A statement of intent to construct.

(b) The anticipated date of commencement of construction.

(c) All documentation produced as a result of the siting requirements of § 60.2895.

(d) The waste management plan as specified in §§ 60.2899 through 60.2901.

(e) Anticipated date of initial startup.

§ 60.2953 What information must I submit prior to initial startup?

You must submit the information specified in paragraphs (a) through (e) of this section prior to initial startup.

(a) The type(s) of waste to be burned.

(b) The maximum design waste burning capacity.

(c) The anticipated maximum charge rate.

(d) If applicable, the petition for site-specific operating limits under § 60.2917.

(e) The anticipated date of initial startup.

§ 60.2954 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) and (b) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 60.2927, as applicable.

(b) The values for the site-specific operating limits established in § 60.2916 or § 60.2917.

§ 60.2955 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 60.2954. You must submit subsequent reports no more than 12 months following the previous report.

§ 60.2956 What information must I include in my annual report?

The annual report required under § 60.2955 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 60.2957 through 60.2959.

(a) Company name and address.

(b) Statement by the owner or operator, with their name, title, and signature, certifying the truth, accuracy, and completeness of the report. Such certifications must also comply with the requirements of 40 CFR 70.5(d) or 40 CFR 71.5(d).

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 60.2916 or § 60.2917.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the emission limitations or operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 12-hour average and the lowest recorded 12-hour average, as applicable, for carbon monoxide emissions and the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 60.2949(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 60.2934(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 60.2934(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours, but less than 2 weeks.

§ 60.2957 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if any recorded 12-hour average carbon monoxide emission rate is above the emission limitation, if the control device was bypassed, or if a performance test was conducted that showed a deviation from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 60.2958 What must I include in the deviation report?

In each report required under § 60.2957, for any pollutant or operating parameter that deviated from the emission limitations or operating limits specified in this subpart, include the seven items described in paragraphs (a) through (g) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Durations and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitor downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

(g) The dates, times, and durations of any bypass of the control device.

§ 60.2959 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to EPA every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from EPA to continue operation of the OSWI unit.

(b) If your unit was shut down by EPA, under the provisions of § 60.2911(c)(2), due to a failure to provide an accessible qualified operator, you must notify EPA that you are resuming operation once a qualified operator is accessible.

§ 60.2960 Are there any other notifications or reports that I must submit?

Yes, you must submit notifications as provided by § 60.7.

§ 60.2961 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§ 60.2962 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See § 60.19(c) for procedures to seek approval to change your reporting date.

Title V Operating Permits

§ 60.2966 Am I required to apply for and obtain a title V operating permit for my unit?

Yes, if you are subject to this subpart, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements for an exemption specified in § 60.2887.

§ 60.2967 When must I submit a title V permit application for my new unit?

(a) If your new unit subject to this subpart is not subject to an earlier permit application deadline, a complete title V permit application must be submitted on or before one of the dates specified in paragraphs (a)(1) or (2) of this section. (See section 503(c) of the Clean Air Act and 40 CFR 70.5(a)(1)(i) and 40 CFR 71.5(a)(1)(i).)

(1) For a unit that commenced operation as a new source as of December 16, 2005, then a complete title V permit application must be submitted not later than December 18, 2006.

(2) For a unit that does not commence operation as a new source until after December 16, 2005, then a complete title V permit application must be submitted not later than 12 months after the date the unit commences operation as a new source.

(b) If your new unit subject to this subpart is subject to title V as a result of some triggering requirement(s) other than this subpart (for example, a unit subject to this subpart may be a major source or part of a major source), then your unit may be required to apply for a title V permit prior to the deadlines specified in paragraph (a) of this section. If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement that first causes the source to be subject to title V. (See section 503(c) of the Clean Air Act and 40 CFR 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 40 CFR 71.3(a) and (b), and 40 CFR 71.5(a)(1)(i).)

(c) A ''complete'' title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 40 CFR 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. (See sections 503(d) and 502(a) of the Clean Air Act and 40 CFR 70.7(b) and 40 CFR 71.7(b).)

Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery

§ 60.2969 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

Your incinerator or air curtain incinerator is excluded from the requirements of this subpart if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism. To qualify for this exclusion, the incinerator or air curtain incinerator must be used to combust debris in an area declared a State of Emergency by a local or State government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area, and you must follow the requirements specified in paragraphs (a) through (c) of this section.

(a) If the incinerator or air curtain incinerator is used during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area, then it is excluded from the requirements of this subpart. You do not need to notify the Administrator of its use or meet the emission limitations or other requirements of this subpart.

(b) If the incinerator or air curtain incinerator will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the same emergency or disaster declaration area, you must notify the Administrator that the temporary-use incinerator or air curtain incinerator will be used for more than 8 weeks and request permission to continue to operate the unit as specified in paragraphs (b)(1) and (2) of this section.

(1) The notification must be submitted in writing by the date 8 weeks after you start operation of the temporary-use incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area.

(2) The notification must contain the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the incinerator or air curtain incinerator is being used, a description of the types of materials being burned in the incinerator or air curtain incinerator, a brief description of the size and design of the unit (for example, an air curtain incinerator or a modular starved-air incinerator), the reasons the incinerator or air curtain incinerator must be operated for more than 8 weeks, and the amount of time for which you request permission to operate including the date you expect to cease operation of the unit.

(c) If you submitted the notification containing the information in paragraph (b)(2) by the date specified in paragraph (b)(1), you may continue to operate the incinerator or air curtain incinerator for another 8 weeks, which is a total of 16 weeks from the date the unit started operation within the boundaries of the current emergency or disaster declaration area. You do not have to meet the emission limitations or other requirements of this subpart during this period.

(1) At the end of 16 weeks from the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, you must cease operation of the unit or comply with all requirements of this subpart, unless the Administrator has approved in writing your request to continue operation.

(2) If the Administrator has approved in writing your request to continue operation, then you may continue to operate the incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area until the date specified in the approval, and you do not need to comply with any other requirements of this subpart during the approved time period.

Air Curtain Incinerators That Burn Only Wood Waste, Clean Lumber, and Yard Waste

§ 60.2970 What is an air curtain incinerator?

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this subpart and subpart FFFF of this part only, air curtain incinerators include both firebox and trench burner units.

(b) Air curtain incinerators that burn only the materials listed in paragraphs (b)(1) through (4) of this section are required to meet only the requirements in §§ 60.2970 through 60.2974 and are exempt from all other requirements of this subpart.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§ 60.2971 What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Within 60 days after your air curtain incinerator reaches the charge rate at which it will operate, but no later than 180 days after its initial startup, you must meet the two limitations specified in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) The limitations in paragraph (a) of this section apply at all times except during malfunctions.

§ 60.2972 How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Use Method 9 of appendix A of this part to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8.

(c) After the initial test for opacity, conduct annual tests no more than 12 months following the date of your previous test.

(d) If the air curtain incinerator has been out of operation for more than 12 months following the date of the previous test, then you must conduct a test for opacity upon startup of the unit.

§ 60.2973 What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Prior to commencing construction on your air curtain incinerator, submit the three items described in paragraphs (a)(1) through (3) of this section.

(1) Notification of your intent to construct the air curtain incinerator.

(2) Your planned initial startup date.

(3) Types of materials you plan to burn in your air curtain incinerator.

(b) Keep records of results of all initial and annual opacity tests in either paper copy or computer-readable format that can be printed upon request, unless the Administrator approves another format, for at least 5 years. You must keep each record on site for at least 2 years. You may keep the records off site for the remaining 3 years.

(c) Make all records available for submittal to the Administrator or for an inspector's review.

(d) You must submit the results (each 6-minute average) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

(e) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date.

(f) Keep a copy of the initial and annual reports on site for a period of 5 years. You must keep each report on site for at least 2 years. You may keep the reports off site for the remaining 3 years.

§ 60.2974 Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?

Yes, if your air curtain incinerator is subject to this subpart, you are required to apply for and obtain a title V operating permit as specified in §§ 60.2966 and 60.2967.

Equations

§ 60.2975 What equations must I use?

(a) *Percent oxygen.* Adjust all pollutant concentrations to 7 percent oxygen using equation 1 of this section.

$$C_{adj} = C_{meas} * (20.9 - 7)/(20.9 - \%O_2) \qquad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen

C_{meas} = pollutant concentration measured on a dry basis

(20.9–7) = 20.9 percent oxygen–7 percent oxygen (defined oxygen correction basis)

20.9 = oxygen concentration in air, percent

$\%O_2$ = oxygen concentration measured on a dry basis, percent

(b) *Capacity of a very small municipal waste combustion unit.* For very small municipal waste combustion units that can operate continuously for 24-hour periods, calculate the unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For very small municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(i) If your very small municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your very small municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For very small municipal waste combustion units with a design not based on heat input capacity, use the maximum design charging rate.

(c) *Capacity of a batch very small municipal waste combustion unit.* Calculate the capacity of a batch OSWI unit as the maximum design amount of municipal solid waste it can charge per batch multiplied by the maximum number of batches it can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the unit can combust 24/16, or 1.5 batches, in 24 hours.

(d) *Carbon monoxide pollutant rate.* When hourly average pollutant rates (E_h) are obtained (*e.g.*, CEMS values), compute the rolling average carbon monoxide pollutant rate (E_a) for each 12-hour period using the following equation:

$$E_a = \frac{1}{12}\sum_{j=1}^{12} E_{hj} \qquad \text{(Eq. 2)}$$

Where:

E_a = Average carbon monoxide pollutant rate for the 12-hour period, ppm corrected to 7 percent O_2.

E_{hj} = Hourly arithmetic average pollutant rate for hour ''j,'' ppm corrected to 7 percent O_2.

Definitions

§ 60.2977 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and subpart A (General Provisions) of this part.

Administrator means:

(1) For approved and effective State section 111(d)/129 plans, the Director of the State air pollution control agency, or his or her delegatee;

(2) For Federal section 111(d)/129 plans, the Administrator of the EPA, an employee of the EPA, the Director of the State air pollution control agency, or employee of the State air pollution control agency to whom the authority has been delegated by the Administrator of the EPA to perform the specified task; and

(3) For NSPS, the Administrator of the EPA, an employee of the EPA, the Director of the State air pollution control agency, or employee of the State air pollution control agency to whom the authority has been delegated by the Administrator of the EPA to perform the specified task.

Air curtain incinerator means an incineration unit operating by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this subpart and subpart FFFF of this part only, air curtain incinerators include both firebox and trench burner units.

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Batch OSWI unit means an OSWI unit that is designed such that neither waste charging nor ash removal can occur during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Chemotherapeutic waste means waste material resulting from the production or use of anti-neoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Class II municipal solid waste landfill means a landfill that meets four criteria:

(1) Accepts, for incineration or disposal, less than 20 tons per day of municipal solid waste or other solid wastes based on an annual average;

(2) Is located on a site where there is no evidence of groundwater pollution caused or contributed to by the landfill;

(3) Is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill; and

(4) Serves a community that meets one of two criteria:

(i) Experiences for at least three months each year, an interruption in access to surface transportation, preventing access to a Class I municipal solid waste landfill; or

(ii) Has no practicable waste management alternative, with a landfill located in an area that annually receives 25 inches or less of precipitation.

Class III municipal solid waste landfill is a landfill that is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill, and that accepts, for disposal, either of the following two criteria:

(1) Ash from incinerated municipal waste in quantities less than 1 ton per day on an annual average, which ash must be free of food scraps that might attract animals; or

(2) Less than 5 tons per day of municipal solid waste, based on an annual average, and is not located in a place that meets either of the following criteria:

(i) Where public access is restricted, including restrictions on the right to move to the place and reside there; or

(ii) That is provided by an employer and that is populated totally by persons who are required to reside there as a condition of employment and who do not consider the place to be their permanent residence.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

Collected from means the transfer of material from the site at which the material is generated to a separate site where the material is burned.

Contained gaseous material means gases that are in a container when that container is combusted.

Continuous emission monitoring system or CEMS means a monitoring system for continuously measuring and recording the emissions of a pollutant from an OSWI unit.

Continuous OSWI unit means an OSWI unit that is designed to allow waste charging and ash removal during combustion.

Deviation means any instance in which a unit that meets the requirements in § 60.2885, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any unit that meets the requirements in § 60.2885 and is required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is allowed by this subpart.

Dioxins/furans means tetra- through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

EPA means the Administrator of the EPA or employee of the EPA that is delegated the authority to perform the specified task.

Institutional facility means a land-based facility owned and/or operated by an organization having a governmental, educational, civic, or religious purpose such as a school, hospital, prison, military installation, church, or other similar establishment or facility.

Institutional waste means solid waste (as defined in this subpart) that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit: whose design does not provide for energy recovery (as defined in this subpart); operated without energy recovery (as defined in this subpart); or operated with only waste heat recovery (as defined in this subpart). Institutional

waste also means solid waste (as defined in this subpart) combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility.

Institutional waste incineration unit means any combustion unit that combusts institutional waste (as defined in this subpart) and is a distinct operating unit of the institutional facility that generated the waste. Institutional waste incineration units include field-erected, modular, cyclonic burn barrel, and custom built incineration units operating with starved or excess air, and any air curtain incinerator that is a distinct operating unit of the institutional facility that generated the institutional waste (except those air curtain incinerators listed in § 60.2888(b)).

Intermittent OSWI unit means an OSWI unit that is designed to allow waste charging, but not ash removal, during combustion.

Low-level radioactive waste means waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Metropolitan Statistical Area means any areas listed as metropolitan statistical areas in OMB Bulletin No. 05–02 entitled ''Update of Statistical Area Definitions and Guidance on Their Uses'' dated February 22, 2005 (available on the Web at *http://www.whitehouse.gov/omb/bulletins/).*

Modification or modified unit means an incineration unit you have changed on or after June 16, 2006 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs (current dollars). For an OSWI unit, to determine what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

(2) Any physical change in the unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Municipal solid waste means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (1) the term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (2) an incineration unit shall not be considered to be combusting municipal solid waste for purposes of this subpart if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal solid waste, as determined by § 60.2887(b).

Municipal waste combustion unit means, for the purpose of this subpart and subpart FFFF of this part, any setting or equipment that combusts municipal solid waste (as defined in this subpart) including, but not limited to, field-erected, modular, cyclonic burn barrel, and custom built incineration units (with or without energy recovery) operating with starved or excess air, boilers, furnaces, pyrolysis/combustion units, and air curtain incinerators (except those air curtain incinerators listed in § 60.2888(b)).

Other solid waste incineration (OSWI) unit means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in this subpart. Unit types listed in § 60.2887 as being excluded from the subpart are not OSWI units subject to this subpart. While not all OSWI units will include all of the following components, an OSWI unit includes, but is not limited to, the municipal or institutional solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The OSWI unit does not include air pollution control equipment or the stack. The OSWI unit boundary starts at the municipal or institutional waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The OSWI unit includes all ash handling systems connected to the bottom ash handling system.

Particulate matter means total particulate matter emitted from OSWI units as measured by Method 5 or Method 29 of appendix A of this part.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Reconstruction means rebuilding an incineration unit and meeting two criteria:

(1) The reconstruction begins on or after June 16, 2006.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the unit (not including land) updated to current costs (current dollars). For an OSWI unit, to determine what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber. For continuous OSWI, shutdown shall commence no less than 2 hours after the last charge to the incinerator. For intermittent OSWI, shutdown shall commence no less than 4 hours after the last charge to the incinerator. For batch OSWI, shutdown shall commence no less than 5 hours after the high-air phase of combustion has been completed.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material

as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Standard conditions, when referring to units of measure, means a temperature of 68 °F (20 °C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the OSWI unit. For batch OSWI, startup means the period of time between activation of the system and ignition of the waste.

Very small municipal waste combustion unit means any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in § 60.2975.

Waste heat recovery means the process of recovering heat from the combustion flue gases outside of the combustion firebox by convective heat transfer only.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

(4) Treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes.

(2) Clean lumber.

Tables to Subpart EEEE of Part 60

As stated in § 60.2915, you must comply with the following:

TABLE 1 TO SUBPART EEEE OF PART 60.—EMISSION LIMITATIONS

For the air pollutant	You must meet this emission limitation [a]	Using this averaging time	And determining compliance using this method
1. Cadmium	18 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of this part.
2. Carbon monoxide	40 parts per million by dry volume	3-run average (1 hour minimum sample time per run during performance test), and 12-hour rolling averages measured using CEMS.[b]	Method 10, 10A, or 10B of appendix A of this part and CEMS.
3. Dioxins/furans (total basis)	33 nanograms per dry standard cubic meter.	3-run average (1 hour minimum sample meter time per run).	Method 23 of appendix A of this part.
4. Hydrogen chloride	15 parts per million by dry volume	3-run average (1 hour minimum sample time per run).	Method 26A of appendix A of this part.
5. Lead	226 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of this part.
6. Mercury	74 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of this part.
7. Opacity	10 percent	6-run average (1 hour minimum sample time per run).	Method 9 of appendix A of this part.
8. Oxides of nitrogen	103 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Method 7, 7A, 7C, 7D, or 7E of appendix A of this part, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Methods 7 and 7C only.
9. Particulate matter	0.013 grains per dry standard cubic foot.	3-run average (1 hour minimum sample time per run).	Method 5 or 29 of appendix A of this part.
10. Sulfur dioxide	3.1 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Method 6 or 6C of appendix A of this part, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Method 6 only.

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] Calculated each hour as the average of the previous 12 operating hours.

As stated in § 60.2916, you must comply with the following:

TABLE 2 TO SUBPART EEEE OF PART 60.—OPERATING LIMITS FOR INCINERATORS AND WET SCRUBBERS

For these operating parameters	You must establish these operating limits	And monitoring using these minimum frequencies		
		Data measurement	Data recording	Averaging time
1. Charge rate	Maximum charge rate	Continuous	Every hour	Daily for batch units. 3-hour rolling for continuous and intermittent units [a].
2. Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes	3-hour rolling [a].
3. Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling [a].
4. Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling [a].

[a] Calculated each hour as the average of the previous 3 operating hours.

As stated in § 60.2940, you must comply with the following:

TABLE 3 TO SUBPART EEEE OF PART 60.—REQUIREMENTS FOR CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

For the following pollutants	Use the following span values for your CEMS	Use the following performance specifications (P.S.) in appendix B of this part for your CEMS	If needed to meet minimum data requirements, use the following alternate methods in appendix A of this part to collect data
1. Carbon Monoxide	125 percent of the maximum hourly potential carbon monoxide emissions of the waste combustion unit.	P.S.4A	Method 10.
2. Oxygen	25 percent oxygen	P.S.3	Method 3A or 3B, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Method 3B only.

As stated in § 60.2951, you must comply with the following:

TABLE 4 TO SUBPART EEEE OF PART 60.—SUMMARY OF REPORTING REQUIREMENTS

Report	Due date	Contents	Reference
1. Preconstruction report	a. Prior to commencing construction.	i. Statement of intent to construct;	§ 60.2952.
		ii. Anticipated date of commencement of onstruction;	§ 60.2952.
		iii. Documentation for siting requirements;	§ 60.2952.
		iv. Waste management plan; and	§ 60.2952.
		v. Anticipated date of initial startup.	§ 60.2952.
2. Startup notification	a. Prior to initial startup	i. Types of waste to be burned;	§ 60.2953.
		ii. Maximum design waste burning capacity;	§ 60.2953.
		iii. Anticipated maximum charge rate;	§ 60.2953.
		iv. If applicable, the petition for site-specific operating limits; and	§ 60.2953.
		v. Anticipated date of initial startup.	§ 60.2953.
3. Initial test report	a. No later than 60 days following the initial performance test.	i. Complete test report for the initial performance test; and	§ 60.2954.
		ii. The values for the site-specific operating limits	§ 60.2954.
4. Annual report	a. No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report.	i. Company Name and address;	§§ 60.2955 and 60.2956.
		ii. Statement and signature by the owner or operator;	§§ 60.2955 and 60.2956.
		iii. Date of report;	§§ 60.2955 and 60.2956.
		iv. Values for the operating limits;	§§ 60.2955 and 60.2956.
		v. If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period;	§§ 60.2955 and 60.2956.
		vi. Highest and lowest recorded 12-hour averages, as applicable, for carbon monoxide emissions and highest and lowest recorded 3-hour averages, as applicable, for each operating parameter recorded for the calendar year being reported;	§§ 60.2955 and 60.2956.

TABLE 4 TO SUBPART EEEE OF PART 60.—SUMMARY OF REPORTING REQUIREMENTS—Continued

Report	Due date	Contents	Reference
		vii. Information for deviations or malfunctions recorded under § 60.2949(b)(6) and (c) through (e);	§§ 60.2955 and 60.2956.
		viii. If a performance test was conducted during the reporting period, the results of the test;	§§ 60.2955 and 60.2956.
		ix. If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2934 (a) or (b) were met; and	§§ 60.2955 and 60.2956.
		x. Documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours but less than 2 weeks.	§§ 60.2955 and 60.2956.
5. Emission limitation or operating limit deviation report.	a. By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year.	i. Dates and times of deviation;	§§ 60.2957 and 60.2958.
		ii. Averaged and recorded data for those dates;	§§ 60.2957 and 60.2958.
		iii. Duration and causes of each deviation and the corrective actions taken;	§§ 60.2957 and 60.2958.
		iv. Copy of operating limit monitoring data and any test reports;	§§ 60.2957 and 60.2958.
		v. Dates, times, and causes for monitor downtimes incidents;	§§ 60.2957 and 60.2958.
		vi. Whether each deviation occurred during a period of startup, shutdown, or malfunction; and	§§ 60.2957 and 60.2958.
		vii. Dates, times, and durations of any bypass of the control device.	§§ 60.2957 and 60.2958.
6. Qualified operator deviation notification.	a. Within 10 days of deviation.	i. Statement of cause of deviation;	§ 60.2959(a)(1).
		ii. Description of efforts to have an accessible qualified operator; and	§ 60.2959(a)(1)
		iii. The date a qualified operator will be accessible	§ 60.2959(a)(1).
7. Qualified operation deviation status report.	a. Every 4 weeks following deviation.	i. Description of efforts to have an accessible qualified operator;	§ 60.2959(a)(2).
		ii. The date a qualified operator will be accessible; and	§ 60.2959(a)(2).
		iii. Request to continue operation	§ 60.2959(a)(2).
8. Qualified operator deviation notification of resumed operation.	a. Prior to resuming operation.	i. Notification that you are resuming operation	§ 60.2959(b).

Note: This table is only a summary, see the referenced sections of the rule for the complete requirements.

■ 4. Part 60 is amended by adding subpart FFFF to read as follows:

Subpart FFFF—Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004

Introduction

Sec.
60.2980 What is the purpose of this subpart?
60.2981 Am I affected by this subpart?
60.2982 Is a State plan required for all States?
60.2983 What must I include in my State plan?
60.2984 Is there an approval process for my State plan?
60.2985 What if my State plan is not approvable?
60.2986 Is there an approval process for a negative declaration letter?
60.2987 What compliance schedule must I include in my State plan?
60.2988 Are there any State plan requirements for this subpart that apply instead of the requirements specified in subpart B of this part?
60.2989 Does this subpart directly affect incineration unit owners and operators in my State?
60.2990 What Authorities are withheld by EPA?

Applicability of State Plans

60.2991 What incineration units must I address in my State plan?
60.2992 What is an existing incineration unit?
60.2993 Are any combustion units excluded from my State plan?
60.2994 Are air curtain incinerators regulated under this subpart?

Model Rule—Use of Model Rule

60.2996 What is the purpose of the ''model rule'' in this subpart?
60.2997 How does the model rule relate to the required elements of my State plan?
60.2998 What are the principal components of the model rule?

Model Rule—Compliance Schedule

60.3000 When must I comply?
60.3001 What must I do if I close my OSWI unit and then restart it?
60.3002 What must I do if I plan to permanently close my OSWI unit and not restart it?

Model Rule—Waste Management Plan

60.3010 What is a waste management plan?
60.3011 When must I submit my waste management plan?
60.3012 What should I include in my waste management plan?

Model Rule—Operator Training and Qualification

60.3014 What are the operator training and qualification requirements?
60.3015 When must the operator training course be completed?
60.3016 How do I obtain my operator qualification?
60.3017 How do I maintain my operator qualification?
60.3018 How do I renew my lapsed operator qualification?
60.3019 What site-specific documentation is required?
60.3020 What if all the qualified operators are temporarily not accessible?

Model Rule—Emission Limitations and Operating Limits

60.3022 What emission limitations must I meet and by when?
60.3023 What operating limits must I meet and by when?
60.3024 What if I do not use a wet scrubber to comply with the emission limitations?
60.3025 What happens during periods of startup, shutdown, and malfunction?

Model Rule—Performance Testing

60.3027 How do I conduct the initial and annual performance test?
60.3028 How are the performance test data used?

Model Rule—Initial Compliance Requirements

60.3030 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?
60.3031 By what date must I conduct the initial performance test?

Model Rule—Continuous Compliance Requirements

60.3033 How do I demonstrate continuous compliance with the emission limitations and the operating limits?
60.3034 By what date must I conduct the annual performance test?
60.3035 May I conduct performance testing less often?
60.3036 May I conduct a repeat performance test to establish new operating limits?

Model Rule—Monitoring

60.3038 What continuous emission monitoring systems must I install?
60.3039 How do I make sure my continuous emission monitoring systems are operating correctly?
60.3040 What is my schedule for evaluating continuous emission monitoring systems?
60.3041 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?
60.3042 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?
60.3043 What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?
60.3044 Is there a minimum amount of operating parameter monitoring data I must obtain?

Model Rule—Recordkeeping and Reporting

60.3046 What records must I keep?
60.3047 Where and in what format must I keep my records?
60.3048 What reports must I submit?
60.3049 What information must I submit following my initial performance test?
60.3050 When must I submit my annual report?
60.3051 What information must I include in my annual report?
60.3052 What else must I report if I have a deviation from the operating limits or the emission limitations?
60.3053 What must I include in the deviation report?
60.3054 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?
60.3055 Are there any other notifications or reports that I must submit?
60.3056 In what form can I submit my reports?
60.3057 Can reporting dates be changed?

Model Rule—Title V Operating Permits

60.3059 Am I required to apply for and obtain a title V operating permit for my unit?
60.3060 When must I submit a title V permit application for my existing unit?

Model Rule—Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery

60.3061 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

Model Rule—Air Curtain Incinerators That Burn Only Wood Waste, Clean Lumber, and Yard Waste

60.3062 What is an air curtain incinerator?
60.3063 When must I comply if my air curtain incinerator burns only wood waste, clean lumber, and yard waste?
60.3064 What must I do if I close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and then restart it?
60.3065 What must I do if I plan to permanently close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and not restart it?
60.3066 What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?
60.3067 How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?
60.3068 What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?
60.3069 Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?

Model Rule—Equations

60.3076 What equations must I use?

Model Rule—Definitions

60.3078 What definitions must I know?

Tables to Subpart FFFF of Part 60

Table 1 to Subpart FFFF of Part 60—Model Rule—Compliance Schedule
Table 2 to Subpart FFFF of Part 60—Model Rule—Emission Limitations
Table 3 to Subpart FFFF of Part 60—Model Rule—Operating Limits for Incinerators and Wet Scrubbers
Table 4 to Subpart FFFF of Part 60—Model Rule—Requirements for Continuous Emission Monitoring Systems (CEMS)
Table 5 to Subpart FFFF of Part 60—Model Rule—Summary of Reporting Requirements [a]

Subpart FFFF—Emission Guidelines and Compliance Times for Other Solid Waste Incineration Units That Commenced Construction On or Before December 9, 2004

Introduction

§ 60.2980 What is the purpose of this subpart?

This subpart establishes emission guidelines and compliance schedules for the control of emissions from other solid waste incineration (OSWI) units. The pollutants addressed by these emission guidelines are listed in Table 2 of this subpart. These emission guidelines are developed in accordance with sections 111(d) and 129 of the Clean Air Act and subpart B of this part.

§ 60.2981 Am I affected by this subpart?

(a) If you are the Administrator of an air quality program in a State or United States protectorate with one or more existing OSWI units or air curtain incinerators subject to this subpart as described in § 60.2994(b) that commenced construction on or before December 9, 2004, you must submit a State plan to the U.S. Environmental Protection Agency (EPA) that implements the emission guidelines contained in this subpart.

(b) You must submit the State plan to EPA by December 18, 2006.

§ 60.2982 Is a State plan required for all States?

No, you are not required to submit a State plan if there are no existing OSWI units or air curtain incinerators subject to this subpart as described in § 60.2994(b) in your State and you submit a negative declaration letter in place of the State plan.

§ 60.2983 What must I include in my State plan?

(a) You must include the following nine items in your State plan:

(1) Inventory of affected incineration units, including those that have ceased operation but have not been dismantled.

(2) Inventory of emissions from affected incineration units in your State.

(3) Compliance schedules for each affected incineration unit.

(4) For each affected incineration unit, emission limitations, operator training and qualification requirements, a waste management plan, and operating parameter requirements that are at least as protective as the emission guidelines contained in this subpart.

(5) Stack testing, recordkeeping, and reporting requirements.

(6) Transcript of the public hearing on the State plan.

(7) Provision for State progress reports to EPA.

(8) Identification of enforceable State mechanisms that you selected for implementing the emission guidelines of this subpart.

(9) Demonstration of your State's legal authority to carry out the sections 111(d) and 129 in your State plan.

(b) Your State plan may deviate from the format and content of the emission guidelines contained in this subpart.

However, if your State plan does deviate, you must demonstrate that your State plan is at least as protective as the emission guidelines contained in this subpart. Your State plan must address regulatory applicability, compliance schedule, operator training and qualification, a waste management plan, emission limitations, stack testing, operating parameter requirements, monitoring, recordkeeping and reporting, and air curtain incinerator requirements.

(c) You must follow the requirements of subpart B of this part (Adoption and Submittal of State Plans for Designated Facilities) in your State plan.

§ 60.2984 Is there an approval process for my State plan?

Yes, EPA will review your State plan according to § 60.27.

§ 60.2985 What if my State plan is not approvable?

If you do not submit an approvable State plan (or a negative declaration letter) by December 17, 2007, EPA will develop a Federal plan according to § 60.27 to implement the emission guidelines contained in this subpart. Owners and operators of incineration units not covered by an approved State plan must comply with the Federal plan. The Federal plan is an interim action and applies to units until a State plan covering those units is approved and becomes effective.

§ 60.2986 Is there an approval process for a negative declaration letter?

No, EPA has no formal review process for negative declaration letters. Once we receive your negative declaration letter, we will place a copy in the public docket and publish a notice in the **Federal Register**. If, at a later date, an existing incineration unit is found in your State, the Federal plan implementing the emission guidelines contained in this subpart would automatically apply to that unit until your State plan is approved.

§ 60.2987 What compliance schedule must I include in my State plan?

Your State plan must include compliance schedules that require OSWI units and air curtain incinerators subject to this subpart as described in § 60.2994(b) to achieve final compliance as expeditiously as practicable after approval of the State plan but not later than the earlier of the following two dates:

(a) December 16, 2010.

(b) Three years after the effective date of State plan approval.

§ 60.2988 Are there any State plan requirements for this subpart that apply instead of the requirements specified in subpart B of this part?

Yes, subpart B of this part establishes general requirements for developing and processing section 111(d) plans. This subpart applies instead of the requirements in subpart B of this part for the following:

(a) State plans developed to implement this subpart must be as protective as the emission guidelines contained in this subpart. State plans must require all OSWI units and air curtain incinerators subject to this subpart as described in § 60.2994(b) to comply by December 16, 2010 or 3 years after the effective date of State plan approval, whichever is sooner. This applies instead of the option for case-by-case less stringent emission standards and longer compliance schedules in § 60.24(f).

(b) State plans developed to implement this subpart are required to include only one increment of progress for the affected incineration units. This increment is the final compliance date in § 60.21(h)(5). This applies instead of the requirement of § 60.24(e)(1).

§ 60.2989 Does this subpart directly affect incineration unit owners and operators in my State?

(a) No, this subpart does not directly affect incineration unit owners and operators in your State. However, unit owners and operators must comply with the State plan you develop to implement the emission guidelines contained in this subpart.

(b) If you do not submit an approvable plan to implement and enforce the guidelines contained in this subpart by December 17, 2007, EPA will implement and enforce a Federal plan, as provided in § 60.2985, to ensure that each unit within your State reaches compliance with all the provisions of this subpart by December 16, 2010.

§ 60.2990 What Authorities are withheld by EPA?

The following authorities are withheld by EPA and not transferred to the State, local or tribal agency:

(1) Approval of alternatives to the emission limitations in Table 2 of this subpart and operating limits established under § 60.3023 and Table 3 of this subpart.

(2) Approval of petitions for specific operating limits in § 60.3024.

(3) Approval of major alternatives to test methods.

(4) Approval of major alternatives to monitoring.

(5) Approval of major alternatives to recordkeeping and reporting.

(6) The status report requirements in § 60.3020(c)(2).

Applicability of State Plans

§ 60.2991 What incineration units must I address in my State plan?

Your State plan must address all incineration units in your State that meet all the requirements specified in paragraphs (a) through (c) of this section.

(a) The incineration unit is an existing incineration unit as defined in § 60.2992.

(b) The incineration unit is an OSWI unit as defined in § 60.3078 or an air curtain incinerator subject to this subpart as described in § 60.2994(b). OSWI units are very small municipal waste combustion units and institutional waste incineration units as defined in § 60.3078.

(c) The incineration unit is not excluded under § 60.2993.

§ 60.2992 What is an existing incineration unit?

An existing incineration unit is an OSWI unit or air curtain incinerator subject to this subpart that commenced construction on or before December 9, 2004, except as provided in paragraph (a) of this section.

(a) If the owner or operator of an incineration unit makes changes that meet the definition of modification or reconstruction on or after June 16, 2006, the unit becomes subject to subpart EEEE of this part (New Source Performance Standards for Other Solid Waste Incineration Units) and the State plan no longer applies to that unit.

(b) If the owner or operator of an existing incineration unit makes physical or operational changes to the unit primarily to comply with the State plan, then subpart EEEE of this part does not apply to that unit. Such changes do not qualify as modifications or reconstructions under subpart EEEE of this part.

§ 60.2993 Are any combustion units excluded from my State plan?

This subpart excludes the types of units described in paragraphs (a) through (q) of this section, as long as the owner/operator meets the requirements of this section.

(a) *Cement kilns.* The unit is excluded if it is regulated under subpart LLL of part 63 of this chapter (National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry).

(b) *Co-fired combustors.* The unit, that would otherwise be considered a very small municipal waste combustion unit, is excluded if the owner/operator of the

unit meets the five requirements specified in paragraphs (b)(1) through (5) of this section.

(1) Has a Federally enforceable permit limiting the combustion of municipal solid waste to 30 percent of the total fuel input by weight.

(2) Notifies the Administrator that the unit qualifies for the exclusion.

(3) Provides the Administrator with a copy of the Federally enforceable permit.

(4) Records the weights, each calendar quarter, of municipal solid waste and of all other fuels combusted.

(5) Keeps each report for 5 years. These records must be kept on site for at least 2 years, but may be kept off site for the remaining 3 years.

(c) *Cogeneration facilities*. The unit is excluded if it meets the three requirements specified in paragraphs (c)(1) through (3) of this section.

(1) The unit qualifies as a cogeneration facility under section 3(18)(B) of the Federal Power Act (16 U.S.C. 796(18)(B)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity and steam or other forms of energy used for industrial, commercial, heating, or cooling purposes.

(3) The owner/operator of the unit notifies the Administrator that the unit meets all of these criteria.

(d) *Commercial and industrial solid waste incineration units*. The unit is excluded if it is regulated under subparts CCCC or DDDD of this part or subpart III of part 62 and is required to meet the emission limitations established in those subparts.

(e) *Hazardous waste combustion units*. The unit is excluded if it meets either of the two criteria specified in paragraph (e)(1) or (2) of this section.

(1) The owner/operator of the unit is required to get a permit for the unit under section 3005 of the Solid Waste Disposal Act.

(2) The unit is regulated under 40 CFR part 63, subpart EEE (National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors).

(f) *Hospital/medical/infectious waste incinerators*. The unit is excluded if it is regulated under subparts Ce or Ec of this part (New Source Performance Standards and Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators) or subpart HHH of part 62 (Federal Plan for Hospital/Medical/Infectious Waste Incinerators constructed on or before June 20, 1996).

(g) *Incinerators and air curtain incinerators in isolated areas of Alaska*. The incineration unit is excluded if it is used at a solid waste disposal site in Alaska that is classified as a Class II or Class III municipal solid waste landfill, as defined in § 60.3078.

(h) *Rural institutional waste incinerators*. The incineration unit is excluded if it is an institutional waste incinerator, as defined in § 60.3078, and the application for exclusion described in paragraphs (h)(1) and (2) of this section has been approved by the Administrator.

(1) Prior to 1 year before the final compliance date, an application and supporting documentation demonstrating that the institutional waste incineration unit meets the two requirements specified in paragraphs (h)(1)(i) and (ii) of this section must be submitted to the Administrator for approval.

(i) The unit is located more than 50 miles from the boundary of the nearest Metropolitan Statistical Area,

(ii) Alternative disposal options are not available or are economically infeasible.

(2) The application described in paragraph (h)(1) of this section must be revised and resubmitted to the Administrator for approval every 5 years following the initial approval of the exclusion for your unit.

(3) If you re-applied for an exclusion pursuant to paragraph (h)(2) of this section and were denied exclusion by the Administrator, you have 3 years from the expiration date of the current exclusion to comply with the emission limits and all other applicable requirements of this subpart.

(i) *Institutional boilers and process heaters*. The unit is excluded if it is regulated under 40 CFR part 63, subpart DDDDD (National Emission Standards for Hazardous Air Pollutants for Industrial, Commercial, and Institutional Boilers and Process Heaters).

(j) *Laboratory Analysis Units*. The unit is excluded if it burns samples of materials only for the purpose of chemical or physical analysis.

(k) *Materials recovery units*. The unit is excluded if it combusts waste for the primary purpose of recovering metals. Examples include primary and secondary smelters.

(l) *Pathological waste incineration units*. The institutional waste incineration unit or very small municipal waste combustion unit is excluded from this subpart if it burns 90 percent or more by weight (on a calendar quarter basis and excluding the weight of auxiliary fuel and combustion air) of pathological waste, low-level radioactive waste, and/or chemotherapeutic waste as defined in § 60.3078 and the owner/operator of the unit notifies the Administrator that the unit meets these criteria.

(m) *Small or large municipal waste combustion units*. The unit is excluded if it is regulated under subparts AAAA, BBBB, Ea, Eb, or Cb, of this part or subparts FFF or JJJ of part 62 and is required to meet the emission limitations established in those subparts.

(n) *Small power production facilities*. The unit is excluded if it meets the three requirements specified in paragraphs (n)(1) through (3) of this section.

(1) The unit qualifies as a small power-production facility under section 3(17)(C) of the Federal Power Act (16 U.S.C. 796(17)(C)).

(2) The unit burns homogeneous waste (not including refuse-derived fuel) to produce electricity.

(3) The owner/operator of the unit notifies the Administrator that the unit meets all of these criteria.

(o) *Temporary-use incinerators and air curtain incinerators used in disaster recovery*. The incineration unit is excluded if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism and you comply with the requirements in § 60.3061.

(p) *Units that combust contraband or prohibited goods*. The incineration unit is excluded if the unit is owned or operated by a government agency such as police, customs, agricultural inspection, or a similar agency to destroy only illegal or prohibited goods such as illegal drugs, or agricultural food products that can not be transported into the country or across state lines to prevent biocontamination. The exclusion does not apply to items either confiscated or incinerated by private, industrial, or commercial entities.

(q) *Incinerators used for national security*. Your incineration unit is excluded if it meets the requirements specified in either (q)(1) or (2) of this section.

(1) The incineration unit is used solely during military training field exercises to destroy national security materials integral to the field exercises.

(2) The incineration unit is used solely to incinerate national security materials, its use is necessary to safeguard national security, you follow the exclusion request requirements in paragraphs (q)(2)(i) and (ii) of this section, and the Administrator has approved your request for exclusion.

(i) The request for exclusion and supporting documentation must demonstrate both that the incineration unit is used solely to destroy national

security materials and that a reliable alternative to incineration that ensures acceptable destruction of national security materials is unavailable, on either a permanent or temporary basis.

(ii) The request for exclusion must be submitted to the Administrator prior to 1 year before the final compliance date.

§ 60.2994 Are air curtain incinerators regulated under this subpart?

(a) Air curtain incinerators that burn less than 35 tons per day of municipal solid waste or air curtain incinerators located at institutional facilities burning any amount of institutional waste generated at that facility are subject to all requirements of this subpart, including the emission limitations specified in Table 2 of this subpart.

(b) Air curtain incinerators that burn only less than 35 tons per day of the materials listed in paragraphs (b)(1) through (4) of this section collected from the general public and from residential, commercial, institutional, and industrial sources; or, air curtain incinerators located at institutional facilities that burn only the materials listed in paragraphs (b)(1) through (4) of this section generated at that facility, are required to meet only the requirements in §§ 60.3062 through 60.3069 and are exempt from all other requirements of this subpart.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

Model Rule—Use of Model Rule

§ 60.2996 What is the purpose of the ''model rule'' in this subpart?

(a) The model rule provides the emission guidelines requirements in a standard regulation format. You must develop a State plan that is at least as protective as the model rule. You may use the model rule language as part of your State plan. Alternative language may be used in your State plan if you demonstrate that the alternative language is at least as protective as the model rule contained in this subpart.

(b) In the ''model rule'' of §§ 60.3000 through 60.3078, ''you'' means the owner or operator of an OSWI unit or air curtain incinerator subject to this subpart.

§ 60.2997 How does the model rule relate to the required elements of my State plan?

Use the model rule to satisfy the State plan requirements specified in § 60.2983(a)(4) and (5).

§ 60.2998 What are the principal components of the model rule?

The model rule contains nine major components, as follows:

(a) Compliance schedule.

(b) Waste management plan.

(c) Operator training and qualification.

(d) Emission limitations and operating limits.

(e) Performance testing.

(f) Initial compliance requirements.

(g) Continuous compliance requirements.

(h) Monitoring.

(i) Recordkeeping and reporting.

Model Rule—Compliance Schedule

§ 60.3000 When must I comply?

Table 1 of this subpart specifies the final compliance date. You must submit a notification to the Administrator stating whether final compliance has been achieved, postmarked within 10 business days after the final compliance date in Table 1 of this subpart.

§ 60.3001 What must I do if I close my OSWI unit and then restart it?

(a) If you close your OSWI unit but will reopen it prior to the final compliance date in your State plan, you must meet the final compliance date specified in Table 1 of this subpart.

(b) If you close your OSWI unit but will restart it after your final compliance date, you must complete emission control retrofit and meet the emission limitations on the date your OSWI unit restarts operation. You must conduct your initial performance test within 30 days of restarting your OSWI unit.

§ 60.3002 What must I do if I plan to permanently close my OSWI unit and not restart it?

You must close the unit before the final compliance date specified in Table 1 of this subpart.

Model Rule—Waste Management Plan

§ 60.3010 What is a waste management plan?

A waste management plan is a written plan that identifies both the feasibility and the methods used to reduce or separate certain components of solid waste from the waste stream in order to reduce or eliminate toxic emissions from incinerated waste.

§ 60.3011 When must I submit my waste management plan?

You must submit a waste management plan no later than 60 days following the initial performance test as specified in Table 5 of this subpart. Section 60.3031 specifies the date by which you are required to conduct your performance test.

§ 60.3012 What should I include in my waste management plan?

A waste management plan must include consideration of the reduction or separation of waste-stream elements such as paper, cardboard, plastics, glass, batteries, or metals; or the use of recyclable materials. The plan must identify any additional waste management measures and implement those measures the source considers practical and feasible, considering the effectiveness of waste management measures already in place, the costs of additional measures, the emissions reductions expected to be achieved, and any other environmental or energy impacts they might have.

Model Rule—Operator Training and Qualification

§ 60.3014 What are the operator training and qualification requirements?

(a) No OSWI unit can be operated unless a fully trained and qualified OSWI unit operator is accessible, either at the facility or can be at the facility within 1 hour. The trained and qualified OSWI unit operator may operate the OSWI unit directly or be the direct supervisor of one or more other plant personnel who operate the unit. If all qualified OSWI unit operators are temporarily not accessible, you must follow the procedures in § 60.3020.

(b) Operator training and qualification must be obtained through a State-approved program or by completing the requirements included in paragraph (c) of this section.

(c) Training must be obtained by completing an incinerator operator training course that includes, at a minimum, the three elements described in paragraphs (c)(1) through (3) of this section.

(1) Training on the 13 subjects listed in paragraphs (c)(1)(i) through (xiii) of this section.

(i) Environmental concerns, including types of emissions.

(ii) Basic combustion principles, including products of combustion.

(iii) Operation of the specific type of incinerator to be used by the operator, including proper startup, waste charging, and shutdown procedures.

(iv) Combustion controls and monitoring.

(v) Operation of air pollution control equipment and factors affecting performance (if applicable).

(vi) Inspection and maintenance of the incinerator and air pollution control devices.

(vii) Methods to monitor pollutants (including monitoring of incinerator and control device operating parameters)

and monitoring equipment calibration procedures, where applicable.

(viii) Actions to correct malfunctions or conditions that may lead to malfunction.

(ix) Bottom and fly ash characteristics and handling procedures.

(x) Applicable Federal, State, and local regulations, including Occupational Safety and Health Administration workplace standards.

(xi) Pollution prevention.

(xii) Waste management practices.

(xiii) Recordkeeping requirements.

(2) An examination designed and administered by the instructor.

(3) Written material covering the training course topics that may serve as reference material following completion of the course.

§ 60.3015 When must the operator training course be completed?

The operator training course must be completed by the latest of the three dates specified in paragraphs (a) through (c) of this section.

(a) The final compliance date specified in Table 1 of this subpart.

(b) Six months after your OSWI unit startup.

(c) Six months after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.

§ 60.3016 How do I obtain my operator qualification?

(a) You must obtain operator qualification by completing a training course that satisfies the criteria under § 60.3014(c).

(b) Qualification is valid from the date on which the training course is completed and the operator successfully passes the examination required under § 60.3014(c)(2).

§ 60.3017 How do I maintain my operator qualification?

To maintain qualification, you must complete an annual review or refresher course covering, at a minimum, the five topics described in paragraphs (a) through (e) of this section.

(a) Update of regulations.

(b) Incinerator operation, including startup and shutdown procedures, waste charging, and ash handling.

(c) Inspection and maintenance.

(d) Responses to malfunctions or conditions that may lead to malfunction.

(e) Discussion of operating problems encountered by attendees.

§ 60.3018 How do I renew my lapsed operator qualification?

You must renew a lapsed operator qualification by one of the two methods specified in paragraphs (a) and (b) of this section.

(a) For a lapse of less than 3 years, you must complete a standard annual refresher course described in § 60.3017.

(b) For a lapse of 3 years or more, you must repeat the initial qualification requirements in § 60.3016(a).

§ 60.3019 What site-specific documentation is required?

(a) Documentation must be available at the facility and readily accessible for all OSWI unit operators that addresses the nine topics described in paragraphs (a)(1) through (9) of this section. You must maintain this information and the training records required by paragraph (c) of this section in a manner that they can be readily accessed and are suitable for inspection upon request.

(1) Summary of the applicable standards under this subpart.

(2) Procedures for receiving, handling, and charging waste.

(3) Incinerator startup, shutdown, and malfunction procedures.

(4) Procedures for maintaining proper combustion air supply levels.

(5) Procedures for operating the incinerator and associated air pollution control systems within the standards established under this subpart.

(6) Monitoring procedures for demonstrating compliance with the operating limits established under this subpart.

(7) Reporting and recordkeeping procedures.

(8) The waste management plan required under §§ 60.3010 through 60.3012.

(9) Procedures for handling ash.

(b) You must establish a program for reviewing the information listed in paragraph (a) of this section with each incinerator operator.

(1) The initial review of the information listed in paragraph (a) of this section must be conducted by the latest of three dates specified in paragraphs (b)(1)(i) through (iii) of this section.

(i) The final compliance date specified in Table 1 of this subpart.

(ii) Six months after your OSWI unit startup.

(iii) Six months after an employee assumes responsibility for operating the OSWI unit or assumes responsibility for supervising the operation of the OSWI unit.

(2) Subsequent annual reviews of the information listed in paragraph (a) of this section must be conducted not later than 12 months following the previous review.

(c) You must also maintain the information specified in paragraphs (c)(1) through (3) of this section.

(1) Records showing the names of OSWI unit operators who have completed review of the information in paragraph (a) of this section as required by paragraph (b) of this section, including the date of the initial review and all subsequent annual reviews.

(2) Records showing the names of the OSWI unit operators who have completed the operator training requirements under § 60.3014, met the criteria for qualification under § 60.3016, and maintained or renewed their qualification under § 60.3017 or § 60.3018. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(3) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

§ 60.3020 What if all the qualified operators are temporarily not accessible?

If all qualified operators are temporarily not accessible (*i.e.*, not at the facility and not able to be at the facility within 1 hour), you must meet one of the three criteria specified in paragraphs (a) through (c) of this section, depending on the length of time that a qualified operator is not accessible.

(a) When all qualified operators are not accessible for 12 hours or less, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed review of the information specified in § 60.3019(a) within the past 12 months. You do not need to notify the Administrator or include this as a deviation in your annual report.

(b) When all qualified operators are not accessible for more than 12 hours, but less than 2 weeks, the OSWI unit may be operated by other plant personnel familiar with the operation of the OSWI unit who have completed a review of the information specified in § 60.3019(a) within the past 12 months. However, you must record the period when all qualified operators were not accessible and include this deviation in the annual report as specified under § 60.3051.

(c) When all qualified operators are not accessible for 2 weeks or more, you must take the two actions that are described in paragraphs (c)(1) and (2) of this section.

(1) Notify the Administrator of this deviation in writing within 10 days. In the notice, state what caused this deviation, what you are doing to ensure that a qualified operator is accessible,

and when you anticipate that a qualified operator will be accessible.

(2) Submit a status report to EPA every 4 weeks outlining what you are doing to ensure that a qualified operator is accessible, stating when you anticipate that a qualified operator will be accessible and requesting approval from EPA to continue operation of the OSWI unit. You must submit the first status report 4 weeks after you notify the Administrator of the deviation under paragraph (c)(1) of this section. If EPA notifies you that your request to continue operation of the OSWI unit is disapproved, the OSWI unit may continue operation for 90 days, then must cease operation. Operation of the unit may resume if you meet the two requirements in paragraphs (c)(2)(i) and (ii) of this section.

(i) A qualified operator is accessible as required under § 60.3014(a).

(ii) You notify EPA that a qualified operator is accessible and that you are resuming operation.

Model Rule—Emission Limitations and Operating Limits

§ 60.3022 What emission limitations must I meet and by when?

You must meet the emission limitations specified in Table 2 of this subpart on the date the initial performance test is required or completed (whichever is earlier). Section 60.3031 specifies the date by which you are required to conduct your performance test.

§ 60.3023 What operating limits must I meet and by when?

(a) If you use a wet scrubber to comply with the emission limitations, you must establish operating limits for four operating parameters (as specified in Table 3 of this subpart) as described in paragraphs (a)(1) through (4) of this section during the initial performance test.

(1) Maximum charge rate, calculated using one of the two different procedures in paragraphs (a)(1)(i) or (ii) of this section, as appropriate.

(i) For continuous and intermittent units, maximum charge rate is the average charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(ii) For batch units, maximum charge rate is the charge rate measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(2) Minimum pressure drop across the wet scrubber, which is calculated as the average pressure drop across the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations; or minimum amperage to the wet scrubber, which is calculated as the average amperage to the wet scrubber measured during the most recent performance test demonstrating compliance with the particulate matter emission limitations.

(3) Minimum scrubber liquor flow rate, which is calculated as the average liquor flow rate at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with all applicable emission limitations.

(4) Minimum scrubber liquor pH, which is calculated as the average liquor pH at the inlet to the wet scrubber measured during the most recent performance test demonstrating compliance with the hydrogen chloride and sulfur dioxide emission limitations.

(b) You must meet the operating limits established during the initial performance test beginning on the date 180 days after your final compliance date in Table 1 of this subpart.

§ 60.3024 What if I do not use a wet scrubber to comply with the emission limitations?

If you use an air pollution control device other than a wet scrubber or limit emissions in some other manner to comply with the emission limitations under § 60.3022, you must petition EPA for specific operating limits, the values of which are to be established during the initial performance test and then continuously monitored thereafter. You must not conduct the initial performance test until after the petition has been approved by EPA. Your petition must include the five items listed in paragraphs (a) through (e) of this section.

(a) Identification of the specific parameters you propose to use as operating limits.

(b) A discussion of the relationship between these parameters and emissions of regulated pollutants, identifying how emissions of regulated pollutants change with changes in these parameters, and how limits on these parameters will serve to limit emissions of regulated pollutants.

(c) A discussion of how you will establish the upper and/or lower values for these parameters that will establish the operating limits on these parameters.

(d) A discussion identifying the methods you will use to measure and the instruments you will use to monitor these parameters, as well as the relative accuracy and precision of these methods and instruments.

(e) A discussion identifying the frequency and methods for recalibrating the instruments you will use for monitoring these parameters.

§ 60.3025 What happens during periods of startup, shutdown, and malfunction?

The emission limitations and operating limits apply at all times except during OSWI unit startups, shutdowns, or malfunctions.

Model Rule—Performance Testing

§ 60.3027 How do I conduct the initial and annual performance test?

(a) All performance tests must consist of a minimum of three test runs conducted under conditions representative of normal operations.

(b) All performance tests must be conducted using the methods in Table 2 of this subpart.

(c) All performance tests must be conducted using the minimum run duration specified in Table 2 of this subpart.

(d) Method 1 of appendix A of this part must be used to select the sampling location and number of traverse points.

(e) Method 3A or 3B of appendix A of this part must be used for gas composition analysis, including measurement of oxygen concentration. Method 3A or 3B of appendix A of this part must be used simultaneously with each method.

(f) All pollutant concentrations, except for opacity, must be adjusted to 7 percent oxygen using Equation 1 in § 60.3076.

(g) Method 26A of appendix A of this part must be used for hydrogen chloride concentration analysis, with the additional requirements specified in paragraphs (g)(1) through (3) of this section.

(1) The probe and filter must be conditioned prior to sampling using the procedure described in paragraphs (g)(1)(i) through (iii) of this section.

(i) Assemble the sampling train(s) and conduct a conditioning run by collecting between 14 liters per minute (0.5 cubic feet per minute) and 30 liters per minute (1.0 cubic feet per minute) of gas over a 1-hour period. Follow the sampling procedures outlined in section 8.1.5 of Method 26A of appendix A of this part. For the conditioning run, water can be used as the impinger solution.

(ii) Remove the impingers from the sampling train and replace with a fresh impinger train for the sampling run, leaving the probe and filter (and cyclone, if used) in position. Do not recover the filter or rinse the probe before the first run. Thoroughly rinse the impingers used in the

preconditioning run with deionized water and discard these rinses.

(iii) The probe and filter assembly are conditioned by the stack gas and are not recovered or cleaned until the end of testing.

(2) For the duration of sampling, a temperature around the probe and filter (and cyclone, if used) between 120 °C (248 °F) and 134 °C (273 °F) must be maintained.

(3) If water droplets are present in the sample gas stream, the requirements specified in paragraphs (g)(3)(i) and (ii) of this section must be met.

(i) The cyclone described in section 6.1.4 of Method 26A of appendix A of this part must be used.

(ii) The post-test moisture removal procedure described in section 8.1.6 of Method 26A of appendix A of this part must be used.

§ 60.3028 How are the performance test data used?

You use results of performance tests to demonstrate compliance with the emission limitations in Table 2 of this subpart.

Model Rule—Initial Compliance Requirements

§ 60.3030 How do I demonstrate initial compliance with the emission limitations and establish the operating limits?

You must conduct an initial performance test, as required under § 60.8, to determine compliance with the emission limitations in Table 2 of this subpart and to establish operating limits using the procedure in § 60.3023 or § 60.3024. The initial performance test must be conducted using the test methods listed in Table 2 of this subpart and the procedures in § 60.3027.

§ 60.3031 By what date must I conduct the initial performance test?

The initial performance test must be conducted no later than 180 days after your final compliance date. Your final compliance date is specified in Table 1 of this subpart.

Model Rule—Continuous Compliance Requirements

§ 60.3033 How do I demonstrate continuous compliance with the emission limitations and the operating limits?

(a) You must conduct an annual performance test for all of the pollutants in Table 2 of this subpart for each OSWI unit to determine compliance with the emission limitations. The annual performance test must be conducted using the test methods listed in Table 2 of this subpart and the procedures in § 60.3027.

(b) You must continuously monitor carbon monoxide emissions to determine compliance with the carbon monoxide emissions limitation. Twelve-hour rolling average values are used to determine compliance. A 12-hour rolling average value above the carbon monoxide emission limit in Table 2 constitutes a deviation from the emission limitation.

(c) You must continuously monitor the operating parameters specified in § 60.3023 or established under § 60.3024. Three-hour rolling average values are used to determine compliance with the operating limits unless a different averaging period is established under § 60.3024. A 3-hour rolling average value (unless a different averaging period is established under § 60.3024) above the established maximum or below the established minimum operating limits constitutes a deviation from the established operating limits. Operating limits do not apply during performance tests.

§ 60.3034 By what date must I conduct the annual performance test?

You must conduct annual performance tests within 12 months following the initial performance test. Conduct subsequent annual performance tests within 12 months following the previous one.

§ 60.3035 May I conduct performance testing less often?

(a) You can test less often for a given pollutant if you have test data for at least three consecutive annual tests, and all performance tests for the pollutant over that period show that you comply with the emission limitation. In this case, you do not have to conduct a performance test for that pollutant for the next 2 years. You must conduct a performance test during the 3rd year and no more than 36 months following the previous performance test.

(b) If your OSWI unit continues to meet the emission limitation for the pollutant, you may choose to conduct performance tests for that pollutant every 3rd year, but each test must be within 36 months of the previous performance test.

(c) If a performance test shows a deviation from an emission limitation for any pollutant, you must conduct annual performance tests for that pollutant until three consecutive annual performance tests for that pollutant all show compliance.

§ 60.3036 May I conduct a repeat performance test to establish new operating limits?

Yes, you may conduct a repeat performance test at any time to establish new values for the operating limits. The Administrator may request a repeat performance test at any time.

Model Rule—Monitoring

§ 60.3038 What continuous emission monitoring systems must I install?

(a) You must install, calibrate, maintain, and operate continuous emission monitoring systems for carbon monoxide and for oxygen. You must monitor the oxygen concentration at each location where you monitor carbon monoxide.

(b) You must install, evaluate, and operate each continuous emission monitoring system according to the ''Monitoring Requirements'' in § 60.13.

§ 60.3039 How do I make sure my continuous emission monitoring systems are operating correctly?

(a) Conduct initial, daily, quarterly, and annual evaluations of your continuous emission monitoring systems that measure carbon monoxide and oxygen.

(b) Complete your initial evaluation of the continuous emission monitoring systems within 180 days after your final compliance date in Table 1 of this subpart.

(c) For initial and annual evaluations, collect data concurrently (or within 30 to 60 minutes) using your carbon monoxide and oxygen continuous emission monitoring systems. To validate carbon monoxide concentration levels, use EPA Method 10, 10A, or 10B of appendix A of this part. Use EPA Method 3 or 3A to measure oxygen. Collect the data during each initial and annual evaluation of your continuous emission monitoring systems following the applicable performance specifications in appendix B of this part. Table 4 of this subpart shows the required span values and performance specifications that apply to each continuous emission monitoring system.

(d) Follow the quality assurance procedures in Procedure 1 of appendix F of this part for each continuous emission monitoring system. The procedures include daily calibration drift and quarterly accuracy determinations.

§ 60.3040 What is my schedule for evaluating continuous emission monitoring systems?

(a) Conduct annual evaluations of your continuous emission monitoring systems no more than 12 months after the previous evaluation was conducted.

(b) Evaluate your continuous emission monitoring systems daily and quarterly as specified in appendix F of this part.

§ 60.3041 What is the minimum amount of monitoring data I must collect with my continuous emission monitoring systems, and is the data collection requirement enforceable?

(a) Where continuous emission monitoring systems are required, obtain 1-hour arithmetic averages. Make sure the averages for carbon monoxide are in parts per million by dry volume at 7 percent oxygen. Use the 1-hour averages of oxygen data from your continuous emission monitoring system to determine the actual oxygen level and to calculate emissions at 7 percent oxygen.

(b) Obtain at least two data points per hour in order to calculate a valid 1-hour arithmetic average. Section 60.13(e)(2) requires your continuous emission monitoring systems to complete at least one cycle of operation (sampling, analyzing, and data recording) for each 15-minute period.

(c) Obtain valid 1-hour averages for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(d) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you have deviated from the data collection requirement regardless of the emission level monitored.

(e) If you do not obtain the minimum data required in paragraphs (a) through (c) of this section, you must still use all valid data from the continuous emission monitoring systems in calculating emission concentrations.

(f) If continuous emission monitoring systems are temporarily unavailable to meet the data collection requirements, refer to Table 4 of this subpart. It shows alternate methods for collecting data when systems malfunction or when repairs, calibration checks, or zero and span checks keep you from collecting the minimum amount of data.

§ 60.3042 How do I convert my 1-hour arithmetic averages into the appropriate averaging times and units?

(a) Use Equation 1 in § 60.3076 to calculate emissions at 7 percent oxygen.

(b) Use Equation 2 in § 60.3076 to calculate the 12-hour rolling averages for concentrations of carbon monoxide.

§ 60.3043 What operating parameter monitoring equipment must I install, and what operating parameters must I monitor?

(a) If you are using a wet scrubber to comply with the emission limitations under § 60.3022, you must install, calibrate (to manufacturers' specifications), maintain, and operate devices (or establish methods) for monitoring the value of the operating parameters used to determine compliance with the operating limits listed in Table 3 of this subpart. These devices (or methods) must measure and record the values for these operating parameters at the frequencies indicated in Table 3 of this subpart at all times.

(b) You must install, calibrate (to manufacturers' specifications), maintain, and operate a device or method for measuring the use of any stack that could be used to bypass the control device. The measurement must include the date, time, and duration of the use of the bypass stack.

(c) If you are using a method or air pollution control device other than a wet scrubber to comply with the emission limitations under § 60.3022, you must install, calibrate (to the manufacturers' specifications), maintain, and operate the equipment necessary to monitor compliance with the site-specific operating limits established using the procedures in § 60.3024.

§ 60.3044 Is there a minimum amount of operating parameter monitoring data I must obtain?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration checks and required zero and span adjustments of the monitoring system), you must conduct all monitoring at all times the OSWI unit is operating.

(b) You must obtain valid monitoring data for at least 75 percent of the operating hours per day for at least 90 percent of the operating days per calendar quarter. An operating day is any day the unit combusts any municipal or institutional solid waste.

(c) If you do not obtain the minimum data required in paragraphs (a) and (b) of this section, you have deviated from the data collection requirement regardless of the operating parameter level monitored.

(d) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing compliance with the operating limits.

Model Rule—Recordkeeping and Reporting

§ 60.3046 What records must I keep?

You must maintain the 14 items (as applicable) as specified in paragraphs (a) through (n) of this section for a period of at least 5 years.

(a) Calendar date of each record.

(b) Records of the data described in paragraphs (b)(1) through (8) of this section.

(1) The OSWI unit charge dates, times, weights, and hourly charge rates.

(2) Liquor flow rate to the wet scrubber inlet every 15 minutes of operation, as applicable.

(3) Pressure drop across the wet scrubber system every 15 minutes of operation or amperage to the wet scrubber every 15 minutes of operation, as applicable.

(4) Liquor pH as introduced to the wet scrubber every 15 minutes of operation, as applicable.

(5) For OSWI units that establish operating limits for controls other than wet scrubbers under § 60.3024, you must maintain data collected for all operating parameters used to determine compliance with the operating limits.

(6) All 1-hour average concentrations of carbon monoxide emissions.

(7) All 12-hour rolling average values of carbon monoxide emissions and all 3-hour rolling average values of continuously monitored operating parameters.

(8) Records of the dates, times, and durations of any bypass of the control device.

(c) Identification of calendar dates and times for which continuous emission monitoring systems or monitoring systems used to monitor operating limits were inoperative, inactive, malfunctioning, or out of control (except for downtime associated with zero and span and other routine calibration checks). Identify the pollutant emissions or operating parameters not measured, the duration, reasons for not obtaining the data, and a description of corrective actions taken.

(d) Identification of calendar dates, times, and durations of malfunctions, and a description of the malfunction and the corrective action taken.

(e) Identification of calendar dates and times for which monitoring data show a deviation from the carbon monoxide emissions limit in Table 2 of this subpart or a deviation from the operating limits in Table 3 of this subpart or a deviation from other operating limits established under § 60.3024 with a description of the deviations, reasons for such deviations, and a description of corrective actions taken.

(f) Calendar dates when continuous monitoring systems did not collect the minimum amount of data required under §§ 60.3041 and 60.3044.

(g) For carbon monoxide continuous emissions monitoring systems, document the results of your daily drift tests and quarterly accuracy determinations according to Procedure 1 of appendix F of this part.

(h) Records of the calibration of any monitoring devices required under § 60.3043.

(i) The results of the initial, annual, and any subsequent performance tests conducted to determine compliance with the emission limits and/or to establish operating limits, as applicable. Retain a copy of the complete test report including calculations and a description of the types of waste burned during the test.

(j) Records showing the names of OSWI unit operators who have completed review of the information in § 60.3019(a) as required by § 60.3019(b), including the date of the initial review and all subsequent annual reviews.

(k) Records showing the names of the OSWI unit operators who have completed the operator training requirements under § 60.3014, met the criteria for qualification under § 60.3016, and maintained or renewed their qualification under § 60.3017 or § 60.3018. Records must include documentation of training, the dates of the initial and refresher training, and the dates of their qualification and all subsequent renewals of such qualifications.

(l) For each qualified operator, the phone and/or pager number at which they can be reached during operating hours.

(m) Equipment vendor specifications and related operation and maintenance requirements for the incinerator, emission controls, and monitoring equipment.

(n) The information listed in § 60.3019(a).

§ 60.3047 Where and in what format must I keep my records?

(a) You must keep each record on site for at least 2 years. You may keep the records off site for the remaining 3 years.

(b) All records must be available in either paper copy or computer-readable format that can be printed upon request, unless an alternative format is approved by the Administrator.

§ 60.3048 What reports must I submit?

See Table 5 of this subpart for a summary of the reporting requirements.

§ 60.3049 What information must I submit following my initial performance test?

You must submit the information specified in paragraphs (a) through (c) of this section no later than 60 days following the initial performance test. All reports must be signed by the facilities manager.

(a) The complete test report for the initial performance test results obtained under § 60.3030, as applicable.

(b) The values for the site-specific operating limits established in § 60.3023 or § 60.3024.

(c) The waste management plan, as specified in §§ 60.3010 through 60.3012.

§ 60.3050 When must I submit my annual report?

You must submit an annual report no later than 12 months following the submission of the information in § 60.3049. You must submit subsequent reports no more than 12 months following the previous report.

§ 60.3051 What information must I include in my annual report?

The annual report required under § 60.3050 must include the ten items listed in paragraphs (a) through (j) of this section. If you have a deviation from the operating limits or the emission limitations, you must also submit deviation reports as specified in §§ 60.3052 through 60.3054.

(a) Company name and address.

(b) Statement by the owner or operator, with their name, title, and signature, certifying the truth, accuracy, and completeness of the report. Such certifications must also comply with the requirements of 40 CFR 70.5(d) or 40 CFR 71.5(d).

(c) Date of report and beginning and ending dates of the reporting period.

(d) The values for the operating limits established pursuant to § 60.3023 or § 60.3024.

(e) If no deviation from any emission limitation or operating limit that applies to you has been reported, a statement that there was no deviation from the emission limitations or operating limits during the reporting period, and that no monitoring system used to determine compliance with the emission limitations or operating limits was inoperative, inactive, malfunctioning or out of control.

(f) The highest recorded 12-hour average and the lowest recorded 12-hour average, as applicable, for carbon monoxide emissions and the highest recorded 3-hour average and the lowest recorded 3-hour average, as applicable, for each operating parameter recorded for the calendar year being reported.

(g) Information recorded under § 60.3046(b)(6) and (c) through (e) for the calendar year being reported.

(h) If a performance test was conducted during the reporting period, the results of that test.

(i) If you met the requirements of § 60.3035(a) or (b), and did not conduct a performance test during the reporting period, you must state that you met the requirements of § 60.3035(a) or (b), and, therefore, you were not required to conduct a performance test during the reporting period.

(j) Documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours, but less than 2 weeks.

§ 60.3052 What else must I report if I have a deviation from the operating limits or the emission limitations?

(a) You must submit a deviation report if any recorded 3-hour average parameter level is above the maximum operating limit or below the minimum operating limit established under this subpart, if any recorded 12-hour average carbon monoxide emission rate is above the emission limitation, if the control device was bypassed, or if a performance test was conducted that showed a deviation from any emission limitation.

(b) The deviation report must be submitted by August 1 of that year for data collected during the first half of the calendar year (January 1 to June 30), and by February 1 of the following year for data you collected during the second half of the calendar year (July 1 to December 31).

§ 60.3053 What must I include in the deviation report?

In each report required under § 60.3052, for any pollutant or operating parameter that deviated from the emission limitations or operating limits specified in this subpart, include the seven items described in paragraphs (a) through (g) of this section.

(a) The calendar dates and times your unit deviated from the emission limitations or operating limit requirements.

(b) The averaged and recorded data for those dates.

(c) Durations and causes of each deviation from the emission limitations or operating limits and your corrective actions.

(d) A copy of the operating limit monitoring data during each deviation and any test report that documents the emission levels.

(e) The dates, times, number, duration, and causes for monitor downtime incidents (other than downtime associated with zero, span, and other routine calibration checks).

(f) Whether each deviation occurred during a period of startup, shutdown, or malfunction, or during another period.

(g) The dates, times, and durations of any bypass of the control device.

§ 60.3054 What else must I report if I have a deviation from the requirement to have a qualified operator accessible?

(a) If all qualified operators are not accessible for 2 weeks or more, you must take the two actions in paragraphs (a)(1) and (2) of this section.

(1) Submit a notification of the deviation within 10 days that includes the three items in paragraphs (a)(1)(i) through (iii) of this section.

(i) A statement of what caused the deviation.

(ii) A description of what you are doing to ensure that a qualified operator is accessible.

(iii) The date when you anticipate that a qualified operator will be available.

(2) Submit a status report to EPA every 4 weeks that includes the three items in paragraphs (a)(2)(i) through (iii) of this section.

(i) A description of what you are doing to ensure that a qualified operator is accessible.

(ii) The date when you anticipate that a qualified operator will be accessible.

(iii) Request approval from EPA to continue operation of the OSWI unit.

(b) If your unit was shut down by EPA, under the provisions of § 60.3020(c)(2), due to a failure to provide an accessible qualified operator, you must notify EPA that you are resuming operation once a qualified operator is accessible.

§ 60.3055 Are there any other notifications or reports that I must submit?

Yes, you must submit notifications as provided by § 60.7.

§ 60.3056 In what form can I submit my reports?

Submit initial, annual, and deviation reports electronically or in paper format, postmarked on or before the submittal due dates.

§ 60.3057 Can reporting dates be changed?

If the Administrator agrees, you may change the semiannual or annual reporting dates. See § 60.19(c) for procedures to seek approval to change your reporting date.

Model Rule—Title V Operating Permits

§ 60.3059 Am I required to apply for and obtain a title V operating permit for my unit?

Yes, if you are subject to an applicable EPA-approved and effective Clean Air Act section 111(d)/129 State or Tribal plan or an applicable and effective Federal plan, you are required to apply for and obtain a title V operating permit unless you meet the relevant requirements for an exemption specified in § 60.2993.

§ 60.3060 When must I submit a title V permit application for my existing unit?

(a)(1) If your existing unit is not subject to an earlier permit application deadline, a complete title V permit application must be submitted on or before the earlier of the dates specified in paragraphs (a)(1)(i) through (iii) of this section. (See sections 129(e), 503(c), 503(d), and 502(a) of the Clean Air Act and 40 CFR 70.5(a)(1)(i) and 40 CFR 71.5(a)(1)(i).)

(i) 12 months after the effective date of any applicable EPA-approved Clean Air Act section 111(d)/129 State or Tribal plan.

(ii) 12 months after the effective date of any applicable Federal plan.

(iii) December 16, 2008.

(2) For any existing unit not subject to an earlier permit application deadline, the application deadline of 36 months after the promulgation of 40 CFR part 60, subpart FFFF, applies regardless of whether or when any applicable Federal plan is effective, or whether or when any applicable Clean Air Act section 111(d)/129 State or Tribal plan is approved by EPA and becomes effective.

(b) If your existing unit is subject to title V as a result of some triggering requirement(s) other than those specified in paragraph (a) of this section (for example, a unit may be a major source or part of a major source), then your unit may be required to apply for a title V permit prior to the deadlines specified in paragraph (a). If more than one requirement triggers a source's obligation to apply for a title V permit, the 12-month timeframe for filing a title V permit application is triggered by the requirement which first causes the source to be subject to title V. (See section 503(c) of the Clean Air Act and 40 CFR 70.3(a) and (b), 40 CFR 70.5(a)(1)(i), 40 CFR 71.3(a) and (b), and 40 CFR 71.5(a)(1)(i).)

(c) A ''complete'' title V permit application is one that has been determined or deemed complete by the relevant permitting authority under section 503(d) of the Clean Air Act and 40 CFR 70.5(a)(2) or 40 CFR 71.5(a)(2). You must submit a complete permit application by the relevant application deadline in order to operate after this date in compliance with Federal law. (See sections 503(d) and 502(a) of the Clean Air Act and 40 CFR 70.7(b) and 40 CFR 71.7(b).)

Model Rule—Temporary-Use Incinerators and Air Curtain Incinerators Used in Disaster Recovery

§ 60.3061 What are the requirements for temporary-use incinerators and air curtain incinerators used in disaster recovery?

Your incinerator or air curtain incinerator is excluded from the requirements of this subpart if it is used on a temporary basis to combust debris from a disaster or emergency such as a tornado, hurricane, flood, ice storm, high winds, or act of bioterrorism. To qualify for this exclusion, the incinerator or air curtain incinerator must be used to combust debris in an area declared a State of Emergency by a local or State government, or the President, under the authority of the Stafford Act, has declared that an emergency or a major disaster exists in the area, and you must follow the requirements specified in paragraphs (a) through (c) of this section.

(a) If the incinerator or air curtain incinerator is used during a period that begins on the date the unit started operation and lasts 8 weeks or less within the boundaries of the same emergency or disaster declaration area, then it is excluded from the requirements of this subpart. You do not need to notify the Administrator of its use or meet the emission limitations or other requirements of this subpart.

(b) If the incinerator or air curtain incinerator will be used during a period that begins on the date the unit started operation and lasts more than 8 weeks within the boundaries of the same emergency or disaster declaration area, you must notify the Administrator that the temporary-use incinerator or air curtain incinerator will be used for more than 8 weeks and request permission to continue to operate the unit as specified in paragraphs (b)(1) and (2) of this section.

(1) The notification must be submitted in writing by the date 8 weeks after you start operation of the temporary-use incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area.

(2) The notification must contain the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, identification of the disaster or emergency for which the incinerator or air curtain incinerator is being used, a description of the types of materials being burned in the incinerator or air curtain incinerator, a brief description of the size and design of the unit (for example, an air curtain incinerator or a modular starved-air incinerator), the reasons the incinerator

or air curtain incinerator must be operated for more than 8 weeks, and the amount of time for which you request permission to operate including the date you expect to cease operation of the unit.

(c) If you submitted the notification containing the information in paragraph (b)(2) by the date specified in paragraph (b)(1), you may continue to operate the incinerator or air curtain incinerator for another 8 weeks, which is a total of 16 weeks from the date the unit started operation within the boundaries of the current emergency or disaster declaration area. You do not have to meet the emission limitations or other requirements of this subpart during this period.

(1) At the end of 16 weeks from the date the incinerator or air curtain incinerator started operation within the boundaries of the current emergency or disaster declaration area, you must cease operation of the unit or comply with all requirements of this subpart, unless the Administrator has approved in writing your request to continue operation.

(2) If the Administrator has approved in writing your request to continue operation, then you may continue to operate the incinerator or air curtain incinerator within the boundaries of the current emergency or disaster declaration area until the date specified in the approval, and you do not need to comply with any other requirements of this subpart during the approved time period.

Model Rule—Air Curtain Incinerators That Burn Only Wood Waste, Clean Lumber, and Yard Waste

§ 60.3062 What is an air curtain incinerator?

(a) An air curtain incinerator operates by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this subpart and subpart EEEE of this part only, air curtain incinerators include both firebox and trench burner units.

(b) Air curtain incinerators that burn only the materials listed in paragraphs (b)(1) through (4) of this section are required to meet only the requirements in §§ 60.3062 through 60.3069 and are exempt from all other requirements of this subpart.

(1) 100 percent wood waste.

(2) 100 percent clean lumber.

(3) 100 percent yard waste.

(4) 100 percent mixture of only wood waste, clean lumber, and/or yard waste.

§ 60.3063 When must I comply if my air curtain incinerator burns only wood waste, clean lumber, and yard waste?

Table 1 of this subpart specifies the final compliance date. You must submit a notification to the Administrator postmarked within 10 business days after the final compliance date in Table 1 of this subpart.

§ 60.3064 What must I do if I close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and then restart it?

(a) If you close your incinerator but will reopen it prior to the final compliance date in your State plan, you must meet the final compliance date specified in Table 1 of this subpart.

(b) If you close your incinerator but will restart it after your final compliance date, you must meet the emission limitations on the date your incinerator restarts operation.

§ 60.3065 What must I do if I plan to permanently close my air curtain incinerator that burns only wood waste, clean lumber, and yard waste and not restart it?

You must close the unit before the final compliance date specified in Table 1 of this subpart.

§ 60.3066 What are the emission limitations for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Within 180 days after your final compliance date in Table 1 of this subpart, you must meet the two limitations specified in paragraphs (a)(1) and (2) of this section.

(1) The opacity limitation is 10 percent (6-minute average), except as described in paragraph (a)(2) of this section.

(2) The opacity limitation is 35 percent (6-minute average) during the startup period that is within the first 30 minutes of operation.

(b) The limitations in paragraph (a) of this section apply at all times except during malfunctions.

§ 60.3067 How must I monitor opacity for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Use Method 9 of appendix A of this part to determine compliance with the opacity limitation.

(b) Conduct an initial test for opacity as specified in § 60.8 within 180 days after the final compliance date in Table 1 of this subpart.

(c) After the initial test for opacity, conduct annual tests no more than 12 months following the date of your previous test.

(d) If the air curtain incinerator has been out of operation for more than 12 months following the date of your previous test, then you must conduct a test for opacity upon startup of the unit.

§ 60.3068 What are the recordkeeping and reporting requirements for air curtain incinerators that burn only wood waste, clean lumber, and yard waste?

(a) Keep records of results of all initial and annual opacity tests in either paper copy or computer-readable format that can be printed upon request, unless the Administrator approves another format, for at least 5 years. You must keep each record on site for at least 2 years. You may keep the records off site for the remaining 3 years.

(b) Make all records available for submittal to the Administrator or for an inspector's review.

(c) You must submit the results (each 6-minute average) of the initial opacity tests no later than 60 days following the initial test. Submit annual opacity test results within 12 months following the previous report.

(d) Submit initial and annual opacity test reports as electronic or paper copy on or before the applicable submittal date.

(e) Keep a copy of the initial and annual reports for a period of 5 years. You must keep each report on site for at least 2 years. You may keep the reports off site for the remaining 3 years.

§ 60.3069 Am I required to apply for and obtain a title V operating permit for my air curtain incinerator that burns only wood waste, clean lumber, and yard waste?

Yes, if your air curtain incinerator is subject to this subpart, you are required to apply for and obtain a title V operating permit as specified in §§ 60.3059 and 60.3060.

Model Rule—Equations

§ 60.3076 What equations must I use?

(a) *Percent oxygen.* Adjust all pollutant concentrations to 7 percent oxygen using Equation 1 of this section.

$$C_{adj} = C_{meas} * (20.9 - 7)/(20.9 - \%O_2) \qquad \text{(Eq. 1)}$$

Where:

C_{adj} = pollutant concentration adjusted to 7 percent oxygen

C_{meas} = pollutant concentration measured on a dry basis

(20.9–7) = 20.9 percent oxygen–7 percent oxygen (defined oxygen correction basis)

20.9 = oxygen concentration in air, percent

$\%O_2$ = oxygen concentration measured on a dry basis, percent

(b) *Capacity of a very small municipal waste combustion unit.* For very small municipal waste combustion units that can operate continuously for 24-hour periods, calculate the unit capacity based on 24 hours of operation at the maximum charge rate. To determine the maximum charge rate, use one of two methods:

(1) For very small municipal waste combustion units with a design based on heat input capacity, calculate the maximum charging rate based on the maximum heat input capacity and one of two heating values:

(i) If your very small municipal waste combustion unit combusts refuse-derived fuel, use a heating value of 12,800 kilojoules per kilogram (5,500 British thermal units per pound).

(ii) If your very small municipal waste combustion unit combusts municipal solid waste, use a heating value of 10,500 kilojoules per kilogram (4,500 British thermal units per pound).

(2) For very small municipal waste combustion units with a design not based on heat input capacity, use the maximum design charging rate.

(c) *Capacity of a batch very small municipal waste combustion unit.* Calculate the capacity of a batch OSWI unit as the maximum design amount of municipal solid waste it can charge per batch multiplied by the maximum number of batches it can process in 24 hours. Calculate the maximum number of batches by dividing 24 by the number of hours needed to process one batch. Retain fractional batches in the calculation. For example, if one batch requires 16 hours, the OSWI unit can combust 24/16, or 1.5 batches, in 24 hours.

(d) *Carbon monoxide pollutant rate.* When hourly average pollutant rates (E_h) are obtained (e.g., CEMS values), compute the rolling average carbon monoxide pollutant rate (E_a) for each 12-hour period using the following equation:

$$E_a = \frac{1}{12}\sum_{j=1}^{12} E_{hj} \qquad \text{(Eq. 2)}$$

Where:

E_a = Average carbon monoxide pollutant rate for the 12-hour period, ppm corrected to 7 percent O_2.

E_{hj} = Hourly arithmetic average pollutant rate for hour ''j,'' ppm corrected to 7 percent O_2.

Model Rule—Definitions

§ 60.3078 What definitions must I know?

Terms used but not defined in this subpart are defined in the Clean Air Act and subpart A (General Provisions) of this part.

Administrator means:

(1) For approved and effective State section 111(d)/129 plans, the Director of the State air pollution control agency, or his or her delegatee;

(2) For Federal section 111(d)/129 plans, the Administrator of the EPA, an employee of the EPA, the Director of the State air pollution control agency, or employee of the State air pollution control agency to whom the authority has been delegated by the Administrator of the EPA to perform the specified task; and

(3) For NSPS, the Administrator of the EPA, an employee of the EPA, the Director of the State air pollution control agency, or employee of the State air pollution control agency to whom the authority has been delegated by the Administrator of the EPA to perform the specified task.

Air curtain incinerator means an incineration unit operating by forcefully projecting a curtain of air across an open, integrated combustion chamber (fire box) or open pit or trench (trench burner) in which combustion occurs. For the purpose of this subpart and subpart EEEE only, air curtain incinerators include both firebox and trench burner units.

Auxiliary fuel means natural gas, liquified petroleum gas, fuel oil, or diesel fuel.

Batch OSWI unit means an OSWI unit that is designed such that neither waste charging nor ash removal can occur during combustion.

Calendar quarter means three consecutive months (nonoverlapping) beginning on: January 1, April 1, July 1, or October 1.

Calendar year means 365 consecutive days starting on January 1 and ending on December 31.

Chemotherapeutic waste means waste material resulting from the production or use of anti-neoplastic agents used for the purpose of stopping or reversing the growth of malignant cells.

Class II municipal solid waste landfill means a landfill that meets four criteria:

(1) Accepts, for incineration or disposal, less than 20 tons per day of municipal solid waste or other solid wastes based on an annual average;

(2) Is located on a site where there is no evidence of groundwater pollution caused or contributed to by the landfill;

(3) Is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill; and

(4) Serves a community that meets one of two criteria:

(i) Experiences for at least three months each year, an interruption in access to surface transportation, preventing access to a Class I municipal solid waste landfill; or

(ii) Has no practicable waste management alternative, with a landfill located in an area that annually receives 25 inches or less of precipitation.

Class III municipal solid waste landfill is a landfill that is not connected by road to a Class I municipal solid waste landfill, as defined by Alaska regulatory code 18 AAC 60.300(c) or, if connected by road, is located more than 50 miles from a Class I municipal solid waste landfill, and that accepts, for disposal, either of the following two criteria:

(1) Ash from incinerated municipal waste in quantities less than one ton per day on an annual average, which ash must be free of food scraps that might attract animals; or

(2) Less than five tons per day of municipal solid waste, based on an annual average, and is not located in a place that meets either of the following criteria:

(i) Where public access is restricted, including restrictions on the right to move to the place and reside there; or

(ii) That is provided by an employer and that is populated totally by persons who are required to reside there as a condition of employment and who do not consider the place to be their permanent residence.

Clean lumber means wood or wood products that have been cut or shaped and include wet, air-dried, and kiln-dried wood products. Clean lumber does not include wood products that have been painted, pigment-stained, or pressure-treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (e.g., plywood, particle board, flake board, and oriented strand board).

Collected from means the transfer of material from the site at which the material is generated to a separate site where the material is burned.

Contained gaseous material means gases that are in a container when that container is combusted.

Continuous emission monitoring system or CEMS means a monitoring system for continuously measuring and recording the emissions of a pollutant from an OSWI unit.

Continuous OSWI unit means an OSWI unit that is designed to allow waste charging and ash removal during combustion.

Deviation means any instance in which a unit that meets the requirements in § 60.2991, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation, operating limit, or operator qualification and accessibility requirements;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any unit that meets requirements in § 60.2991 and is required to obtain such a permit; or

(3) Fails to meet any emission limitation, operating limit, or operator qualification and accessibility requirement in this subpart during startup, shutdown, or malfunction, regardless of whether or not such failure is allowed by this subpart.

Dioxins/furans means tetra-through octachlorinated dibenzo-p-dioxins and dibenzofurans.

Energy recovery means the process of recovering thermal energy from combustion for useful purposes such as steam generation or process heating.

EPA means the Administrator of the EPA or employee of the EPA that is delegated the authority to perform the specified task.

Institutional facility means a land-based facility owned and/or operated by an organization having a governmental, educational, civic, or religious purpose such as a school, hospital, prison, military installation, church, or other similar establishment or facility.

Institutional waste means solid waste (as defined in this subpart) that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit: Whose design does not provide for energy recovery (as defined in this subpart); operated without energy recovery (as defined in this subpart); or operated with only waste heat recovery (as defined in this subpart). Institutional waste also means solid waste (as defined in this subpart) combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility.

Institutional waste incineration unit means any combustion unit that combusts institutional waste (as defined in this subpart) and is a distinct operating unit of the institutional facility that generated the waste. Institutional waste incineration units include field-erected, modular, cyclonic burn barrel, and custom built incineration units operating with starved or excess air, and any air curtain incinerator that is a distinct operating unit of the institutional facility that generated the institutional waste (except those air curtain incinerators listed in § 60.2994(b)).

Intermittent OSWI unit means an OSWI unit that is designed to allow waste charging, but not ash removal, during combustion.

Low-level radioactive waste means waste material that contains radioactive nuclides emitting primarily beta or gamma radiation, or both, in concentrations or quantities that exceed applicable Federal or State standards for unrestricted release. Low-level radioactive waste is not high-level radioactive waste, spent nuclear fuel, or byproduct material as defined by the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)).

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused, in part, by poor maintenance or careless operation are not malfunctions.

Metropolitan Statistical Area means any areas listed as metropolitan statistical areas in OMB Bulletin No. 05–02 entitled ''Update of Statistical Area Definitions and Guidance on Their Uses'' dated February 22, 2005 (available on the Web at *http://www.whitehouse.gov/omb/bulletins/*).

Modification or modified unit means an incineration unit you have changed on or after June 16, 2006 and that meets one of two criteria:

(1) The cumulative cost of the changes over the life of the unit exceeds 50 percent of the original cost of building and installing the unit (not including the cost of land) updated to current costs (current dollars). For an OSWI unit, to determine what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

(2) Any physical change in the OSWI unit or change in the method of operating it that increases the amount of any air pollutant emitted for which section 129 or section 111 of the Clean Air Act has established standards.

Municipal solid waste means refuse (and refuse-derived fuel) collected from the general public and from residential, commercial, institutional, and industrial sources consisting of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustible materials and non-combustible materials such as metal, glass and rock, provided that: (1) The term does not include industrial process wastes or medical wastes that are segregated from such other wastes; and (2) an incineration unit shall not be considered to be combusting municipal solid waste for purposes of this subpart if it combusts a fuel feed stream, 30 percent or less of the weight of which is comprised, in aggregate, of municipal solid waste, as determined by § 60.2993(b).

Municipal waste combustion unit means, for the purpose of this subpart and subpart EEEE, any setting or equipment that combusts municipal solid waste (as defined in this subpart) including, but not limited to, field-erected, modular, cyclonic burn barrel, and custom built incineration units (with or without energy recovery) operating with starved or excess air, boilers, furnaces, pyrolysis/combustion units, and air curtain incinerators (except those air curtain incinerators listed in § 60.2994(b)).

Other solid waste incineration (OSWI) unit means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in this subpart. Unit types listed in § 60.2993 as being excluded from the subpart are not OSWI units subject to this subpart. While not all OSWI units will include all of the following components, an OSWI unit includes, but is not limited to, the municipal or institutional solid waste feed system, grate system, flue gas system, waste heat recovery equipment, if any, and bottom ash system. The OSWI unit does not include air pollution control equipment or the stack. The OSWI unit boundary starts at the municipal or institutional waste hopper (if applicable) and extends through two areas:

(1) The combustion unit flue gas system, which ends immediately after the last combustion chamber or after the waste heat recovery equipment, if any; and

(2) The combustion unit bottom ash system, which ends at the truck loading station or similar equipment that transfers the ash to final disposal. The OSWI unit includes all ash handling systems connected to the bottom ash handling system.

Particulate matter means total particulate matter emitted from OSWI units as measured by Method 5 or Method 29 of appendix A of this part.

Pathological waste means waste material consisting of only human or animal remains, anatomical parts, and/or tissue, the bags/containers used to collect and transport the waste material, and animal bedding (if applicable).

Reconstruction means rebuilding an incineration unit and meeting two criteria:

(1) The reconstruction begins on or after June 16, 2006.

(2) The cumulative cost of the construction over the life of the incineration unit exceeds 50 percent of the original cost of building and installing the unit (not including land) updated to current costs (current dollars). For an OSWI unit, to determine what systems are within the boundary of the unit used to calculate these costs, see the definition of OSWI unit.

Refuse-derived fuel means a type of municipal solid waste produced by processing municipal solid waste through shredding and size classification. This includes all classes of refuse-derived fuel including two fuels:

(1) Low-density fluff refuse-derived fuel through densified refuse-derived fuel.

(2) Pelletized refuse-derived fuel.

Shutdown means the period of time after all waste has been combusted in the primary chamber. For continuous OSWI, shutdown shall commence no less than 2 hours after the last charge to the incinerator. For intermittent OSWI, shutdown shall commence no less than 4 hours after the last charge to the incinerator. For batch OSWI, shutdown shall commence no less than 5 hours after the high-air phase of combustion has been completed.

Solid waste means any garbage, refuse, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, agricultural operations, and from community activities, but does not include solid or dissolved material in domestic sewage, or solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permits under section 402 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1342), or source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Standard conditions, when referring to units of measure, means a temperature of 68°F (20°C) and a pressure of 1 atmosphere (101.3 kilopascals).

Startup period means the period of time between the activation of the system and the first charge to the OSWI unit. For batch OSWI, startup means the period of time between activation of the system and ignition of the waste.

Very small municipal waste combustion unit means any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in § 60.3076.

Waste heat recovery means the process of recovering heat from the combustion flue gases outside of the combustion firebox by convective heat transfer only.

Wet scrubber means an add-on air pollution control device that utilizes an aqueous or alkaline scrubbing liquor to collect particulate matter (including nonvaporous metals and condensed organics) and/or to absorb and neutralize acid gases.

Wood waste means untreated wood and untreated wood products, including tree stumps (whole or chipped), trees, tree limbs (whole or chipped), bark, sawdust, chips, scraps, slabs, millings, and shavings. Wood waste does not include:

(1) Grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands.

(2) Construction, renovation, or demolition wastes.

(3) Clean lumber.

(4) Treated wood and treated wood products, including wood products that have been painted, pigment-stained, or pressure treated by compounds such as chromate copper arsenate, pentachlorophenol, and creosote, or manufactured wood products that contain adhesives or resins (*e.g.*, plywood, particle board, flake board, and oriented strand board).

Yard waste means grass, grass clippings, bushes, shrubs, and clippings from bushes and shrubs. Yard waste comes from residential, commercial/retail, institutional, or industrial sources as part of maintaining yards or other private or public lands. Yard waste does not include two items:

(1) Construction, renovation, and demolition wastes.

(2) Clean lumber.

Tables to Subpart FFFF of Part 60

As stated in § 60.3000, you must comply with the following:

TABLE 1 TO SUBPART FFFF OF PART 60.—MODEL RULE—COMPLIANCE SCHEDULE

Complete this action	By this date [a]
Final compliance [b]	(Dates to be specified in State plan) [c].

[a] Site-specific schedules can be used at the discretion of the State.

[b] Final compliance means that you complete all process changes and retrofit of control devices so that, when the incineration unit is brought on line, all process changes and air pollution control devices necessary to meet the emission limitations operate as designed.

[c] The date can be no later than 3 years after the effective date of State plan approval or December 16, 2010, whichever is earlier.

As stated in § 60.3022, you must comply with the following:

TABLE 2 TO SUBPART FFFF OF PART 60.—MODEL RULE—EMISSION LIMITATIONS

For the air pollutant	You must meet this emission limitation[a]	Using this averaging time	And determining compliance using this method
1. Cadmium	18 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of this part.
2. Carbon monoxide	40 parts per million by dry volume.	3-run average (1 hour minimum sample time per run during performance test), and 12-hour rolling averages measured using CEMS [b].	Method 10, 10A, or 10B of appendix A of this part and CEMS.
3. Dioxins/furans (total basis).	33 nanograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 23 of appendix A of this part.

TABLE 2 TO SUBPART FFFF OF PART 60.—MODEL RULE—EMISSION LIMITATIONS—Continued

For the air pollutant	You must meet this emission limitation[a]	Using this averaging time	And determining compliance using this method
4. Hydrogen chloride ...	15 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Method 26A of appendix A of this part.
5. Lead	226 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of this part.
6. Mercury	74 micrograms per dry standard cubic meter.	3-run average (1 hour minimum sample time per run).	Method 29 of appendix A of this part.
7. Opacity	10 percent	6-run average (1 hour minimum sample time per run).	Method 9 of appendix A of this part.
8. Oxides of nitrogen ...	103 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Method 7, 7A, 7C, 7D, or 7E of appendix A of this part, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Methods 7 and 7C only.
9. Particulate matter	0.013 grains per dry standard cubic foot.	3-run average (1 hour minimum sample time per run).	Method 5 or 29 of appendix A of this part.
10. Sulfur dioxide	3.1 parts per million by dry volume.	3-run average (1 hour minimum sample time per run).	Method 6 or 6C of appendix A of this part, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Method 6 only.

[a] All emission limitations (except for opacity) are measured at 7 percent oxygen, dry basis at standard conditions.
[b] Calculated each hour as the average of the previous 12 operating hours.

As stated in § 60.3023, you must comply with the following:

TABLE 3 TO SUBPART FFFF OF PART 60.—MODEL RULE—OPERATING LIMITS FOR INCINERATORS AND WET SCRUBBERS

For these operating parameters	You must establish operating limits	And monitoring using these minimum frequencies		
		Data measurement	Data recording	Averaging time
1. Charge rate	Maximum charge rate	Continuous	Every hour	Daily for batch units. 3-hour rolling for continuous and intermittent units. [a]
2. Pressure drop across the wet scrubber or amperage to wet scrubber.	Minimum pressure drop or amperage.	Continuous	Every 15 minutes	3-hour rolling. [a]
3. Scrubber liquor flow rate	Minimum flow rate	Continuous	Every 15 minutes	3-hour rolling. [a]
4. Scrubber liquor pH	Minimum pH	Continuous	Every 15 minutes	3-hour rolling. [a]

[a] Calculated each hour as the average of the previous 3 operating hours.

As stated in § 60.3039, you must comply with the following:

TABLE 4 TO SUBPART FFFF OF PART 60.—MODEL RULE—REQUIREMENTS FOR CONTINUOUS EMISSION MONITORING SYSTEMS (CEMS)

For the following pollutants	Use the following span values for your CEMS	Use the following performance specifications (P.S.) in appendix B of this part for your CEMS	If needed to meet minimum data requirements, use the following alternate methods in appendix A of this part to collect data
1. Carbon Monoxide	125 percent of the maximum hourly potential carbon monoxide emissions of the waste combustion unit.	P.S.4A	Method 10.
2. Oxygen	25 percent oxygen	P.S.3	Method 3A or 3B, or ANSI/ASME PTC 19.10–1981 (IBR, see § 60.17(h)) in lieu of Method 3B only.

As stated in § 60.3048, you must comply with the following:

TABLE 5 TO SUBPART FFFF OF THE PART 60.—MODEL RULE—SUMMARY OF REPORTING REQUIREMENTS

Report	Due date	Contents	Reference
1. Initial test report	a. No later than 60 days following the initial performance test	i. Complete test report for the initial performance test; and.	§ 60.3049.
		ii. The values for the site-specific operating limits.	§ 60.3049.
2. Waste management plan	a. No later than 60 days following the initial performance test	i. Reduction or separation of recyclable materials; and.	§§ 60.3010 through 60.3012.
		ii. Identification of additional waste management measures and how they will be implemented.	§§ 60.3010 through 60.3012.
3. Annual Report	a. No later than 12 months following the submission of the initial test report. Subsequent reports are to be submitted no more than 12 months following the previous report	i. Company Name and address; ..	§§ 60.3050 and 60.3051.
		ii. Statement and signature by the owner or operator;.	§§ 60.3050 and 60.3051.
		iii. Date of report;	§§ 60.3050 and 60.3051.
		iv. Values for the operation limits;	§§ 60.3050 and 60.3051.
		v. If no deviations or malfunctions were reported, a statement that no deviations occurred during the reporting period;.	§§ 60.3050 and 60.3051.
		vi. Highest and lowest recorded 12-hour averages, as applicable, for carbon monoxide emissions and highest and lowest recorded 3-hour averages, as applicable, for each operating parameter recorded for the calendar year being reported;.	§§ 60.3050 and 60.3051.
		vii. Information for deviations or malfunctions recorded under § 60.2949(b)(6) and (c) through (e);.	§§ 60.3050 and 60.3051.
		viii. If a performance test was conducted during the reporting period, the results of the test;.	§§ 60.3050 and 60.3051.
		ix. If a performance test was not conducted during the reporting period, a statement that the requirements of § 60.2934(a) or (b) were met; and.	§§ 60.3050 and 60.3051.
		x. Documentation of periods when all qualified OSWI unit operators were unavailable for more than 12 hours but less than 2 weeks.	§§ 60.3050 and 60.3051.
4. Emission limitation or operating limit deviation report.	a. By August 1 of that year for data collected during the first half of the calendar year. By February 1 of the following year for data collected during the second half of the calendar year	i. Dates and times of deviation;	§§ 60.3052 and 60.3053.
		ii. Averaged and recorded data for those dates;.	§§ 60.3052 and 60.3053.
		iii. Duration and causes of each deviation and the corrective actions taken..	§§ 60.3052 and 60.3053.
		iv. Copy of operating limit monitoring data and any test reports;.	§§ 60.3052 and 60.3053.
		v. Dates, times, and causes for monitor downtime incidents;.	§§ 60.3052 and 60.3053.
		vi. Whether each deviation occurred during a period of start-up, shutdown, or malfunction; and.	§§ 60.3052 and 60.3053.
		vii. Dates, times, and duration of any bypass of the control device.	§§ 60.3052 and 60.3053.

TABLE 5 TO SUBPART FFFF OF THE PART 60.—MODEL RULE—SUMMARY OF REPORTING REQUIREMENTS—Continued

Report	Due date	Contents	Reference
5. Qualified operator deviation notification.	a. Within 10 days of deviation	i. Statement of cause of deviation;	§ 60.3054(a)(1).
		ii. Description of efforts to have an accessible qualified operator; and.	§ 60.3054(a)(1).
		iii. The date a qualified operator will be accessible.	§ 60.3054(a)(1).
6. Qualified operation deviation status report.	a. Every 4 weeks following deviation	i. Description of efforts to have an accessible qualified operator;.	§ 60.3054(a)(2).
		ii. The date a qualified operator will be accessible; and.	§ 60.3054(a)(2).
		iii. Request to continue operation	§ 60.3054(a)(2).
7. Qualified operator deviation notification of resumed operation.	a. Prior to resuming operation	i. Notification that you are resuming operation.	§ 60.3054(b).

Note: This table is only a summary, see the referenced sections of the rule for the complete requirements.

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Federal Register

Friday,
December 16, 2005

Part III

Small Business Administration

Small Business Technology Transfer Program Policy Directive; Notice

SMALL BUSINESS ADMINISTRATION

RIN 3245–AE96

Small Business Technology Transfer Program Policy Directive

AGENCY: Small Business Administration.

ACTION: Notice of final Policy Directive.

SUMMARY: This document revises the Small Business Technology Transfer (STTR) Program Policy Directive. This final Policy Directive reflects statutory amendments to the program and provides guidance to Federal agencies on the general conduct of the STTR program. This revised directive includes amendments to streamline and enhance the program.

DATES: This final Policy Directive is effective on December 16, 2005.

FOR FURTHER INFORMATION CONTACT: Edsel Brown, Assistant Administrator for the Office of Technology, Office of Government Contracting/Business Development, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416, or via e-mail to *technology@sba.gov.*

SUPPLEMENTARY INFORMATION: In 1992, Congress enacted the Small Business Technology Transfer Act of 1992 (STTR Act), Pub. L. 102–564 (codified at 15 U.S.C. 638). The STTR Act established the Small Business Technology Transfer Program (STTR Program) as a pilot program that required Federal agencies with extramural budgets for research or research and development (R/R&D) in excess of $1 billion per fiscal year to enter into funding agreements with small business concerns (SBCs) that engage in a collaborative relationship with a research institution. The purpose of the STTR Program is to stimulate a partnership of ideas and technologies between innovative SBCs and research institutions. The program assists the small business and research communities by developing commercially-viable technologies. The STTR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D to meet stated agency needs or missions.

The STTR Act requires the U.S. Small Business Administration (SBA) to ''issue a policy directive for the general conduct of the STTR Programs within the Federal Government.'' 15 U.S.C. 638(p)(1). SBA published its first STTR Policy Directive in 1993 (58 FR 42607–42620, Aug. 10, 1993).

Congress has since amended the STTR Act, most recently with the enactment of the Small Business Technology Transfer Program Reauthorization Act of 2001 (Reauthorization Act), Pub. L. 107–50. The Reauthorization Act extends the STTR Program through September 30, 2009, and changes its status from a pilot program to a permanent one. In addition, the Reauthorization Act clarifies STTR data rights pertaining to STTR Phase I, II, and III awards (see final Policy Directive, sections 4(c)(2), 8(b) and Appendix I, Instructions, section 5(d)(1)(iii)); requires the establishment of an STTR Program Government-accessible and a public-accessible database (see final Policy Directive, section 11(e)); requires participating agencies to increase the amount of their extramural budget to be reserved for the STTR Program from 0.15 percent to 0.3 percent (see final Policy Directive, section 2(d)); permits agencies to increase the dollar value of STTR Phase II awards from $500,000 to $750,000 (see final Policy Directive, section 7(i)(1)); and permits agencies to approve a shorter or longer duration of time for award performance, where appropriate for a particular project (see final Policy Directive, section 7(h)).

The Reauthorization Act also requires SBA to report to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business on the STTR Programs of the Federal agencies and to specifically address the number of proposals received from, and the number and total amount of awards to, Historically Underutilized Business Zone (HUBZone) SBCs under the STTR Program. Further, the Reauthorization Act requires agencies to implement an outreach program to research institutions and SBCs for the purpose of enhancing its STTR Program, in conjunction with any such outreach done for purposes of the SBIR Program. The final Policy Directive addresses these requirements in sections 10(b)(5) and 9(a)(15), respectively.

In addition, the Reauthorization Act requires SBA to promulgate regulations establishing a single model agreement that allocates between SBCs and research institutions intellectual property rights and, if any, rights to carry out follow-on research, development, or commercialization. SBA notes that it plans to issue final regulations implementing a model agreement for the STTR Program in the near future. The Reauthorization Act requires agencies to adopt this model agreement. This requirement is noted in the final Policy Directive at section 9(a)(13).

Further, the Reauthorization Act amends the Federal and State Technology Partnership (FAST) Program to require the Administrator and the Small Business Innovation Research (SBIR) Program Managers to consider whether proposals submitted address the needs of SBCs owned and controlled by women, SBCs owned and controlled by minorities, and located in areas that have historically not participated in the SBIR and STTR Programs. SBA notes that section 12 of the SBIR Policy Directive (67 FR 60072, September 24, 2002) (also available at *http://www.sba.gov/sbir/indexsbir-sttr.html*) establishes guidance for the FAST Program as does the FAST Program Announcement, which can be found at *http://www.sba.gov/sbir/indexprograms.html.* Further, the Reauthorization Act requires SBA to promulgate regulations establishing standards for the consideration of proposals under FAST, including the standards previously listed. SBA is currently drafting these regulations as a separate rulemaking. These regulations are not addressed in this final Policy Directive.

As previously discussed, SBA amends the Policy Directive to address the Reauthorization Act's amendments and to simplify and enhance the program. For example, SBA has organized the final Policy Directive into 11 self-explanatory sections: (1) Purpose (2) Summary of Legislative Provisions (3) Definitions (4) Competitively Phased Structure of the Program (5) Program Solicitation Process (6) Eligibility and Application (Proposal) Requirements; (7) STTR Funding Process (8) Terms of Agreement Under STTR Awards (9) Responsibilities of STTR Participating Agencies and Departments (10) Annual Report to SBA and (11) Responsibilities of SBA. Two appendices are also included: (1) Instructions for STTR Program Solicitation Preparation; and (2) Tech-Net Data Fields for the Public database and questionnaire for the Government Database. On June 16, 2003, the SBA published a proposed policy directive at 68 FR 35748, which addressed the amendments made by the Reauthorization Act and those amendments designed to streamline and enhance the program. SBA received only three comments which are discussed below.

Summary of General Comments

One commenter, a coalition, stated that it had forwarded the proposed directive to its members and did not receive any negative comments. However, the commenter did suggest one clarification, pertaining to section 3(y)(4), which defined the term ''small business concern.'' According to the

proposed directive, a SBC is one that is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States. This commenter stated that it believes that a company should be ineligible for Phase I or II STTR awards if it is owned and controlled by another company that is ineligible. However, this commenter believes that Small Business Investment Companies (SBICs) should be allowed to own more than 51% of an STTR awardee. Because SBA did not propose a change to the STTR eligibility requirements when it issued the STTR Policy Directive as proposed, it does not believe that it should amend those criteria now.

SBA also received one comment on section 9(c)(2). In that section, SBA clarified that agencies may not allow the funding agreement to include a provision subcontracting any portion of the STTR award back to the issuing agency or to any other Federal government unit. This mirrors a similar provision for the SBIR Program that has been in effect since 1997. The SBA believes that this restriction is necessary to avoid real and apparent conflicts of interest in STTR proposal evaluation and selection. The SBA noted in the preamble to the proposed directive that this would not restrict the use of Federal laboratory facilities by STTR awardees for STTR project work. Rather, it would only prohibit the use of STTR award funds to pay for Federal laboratory resources. SBA had also proposed a case-by-case waiver to this provision.

One commenter strongly opposed this section of the policy directive because it would restrict awardees from using Federally-funded research and development centers (FFRDCs) for STTR Program projects. Specifically, this commenter argued that Congress intended for FFRDCs to play a role in the STTR Program by allowing them to partner with the SBC for an STTR award. In addition, the commenter argued that the Small Business Act requires agencies to establish procedures to ensure that FFRDCs that participate in the STTR Program are free from organizational conflicts of interest relative to the program. As a result, this commenter believes that agencies should be allowed to have provisions in the funding agreement that subcontract a portion of the STTR award to an FFRDC, without requiring a waiver from the SBA. The SBA agrees with the commenter and has amended the directive, at § 9(c)(2), to allow STTR funds to be used to pay for lab resources of FFRDCs and no waiver from the SBA is required. However, the SBA notes that STTR funds may not be used to pay for lab resources of non-FFRDCs, unless a waiver is granted.

The SBA also received one comment that appears to pertain to section 9 of the directive, which addresses the responsibilities of STTR participating agencies and departments. According to section 9(b)(4), which implements section 9(o)(14) of the Small Business Act, the SBA and agencies must provide outreach efforts to increase the participation of socially and economically disadvantaged SBCs and women-owned SBCs in the STTR Program. According to the commenter, although he liked many of the changes in the directive, he was disappointed that this section did not include veterans, disabled veterans or HUBZones as well and requested that these ''special groups'' be included. The SBA agrees that agencies should encourage participation of all such groups in the STTR Program and should conduct outreach efforts to ensure these groups participate in the program and has amended the directive accordingly.

Paperwork Reduction Act

SBA has determined that this rule imposes reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., Chapter 35. The STTR Reauthorization Act amended the Small Business Act to require SBA to establish a Public database and a Government database on the SBIR and STTR Programs. Both databases will be maintained by SBA as part of an internet-based system titled Technology Resource Network or Tech-Net. The information that will be collected for these databases will be submitted to SBA by the Federal agencies that participate in these programs, based on information that they collect from Phase I and II awardees and in some instances by the awardees directly. SBA has submitted the information to be collected to OMB for review and will publish a notice in the **Federal Register** to announce the results of OMB's review.

Due to the changes in the Tech-Net database since publication of the proposed policy directive in 2003, SBA is granting an additional 30-day comment period. Specifically, in order to clarify the reporting requirements, SBA has reformatted Appendix II by changing the description of some data fields, and adding fields that were not previously listed. SBA has consolidated file format to a single file and numbering all sixty-one (61) fields required for reporting. SBA has identified those fields which are mandatory for all records, mandatory for STTR projects, and mandatory for Phase 2 projects. SBA also renamed the field formerly labeled ''Minority,'' as ''Socially and Economically Disadvantaged Small Business.'' The STTR reauthorization legislation requires collection of information on awardees' HUBZone certification. However, the requirement was previously omitted from the public database as a reporting field. To rectify this, SBA has added a new field for ''HUBZone Certified.'' Finally, SBA has recently completed the development and design of the questionnaire for the Government database and now includes the questionnaire in the Appendix.

Written comments must be received on or before January 17, 2006 and should be addressed to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW., 5th Floor, Washington, DC 20416; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for SBA, New Executive Office Building, Washington, DC 20503.

If necessary, SBA will revise the information collection in response to any comments the Agency receives by the close of the comment period. The Agency invites comments on: (1) Whether the final collection of information is necessary for the proper performance of SBA's responsibilities and functions under the STTR Program, including whether the information will have a practical utility; (2) the accuracy of SBA's estimate of the burden of the final collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Summary of Collection

Public Database

The public database will include the following information: the name, size, location, and identification number assigned by the SBA Administrator of each Small Business Concern (SBC) that has received a Phase I or Phase II award; a description of each SBIR and STTR Phase I or Phase II award including an

abstract of the project funded by the award; the awarding Federal agency; and the date and amount of the award. This information has been collected by the participating Agencies from applicants since the inception of the programs and is submitted annually to the SBA.

For purposes of the STTR Program only, the agencies will also now collect and report to SBA information on whether the SBC or the research institution initiated the collaboration on the STTR project; whether the research institution is a college or university; whether the educational institution is designated as an Alaska Native-Serving Institution (ANSI), Historically Black College or University (HBCU), Hispanic-Serving Institution (HSI), Tribal College or University (TCU), or Native Hawaiian-Serving Institution (NHSI); what dollar amount the SBC proposes to subcontract to the research institution under Phase I, the exact dollar amount subcontracted to the NHSI, ANSI, HBCU, TCU or HSI under a Phase II award, whether the SBC or the research institution originated any technology as a result of the project; how long it took to negotiate any licensing agreement between the SBC and the research institution; and how the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project were allocated between the SBC and the research institution. Please note that the information mentioned in this paragraph is classified as sensitive and will not be accessible to the general public. (See Appendix II (a) of this Policy Directive).

Government Database.

This secure database will contain information on the commercialization of SBIR and STTR Phase II awards. Specifically SBA will collect information on: revenue from the sale of new products or services resulting from the research conducted under each Phase II award; additional investment from any source other than Phase I or Phase II STTR or SBIR awards to further the research and development conducted under each Phase II award; and any other information that the Administrator, in conjunction with the program managers of the participating agencies, considers relevant and appropriate to the SBIR and STTR programs. (see Appendix II (c) of this Policy Directive).

Title of Information Collection: Technology Resource Network (Tech-Net) (No SBA Form Number).

Description of Respondents:

(a) *Public Database:* All SBCs receiving a SBIR or STTR Phase I or II award from any of the participating SBIR/STTR Federal agencies.

(b) *Government Database:* All SBCs that apply for a SBIR or STTR Phase I or II award from any of the participating SBIR/STTR Federal agencies and have previously won a SBIR or STTR Phase II award. Also, all SBIR or STTR Phase I or Phase II applicants who submitted proposals that were not awarded funding.

Estimates of burden hours:

(a) Public Database

Estimated number of respondents: 3,500 SBCs.

Estimated number of responses: 7,000.

Frequency of response: Annually.

Estimated time for response: 0.5 hour.

Total estimated annual burden hours: 3,500.

(b) Government Database

(1) Applicants receiving SBIR or STTR Phase II award:

Estimated number of respondents: 3,000.

Estimated number of responses: 3,000.

Frequency of response: Annually.

Estimated time for response: 1.0 hours.

Estimated annual burden hours: 3,000.

(2) Applicants with unfunded proposals:

Estimated number of respondents: 13,500.

Estimated number of responses: 27,000.

Frequency of response: Annually.

Estimated Time for Response: 0.5 hours.

Estimated Annual Burden Hours: 13,500.

Notice of Final Policy Directive; Small Business Technology Transfer Program

To: The Small Business Technology Transfer Program Directors.

Subject: Small Business Technology Transfer Program Reauthorization Act of 2001—Amendments to the Small Business Technology Transfer (STTR) Program.

1. *Purpose.* Section 9(p) of the Small Business Act (15 U.S.C. 638) (as amended by Public Law 107–50) requires the Administrator of the U.S. Small Business Administration (SBA) to modify its Small Business Technology Transfer (STTR) Program Policy Directive, issued for the general conduct of the STTR Program.

2. *Authority.* This Policy Directive is issued pursuant to 15 U.S.C. 638(p).

3. *Procurement Regulations.* It is recognized that the Federal Acquisition Regulation may need to be modified to conform to the requirements of the Reauthorization Act and the final Policy Directive. SBA's Administrator or designee must review and concur with any regulatory provisions that pertain to areas of SBA responsibility. SBA's Office of Technology coordinates such regulatory actions.

4. *Personnel Concerned.* This Policy Directive serves as guidance for all Federal Government personnel who are involved in the administration of the STTR Program, issuance and management of funding agreements or contracts pursuant to the STTR Program, and the establishment of goals for small business concerns in research or research and development acquisition or grants.

5. *Originator.* SBA's Office of Technology, Office of Government Contracting, Office of Government Contracting and Business Development.

6. *Date.* A final Policy Directive will be effective on the date published in the **Federal Register**.

Authorized By:

Calvin Jenkins,

Acting Associate Deputy Administrator, for Government Contracting and Business Development.

Hector V. Barreto,

Administrator, U.S. Small Business Administration.

Small Business Technology Transfer (STTR) Program

Final Policy Directive

Table of Contents 1

1. Purpose
2. Summary of Legislative Provisions
3. Definitions
4. Competitively Phased Structure of the Program
5. Program Solicitation Process
6. Eligibility and Application (Proposal) Requirements
7. STTR Funding Process
8. Terms of Agreement Under STTR Awards
9. Responsibilities of STTR Participating Agencies And Departments
10. Annual Report to the Small Business Administration
11. Responsibilities of SBA
Appendix I: Instructions for STTR Program Solicitation Preparation
Appendix II: Tech-Net: Data Fields for Public Database and Questionnaire for Government Database

1. Purpose

(a) Section 9(p) of the Small Business Act (Act) requires that the Small Business Administration (SBA) issue an STTR Program Policy Directive for the general conduct of the STTR Program within the Federal Government.

(b) This Policy Directive fulfills SBA's statutory obligation to provide guidance

to the participating Federal agencies for the general operation of the STTR Program. Additional or modified instructions may be issued by the SBA as a result of public comment or experience.

(c) The purpose of the STTR Program is to stimulate a partnership of ideas and technologies between innovative small business concerns (SBCs) and research institutions through Federally-funded research or research and development (R/R&D). By providing awards to SBCs for cooperative R/R&D efforts with research institutions, the STTR Program assists the small business and research communities by commercializing innovative technologies.

(d) Federal agencies participating in the STTR Program (STTR agencies) are obligated to follow the guidance provided by this Policy Directive. Each agency is required to review its rules, policies, and guidance on the STTR Program to ensure consistency with this Policy Directive and to make any necessary changes in accordance with each agency's normal procedures. This is consistent with the statutory authority provided to the SBA concerning the STTR Program.

2. Summary of Legislative Provisions

(a) The Small Business Technology Transfer Program Reauthorization Act of 2001, Pub. L. 107–50, amended section 9 of the Act (15 U.S.C. 638).

(1) The amendments:

(i) Continue the STTR Program through September 30, 2009;

(ii) Clarify data rights pertaining to STTR Phase I, Phase II, and Federally-funded Phase III awards.

(iii) Establish databases—one for the public and one for Government use—to collect and maintain in a common format information that is necessary to assist SBCs and assess the STTR Program.

(b) Each Federal agency with an extramural budget for R/R&D in excess of $1,000,000,000 must participate in the STTR Program.

(c) The statutory requirements establish a uniform, simplified process for the operation of the STTR Program while allowing the STTR agencies flexibility in the operation of their individual STTR Program. This Policy Directive fulfills the Congressional intent to minimize regulatory burden in the conduct of this program.

(d) Each STTR agency must establish an STTR Program by reserving not less than 0.3 percent of its extramural budget for awards to SBCs for cooperative R/R&D through the following uniform, three-phase process:

(1) Phases I and II: These phases help STTR agencies meet R/R&D and commercialization objectives through funding agreements.

(2) Phase III. This phase, where appropriate, helps Federal agencies participating in the STTR Program by:

(i) Providing Federal agencies the benefits of commercial applications derived from the cooperative conduct of Government-funded R/R&D which stimulates technological innovation and enhances the national return on investment from R/R&D;

(ii) Providing STTR awardees access to the Federal market through non-STTR funding agreements; and

(iii) Providing STTR awardees access to private sector markets to stimulate economic growth and create jobs.

(e) The Act directs each STTR agency to report annually to SBA. The Act also requires SBA to obtain annual reports and monitor each agency's STTR Program and to report these findings annually to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.

(f) The competition requirements of the Armed Services Procurement Act of 1947 (10 U.S.C. 2302 *et seq.*) and the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 251 *et seq.*) must be read in conjunction with the procurement notice publication requirements of section 8(e) of the Small Business Act (15 U.S.C. 637(e)). The following notice publication requirements of section 8(e) of the Small Business Act apply to STTR agencies using contracts as a STTR funding agreement:

(l) Any Federal executive agency intending to solicit a proposal to contract for property or services valued above $25,000 must transmit a notice of the impending solicitation to the Government-wide point of entry (GPE) for access by interested sources. *See* FAR 5.201. The GPE, located at *http://www.fedbizopps.gov*, is the single point where Government business opportunities greater than $25,000, including synopses of final contract actions, solicitations, and associated information, can be accessed electronically by the public. In addition, an agency must not issue its solicitation until 15 days after the date of the publication in the GPE. The agency may not establish a deadline for submission of proposals in response to a solicitation earlier than 30 days after the date on which the solicitation was issued.

(2) The contracting officer must generally make available through the GPE those solicitations synopsized through the GPE, including specifications and other pertinent information determined necessary by the contracting officer. *See* FAR 5.102.

(3) Any executive agency awarding a contract for property or services valued at more than $25,000 must submit a synopsis of the award through the GPE if a subcontract is likely to result from such contract. See FAR 5.301.

(4) The following are exemptions from the notice publication requirements:

(i) In the case of agencies intending to solicit Phase I proposals for contracts in excess of $25,000, the head of the agency may exempt a particular solicitation from the notice publication requirements if that official makes a written determination, after consulting with the Administrator of the Office of Federal Procurement Policy and the SBA Administrator, that it is inappropriate or unreasonable to publish a notice before issuing a solicitation.

(ii) The STTR Phase II award process.

(iii) The STTR Phase III award process.

3. Definitions

(a) *Act.* The Small Business Act (15 U.S.C. 631 *et seq.*), as amended.

(b) *Applicant.* The organizational entity that, at the time of award, will qualify as a SBC and that submits a contract proposal or a grant application for a funding agreement under the STTR Program.

(c) *Affiliate.* This term has the same meaning as set forth in 13 CFR Part 121—Small Business Size Regulations, § 121.103, What is affiliation?

(d) *Alaska Native-Serving Institution (ANSI).* As defined by 20 U.S.C. 1059d, it is An institution of higher education that is an eligible institution that at the time of application, has an enrollment of undergraduate students that is at least 20 percent Alaska Native students;

(e) *Awardee.* The organizational entity receiving an STTR Phase I, Phase II, or Phase III award.

(f) *Commercialization.* The process of developing marketable products or services and producing and delivering products or services for sale (whether by the originating party or by others) to Government or commercial markets.

(g) *Cooperative Agreement.* A financial assistance mechanism used when substantial Federal programmatic involvement with the awardee during performance is anticipated by the issuing agency. The Cooperative Agreement contains the responsibilities and respective obligations of the parties.

(h) *Cooperative Research and Development.* R/R&D conducted jointly by a SBC and a research institution in which not less than 40 percent of the

work is performed by the SBC, and not less than 30 percent of the work is performed by the single, partnering research institution.

(i) *Essentially Equivalent Work.* This occurs when (1) substantially the same research is final for funding in more than one contract proposal or grant application submitted to the same Federal agency (2) substantially the same research is submitted to two or more different Federal agencies for review and funding consideration or (3) a specific research objective and the research design for accomplishing an objective are the same or closely related in two or more proposals or awards, regardless of the funding source.

(j) *Extramural Budget.* The sum of the total obligations for R/R&D minus amounts obligated for R/R&D activities by employees of a Federal agency in or through Government-owned, Government-operated facilities. For the Agency for International Development, the ''extramural budget'' must not include amounts obligated solely for general institutional support of international research centers or for grants to foreign countries. For the Department of Energy, the ''extramural budget'' must not include amounts obligated for atomic energy defense programs solely for weapons activities or for naval reactor programs.

(k) *Feasibility.* The practical extent to which a project can be performed successfully.

(l) *Federal Agency.* An executive agency as defined in 5 U.S.C. 105, or a military department as defined in 5 U.S.C. 102, except that it does not include any agency within the Intelligence Community as defined in Executive Order 12333, section 3.4(f), or its successor orders.

(m) *Funding Agreement.* Any contract, grant, or cooperative agreement entered into between any Federal agency and any SBC for the performance of experimental, developmental, or research work, including products or services, funded in whole or in part by the Federal Government.

(n) *Funding Agreement Officer.* A contracting officer, a grants officer, or a cooperative agreement officer.

(o) *Grant.* A financial assistance mechanism providing money, property, or both to an eligible entity to carry out an approved project or activity. A grant is used whenever the Federal agency anticipates no substantial programmatic involvement with the awardee during performance.

(p) *Hispanic-Serving Institutions (HSI).* Pursant to 20 U.S.C. 1101 (5), a non-profit institution that has at least 25% Hispanic full-time equivalent (FTE) enrollment, and of the Hispanic student enrollment at least 50% are low income.

(q) *Historically Black College or University (HBCU).* Pursuant to 20 U.S.C. 1061 (2), a black college or university that was established prior to 1964, whose principle mission was, and is, the education of Black Americans, and that is accredited by a nationally recognized agency or association determined by the Secretary of Education to be a reliable authority as to the quality of training offered or is, according to such an agency or association is making reasonable progress toward accreditation, with certain exceptions noted in statute.

(r) *Innovation.* Something new or improved, having marketable potential, including (1) development of new technologies, (2) refinement of existing technologies, or (3) development of new applications for existing technologies.

(s) *Intellectual Property.* The separate and distinct types of intangible property that are referred to collectively as ''intellectual property,'' including but not limited to: patents, trademarks, copyrights, trade secrets, STTR technical data (as defined in this section), ideas, designs, know-how, business, technical and research methods, other types of intangible business assets, and all types of intangible assets either final or generated by an SBC as a result of its participation in the STTR Program.

(t) *Joint Venture.* An association of concerns with interests in any degree or proportion by way of contract, express or implied, consorting to engage in and carry out a single specific business venture for joint profit, for which purpose they combine their efforts, property, money, skill, or knowledge, but not on a continuing or permanent basis for conducting business generally. A joint venture is viewed as a business entity in determining power to control its management.

(u) *Native Hawaiian-Serving Institutions (NHSI).* Pursuant to 20 U.S.C. 1059(d) is an institution of higher education which is an eligible institution under 20 U.S.C. 1058(b) at the time of application, and has an enrollment of undergraduate students that is at least 10 percent Native Hawaiian students.

(v) *Outcomes.* The measures of long-term, eventual, program impact.

(w) *Outputs.* The measures of near-term program impact.

(x) *Principal Investigator/Project Manager.* The one individual designated by the applicant to provide the scientific and technical direction to a project supported by the funding agreement.

(y) *Program Solicitation.* A formal solicitation for proposals whereby a Federal agency notifies the small business community of its R/R&D needs and interests in broad and selected areas, as appropriate to the agency, and requests proposals from SBCs in response to these needs and interests. Announcements in the **Federal Register** or the GPE are not considered STTR Program solicitations.

(z) *Prototype.* A model of something to be further developed, which includes designs, protocols, questionnaires, software, and devices.

(aa) *Research or Research and Development (R/R&D).* Any activity that is:

(l) A systematic, intensive study directed toward greater knowledge or understanding of the subject studied;

(2) A systematic study directed specifically toward applying new knowledge to meet a recognized need; or

(3) A systematic application of knowledge toward the production of useful materials, devices, and systems or methods, including design, development, and improvement of prototypes and new processes to meet specific requirements.

(bb) *Research Institution.* One that has a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor, and is:

(1) A non-profit institution as defined in section 4(5) of the Stevenson-Wydler Technology Innovation Act of 1980 (that is, an organization that is owned and operated exclusively for scientific or educational purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual) and includes non-profit medical and surgical hospitals; or

(2) A Federally-funded R&D center as identified by the National Science Foundation in accordance with the Government-wide Federal Acquisition Regulation issued in accordance with section 35(c)(1) of the Office of Federal Procurement Policy Act (or any successor regulation thereto).

(cc) *Small Business Concern.* A concern that, on the date of award for both Phase I and Phase II funding agreements:

(1) Is organized for profit, with a place of business located in the United States, which operates primarily within the United States or which makes a significant contribution to the United

States economy through payment of taxes or use of American products, materials or labor;

(2) Is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture;

(3) Is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States; and

(4) Has, including its affiliates, not more than 500 employees.

(dd) *Socially and Economically Disadvantaged SBC. See* 13 CFR Part 124—8(A) Business Development/Small Disadvantaged Business Status Determinations, §§ 124.103 (Who is socially disadvantaged?) and 124.104 (Who is economically disadvantaged?).

(ee) *STTR Participants.* Business concerns that have received STTR awards or that have submitted STTR proposals/applications.

(ff) *STTR Technical Data.* All data generated during the performance of an STTR award.

(gg) *STTR Technical Data Rights.* The rights an STTR awardee obtains in data generated during the performance of any STTR Phase I, Phase II, or phase III award that an awardee delivers to the Government during or upon completion of a Federally-funded project, and to which the Government receives a license.

(hh) *Subcontract.* Any agreement, other than one involving an employer employee relationship, entered into by an awardee of a funding agreement calling for supplies or services for the performance of the original funding agreement.

(ii) *Tribal-Serving Institution (TSI).* Those institutions defined under section 532 of the Equity in Educational Land-Grants Status Act of 1994 (7 U.SC. 301 note), any other institution that qualified for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 et. seq.) which is also known as tribally controlled colleges or universities and the Navajo Community College Assistance Act of 1978, Pub. L. 95–471, Title II (25 U.S.C. 640a note).

(jj) *United States.* The 50 states, the territories and possessions of the Federal Government, the Commonwealth of Puerto Rico, the District of Columbia, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic *Women-Owned SBC.* of Palau.

(kk) A SBC that is at least 51 percent owned by one or more women, or in the case of any publicly owned business, at least 51 percent of the stock is owned by women, and women control the management and daily business operations.

4. Competitively Phased Structure of the Program

The STTR Program is a phased process, uniform throughout the Federal Government, of soliciting proposals and awarding funding agreements for R/R&D, production, services, or any combination, to meet stated agency needs or missions. In order to stimulate and foster scientific and technological innovation, including increasing commercialization of Federal R/R&D, the program must follow a uniform competitive process of the following three phases:

(a) *Phase I.* Phase I involves a solicitation of contract proposals or grant applications (hereinafter referred to as proposals) to conduct feasibility-related experimental or theoretical R/R&D related to described agency requirements. These requirements, as defined by agency topics contained in a solicitation, may be general or narrow in scope, depending on the needs of the agency. The object of this phase is to determine the scientific and technical merit and feasibility of the final effort and the quality of performance of the SBC with a relatively small agency investment before consideration of further Federal support in Phase II.

(l) Several different final solutions to a given problem may be funded.

(2) Proposals will be evaluated on a competitive basis. Agency criteria used to evaluate STTR proposals must give consideration to the scientific and technical merit and feasibility of the proposal along with its potential for commercialization. Considerations may also include program balance or critical agency requirements.

(3) Agencies may require the submission of a Phase II proposal as a deliverable item under Phase I.

(b) *Phase II.* The object of Phase II is to continue the R/R&D effort from the completed Phase I. Only STTR awardees in Phase I are eligible to participate in Phases II and III. This includes those awardees identified via a ''novated'' or ''successor in interest'' or similarly-revised funding agreement, or those that have reorganized with the same key staff, regardless of whether they have been assigned a different tax identification number. Agencies may require the original awardee to relinquish its rights and interests in an STTR project in favor of another applicant as a condition for that applicant's eligibility to participate in the STTR Program for that project.

(l) Funding shall be based upon the results of Phase I and the scientific and technical merit and commercial potential of the Phase II proposal. Phase II awards may not necessarily complete the total research and development that may be required to satisfy commercial or Federal needs beyond the STTR Program. The Phase II funding agreement with the awardee may, at the discretion of the awarding agency, establish the procedures applicable to Phase III agreements. The Government is not obligated to fund any specific Phase II proposal.

(2) The STTR Phase II award decision process requires, among other things, consideration of a proposal's commercial potential. Commercial potential includes the potential to transition the technology to private sector applications, Government applications, or Government contractor applications. Commercial potential in a Phase II proposal may be evidenced by:

(i) The SBC's record of successfully commercializing STTR or other research;

(ii) The existence of Phase II funding commitments from private sector or other non-STTR funding sources;

(iii) The existence of Phase III, follow-on commitments for the subject of the research; and

(iv) Other indicators of commercial potential of the idea.

(c) *Phase III.* STTR Phase III refers to work that derives from, extends, or logically concludes effort(s) performed under prior STTR funding agreements, but is funded by sources other than the STTR Program. Phase III work is typically oriented towards commercialization of STTR research or technology.

(l) Each of the following types of activity constitutes STTR Phase III work:

(i) Commercial application of STTR-funded R/R&D financed by non-Federal sources of capital (Note: The guidance in this Policy Directive regarding STTR Phase III pertains to the non-STTR federally-funded work described in (ii) and (iii) below. It does not address the nature of private agreements the STTR firm may make in the commercialization of its technology.);

(ii) STTR-derived products or services intended for use by the Federal

Government, funded by non-STTR sources of Federal funding;

(iii) Continuation of R/R&D that has been competitively selected using peer review or scientific review criteria, funded by non-STTR Federal funding sources.

(2) A Phase III award is, by its nature, an STTR award, has STTR status, and must be accorded STTR data rights. (See Section 8(b)(2) regarding the protection period for data rights.) If an STTR awardee wins a competition for work that derives from, extends, or logically concludes that firm's work under a prior STTR funding agreement, then the funding agreement for the new, competed, work must have all STTR Phase III status and data rights. A Federal agency may enter into a Phase III STTR agreement at any time with a Phase II awardee. Similarly, a Federal agency may enter into a Phase III STTR agreement at any time with a Phase I awardee. An agency official may determine, using the criteria set forth in the Directive as guidance, whether a contract or agreement is a Phase III award.

(3) The competition for STTR Phase I and Phase II awards satisfies any competition requirement of the Armed Services Procurement Act, the Federal Property and Administrative Services Act, and the Competition in Contracting Act. Therefore, an agency that wishes to fund an STTR Phase III project is not required to conduct another competition in order to satisfy those statutory provisions. As a result, in conducting actions relative to a Phase III STTR award, it is sufficient to state for purposes of a Justification and Approval pursuant to FAR 6.302–5, that the project is a STTR Phase III award that is derived from, extends, or logically concludes efforts performed under prior STTR funding agreements and is authorized under 10 U.S.C. 2304(b)(2) or 41 U.S.C. 253(b)(2).

(4) The Phase III work may be for products, production, services, R/R&D, or any combination thereof.

(5) There is no limit on the number, duration, type, or dollar value of Phase III awards made to a business concern. There is no limit on the time that may elapse between a Phase I or Phase II award and Phase III award, or between a Phase III award and any subsequent Phase III award.

(6) The small business size limits for Phase I and Phase II awards do not apply to Phase III awards.

(7) For Phase III, Congress intends that agencies or their Government-owned, contractor-operated facilities, Federally-funded research and development centers, or Government prime contractors that pursue R/R&D or production developed under the STTR Program, give preference, including sole source awards, to the awardee that developed the technology. In fact, the Act requires reporting to SBA of all instances in which the agency pursues research, development, or production of a technology developed by an STTR awardee, with a concern other than the one that developed the STTR technology. (See section 4(c)(8) immediately below for agency notification to SBA prior to award of such a funding agreement and section 9(a)(11) regarding agency reporting of the issuance of such award.) SBA will report such instances, including those discovered independently by SBA, to Congress.

(8) For Phase III, agencies, their Government-owned, contractor-operated facilities, or Federally-funded research and development centers, that intend to pursue R/R&D, production, services or any combination thereof of a technology developed by an STTR awardee of that agency, with an entity other than that STTR awardee, must notify SBA in writing prior to such an award. This notice requirement also applies to technologies of STTR awardees with STTR funding from two or more agencies where one of the agencies determines to pursue the technology with an entity other than that awardee. This notification must include, at a minimum: (a) The reasons why the follow-on award with the STTR awardee is not practicable; (b) the identity of the entity with which the agency intends to make an award to perform research, development, or production; and (c) a description of the type of funding award under which the research, development, or production will be obtained. SBA may appeal the decision to the head of the contracting activity. If SBA decides to appeal the decision, it must file a notice of intent to appeal with the contracting officer no later than 5 business days after receiving the agency's notice of intent to make award. Upon receipt of SBA's notice of intent to appeal, the contracting officer must suspend further action on the acquisition until the head of the contracting activity issues a written decision on the appeal. The contracting officer may proceed with award if he or she determines in writing that the award must be made to protect the public interest. The contracting officer must include a statement of the facts justifying that determination and provide a copy of its determination to SBA. Within 30 days of receiving SBA's appeal, the head of the contracting activity must render a written decision setting forth the basis of his or her determination.

5. Program Solicitation Process

(a) At least annually, each agency must issue a program solicitation that sets forth a substantial number of R/R&D topics and subtopic areas consistent with stated agency needs or missions. Both the list of topics and the description of the topics and subtopics must be sufficiently comprehensive to provide a wide range of opportunities for SBCs to participate in the agency R/R&D programs. Topics and subtopics must emphasize the need for proposals with advanced concepts to meet specific agency R/R&D needs. Each topic and subtopic must describe the needs in sufficient detail to assist in providing on-target responses, but cannot involve detailed specifications to prescribed solutions of the problems.

(b) The Act requires issuance of STTR (Phase I) Program solicitations in accordance with a Master Schedule coordinated between SBA and the STTR agency. The SBA office responsible for coordination is: Office of Technology, Office of Government Contracting, Office of Government Contracting and Business Development, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416. Phone: (202) 205–6450. Fax: (202) 205–7754. Email: *technology@sba.gov.* Internet site: *http://www.sba.gov/sbir.*

(c) For maximum participation by interested SBCs, it is important that the planning, scheduling and coordination of agency program solicitation release dates be completed as early as practicable to coincide with the commencement of the fiscal year on October 1. Bunching of agency program solicitation release and closing dates may prohibit SBCs from preparation and timely submission of proposals for more than one STTR project. SBA's coordination of agency schedules minimizes the bunching of final release and closing dates. Participating agencies may elect to publish multiple program solicitations within a given fiscal year to facilitate in-house agency proposal review and evaluation scheduling.

(d) *Master Schedule.* SBA posts an electronic Master Schedule of release dates of program solicitations with links to Internet Web sites of agency solicitations. Agencies must post on their Internet Web sites the following information regarding each program solicitation:

(1) The list of topics upon which R/R&D proposals will be sought.

(2) Agency address, phone number, or e-mail address from which STTR

Program solicitations can be requested or obtained, especially through electronic means.

(3) Names, addresses, and phone numbers of agency contact points where STTR-related inquiries may be directed.

(4) Release date(s) of program solicitation(s).

(5) Closing date(s) for receipt of proposals.

(6) Estimated number and average dollar amounts of Phase I awards to be made under the solicitation.

(e) On or before August 1, each agency representative must notify SBA in writing or by e-mail of its final program solicitation release and proposal due dates for the next fiscal year. SBA and the agency representatives will coordinate the resolution of any conflicting agency solicitation dates by the second week of August. In all cases, SBA will make final decisions.

(f) For those agencies that use both general topic and more specific subtopic designations in their STTR solicitations, the topic data should accurately describe the research solicited. For example, rather than just announcing topic information characterized as ''Chemistry'' or ''Aerodynamics,'' the STTR agency should summarize the subtopic statements and, where appropriate, utilize National Critical Technologies.

(g) *Simplified, Standardized, and Timely STTR Program Solicitations.*

(1) The Act requires '' * * * simplified, standardized and timely STTR solicitations'' and for STTR agencies to use a ''uniform process'' minimizing the regulatory burden for SBCs. Therefore, the instructions in Appendix I to this Policy Directive purposely depart from normal Government solicitation format and requirements. STTR Program solicitations must be prepared according to Appendix I.

(2) Agencies must provide SBA's Office of Technology with two hard copies or an e-mail version of each solicitation and any modifications no later than the date of release of the solicitation or modification to the public. Agencies that issue program solicitations in electronic format only must provide the Internet site at which the program solicitation may be accessed no later than the date of posting at that site of the program solicitation.

(3) SBA does not intend that the STTR Program solicitation replace or be used as a substitute for unsolicited proposals for R/R&D awards to SBCs. In addition, the STTR Program solicitation procedures do not prohibit other agency R/R&D actions with SBCs that are carried on in accordance with applicable statutory or regulatory authorizations.

6. Eligibility and Application (Proposal) Requirements

(a) Eligibility Requirements

(1) To receive STTR funds, each awardee of a STTR Phase I or Phase II award must qualify as an SBC.

(2) For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the SBC, and not less than 30 percent of the R/R&D work must be performed by the single, partnering research institution.

(3) For both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, agencies may approve a particular portion of the R/R&D work to be performed or obtained in a country outside of the United States, for example, if a supply or material or other item or project requirement is not available in the United States. The funding agreement officer must approve each such specific condition in writing.

(4) For both Phase I and Phase II, the principal investigator can be with the SBC or the collaborative partner at the time of award and during the conduct of the final project. An SBC may replace the principal investigator on an STTR Phase I or Phase II award, subject to approval in writing by the funding agreement officer. For purposes of the STTR Program, personnel obtained through a Professional Employer Organization or other similar personnel leasing company may be considered employees of the awardee. This is consistent with SBA's size regulations, 13 CFR 121.106—Small Business Size Regulations.

(b) Proposal Requirements

(1) *Commercialization Plan.* A succinct commercialization plan must be included with each proposal for an STTR Phase II award moving toward commercialization. Elements of a commercialization plan may include the following:

(i) *Company information:* Focused objectives/core competencies; size; specialization area(s); products with significant sales; and history of previous Federal and non-Federal funding, regulatory experience, and subsequent commercialization.

(ii) *Customer and Competition:* Clear description of key technology objectives, current competition, and advantages compared to competing products or services; description of hurdles to acceptance of the innovation.

(iii) *Market:* Milestones, target dates, analyses of market size, and estimated market share after first year sales and after 5 years; explanation of plan to obtain market share.

(iv) *Intellectual Property:* Patent status, technology lead, trade secrets or other demonstration of a plan to achieve sufficient protection to realize the commercialization stage and attain at least a temporal competitive advantage.

(v) *Financing:* Plans for securing necessary funding in Phase III.

(vi) *Assistance and mentoring:* Plans for securing needed technical or business assistance through mentoring, partnering, or through arrangements with state assistance programs, SBDCs, Federally-funded research laboratories, Manufacturing Extension Partnership Centers, or other assistance providers.

(2) *Data Collection:* Each Phase II applicant will be required to provide information to the Tech-Net Database System (*http://technet.sba.gov*). See Appendix I, section 3(c), ''Data Collection Requirement,'' for additional information.

7. STTR Funding Process

Because the Act requires a ''simplified, standardized funding process,'' specific attention must be given to the following areas of STTR Program administration:

(a) *Timely Receipt and Review of Proposals.*

(1) Participating agencies must establish appropriate dates and formats for review of proposals.

(i) All activities related to Phase I proposal reviews must normally be completed and awards made within 6 months from the closing date of the program solicitation. However, agencies may extend that period up to 12 months based on agency needs.

(ii) Program solicitations must establish proposal submission dates for Phase I and may establish proposal submission dates for Phase II. However, agencies may also negotiate mutually acceptable Phase II proposal submission dates with individual Phase I awardees, accomplish proposal reviews expeditiously, and proceed with Phase II awards. While recognizing that Phase II arrangements between the agency and applicant may require more detailed negotiation to establish terms acceptable to both parties, agencies must not sacrifice the R/R&D momentum created under Phase I by engaging in unnecessarily protracted Phase II proceedings.

(iii) STTR participants often submit duplicate or similar proposals to more than one soliciting agency when the work projects appear to involve similar

topics or requirements, which are within the expertise and capability levels of the applicant. To the extent feasible, more than one agency should not fund ''essentially equivalent work'' under the STTR or other Federal programs. For this purpose, the standardized program solicitation requires applicants to indicate the name and address of the agencies to which essentially equivalent work proposals were made, or anticipated to be made, and to identify by subject the projects for which the proposal was submitted and the dates submitted. The same information will be required for any previous Federal Government awards. To assist in avoiding duplicate funding, each agency must provide to SBA and to each STTR agency a listing of Phase I and Phase II awardees, their complete address, and the title of each STTR project. This information should be distributed no later than release of the funding agreement award information to the public.

(b) *Review of STTR Proposals.* SBA encourages STTR agencies to use their routine review processes for STTR proposals whether internal or external evaluation is used. A more limited review process may be used for Phase I due to the larger number of proposals anticipated. Where appropriate, ''peer'' reviews external to the agency are authorized by the Act. SBA cautions STTR agencies that all review procedures must be designed to minimize any possible conflict of interest as it pertains to applicant proprietary data. The standardized STTR solicitation advises potential applicants that proposals may be subject to an established external review process and that the applicant may include company designated proprietary information in its proposal.

(c) *Selection of Awardees.* Normally, STTR agencies must establish a proposal review cycle wherein successful and unsuccessful applicants will be notified of final award decisions within 6-months of the agency's Phase I proposal closing date. However, agencies may extend that period up to 12 months based on agency needs.

(1) The standardized STTR Program solicitation must:

(i) Advise Phase I applicants that additional information may be requested by the awarding agency to evidence awardee responsibility for project completion.

(ii) Advise applicants of the proposal evaluation criteria for Phase I and Phase II.

(2) The STTR agency and each Phase I awardee considered for a Phase II award must arrange to manage Phase II proposal submissions, reviews, and selections.

(d) *Management of the STTR Project.* The SBC, and not the single, partnering research institution, is to provide satisfactory evidence that it will exercise management direction and control of the performance of the STTR funding agreement. Regardless of the proportion of the work or funding allocated to each of the performers under the funding agreement, the SBC is to be the primary party with overall responsibility for performance of the project. All agreements between the SBC and the research institution cooperating in the STTR funding agreement, or any business plans reflecting agreements and responsibilities between the parties during performance of STTR Phase I or Phase II funding agreement, or for the commercialization of the resulting technology, should reflect the controlling position of the SBC.

(e) *Cost Sharing.* Cost sharing can serve the mutual interests of the STTR agencies and certain STTR awardees by assuring the efficient use of available resources. However, cost sharing on STTR projects is not required, although it may be encouraged. Therefore, cost sharing cannot be an evaluation factor in the review of proposals. The standardized STTR Program solicitation (Appendix I) will provide information to prospective STTR applicants concerning cost sharing.

(f) *Payment Schedules and Cost Principles.*

(1) STTR awardees may be paid under an applicable, authorized progress payment procedure or in accordance with a negotiated/definitive price and payment schedule. Advance payments are optional and may be made under appropriate law. In all cases, agencies must make payment to recipients under STTR funding agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of the funding agreement requirements.

(2) All STTR funding agreements must use, as appropriate, current cost principles and procedures authorized for use by the STTR agencies. At the time of award, agencies shall inform each STTR awardee, to the extent possible, of the applicable Federal regulations and procedures that refer to the costs that, generally, are allowable under funding agreements.

(g) *Funding Agreement Types and Fee or Profit.* Statutory requirements for uniformity and standardization require consistency in application of STTR Program provisions among STTR agencies. However, consistency must allow for flexibility by the various agencies in missions and needs as well as the wide variance in funds required to be devoted to STTR Programs in the agencies. The following instructions meet all of these requirements:

(1) *Funding Agreement.* The type of funding agreement (contract, grant, or cooperative agreement) is determined by the awarding agency, but must be consistent with 31 U.S.C. 6301–6308.

(2) *Fee or Profit.* Except as expressly excluded or limited by statute, awarding agencies must provide for a reasonable fee or profit on STTR funding agreements, consistent with normal profit margins provided to profit-making firms for R/R&D work.

(h) *Periods of Performance and Extensions.*

(1) In keeping with the legislative intent to make the largest possible number of STTR awards, modification of funding agreements to extend periods of performance, to increase the scope of work, or to increase the dollar amount should be kept to a minimum, except for options in original Phase I or II awards.

(2) *Phase I.* Period of performance normally should not exceed 1 year. However, agencies may provide a longer performance period where appropriate for a particular project. Agencies may approve a shorter or longer period of time, when appropriate for a particular project.

(3) *Phase II.* Period of performance under Phase II is a subject of negotiation between the awardee and the issuing agency. The duration of Phase II normally should not exceed 2 years. However, agencies may provide a longer performance period where appropriate for a particular project. Agencies may approve a shorter or longer period of time, when appropriate for a particular project.

(i) *Dollar Value of Awards.*

(1) Generally, a Phase I award may not exceed $100,000 and a Phase II award may not exceed $750,000. SBA may adjust these amounts once every 5 years to reflect economic adjustments and programmatic considerations. There is no dollar level associated with Phase III STTR awards.

(2) An awarding agency may exceed those award values where appropriate for a particular project. After award of any funding agreement exceeding $100,000 for Phase I or $750,000 for Phase II, the agency's STTR representative must provide SBA with written justification of such action. This justification must be submitted with the agency's Annual Report data. Similar justification is required for any modification of a funding agreement that would bring the cumulative dollar

amount to a total in excess of the amounts set forth above.

8. Terms of Agreement Under STTR Awards

(a) *Proprietary Information Contained in Proposals.* The standardized STTR Program solicitation will include provisions requiring the confidential treatment of any proprietary information to the extent permitted by law. Agencies will discourage SBCs from submitting information considered proprietary unless the information is deemed essential for proper evaluation of the proposal. The solicitation will require that all proprietary information be identified clearly and marked with a prescribed legend. Agencies may elect to require SBCs to limit proprietary information to that essential to the proposal and to have such information submitted on a separate page or pages keyed to the text. The Government, except for proposal review purposes, protects all proprietary information, regardless of type, submitted in a contract proposal or grant application for a funding agreement under the STTR Program, from disclosure.

(b) *Rights in Data Developed Under STTR Funding Agreement.* The Act provides for ''retention by an SBC of the rights to data generated by the concern in the performance of an STTR award.''

(1) Each agency must refrain from disclosing STTR technical data to outside the Government (except reviewers) and especially to competitors of the SBC, or from using the information to produce future technical procurement specifications that could harm the SBC that discovered and developed the innovation.

(2) STTR agencies must protect from disclosure and non-governmental use all STTR technical data developed from work performed under an STTR funding agreement for a period of not less than 4 years from delivery of the last deliverable under that agreement (either Phase I, Phase II, or Federally-funded STTR Phase III) unless, subject to (b)(3) of this section, the agency obtains permission to disclose such STTR technical data from the awardee or STTR applicant. Agencies are released from obligation to protect STTR data upon expiration of the protection period except that any such data that is also protected and referenced under a subsequent STTR award must remain protected through the protection period of that subsequent STTR award. For example, if a Phase III award is issued within or after the Phase II data rights protection period and the Phase III award refers to and protects data developed and protected under the Phase II award, then that data must continue to be protected through the Phase III protection period. Agencies have discretion to adopt a protection period longer than four years. The Government retains a royalty-free license for Government use of any technical data delivered under an STTR award, whether patented or not. This section does not apply to program evaluation.

(3) STTR technical data rights apply to all STTR awards, including subcontracts to such awards, that fall within the statutory definition of Phase I, II, or III of the STTR Program, as described in Section 4 of this Policy Directive. The scope and extent of the STTR technical data rights applicable to Federally-funded Phase III awards is identical to the STTR data rights applicable to Phases I and II STTR awards. The data rights protection period lapses only: (i) Upon expiration of the protection period applicable to the STTR award, or (ii) by agreement between the awardee and the agency.

(4) Agencies must insert the provisions of (b)(1), (2), and (3) immediately above as STTR data rights clauses into all STTR Phase I, Phase II, and Phase III awards. These data rights clauses are non-negotiable and must not be the subject of negotiations pertaining to an STTR Phase III award, or diminished or removed during award administration. An agency must not, in any way, make issuance of an STTR Phase III award conditional on data rights. If the STTR awardee wishes to transfer its STTR data rights to the awarding agency or to a third party, it must do so in writing under a separate agreement. A decision by the awardee to relinquish, transfer, or modify in any way its STTR data rights must be made without pressure or coercion by the agency or any other party. Following issuance of an STTR Phase III award, the awardee may enter into an agreement with the awarding agency to transfer or modify the data rights contained in that STTR Phase III award. Such a bilateral data rights agreement must be entered into only after the STTR Phase III award, which includes the appropriate STTR data rights clause, has been signed. SBA must immediately report to the Congress any attempt or action by an agency to condition an STTR award on data rights, to exclude the appropriate data rights clause from the award, or to diminish such rights.

(c) *Allocation of Rights.*

(1) An SBC, before receiving an STTR award, must negotiate a written agreement between the SBC and the single, partnering research institution, allocating intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. The SBC must submit this agreement to the awarding agency upon request—either with the proposal or any time thereafter. The SBC must certify in all proposals that the agreement is satisfactory to the SBC.

(2) The awarding agency may accept an existing agreement between the two parties if the SBC certifies its satisfaction with the agreement, and such agreement does not conflict with the interests of the Government. Each agency participating in the STTR Program shall provide a model agreement to be used as guidance by the SBC in the development of an agreement with the research institution. The model agreement should direct the parties to, at a minimum:

(i) State specifically the degree of responsibility, and ownership of any product, process, or other invention or innovation resulting from the cooperative research. The degree of responsibility shall include responsibility for expenses and liability, and the degree of ownership shall also include the specific rights to revenues and profits.

(ii) State which party may obtain United States or foreign patents or otherwise protect any inventions resulting from the cooperative research.

(iii) State which party has the right to any continuation of research, including non-STTR follow-on awards.

The Government will not normally be a party to any agreement between the SBC and the research institution. Nothing in the agreement is to conflict with any provisions setting forth the respective rights of the United States and the SBC with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(3) Pursuant to the Act, SBA will establish a single model agreement for use in the STTR Program that allocates between SBCs and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization. Written comments from affected Federal agencies, SBCs, research institutions, and other interested parties will be solicited in the development of the model agreement. Each agency participating in the STTR Program will adopt the agreement developed by SBA as the agency's model agreement.

(d) *Title Transfer of Agency Provided Property.* Under the Act, the Government may transfer title to equipment provided by the STTR agency to the awardee where such transfer would be more cost effective than recovery of the property.

(e) *Continued Use of Government Equipment.* The Act directs that an agency allow an STTR awardee participating in the third phase of the STTR Program continued use, as a directed bailment, of any property transferred by the agency to the Phase II awardee. The Phase II awardee may use the property for a period of not less than 2 years, beginning on the initial date of the concern's participation in the third phase of the STTR Program.

(f) *Grant Authority.* The Act does not, in and of itself, convey grant authority. Each agency must secure grant authority in accordance with its normal procedures.

(g) *Conflicts of Interest.* SBA cautions STTR agencies that awards made to SBCs owned by or employing current or previous Federal Government employees may create conflicts of interest in violation of FAR Part 3 and the Ethics in Government Act of 1978, as amended. Each STTR agency should refer to the standards of conduct review procedures currently in effect for its agency to ensure that such conflicts of interest do not arise.

(h) *American-made Equipment and Products.* Congress intends that the awardee of a funding agreement under the STTR Program should, when purchasing any equipment or a product with funds provided through the funding agreement, purchase only American-made equipment and products, to the extent possible, in keeping with the overall purposes of this program. Each STTR agency must provide to each awardee a notice of this requirement.

9. Responsibilities of STTR Participating Agencies and Departments

(a) The Act requires each agency participating in the STTR Program to:

(1) Unilaterally determine the categories of projects to be included in its STTR Program, giving special consideration to broad research topics and to topics that further one or more critical technologies, as identified by:

(i) The National Critical Technologies panel (or its successor) in reports required under 42 U.S.C. 6683, or

(ii) The Secretary of Defense in accordance with 10 U.S.C. 2522.

(2) Release STTR solicitations in accordance with the SBA master schedule.

(3) Unilaterally receive and evaluate proposals resulting from program solicitations, select awardees, issue funding agreements, and inform each awardee under such agreement, to the extent possible, of the expenses of the awardee that will be allowable under the funding agreement.

(4) Require a succinct commercialization plan with each proposal submitted for a Phase II award.

(5) Collect and maintain information from awardees and provide it to SBA to develop and maintain the Tech-Net Database, as identified in Section 11(e) of this Policy Directive.

(6) Administer its own STTR funding agreements or delegate such administration to another agency.

(7) Include provisions in each STTR funding agreement setting forth the respective rights of the United States and the awardee with respect to intellectual property rights and with respect to any right to carry out follow-on research.

(8) Ensure that the rights in data developed under each Federally-funded STTR Phase I, Phase II, and Phase III award are protected properly.

(9) Make payments to awardees of STTR funding agreements on the basis of progress toward or completion of the funding agreement requirements and in all cases make payment to awardees under such agreements in full, subject to audit, on or before the last day of the 12-month period beginning on the date of completion of such requirements.

(10) Provide an annual report on the STTR Program to SBA. See Section 10 of this Policy Directive.

(11) Report at least annually to SBA's Office of Technology all instances in which an agency pursued research, development, production, or any such combination of a technology developed by an SBC using an award made under the STTR Program of that agency, where the agency determined that it was not practicable to enter into a follow-on non-STTR Program funding agreement with that concern. The report shall include, at a minimum:

(i) The reasons why the follow-on funding agreement with the concern was not practicable;

(ii) The identity of the entity with which the agency contracted to perform the research, development, or production; and

(iii) A description of the type of funding agreement under which the research, development, or production was obtained.

(12) Include in its annual performance plan required by 31 U.S.C. 1115(a) and (b) a section on its STTR Program, and submit such section to the Senate Committee on Small Business and Entrepreneurship and to the House Committees on Science and Small Business.

(13) Adopt the model agreement to be developed by SBA for use in the STTR Program that allocates between SBCs and research institutions intellectual property rights and rights, if any, to carry out follow-on research, development, or commercialization.

(14) Develop, in consultation with the Office of Federal Procurement Policy and the Office of Government Ethics, procedures to ensure that Federally-funded research and development centers that participate in STTR agreements:

(i) Are free from organizational conflicts of interests relative to the STTR Program;

(ii) Do not use privileged information gained through work performed for an STTR agency or private access to STTR agency personnel in the development of an STTR proposal; and

(iii) Use outside peer review as appropriate.

(15) Implement an outreach program to research institutions and SBCs for the purpose of enhancing its STTR Program, in conjunction with any such outreach done for purposes of the Small Business Innovation Research (SBIR) Program.

(b) Interagency actions.

(1) *Joint funding.* An STTR project may be financed by more than one Federal agency. Joint funding is not required but can be an effective arrangement for some projects.

(2) *Phase II awards.* An STTR Phase II award may be issued by a Federal agency other than the one that made the Phase I award. The Phase I and Phase II agencies should document their files appropriately, providing clear rationale for the transfer of the Phase II proposal to, and award by, the funding Federal agency.

(3) *Timely notification of awards.* In order to avoid duplicate funding of an STTR project, agencies shall promptly search the Tech-Net Database System for awards for essentially equivalent work. Discussion among agencies receiving similar proposals is strongly encouraged before an STTR award is made.

(4) *Participation by women-owned SBCs, socially and economically disadvantaged SBCs, veteran-owned SBCs, disabled veteran-owned SBCs and HUBZone SBCs in the STTR Program.* In order to meet statutory requirements for greater inclusion, SBA and the Federal participating agencies will conduct outreach efforts to find and place innovative women-owned SBCs and socially and economically disadvantaged SBCs in the STTR Program information system. These SBCs will be required to compete for STTR awards on the same basis as all other SBCs. However, participating agencies are encouraged to work independently and cooperatively with

SBA to develop methods to encourage qualified women-owned SBCs and socially and economically disadvantaged SBCs to participate in the STTR Program. In addition, agencies are encouraged to conduct outreach efforts to find and place veteran-owned, disabled veteran-owned, and HUBZone SBCs in the STTR program.

(c) Limitation of participation and use of funds.

(1) An agency must not use any of its STTR budget for the purpose of funding administrative costs of the program, including costs associated with program operations, employee salaries, and other associated expenses, or, in the case of a SBC or a research institution, costs associated with employee salaries and other associated expenses, including administrative overhead (other than those direct or indirect costs allowable under guidelines of the Office of Management and Budget and the Federal Acquisition Regulation).

(2) A Federal agency must not issue an STTR funding agreement that includes a provision for subcontracting any portion of that agreement back to the issuing agency, to any other Federal Government agency, or to other units of the Federal Government. SBA may issue a case-by-case waiver to this provision after review of an agency's written justification that includes the following information:

(i) An explanation of why the STTR research project requires the use of the Federal facility or personnel, including data that verifies the absence of non-Federal facilities or personnel capable of supporting the research effort.

(ii) Why the Agency will not and cannot fund the use of the Federal facility or personnel for the STTR project with non-STTR money.

(iii) The concurrence of the SBC's chief business official to use the Federal facility or personnel.

(iv) Only those labs that are organized as an FFRDC and approved by the National Science Foundation are eligible to participate in the STTR Program without the use of the waiver provision.

(3) No agency, at its own discretion, may unilaterally cease participation in the STTR Program. R/R&D agency budgets may cause fluctuations and trends that must be reviewed in light of STTR Program purposes. An agency may be considered by SBA for a phased withdrawal from participation in the STTR Program over a period of time sufficient in duration to minimize any adverse impact on SBCs. However, the SBA decision concerning such a withdrawal will be made on a case-by-case basis and will depend on significant changes to extramural R/R&D 3-year forecasts as found in the annual *Budget of the United States Government* and National Science Foundation breakdowns of total R/R&D obligations as published in the *Federal Funds for Research and Development.* Any withdrawal of an STTR Federal participating agency from the STTR Program will be accomplished in a standardized and orderly manner in compliance with these statutorily mandated procedures.

(4) Federal agencies not otherwise qualified for the STTR Program may participate on a voluntary basis. Federal agencies seeking to participate in the STTR Program must first submit their written requests to SBA. Voluntary participation requires the written approval of SBA.

(5) Agencies may not make available, for the purpose of meeting the required percentage of expenditure on SBCs for the STTR Program (see section 2(d) of this Policy Directive) an amount of its extramural budget for basic research that exceeds those percentages.

(6) Funding agreements with SBCs for R/R&D that result from competitive or single source selections other than an STTR Program shall not be considered to meet any portion of the percentage requirements of section 2(d) set forth in this Policy Directive.

10. Annual Report to the Small Business Administration

The Act requires a ''simplified, standardized and timely annual report'' from the STTR agencies. The following paragraphs explain more about this requirement, including the due date, the kinds of information to be included, and the number of copies to be submitted to SBA.

(a) Annual Report Due Date and Number of Copies

Reporting must be on an annual basis and will be for the period ending September 30 of each fiscal year. A single, hard copy report is due to SBA by March 15 of each year. For example, the report for FY 2002 (October 1, 2001–September 30, 2002) must be submitted to SBA by March 15, 2003. SBA encourages agencies to submit their annual report before the March 15 due date. The report should be sent to the address noted in section 5(b). However, if agencies choose to send an electronic version, it should be sent to *technology@sba.gov.*

(b) Annual Report Content

(1) Agency total fiscal year, extramural R/R&D total obligations as reported to the National Science Foundation pursuant to the annual *Budget of the United States Government.*

(2) STTR Program total fiscal year dollars derived by applying the statutory percentage to the agency's extramural R/R&D total obligations.

(3) STTR Program fiscal year dollars obligated through STTR Program funding agreements for Phase I and Phase II.

(4) Number of topics and subtopics contained in each program solicitation.

(5) Number of proposals received by the agency for each topic and subtopic in each program solicitation. Identify the number of proposals received from, and the number and total amount of awards to, HUBZone SBCs.

(6) For both Phase I and Phase II, the awardee's name and address, solicitation topic and subtopic, solicitation number, project title, and total dollar amount of funding agreement. Identify women-owned SBCs, economically and socially disadvantaged SBCs, HUBZone SBCs, and Phase II awardees with follow-on funding commitments.

(7) Justification for the award of any funding agreement exceeding $100,000 for Phase I or $750,000 for Phase II.

(8) The number of awardees for whom the Phase I process exceeded 6 months starting from the closing date of the STTR solicitation to award of the funding agreement.

(9) For an agency Phase III award using non-STTR Federal funds to continue a Phase II project, the agency must provide the name, address, project title, and dollar amount obligated.

(10) Justification for awards made under a topic or subtopic where the agency received only one proposal. Agencies must also provide the awardee's name and address, the topic or subtopic, and dollar amount of award. Information must be collected quarterly but updated in the agency's annual report.

(11) If applicable, report the number of National Critical Technology topic or subtopic funding agreements issued, including an identification of the specific critical technology topics, and the percentage by number and dollar amount of the agency's total STTR awards to such National Critical Technologies topics.

(12) Report all instances in which an agency pursued R/R&D, services, production, or any such combination of a technology developed by an STTR awardee and determined that it was not practicable to enter into a follow-on funding agreement with non-STTR funds with that concern. *See* section

9(a)(11) for minimum reporting requirements.

(13) Report participation by research institutions that fall under the following educational categories: HBCU, HSI, NHSI, TSI or ANSI pursuant to the collaborative agreement with SBC. Include the dollar amount received by the specific research institution.

11. Responsibilities of SBA

(a) SBA's Office of Technology will annually obtain available information on the current critical technologies from the National Critical Technologies panel (or its successor) and the Secretary of Defense and provide such information to the STTR agencies.

(b) SBA will request this information in June of each year. The data received will be submitted to each of the participating Federal agencies and will also be published in the September issue of the STTR Pre-Solicitation Announcement.

(c) Examples of STTR Areas to be Monitored by SBA.

(1) *STTR Funding Allocations.* The magnitude and source of each STTR agency's annual allocation reserved for STTR awards are critical to the success of the STTR Program. The Act defines the STTR effort (R/R&D), the source of the funds for financing the STTR Program (extramural budget), and the percentage of such funds to be reserved for the STTR Program (0.15 percent through 2003, 0.3 percent thereafter). The Act requires that SBA monitor these annual allocations.

(2) *STTR Program Solicitation and Award Status.* The accomplishment of scheduled STTR events, such as the STTR Program solicitation release and the issuance of funding agreements is critical to meeting statutory mandates and to operating an effective, useful program. SBA monitors these and other operational features of the STTR Program. SBA does not plan to monitor administration of the awards except in instances where SBA assistance is requested and is related to a specific STTR project or funding agreement.

(3) *Follow-on Funding Commitments.* SBA will monitor whether follow-on non-Federal funding commitments obtained by Phase II awardees for Phase III were considered in the evaluation of Phase II proposals as required by the Act.

(4) *Agency Rules and Regulations.* It is essential that no policy, rule, regulation, or interpretation be promulgated by the STTR agencies that are inconsistent with the Act or this Policy Directive. SBA's monitoring activity will include review of policies, rules, regulations, interpretations, and procedures generated to facilitate intra- or interagency STTR Program implementation.

(d) SBA develops, participates in, and, when appropriate and feasible, sponsors seminars for innovative women-owned SBCs and socially and economically disadvantaged SBCs to inform them of the STTR Program and Federal and commercial assistance and services available for STTR Program participants.

(e) Standardized Collection of Data—''Technology Resources Access Network'' (Tech-Net) Database System Overview.

(1) SBA's Office of Technology, as program manager for the STTR and the SBIR Programs, is required to collect and report to the Congress, information regarding awards made to SBCs by each Federal agency participating in these programs.

(2) The Office of Technology maintains an internal database of awards and uses the system to report on technology and demographical statistics regarding the STTR and the SBIR Programs. The system also stores the 200-word technical abstract for each STTR and SBIR award that is prepared by the awardee summarizing the research effort that has been supported by the Federal Government. The system also provides the Office of Technology with the ability to perform keyword searches in many areas, including any part of the name, address, and technical abstract of the awardee. The system produces many reports that are used in the conduct of audits performed by the General Accountability Office (GAO) and to expose potential duplication of research and development efforts funded by the STTR agencies.

(3) The Office of Technology, in a joint effort with SBA's Office of the Chief Information Officer, has redesigned the Office of Technology's internal awards database system to operate on the Internet. The Internet system is titled the ''Technology Resources Access Network,'' or Tech-Net.

(4) Tech-Net offers a vast array of user-friendly capabilities, and is accessible by the public at no charge. Tech-Net allows for the online submission of STTR/SBIR awards data from all STTR agencies. Tech-Net also allows any end-user to perform keyword searches and create formatted reports of STTR/SBIR awards information. Tech-Net will allow for potential research partners to view research and development efforts that are ongoing in the STTR and the SBIR Programs, increasing the investment opportunities of the STTR/SBIR SBCs in the high tech arena. Tech-Net serves as an excellent marketing tool for the small, high tech business community, allowing investors to view first-hand the technical capabilities of STTR/SBIR awardees. This will ultimately produce investments, partnerships, and strategic alliances resulting in commercialization of STTR/SBIR research.

(5) Tech-Net also houses legislatively mandated information on all STTR and SBIR awards, as well as confidential outcome and output information that will be relevant to measuring the effectiveness and success of the programs.

(6) Awardees can update their information and add project commercialization and sales data with user names and passwords. Username and passwords will be assigned only to awardees to provide access to their respective awards information maintained in the Tech-Net system. Award and commercialization data maintained in the Tech-Net database can be changed only by the awardee, SBA, or the awarding STTR/SBIR Federal agency.

(7) Project commercialization and sales data can only be viewed by Congress, the General Accountability Office (GAO), agencies participating in the STTR and the SBIR Programs, Office of Management and Budget (OMB), Office of Science and Technology Policy (OSTP), Office of Federal Procurement Policy (OFPP), and other authorized persons (for example, authorized contractors) who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.

(8) To use the Tech-Net database system, visit the Web site *http://tech-net.sba.gov*. Online help is available.

(9) *Public Tech-Net Database (See Appendix II for Data Fields).* The public Tech-Net database is a searchable, up-to-date, electronic database that includes:

(i) The name, size, location, funding agreement number, and identification number assigned by the Administrator of each SBC that has received an STTR or SBIR Phase I or Phase II award from a Federal agency;

(ii) A description of each STTR or SBIR Phase I or Phase II award received by the SBC including:

(A) An abstract of the project funded by the award, excluding any proprietary information so identified by the awardee;

(B) The Federal agency making the award; and

(C) The date and amount of the award.

(iii) An identification of any business concern or subsidiary established for the

commercial application of a product or service for which an STTR or SBIR award is made; and

(iv) Information regarding mentors and Mentoring networks, as required in the Federal and State Technology (FAST) Partnership Program established under Section 35(d) of the Act and described on the SBA's Internet site at *http://www.sba.gov/sbir/indexfast.html.*

(v) With respect to assistance under the STTR Program (as required under section 9(k)(1) of the Act):

(A) Whether the SBC or the research institution initiated their collaboration on each assisted STTR project;

(B) Whether the SBC or the research institution originated any technology relating to the assisted STTR project;

(C) The length of time it took to negotiate any licensing agreement between the SBC and the research institution under each assisted STTR project; and

(D) The percentage allocated between the SBC and the research institution of the proceeds from commercialization, marketing, or sale of technology resulting from each assisted STTR project.

(E) The educational category of the research institution such as NHSI, HSI, HBCU, TCU or ANSI.

(F) The dollar amount awarded to the research institution identified under the one of the educational categories under E.

(10) *Government Tech-Net Database.* SBA, in consultation with the Federal agencies participating in the STTR and the SBIR Programs, develops and maintains a secure database that:

(i) Contains, for each Phase II award:

(A) Information on revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(B) Information on additional investment from any source, other than Phase I or Phase II STTR or SBIR awards, to further the research and development conducted under each Phase II award; and

(C) Any other information received in connection with the award that the Administrator, in conjunction with the STTR Program managers of the participating agencies, considers relevant and appropriate;

(ii) Includes any narrative information that a Phase II awardee voluntarily submits to further describe the outputs and outcomes of its awards;

(iii) Includes for each applicant that does not receive a Phase I or Phase II award: (A) the name, size, location, and identifying number assigned by SBA, and identification number assigned by SBA; (B) an abstract of the project; and (C) the Federal agency to which the application was made;

(iv) Includes any other data collected by or available to any Federal agency that such agency considers to be useful for STTR Program evaluation; and

(v) Is available for use solely for program evaluation purposes by the Federal Government or, in accordance with Policy Directives issued by SBA, by other authorized persons who are subject to a use and nondisclosure agreement with the Federal Government covering the use of the database.

(ll) *Data Collection for Government Tech-Net Database.*

(i) Each SBC applying for a Phase II award is required to update the appropriate information in the Tech-Net database for any of its prior Phase II awards. In meeting this requirement, the SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(ii) Each Phase II awardee is required to update the appropriate information in the Tech-Net database on that award upon completion of the last deliverable under the funding agreement. In addition, the awardee is requested to voluntarily update the appropriate information on that award in the Tech-Net database annually thereafter for a minimum period of 5 years.

(iii) Pursuant to 15 U.S.C. 638(k)(4), information provided to the Government Tech-Net Database is privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 (Government Organization and Employees); nor must it be considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).

(iv) SBA will minimize the data reporting requirements of SBCs, make updating available electronically, and provide standardized procedures.

Appendix I: Instructions for STTR Program Solicitation Preparation

1. General

Section 9(p) of the Small Business Act (15 U.S.C. 638(p)) requires '' * * * simplified, standardized and timely STTR solicitations'' and for STTR agencies to utilize a ''uniform process'' minimizing the regulatory burden of participation. Therefore, the following instructions purposely depart from normal Government solicitation formats and requirements. STTR solicitations must be prepared and issued as program solicitations in accordance with the following instructions.

2. Limitation in Size of Solicitation

In the interest of meeting the requirement for simplified and standardized solicitations, while also recognizing that the Internet has become the main vehicle for distribution, each agency should structure its entire STTR solicitation to produce the least number of pages (electronic and printed), consistent with the procurement/assistance standard operating procedures and statutory requirements of the participating Federal agencies.

3. Format

STTR Program solicitations must be prepared in a simple, standardized, easy-to-read, and easy-to-understand format. It must include a cover sheet, a table of contents, and the following sections in the order listed:

1. Program Description
2. Definitions
3. Proposal Preparation Instructions and Requirements
4. Method of Selection and Evaluation Criteria
5. Considerations
6. Submission of Proposals
7. Scientific and Technical Information Sources
8. Submission Forms and Certifications
9. Research Topics

4. Cover Sheet

The cover sheet of an STTR Program solicitation must clearly identify the solicitation as a STTR solicitation, identify the agency releasing the solicitation, specify date(s) on which contract proposals or grant applications (proposals) are due under the solicitation, and state the solicitation number or year.

Instructions for Preparation of STTR Program Solicitation Sections 1 through 9

1. Program Description

(a) Summarize in narrative form the invitation to submit proposals and the objectives of the STTR Program.

(b) Describe in narrative form the agency's STTR Program, including a description of the three phases. Note in your description that the solicitation is for Phase I proposals only.

(c) Describe program eligibility, as follows:

Eligibility. Each concern submitting a proposal must qualify as a SBC for R/R&D purposes at the time of award. The SBC will submit a proposal for ''cooperative research and development'' with a non-profit ''research institution'' (terms as defined in this Policy Directive). Also, for both Phase I and Phase II, the R/R&D work must be performed in the United States. However, based on a rare and unique circumstance, for example, a supply or material or other item or project requirement that is not available in the United States, agencies may allow that particular portion of the research or R&D work to be performed or obtained in a country outside of the United States. Approval by the funding agreement officer for each such specific condition must be in writing. Phase II proposals may be submitted only by Phase I awardees.

(d) List the name, address and telephone number of agency contacts for general information on the STTR Program solicitation.

2. Definitions

Whenever terms are used that are unique to the STTR Program, a specific STTR

solicitation or a portion of a solicitation, they will be defined in a separate section entitled ''Definitions.'' At a minimum, the definitions of ''R/R&D,'' ''cooperative research and development,'' ''funding agreement,'' ''research institution,'' ''SBC,'' ''STTR technical data,'' ''STTR technical data rights,'' ''subcontract,'' and ''women-owned SBC,'' as stated in this Policy Directive, must be included.

3. Proposal Preparation Instructions and Requirements

The purpose of this section is to inform the applicant on what to include in the proposal and to set forth limits on what may be included. It should also provide guidance to assist applicants, particularly to firms that may not have previous Government experience, in improving the quality and acceptance of proposals.

(a) *Limitations on Length of Proposal.* Include at least the following information:

(1) STTR Phase I proposals must not exceed a total of 25 pages, including cover page, budget, and all enclosures or attachments, unless stated otherwise in the agency solicitation. Pages should be of standard size (8½″ x 11″ 21.6 cm x 27.9 cm) and should conform to the standard formatting instructions which are provided in this section. Margins should be 2.5 cm and the type at least 10 point font. A SBC, before receiving an STTR award, must negotiate a written agreement between the SBC and the single, partnering research institution, as discussed in section 8(c) of this Policy Directive. While an agency may require this agreement to be submitted at the time of the proposal (or at a later date), it is not considered to be part of the proposal and is not subject to the page limitation.

(2) A notice that no additional attachments, appendices, or references beyond the 25-page limitation shall be considered in proposal evaluation (unless specifically solicited by an agency) and that proposals in excess of the page limitation shall not be considered for review or award.

(b) *Proposal Cover Sheet.* Every applicant is required to include at least the following information on the first page of proposals. Items 8 and 9 are for statistical purposes only.

(1) Agency and Solicitation Number or Year.

(2) Topic Number or Letter.

(3) Subtopic Number or Letter.

(4) Topic Area.

(5) Project Title.

(6) Name and Complete Address of Firm.

(7) Small Business Certifications (by statement or checkbox) as follows:

(a) ''The above concern certifies that it is an SBC and meets the definition as stated in this solicitation or that it will meet that definition at time of award.''

(b) ''The above concern certifies that at least 40 percent of the work under this project will be performed by the SBC and at least 30 percent of the work under this project will be performed by the research institution.''

(8) Socially and Economically Disadvantaged SBC Certification (by statement or checkbox) as follows:

''The above concern certifies that it __ does __ does not qualify as a socially and economically disadvantaged SBC as defined in this solicitation.''

(9) Women-owned SBC Certification (by statement or checkbox) as follows: ''The above concern certifies that it __ does __ does not qualify as a women-owned SBC as defined in this solicitation.''

(10) An information statement regarding duplicate research as follows: ''The applicant and/or Principal Investigator __ has __ has not submitted proposals for essentially equivalent work under other Federal program solicitations or __ has __ has not received other Federal awards for essentially equivalent work.'' (Identify proposals/awards in Section 3(e)10, ''Similar Proposals and Awards.'')

(11) Disclosure permission (by statement or checkbox), such as follows, may be included at the discretion of the funding agency: ''Will you permit the Government to disclose the title and technical abstract page of your final project, plus the name, address, and telephone number of the corporate official of your concern, if your proposal does not result in an award, to concerns that may be interested in contacting you for further information? Yes __ No __''

(12) Signature of a company official of the proposing SBC and that individual's typed name, title, address, telephone number, and date of signature.

(13) Signature of Principal Investigator or Project Manager and that individual's typed name, title, address, telephone number, and date of signature.

(14) Legend for proprietary information as described in the ''Considerations'' section of this program solicitation if appropriate. May also be noted by asterisks in the margins on proposal pages.

(c) *Data Collection Requirement.*

(l) Each Phase II applicant is required to provide information for the Tech-Net Database System (*http://technet.sba.gov*). The following are examples of the data to be entered by applicants into Tech-Net:

(i) Any business concern or subsidiary established for the commercial application of a product or service for which an STTR award is made.

(ii) Revenue from the sale of new products or services resulting from the research conducted under each Phase II award;

(iii) Additional investment from any source, other than Phase I or Phase II awards, to further the research and development conducted under each Phase II award.

(iv) Update the information in the Tech-Net database for any prior Phase II award received by the SBC. The SBC may apportion sales or additional investment information relating to more than one Phase II award among those awards, if it notes the apportionment for each award.

(2) Each Phase II awardee is required to update the appropriate information on the award in the Tech-Net database upon completion of the last deliverable under the funding agreement and is requested to voluntarily update the information in the Tech-Net database annually thereafter for a minimum period of 5 years.

(d) *Abstract or Summary.* Applicants will be required to include a one-page project summary of the final R/R&D including at least the following:

(1) Name and address of SBC.

(2) Name and title of principal investigator or project manager.

(3) Agency name, solicitation number, solicitation topic, and subtopic.

(4) Title of project.

(5) Technical abstract limited to two hundred words.

(6) Summary of the anticipated results and implications of the approach (both Phases I and II) and the potential commercial applications of the research.

(e) *Technical Content.* STTR Program solicitations must require as a minimum the following to be included in proposals submitted thereunder:

(1) *Identification and Significance of the Problem or Opportunity.* A clear statement of the specific technical problem or opportunity addressed.

(2) *Phase I Technical Objectives.* State the specific objectives of the Phase I research and development effort, including the technical questions it will try to answer to determine the feasibility of the final approach.

(3) *Phase I Work Plan.* Include a detailed description of the Phase I R/R&D plan. The plan should indicate what will be done, where it will be done, and how the R/R&D will be carried out. Phase I R/R&D should address the objectives and the questions cited in (e)(2) immediately above. The methods planned to achieve each objective or task should be discussed in detail.

(4) *Related R/R&D.* Describe significant R/R&D that is directly related to the proposal including any conducted by the project manager/principal investigator or by the proposing SBC. Describe how it relates to the final effort, and any planned coordination with outside sources. The applicant must persuade reviewers of his or her awareness of key, recent R/R&D conducted by others in the specific topic area.

(5) *Key Personnel and Bibliography of Directly Related Work.* Identify key personnel involved in Phase I including their directly related education, experience, and bibliographic information. Where curriculum vitae are extensive, summaries that focus on the most relevant experience or publications are desired and may be necessary to meet proposal size limitation.

(6) *Relationship with Future R/R&D.*

(i) State the anticipated results of the final approach if the project is successful (Phase I and II).

(ii) Discuss the significance of the Phase I effort in providing a foundation for the Phase II R/R&D effort.

(7) *Facilities.* A detailed description, availability and location of instrumentation and physical facilities final for Phase I should be provided.

(8) *Consultants.* Involvement of consultants in the planning and research stages of the project is permitted. If such involvement is intended, it should be described in detail.

(9) *Potential Post Applications.* Briefly describe:

(i) Whether and by what means the final project appears to have potential commercial application.

(ii) Whether and by what means the final project appears to have potential use by the Federal Government.

(10) *Similar Proposals or Awards.* WARNING—While it is permissible with proposal notification to submit identical proposals or proposals containing a significant amount of essentially equivalent work for consideration under numerous Federal program solicitations, it is unlawful to enter into funding agreements requiring essentially equivalent work. If there is any question concerning this, it must be disclosed to the soliciting agency or agencies before award. If an applicant elects to submit identical proposals or proposals containing a significant amount of essentially equivalent work under other Federal program solicitations, a statement must be included in each such proposal indicating:

(i) The name and address of the agencies to which proposals were submitted or from which awards were received.

(ii) Date of proposal submission or date of award.

(iii) Title, number, and date of solicitations under which proposals were submitted or awards received.

(iv) The specific applicable research topics for each proposal submitted or award received.

(v) Titles of research projects.

(vi) Name and title of principal investigator or project manager for each proposal submitted or award received.

(f) *Cost Breakdown/Final Budget.* The solicitation will require the submission of simplified cost or budget data.

4. Method of Selection and Evaluation Criteria

(a) *Standard Statement.* Essentially the following statement must be included in all STTR Program solicitations:

''All Phase I and II proposals will be evaluated and judged on a competitive basis. Proposals will be initially screened to determine responsiveness. Proposals passing this initial screening will be technically evaluated by engineers or scientists to determine the most promising technical and scientific approaches. Each proposal will be judged on its own merit. The Agency is under no obligation to fund any proposal or any specific number of proposals in a given topic. It also may elect to fund several or none of the final approaches to the same topic or subtopic.''

(b) *Evaluation Criteria.*

(1) The STTR agency must develop a standardized method in its evaluation process that will consider, at a minimum, the following factors:

(i) The technical approach and the anticipated agency and commercial benefits that may be derived from the research.

(ii) The adequacy of the final effort and its relationship to the fulfillment of requirements of the research topic or subtopics.

(iii) The soundness and technical merit of the final approach and its incremental progress toward topic or subtopic solution.

(iv) Qualifications of the final principal/key investigators, supporting staff, and consultants.

(v) Evaluations of proposals require, among other things, consideration of a proposal's commercial potential as evidenced by:

(A) The SBC's record of commercializing STTR or other research,

(B) The existence of second phase funding commitments from private sector or non-STTR funding sources,

(C) The existence of third phase follow-on commitments for the subject of the research, and,

(D) The presence of other indicators of the commercial potential of the idea.

(2) The factors in (b)(1) above and other appropriate evaluation criteria, if any, must be specified in the ''Method of Selection'' section of STTR Program solicitations.

(c) *Peer Review.* The program solicitation must indicate if the STTR agency contemplates that as a part of the STTR proposal evaluation, it will use external peer review.

(d) *Release of Proposal Review Information.* After final award decisions have been announced, the technical evaluations of the applicant's proposal may be provided to the applicant. The identity of the reviewer must not be disclosed.

5. Considerations

This section must include, as a minimum, the following information:

(a) *Awards.* Indicate the estimated number and type of awards anticipated under the particular STTR Program solicitation in question, including:

(i) Approximate number of Phase I awards expected to be made.

(ii) Type of funding agreement, that is, contract, grant or cooperative agreement.

(iii) Whether fee or profit will be allowed.

(iv) Cost basis of funding agreement, for example, firm-fixed-price, cost reimbursement, or cost-plus-fixed fee.

(v) Information on the approximate average dollar value of awards for Phase I and Phase II.

(b) *Reports.* Describe the frequency and nature of reports that will be required under Phase I funding agreements. Interim reports should be brief letter reports.

(c) *Payment Schedule.* Specify the method and frequency of progress and final payment under Phase I and II agreements.

(d) *Innovations, Inventions and Patents.*

(1) *Limited Rights Information and Data.*

(i) *Proprietary Information.* Essentially the following statement must be included in all STTR solicitations:

Information contained in unsuccessful proposals will remain the property of the applicant. The Government may, however, retain copies of all proposals. Public release of information in any proposal submitted will be subject to existing statutory and regulatory requirements. If proprietary information is provided by an applicant in a proposal, which constitutes a trade secret, proprietary commercial or financial information, confidential personal information or data affecting the national security, it will be treated in confidence, to the extent permitted by law. This information must be clearly marked by the applicant with the term ''confidential proprietary information'' and the following legend must appear on the title page of the proposal:

These data shall not be disclosed outside the Government and shall not be duplicated, used, or disclosed in whole or in part for any purpose other than evaluation of this proposal. If a funding agreement is awarded to this applicant as a result of or in connection with the submission of these data, the Government shall have the right to duplicate, use, or disclose the data to the extent provided in the funding agreement and pursuant to applicable law. This restriction does not limit the Government's right to use information contained in the data if it is obtained from another source without restriction. The data subject to this restriction are contained on pages ____ of this proposal.'' Any other legend may be unacceptable to the Government and may constitute grounds for removing the proposal from further consideration, without assuming any liability for inadvertent disclosure. The Government will limit dissemination of such information to within official channels.

(ii) *Alternative To Minimize Proprietary Information.* Agencies may elect to instruct applicants to:

(A) Limit proprietary information to only that absolutely essential to their proposal.

(B) Provide proprietary information on a separate page with a numbering system to key it to the appropriate place in the proposal.

(iii) *Rights in Data Developed Under STTR Funding Agreements.* Agencies should insert essentially the following statement in their STTR Program solicitations to notify SBCs of the necessity to mark STTR technical data before delivering it to the Agency:

To preserve the STTR data rights of the awardee, the legend (or statements) used in the STTR Data Rights clause included in the STTR award must be affixed to any submissions of technical data developed under that STTR award. If no Data Rights clause is included in the STTR award, the following legend, at a minimum, should be affixed to any data submissions under that award.

These STTR data are furnished with STTR rights under Funding Agreement No. ____ (and subcontract No. ____ if appropriate), Awardee Name _____, Address, Expiration Period of STTR Data Rights _____. The Government may not use, modify, reproduce, release, perform, display, or disclose technical data or computer software marked with this legend for (chose four (4) or five (5) years). After expiration of the (4- or 5-year period), the Government has a royalty-free license to use, and to authorize others to use on its behalf, these data for Government purposes, and is relieved of all disclosure prohibitions and assumes no liability for unauthorized use of these data by third parties, except that any such data that is also protected and referenced under a subsequent STTR award shall remain protected through the protection period of that subsequent STTR award. Reproductions of these data or software must include this legend.

(iv) *Copyrights.* Include an appropriate statement concerning copyrights and publications; for example:

With prior written permission of the funding agreement officer, the awardee normally may copyright and publish (consistent with appropriate national security considerations, if any) material developed with (agency name) support. (Agency name) receives a royalty-free license for the Federal Government and requires that each publication contain an appropriate acknowledgement and disclaimer statement.

(v) *Patents.* Include an appropriate statement concerning patents. For example:

Small business concerns normally may retain the principal worldwide patent rights to any invention developed with Government support. The Government receives a royalty-free license for Federal Government use, reserves the right to require the patent holder to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically. To the extent authorized by 35 U.S.C. 205, the Government will not make public any information disclosing a Government-supported invention for a minimum 4-year period (that may be extended by subsequent STTR funding agreements) to allow the awardee a reasonable time to pursue a patent.

(vi) *Invention Reporting.* Include requirements for reporting inventions. Include appropriate information concerning the reporting of inventions, for example:

STTR awardees must report inventions to the awarding agency within 2 months of the inventor's report to the awardee. The reporting of inventions may be accomplished by submitting paper documentation, including fax.

Note: Some agencies provide electronic reporting of inventions through the NIH Edison Invention Reporting System (Edison System). Use of the Edison System satisfies all invention reporting requirements mandated by 37 CFR Part 401, with particular emphasis on the Standard Patent Rights Clauses, 37 CFR 401.14. Access to the system is through a secure interactive Internet site, *http://www.iedison.gov,* to ensure that all information submitted is protected. All agencies are encouraged to use the Edison System. In addition to fulfilling reporting requirements, the Edison System notifies the user of future time sensitive deadlines with enough lead-time to avoid the possibility of loss of patent rights due to administrative oversight.

(e) *Cost-Sharing.* Include a statement essentially as follows:

Cost-sharing is permitted for proposals under this program solicitation; however, cost-sharing is not required. Cost-sharing will not be an evaluation factor in consideration of your Phase I proposal.

(f) *Profit or Fee.* Include a statement on the payment of profit or fee on awards made under the STTR Program solicitation.

(g) *Joint Ventures or Limited Partnerships.* Include essentially the following language:

Joint ventures and limited partnerships are eligible provided the entity created qualifies as a small business concern as defined in this program solicitation.

(h) *Research and Analytical Work.* Include essentially the following statement:

(1) For both Phase I and Phase II, not less than 40 percent of the R/R&D work must be performed by the SBC, and not less than 30 percent of the R/R&D work must be performed by the single, partnering research institution, as defined in this solicitation.

(i) *Awardee Commitments.* To meet the legislative requirement that STTR solicitations be simplified, standardized and uniform, clauses expected to be in or required to be included in STTR funding agreements must not be included in full or by reference in STTR Program solicitations. Rather, applicants must be advised that they will be required to make certain legal commitments at the time of execution of funding agreements resulting from STTR Program solicitations. Essentially, the following statement must be included in the ''Considerations'' section of STTR Program solicitations:

Upon award of a funding agreement, the awardee will be required to make certain legal commitments through acceptance of numerous clauses in Phase I funding agreements. The outline that follows is illustrative of the types of clauses to which the contractor would be committed. This list is not a complete list of clauses to be included in Phase I funding agreements, and is not the specific wording of such clauses. Copies of complete terms and conditions are available upon request.

(j) *Summary Statements.* The following are illustrative of the type of summary statements to be included immediately following the statement in subparagraph (i). These statements are examples only and may vary depending upon the type of funding agreement used.

(1) *Standards of Work.* Work performed under the funding agreement must conform to high professional standards.

(2) *Inspection.* Work performed under the funding agreement is subject to Government inspection and evaluation at all times.

(3) *Examination of Records.* The Comptroller General (or a duly authorized representative) must have the right to examine any pertinent records of the awardee involving transactions related to this funding agreement.

(4) *Default.* The Government may terminate the funding agreement if the contractor fails to perform the work contracted.

(5) *Termination for Convenience.* The funding agreement may be terminated at any time by the Government if it deems termination to be in its best interest, in which case the awardee will be compensated for work performed and for reasonable termination costs.

(6) *Disputes.* Any dispute concerning the funding agreement that cannot be resolved by agreement must be decided by the contracting officer with right of appeal.

(7) *Contract Work Hours.* The awardee may not require an employee to work more than 8 hours a day or 40 hours a week unless the employee is compensated accordingly (for example, overtime pay).

(8) *Equal Opportunity.* The awardee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin.

(9) *Affirmative Action for Veterans.* The awardee will not discriminate against any employee or applicant for employment because he or she is a disabled veteran or veteran of the Vietnam era.

(10) *Affirmative Action for Handicapped.* The awardee will not discriminate against any employee or applicant for employment because he or she is physically or mentally handicapped.

(11) *Officials Not To Benefit.* No Government official must benefit personally from the STTR funding agreement.

(12) *Covenant Against Contingent Fees.* No person or agency has been employed to solicit or secure the funding agreement upon an understanding for compensation except bona fide employees or commercial agencies maintained by the awardee for the purpose of securing business.

(13) *Gratuities.* The funding agreement may be terminated by the Government if any gratuities have been offered to any representative of the Government to secure the award.

(14) *Patent Infringement.* The awardee shall report each notice or claim of patent infringement based on the performance of the funding agreement.

(15) *American Made Equipment and Products.* When purchasing equipment or a product under the STTR funding agreement, purchase only American-made items whenever possible.

(k) *Additional Information.* Information pertinent to an understanding of the administration requirements of STTR proposals and funding agreements not included elsewhere must be included in this section. As a minimum, statements essentially as follows must be included under ''Additional Information'' in STTR Program solicitations:

(1) This program solicitation is intended for informational purposes and reflects current planning. If there is any inconsistency between the information contained herein and the terms of any resulting STTR funding agreement, the terms of the funding agreement are controlling.

(2) Before award of an STTR funding agreement, the Government may request the applicant to submit certain organizational, management, personnel, and financial information to assure responsibility of the applicant.

(3) The Government is not responsible for any monies expended by the applicant before award of any funding agreement.

(4) This program solicitation is not an offer by the Government and does not obligate the Government to make any specific number of awards. Also, awards under the STTR Program are contingent upon the availability of funds.

(5) The STTR Program is not a substitute for existing unsolicited proposal mechanisms. Unsolicited proposals must not be accepted under the STTR Program in either Phase I or Phase II.

(6) If an award is made pursuant to a proposal submitted under this STTR Program solicitation, a representative of the contractor or grantee or party to a cooperative agreement will be required to certify that the concern has not previously been, nor is currently being, paid for essentially equivalent work by any Federal agency.

6. Submission of Proposals

(a) This section must clearly specify the closing date on which all proposals are due to be received.

(b) This section must specify the number of copies of the proposal that are to be submitted.

(c) This section must clearly set forth the complete mailing and/or delivery address(es) where proposals are to be submitted.

(d) This section may include other instructions such as the following:

(1) *Bindings.* Please do not use special bindings or covers. Staple the pages in the upper left corner of the cover sheet of each proposal.

(2) *Packaging.* All copies of a proposal should be sent in the same package.

7. Scientific and Technical Information Sources

Wherever descriptions of research topics or subtopics include reference to publications, information on where such publications will normally be available shall be included in a separate section of the solicitation entitled ''Scientific and Technical Information Sources.''

8. Research Topics

Describe sufficiently the R/R&D topics and subtopics for which proposals are being solicited to inform the applicant of technical details of what is desired. Allow flexibility in order to obtain the greatest degree of creativity and innovation consistent with the overall objectives of the STTR Program.

9. Submission Forms and Certifications

Multiple copies of proposal preparation forms necessary to the contracting and granting process may be required. This section may include Proposal Summary, Proposal Cover, Budget, Checklist, and other forms the sole purpose of which is to meet the mandate of law or regulation and simplify the submission of proposals.

This section may also include certifying forms required by legislation, regulation or standard operating procedures, to be submitted by the applicant to the contracting or granting agency. This would include certifying forms such as those for the protection of human and animal subjects.

Appendix II: Tech-Net: Data Fields and Questionnaire

(a) The following are the data collection fields for the Public (Awards) Database as described in Section 11(e)(9) of this Policy Directive for all STTR/SBIR annual data submissions to the SBA.

TECHNET PUBLIC (AWARDS) DATABASE

Field name	Required code	Type	Width	Description
1. Program Identification	MA	Numeric	1	STTR/SBIR Award Program Identifier 0 = STTR; 1 = SBIR.
2. Company		Char	80	Company Name.
3. Company Division		Char	80	Company Division.
4. Street1	MA	Char	80	Street Address 1.
5. Street2		Char	80	Street Address 2.
6. City	MA	Char	40	City.
7. State	MA	Char	2	State.
8. Zip	MA	Numeric	5	Zip.
9. Zip4	MA	Numeric	4	Zip + 4.
10. Socially and Economically Disadvantaged Small Business.	MA	Numeric	1	Socially and Economically Disadvantaged Small Business indicator (Allowable values: 0 = yes; 1 = no).
11. Women	MA	Numeric	1	Women-owned company indicator (Allowable values: 0 = yes 1 = no).
12. HUBZone Certified	MA	Numeric	1	HUBZone Certified Small Business Concern (Allowable values: 0 = yes; 1 = no).
13. Contact First	MA	Char	40	Company Official contact first name.
14. Contact Last	MA	Char	40	Contact last name.
15. Contact Middle Initial		Char	1	Contact middle initial (One character only—no periods or full names).
16. Contact Title	MA	Char	40	Contact Official title.
17. Contact Phone	MA	Char	10	Contact Official phone (Ten characters only, for example 9999999999).
18. Contact Email Address	MA	Char	50	Contact email address.
19. Employees	MA	Numeric	5	Number of employees.
20. Agency Code	MA	Numeric	2	Awarding agency (see below).
21. Branch	MA	Number	1	Awarding DOD (see below).
22. Phase I Award Year	MA	Numeric	4	Phase I Year.
23. Phase I Projected Total Amount	MA	Numeric	10	Phase I Projected Total Amount.
24. Phase II Award Year	M2	Numeric	4	Phase II Year (Phase II records only).

TECHNET PUBLIC (AWARDS) DATABASE—Continued

Field name	Required code	Type	Width	Description
25. Phase II Projected Total Amount.	M2	Numeric	10	Phase II Projected Total Amount (Phase II records only).
26. PI First	MA	Char	40	Principal Investigator First Name.
27. PI Last	MA	Char	40	Principal Investigator Last Name.
28. PI Middle Init	MA	Char	1	Principal Investigator middle initial (one character only—no periods or full names).
29. PI Title	MA	Char	40	Principal Investigator Title.
30. PI Phone	MA	Char	10	Principal Investigator phone (Ten characters only, for example 9999999999).
31. PI Email Address	MA	Char	50	Principal Investigator email address.
32. Topic Code	MA	Char	15	Agency Solicitation Topic Number.
33. RI TYPE	MT	Numeric	1	Type of research institution (see below).
34. RI Category	MT	Numeric	1	Type of University (allowable pre-filled data ANSI = Alaskan Native-Serving Institution; HBCU = Historically Black College or University; HSI = Hispanic-Serving Institution; TCU = Tribal College or University; NHSI = Native Hawaiian-Serving Institution (STTR only) auto-fill based on data inserted in element 37).
35. Phase I Projected Total to RI	MT	Numeric	10	Phase I Projected Total Amount to University.
36. Phase II Projected Total Amount to RI.	MT	Numeric	10	Phase II Projected Total Amount to University.
37. RI Name	MT	Char	80	Research institution (proper name of RI—no acronyms or abbreviations).
38. RI Street 1	MT	Char	80	Research institution address (STTR only).
39. RI Street 2		Char	80	Research institution address (STTR only).
40. RI City	MT	Char	40	Research institution city (STTR only).
41. RI State	MT	Char	2	Research institution State (STTR only).
42. RI Zip	MT	Numeric	5	Research institution Zip (STTR only).
43. RI Zip4		Numeric	4	Research institution Zip + 4.
44. RI Official First		Char	40	Research institution Official First Name.
45. RI Official Last		Char	40	Research institution Official Last Name.
46. RI Official Initial		Char	1	Research institution Official Middle Initial (One character only—no periods or full names).
47. RI Official Phone		Char	10	Research Institution Official's phone # (Ten characters only for example, 9999999999).
48. Tracking Number	MA	Char	20	Agency key identifier (Internal number scheme).
49. TIN/EIN	MA	Char	10	Taxpayer/Employer Identification number (Prefix with 1 for EIN; 2 for Social Security Number. This field must be a valid EIN or TIN.
50. Contract/Grant Number	MA	Char	20	Agency Award Contract/Grant Number.
51. Solicitation Number	MA	Char	20	Solicitation Number.
52. Solicitation Year	MA	Numeric	4	Year of the Solicitation.
53. Title	MA	Char	800	Title of research project.
54. Abstract	MA	Char	1500	Technical Abstract.
55. Results		Char	1000	Project anticipated results.
56. Comments	MT	Char	1000	Project comments.
57. Project Initiator	MT	Char	1	Initiator of STTR collaborative effort (allowable values: S = Small Business Concern; R = Research Institution) (STTR only).
58. Technology Used	MT	Char	1	SBC or RI originate any technology used in the STTR project (Allowable values: S = Small Business Concern; R = Research Institution) (STTR only).
59. Time to establish license agreement (months).	MT	Numeric	2	Time duration to establish any STTR license agreement (STTR only).
60. STTR Proceeds Distribution to SBC (%).	MT	Numeric	2	Allocation of proceeds from sale of STTR technology (STTR only).
61. STTR Proceeds Distribution to RI (%).	MT	Numeric	2	Allocation of proceeds from sale of STTR technology (STTR only).

From this point each data element should be sent as a separate file.

TITLE	Char	800	Title of research project.*
Tracking Number	Char	20	Agency key identifier (Internal number scheme).*

Abstract	Char	1500	Technical abstract (500 words).
Tracking Number	Char	20	Agency key identifier (Internal number scheme).*
Abstract SeqNmb	Numeric	1	

Results	Char	1000	—Project anticipated results.
Tracking Number	Char	20	Agency key identifier (Internal number scheme).*

COMMENTS	Char	1000	—Project comments.
Tracking Number	Char	20	Agency key identifier (Internal number scheme).*

Industry Share Amount	Numeric	10	ATP Program Cost Share Amount.
Cost Share Tracking #	Char	20	ATP Cost Share Tracking Number.

General Information: Agency submissions must be complete and timely. Each of the 61 fields must be represented in your submission as shown in the tables above. If a particular field such as 37, ''RI Category'' is not applicable, it must still be included in your submission even though it will be empty. such as contain data even if the data is ''blank''. When applicable, data field 34 ''RI Category'' will be filled automatically once the proper name of the college or university is entered in field 37, ''RI Name.'' If data field 34 is not applicable, TechNet will detect the ''blank'' and auto-fill this field appropriately. Each agency must ensure that data submissions to the SBA include all of the data fields above, even if they are empty.

The collection of this information, which is mandated by statute, [*see,* 15 U.S.C. 638(k)] will be used to conduct program reviews and audits and to report to Congress on technology and demographical statistics for the STTR/SBIR programs. Information such as Employee Identification and Tax Identification numbers and the data related to special categories for RI including the dollar amounts subcontracted or subgranted to these institutions by the small business concern that was awarded a Phase I or Phase II STTR contract or grant will be considered privileged and confidential, and therefore exempt from disclosure under the Freedom of Information Act. Data in the following fields will also be kept confidential: Project Initiator; Technology Used; time to establish license agreement; STTR proceeds distribution to SBC; STTR proceeds distribution to RI. This information will be available only to authorized persons within the reporting firm and to those Federal officials with specific clearance.

(b) *Codes.*

Code Program Identification Code (Field 1)
0 STTR (Small Business Technology Transfer Program)
1 SBIR (Small Business Innovation Research Program)
2 ATP (Advanced Technology Program)

Code Research Institution Types (Field 33)
1 Nonprofit college or university
2 Domestic nonprofit research organization
3 Federally funded research and development center (FFDRC)

Code RI Category (Field 34)
1 Alaskan Native-Serving Institution (ANSI)
2 Hispanic-Serving Institution (HSI)
3 Historically Black College or University (HBCU)
4 Tribal College or University (TCU)
5 Native Hawaiian-Serving Institution

(1) Program Identification Code

0 STTR (Small Business Technology Transfer)
1 SBIR (Small Business Innovation Research)

(2) *Agency Codes*

1 DOD (Department of Defense)
2 DOE (Department of Energy)
3 NASA (National Aeronautics and Space Administration)
4 HHS (Health and Human Services)
5 NSF (National Science Foundation)
6 DOT (Department of Transportation)
7 EPA (Environmental Protection Agency)
8 ED (Department of Education)
9 DOA (Department of Agriculture)
10 DOC (Department of Commerce)
11 NIST (National Institute of Standards and Technology)

(3) *Branch Codes*

1 AF (Department of the Air Force)
2 ARMY (Department of the Army)
3 MDA (Missile Defense Agency)
4 DARP (Defense Advanced Research Projects Agency)
5 DSWA (Defense Special Weapons Agency)
6 NAVY (Department of the Navy)
7 OSD (Office of the Secretary of Defense)
8 SOCO (Special Operations Command)
9 NIMA (National Imaging and Mapping Agency)

You are not required to respond to a collection of information unless it displays a currently valid OMB control number. The reporting burden for the collection of this information is 30 minutes per response. Comments on this burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd Street S.W., Washington, DC 20416, and Desk Officer for Small Business Administration Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503. PLEASE DO NOT SEND YOUR COMPLETED FORMS TO OMB.

(c) The following is the information collection questionnaire for the Government (Commercialization) Database as described in section 11(e)(10) of this Policy Directive.

TECHNET SBIR/STTR Commercialization Database

About the TechNet SBIR/STTR Commercialization Database

The SBIR/STTR Commercialization Database is a secure, on-line reporting system mandated by Congress to collect and maintain information on the economic impact of the SBIR and STTR programs. Information will be entered directly by program awardees and applicants. Analysis of the information in the Commercialization Database will be used to improve the administration of and assess the merits of the program.

The Commercialization Database will be an integral part of the SBIR and STTR application process. Any firm applying for a Phase I or II award will be required at the time of application to complete and update the relevant information in the Commercialization Database on all previous Phase II awards received by that firm. Proposals will not be accepted until this information is completed. Firms finishing a Phase II project are required to complete and update the information in the Commercialization Database at the termination of the award period. Failure to submit the information may affect an applicant's ability to receive an award.

SBIR and STTR awardees will be requested to voluntarily update the information in this database annually for a minimum period of 5 years following the completion of the Phase II project. However, this on-line reporting system will provide firms the opportunity to update the information at any time. Relevant information previously provided to any of the funding agencies by your firm will be placed in the Commercialization Database, reducing redundant reporting.

The TechNet SBIR/STTR Commercialization Database will include the records of all applicants for Phase I and Phase II awards, including those that did not receive awards. These records include the name, size, location, and identifying number of the firm; the abstract of the project; and the Federal agency to which the application was submitted.

Pursuant to 15 U.S.C. 638(k)(4), information provided for this database is privileged and confidential and not subject to disclosure pursuant to 5 U.S.C. 552 (Government Organization and Employees) and is not considered to be publication for purposes of 35 U.S.C. 102 (a) or (b).

You are not required to respond to a collection of information unless it displays a currently valid OMB control number. The estimated burden for collection of this information is 1 hour per response. Comments on this burden should be sent to U.S. Small Business Administration, Chief, AIB, 409 3rd Street SW., Washington, DC 20416, and Desk Officer for Small Business Administration Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503. *Please do not send your completed forms to OMB.*

Confidential On-Line Reporting System

Note: Reporting is for prior Phase II awards only. The reports must be completed when applying for either a Phase I or Phase II

award, and upon completion of a Phase II project. Subsequent reports or updates are requested but voluntary.

Select one:

Applying for a Phase I award, and reporting/updating information on prior Phase II awards. (Required with all SBIR/STTR applications).____

Applying for a Phase II award, and reporting/updating information on prior Phase II awards. (Required with all SBIR/STTR applications).____

Reporting on a Phase II project at the time of completion. (Required) ____

Filing a follow-up report on a Phase II project. (Voluntary) ____

The following table lists previous Phase II awards your firm has received. It contains information from SBIR/STTR program offices. Please review and update or correct the information in the table.

Table of the Applicant's Prior Phase II Awards

Directions:

1. Add new project entry for each Phase II award your firm has had to-date.
2. Update firm information.
3. Enter firm point of contact.
4. (optional) Add a brief narrative on your firm's commercialization track record.
5. View commercialization report, print, sign and attach copy to your proposal.

(This page will be accessed by clicking on the words ''sales'', ''additional investment'' or ''accounting instructions''.)

Definition of Terms:

Sales

- ''Sales'' includes cash revenue from the sale of new products or non-R&D services embodying the specific technology developed under this Phase II project.
  - *Count only such revenue accruing to your firm and not to other entities, except in the following circumstance.* If your firm sold or licensed the technological know-how developed under Phase II to another entity, also count as sales the cash revenue accruing to the other entity from its sale of new products or non-R&D services embodying the Phase II technology.
  - *If the new product/service embodying the Phase II technology is a component of a larger product/service* (*e.g.*, an improved coating on an existing optical lens product), count only the sales attributable to the component rather than the larger product/service.
- ''Sales'' does not include:
  - *SBIR/STTR contracts or grants (Phase I or II), or revenue from any other R&D activities*, including follow-on R&D contracts or grants. ''R&D activities'' include any activities directed toward reducing the technical risk of the technology.
  - *Revenue from the sale or license of technological know-how.*
  - Revenue from your firm's sales to an *affiliate* [a link to the regulation on affiliation] of your firm.

Additional Investment

''Additional Investment'' includes investment by any source other than the Federal SBIR/STTR program in activities that further the development and/or commercialization of the specific technology developed under the Phase II project. Examples of such activities include:

- Additional R&D on the Phase II technology;
- Manufacturing/production start-up;
- Purchase of plant and equipment for manufacturing/production;
- Protection of intellectual property;
- Obtaining certifications;
- Marketing start-up and marketing; and
- Training of workforce to manufacture or sell new products embodying the Phase II technology.

These may be activities funded and conducted by your firm or by other entities.

Accounting Instructions

1. *Do not count the same item as both ''sales'' and ''additional investment,'' and do not include Phase I or Phase II SBIR/STTR awards in either category.*
2. *If two or more Phase II projects contributed to a single new product* that has generated sales revenue and/or additional investment, apportion the sales and investment among the contributing projects without double-counting. Example: Phase II projects A and B lead to a new software product that has generated sales of $10 million to the Army and $12 million to retail software stores. For both projects A and B, enter $5 million for sales to DoD and $6 million for sales to the private sector.
3. *Count only sales and investment to date*, and not projected sales and investment. For sales to or investment by the government, count only the amount of government funding that has been obligated to date and not the total award amount.
4. For purposes of this report, *your ''firm'' includes all affiliates.*

FIRM LEVEL INFORMATION

Company name _____
Address_____
City_____ State _____ Zip Code:_____
Federal Tax ID: _____
DUNS #_____ NAICS Codes:_____
Company point of contact:_____
Company point of contact E-mail:_____
Company point of contact Phone number:_____
Company point of contact Fax number:_____
Company web site address:_____

Please create a password for your firm so that you may access this site in the future. Passwords are case sensitive.
Password:_____ (Verify):_____

1. The year your company was founded____
2. How many SBIR and/or STTR awards has your firm received from the Federal Government? (The answer will not affect your ability to obtain an award).
   Phase I _____ Year of your firm's first Phase I Award? _____
   Phase II _____ Year of your firm's first Phase II Award? _____
   Phase III _____ Year of your firm's first Phase III Award? _____
3. Number of firm employees (including all affiliates):
   (a) At the time of your firm's first Phase II Award:_____ (b) Currently: _____
1. How many patents or copyrights have resulted, at least in part, from your firm's SBIR and STTR awards? No. of patents: _____ No. of copyrights:_____
2. Has your firm completed an Initial Public Offering (''IPO'') of stock since receiving its first Phase II award that was the result, in part, of technology your firm developed under the SBIR or STTR program? Yes ____ No____ If Yes, please give year and an estimate of the total value of the IPO. Year:_____ Value: $._____
3. Has your firm, or part of your firm, been acquired at least partly as a result of the work your firm conducted under an SBIR or STTR award? Yes____ No____ If Yes, please give year and an estimate of the total value of the acquisition. Year:_____ Value: $_____.

*For the purpose of this report, your ''firm'' includes all affiliates.

SBIR/STTR PROJECT COMMERCIALIZATION REPORT

1. Phase II award (contract or grant number)_____
2. Agency sponsoring the Phase II _____
3. Year of award_____
4. SBIR____ STTR_____
5. Briefly describe the commercial application _____
6. Sales (cumulative revenues to-date) realized by your firm that resulted from the research conducted under this SBIR/STTR award:
   (a) To Federal government sources or prime contractors with the Federal Government. (Do not include Phase I or II awards) ($M)_____
   (b) To private sector customers ($M)_____
   (c) Other customers ($M)_____
7. Additional investment (cumulative to-date) from:
   (a) Federal Government or prime contractors with the Federal Government ($M)_____
   (b) Private sector ($M)_____
   (c) Other sources ($M)_____
8. Sources of capital investment your firm has raised to further the research or technology developed under this award (enter the approximate share funded by each source):
   (a) Your firm _____%
   (b) Federal Gov. or prime contractors _____%
   (c) State or local government sources_____%
   (d) Venture capital _____%
   (e) Angel capital _____%
   (f) Banks _____%
   (g) Commercial partner_____%
   (h) Other, please specify _____%
9. In which of the following areas, if any, would your firm be most interested in receiving assistance to help you successfully commercialize the technology developed under this award? [Please check all that apply]
   (a) Knowledge of market
   (b) Business development skills
   (c) Raising venture capital investment
   (d) Finding ''angel'' investors
   (e) Finding business mentors
   (f) Finding a commercial partner
   (g) Other_____
   (h) None of the above
10. Please give a brief narrative of the commercial, economic, other impacts this award has had on your firm (optional).

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Federal Register

Friday,

December 16, 2005

Part IV

Nuclear Regulatory Commission

10 CFR Parts 1, 2, 13, and 110

Use of Electronic Submissions in Agency Hearings; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 13 and 110

RIN 3150–AH74

Use of Electronic Submissions in Agency Hearings

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend its regulations to require the use of electronic submissions in all agency hearings, except for those conducted on a high-level radioactive waste repository application (which are covered under a separate set of regulations). The amendments would require the electronic transmission of electronic documents in submissions made to the NRC's adjudicatory boards, and in serving copies of those submissions on all participants to the proceedings. Although exceptions to these requirements would be established to allow paper filings in limited circumstances, the NRC would maintain a strong preference for fully electronic filing and service. The proposed rule builds upon prior NRC rules and developments in the Federal courts regarding the use of electronic submissions. The Commission is also seeking comment on draft guidance on how to submit hearing documents to the NRC electronically.

DATES: Submit comments on the proposed rule and guidance document by March 1, 2006. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. The NRC staff will hold a public meeting to demonstrate electronic filing and discuss questions on issues arising from this proposed action. The public meeting will be held in the auditorium at NRC Headquarters, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland on January 10, 2006, beginning at 9:30 a.m. and ending before noon.

ADDRESSES: You may submit comments by any one of the following methods. Please include 3150–RIN AH74 in the subject line of your comments. Comments on rulemakings submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including personal information such as social security numbers and birthdates in your submissions.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

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

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone (301) 415–1966).

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at (301) 415–1101.

Publicly available documents related to this rulemaking may be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland. Selected documents, including comments, can be viewed and downloaded electronically via the NRC rulemaking Web site at *http://ruleforum.llnl.gov*.

Publically available documents created or received at the NRC after November 1, 1999, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*.

From this site, the public can gain entry into the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail at *pdr@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Darani Reddick, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–3841, e-mail *dmr1@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background.
II. Summary of the E-Filing Process.
III. Discussion of the Proposed Rule.
IV. Section-by-Section Analysis of Substantive Changes.
V. Minor Conforming Changes.
VI. Voluntary Consensus Standards.
VII. Environmental Impact: Categorical Exclusion.
VIII. Paperwork Reduction Act Statement.
IX. Regulatory Analysis.
X. Regulatory Flexibility Certification.
XI. Backfit Analysis.

I. Background

This proposed rule, E-Filing, would require that submissions in any adjudicatory hearing governed by 10 CFR part 2, subpart C; part 13; or part 110, be made electronically. The subpart C requirements are applicable to hearings held under subparts G, K, L, M, N, and O of 10 CFR part 2, but they are not applicable to hearings held under subpart J governing applications for construction or operation of a high-level radioactive waste repository, which are covered by a separate set of requirements.

E-Filing would be one of the ways that the NRC implements the provisions of the Government Paperwork Elimination Act (GPEA), *see* Title XVII of Public Law 105–277, the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999, enacted October 21, 1998, §§ 1701 *et seq.*, codified at 44 U.S.C. 3504. The GPEA requires Government agencies to provide the public with the option of electronically maintaining, submitting, or disclosing information ''where practicable,'' with the goal of lessening the amount of paperwork when dealing with the Federal government.

In crafting the proposed rule, the NRC has relied upon its past experience with electronic submissions and has also examined Federal court practices.

A. The NRC's Experience With Electronic Submissions

Well before the passage of the GPEA, the NRC had taken major steps to increase the use of electronic documents and electronic transmissions. For example, many of the agency's regulations on record keeping have long permitted storage in electronic format. After the GPEA became law, the NRC began testing the Electronic Information Exchange (EIE), a system that permits users to make electronic submissions to the agency in a secure manner. The EIE uses digital signature technology to authenticate documents and validate the identity of the person submitting the information. Upon receipt, the EIE system time stamps documents transmitted to the NRC and sends the submitter an e-mail notice confirming receipt of the document.

As a result of the testing program, on January 26, 2001, the NRC issued Regulatory Issue Summary (RIS) 2001–05, ''Guidance on Submitting

Documents to the NRC by Electronic Information Exchange or on CD–ROM,'' which encouraged power reactor licensees to submit documents to the NRC by the EIE process or on CD–ROM. On August 10, 2001, the agency issued a letter to certain fuel cycle licensees extending this option to them. Thereafter, the NRC greatly expanded its authorization of electronic submissions through rulemaking, but those rules did not apply to adjudicatory hearings.

B. The E-Rule

On October 10, 2003 (68 FR 58792), the NRC issued a final rule called ''Electronic Maintenance and Submission of Information'' (E-Rule). The E-Rule allows licensees, vendors, applicants, and members of the public to submit documents such as license applications and Freedom of Information Act requests to the NRC in an electronic format, such as on CD–ROM, by e-mail, or through the NRC's EIE. However, the E-Rule does not apply to filings in NRC hearings.

For the E-Rule, the NRC addressed technical matters (document format, size, file naming conventions, resolution, etc.) in a guidance document rather than in the regulations to avoid frequent rulemakings to incorporate technological advances into NRC practice. Although the amendments to the regulations allowed electronic submissions, an accompanying guidance document contained the detailed technical standards and procedures for electronic submissions to the NRC. The **Federal Register** document for the E-Rule explained the need for the standards and procedures by noting that the GPEA only required electronic submissions ''where practicable'' (68 FR 58792, 58793, October 10, 2003):

> At the very least, it is not ''practicable'' for the agency to receive electronic submissions unless they are made in a manner that enables the agency to receive, read, authenticate, distribute, process and retrieve a page at a time, and archive the submissions.

C. 10 CFR Part 2 Subpart J: Procedures for the High-Level Waste Repository Proceedings

In section 114(d) of the Nuclear Waste Policy Act of 1982, Congress set a short deadline for the NRC to issue a decision on any Department of Energy (DOE) application for authorization to construct a geologic repository for high-level waste (HLW). Because any licensing proceeding on such an application is projected to be the largest, most complex hearing before the NRC to date, the NRC determined that all filings in the HLW proceedings must be electronic in order to meet the deadline. Over the course of several rulemakings, the NRC developed the HLW procedures in 10 CFR part 2 subpart J and the corresponding guidance, ''Guidance for the Submission of Electronic Docket Materials Under 10 CFR part 2, subpart J'' (HLW Guidance Document). The E-Filing Guidance on which we are seeking comments is largely drawn from the subpart J regulations.

D. The Use of Electronic Filing by the Federal Courts

Some Federal courts have developed a system for electronic filing with technical standards quite similar to those in subpart J. Because the Federal courts and the NRC have distinct needs and serve different classes of parties, not every feature of the Federal court system is relevant to NRC proceedings. However, certain basic features of the electronic filing methods used by some Federal courts are incorporated in the NRC's proposed approach, e.g., for filings submitted over the Internet, a specific file format that is portable and produces a faithful image of the original must be used (i.e., Adobe® Acrobat Portable Document Format, also commonly referred to as PDF), and submitters are sent a notice of the filing with an Internet location from which the filing can be downloaded.

E. The General Approach Taken by E-Filing

E-Filing would adopt some technical and procedural provisions nearly verbatim from the E-Rule, 10 CFR part 2, subpart J, and the procedures adopted by the Federal courts. The adoption of technical standards from the E-Rule Guidance and subpart J would create uniformity across NRC proceedings, making administration easier.

In addition, E-Filing shares with subpart J a strong preference for electronic submission, because electronic filing and service are faster, more efficient, and less expensive than the traditional forms of filing. Under E-Filing, participants in NRC proceedings would no longer have to pay for the copying and service of most documents. In lengthy, complex proceedings with multiple participants, this could save participants hundreds, if not thousands, of dollars in copying and mailing costs. Although almost all participants in NRC hearings now file pleadings by e-mail (with conforming paper copy to follow), the Commission recognizes that not all participants will be able to meet the proposed electronic filing and service requirements. The Commission, therefore, has created exemptions to the electronic submission requirement that participants wishing to file and serve by the traditional paper method can request.

Like the E-Rule and subpart J, E-Filing would have an accompanying guidance document (E-Filing Guidance) that would be available at *http://www.nrc.gov/site-help/eie.html*. As with the E-Rule, this guidance would set forth the technical standards for electronic transmission and for formatting electronic documents. By not including these standards in the rule, it should be easier and faster for the NRC to amend the guidance, when warranted, to allow use of the most current technology.

II. Summary of the E-Filing Process

The following is a step-by-step capsule of the E-Filing process:

1. Prior to submitting its first filing, an entity seeking to participate (participant) in an NRC adjudicatory proceeding would request a digital identification (ID) certificate from the Secretary of the Commission using the link on the NRC Web site. (See more on digital ID certificates in section III.E. of this document).

2. The participant would log onto the Electronic Information Exchange (EIE) and open the E-Filing submission form. The form contains a pull-down menu, which allows a previously admitted party to designate the proper proceeding. For all initial filings, the participant would select the generic docket. (See more on the EIE and generic dockets in sections III.C. & III.D. of this document).

3. The participant would attach its document, digitally sign the filing, and authorize transmission to the EIE. (See more on signatures and transmission in sections III.H. and III.I. of this document).

4. The Secretary of the Commission would review the generic account for initial filings, establish the appropriate electronic hearing docket, send notifications to the applicant/licensee, intervenor(s), NRC staff, any interested governmental participant(s), and the presiding officer, and create an electronic distribution list based upon the digital IDs issued to proceeding participants.

5. For all subsequent filings, the participant would select the intended recipients from the electronic distribution list. The EIE then would send all selected recipients an e-mail notification that a filing has been made and provide a link to the Internet location of the document. The EIE would also send an e-mail to the submitter confirming receipt of the filing, and notify the other participants.

(See more on electronic distribution lists in section III.F. of this document).

6. Each recipient could open the link to the document and view and/or save the document to its personal computer, thereby enabling access to the document without logging back into the system. (See more on retrieving documents in section III.O. of this document).

III. Discussion of the Proposed Rule

E-Filing represents a major revision to the NRC's methods of filing and service in adjudicatory proceedings governed by the part 2, subpart C requirements. The proposed rule is thoroughly explained in sections III and IV of this document; section III gives a broad overview of some of the major concepts involved in E-Filing and section IV provides a section-by-section analysis of the amendments to the principal sections in subpart C. While some of the details described below may seem complex, once a user learns to file electronically, the Commission expects that he/she will find the process to be both fast and simple.

A. Conceptual Framework for Electronic Filing and Service

Filing and service involve the transfer of a document from one participant to the presiding officer, the other participants in the proceeding, and the Secretary of the Commission. Two types of electronic filing and service would exist under E-Filing: fully electronic and partially electronic. Fully electronic filing and service would involve the electronic transmission of an electronic document. Partially electronic filing and service would entail the physical delivery or mailing of an optical storage medium (OSM) (such as a CD–ROM) containing an electronic document. While E-Filing would permit partially electronic filing and service in cases where necessary, the NRC rule generally calls for fully electronic filing (with certain exceptions permitted by the rule and further described in the E-Filing Guidance).

B. Benefits of Electronic Filing and Service

The benefits of electronic filing and service originate from the use of electronic transmission and electronic documents. The electronic transmission of documents is more cost effective and faster than physical delivery of paper mail. While the added cost and delay of physically delivering or mailing one document may be small, the total cost and delay could be significant over the course of a proceeding with many filings and a large service list.

In addition, compared to paper documents, electronic documents save resources and increase efficiency. Electronic documents are less expensive to produce, store, transport, and retrieve than paper documents. Electronic documents also have text-searching capability, which allows users to review many documents quickly and find those sections that are relevant to their needs, along with text-capture capability, which enables users to transport entire passages from one document to another quickly. Finally, the filing of electronic documents in the appropriate format would benefit the NRC because the agency already processes filings into electronic formats for storage as official agency records.

C. The Electronic Information Exchange

Under E-Filing, a participant wishing to file a document would be required to convert the document into the appropriate electronic format and electronically transmit it to an electronic system monitored by the NRC, called the Electronic Information Exchange. The NRC would establish the EIE, which is a Web site located on the NRC's public Web site at *http://www.nrc.gov/site-help/eie.html*. The EIE would receive, store, and distribute documents filed in proceedings covered by this proposed rule for which an electronic hearing docket had been established. The establishment of dockets for filings received through the EIE is discussed later. (See section III.D. of this document).

To electronically submit a filing, a participant with a digital ID would complete a form on the EIE and select the docket from a provided drop-down list, which would list all dockets to which that person is a participant, as well as a generic docket. All initial filings would be sent to a generic docket. The participant would then attach, digitally sign, and transmit the document. In doing so, the submittter would select the participants to be served electronically from the electronic distribution list, which is a list of the board members and other individuals involved in the proceeding as participants or party representatives. This transmission process could be performed either by the owner of a digital ID or another authorized individual, such as a secretary or clerk.

The EIE thereafter would serve all the persons selected by the submitter for distribution by sending an e-mail notifying them that a document has been filed and providing them with a link from which they could save or view the document. This e-mail would constitute service upon the participants to whom it was sent. Finally, the EIE would send an electronic acknowledgment to the filer, which is an e-mail that confirms receipt of the filing and reports that an e-mail has been sent to the selected persons on the electronic distribution list.

A person filing electronically would be able to seek assistance through the ''Contact Us about EIE'' link located on the NRC Web site at *http://www.nrc.gov/site-help/eie.html* or by calling NRC technical help lines.

D. Electronic Hearing Dockets

The electronic hearing docket is a Web site on the NRC homepage that houses a visual presentation of the docket for a particular proceeding and a link to all the filings in that proceeding. A participant would electronically submit its initial filing, such as a petition to intervene and request for hearing, to a generic docket number on the EIE. Upon receiving the initial filing, the Secretary of the Commission would establish an electronic hearing docket for the proceeding using the licensing docket number under which the proceeding was designated in the **Federal Register** notice. If an electronic docket has already been established, the Secretary would respond to filings by informing the participants of the docket's existence. After creating the electronic docket, the Secretary would maintain that docket and all publicly available filings would be accessible from that site.

After a presiding officer is assigned to the proceeding, the Secretary would replace the licensing docket number with a proceeding docket number. The proceeding docket number would be exactly the same numerical digits as the licensing docket number, except that a two or three letter suffix is added. The Secretary would inform the participants of the modified proceeding docket number, and would instruct them to use the proceeding docket number rather than the licensing docket number when accessing documents.

E. Digital ID Certificates

To access the EIE, a participant would obtain a digital ID certificate from the NRC, which will be supplied to them at no cost. A digital ID certificate is a unique file downloaded onto a participant's computer that would identify the participant to the EIE. Digital IDs would verify the participant's identity for the EIE when making an electronic filing, and would allow the participant to digitally sign documents submitted to the EIE.

A participant must request a digital ID from the NRC before submitting its first

electronic filing with the NRC. If the participant is an organization, the digital ID would be assigned to a participant representative, rather than the participant itself. The notices of opportunity for hearing that the NRC publishes in the **Federal Register** would remind potential participants of this requirement. A participant would apply for a digital ID on the NRC Web site at *http://www.nrc.gov/site-help/eie.html*. A participant would be able to seek assistance in obtaining a digital ID through the ''Contact Us about EIE'' link located on the NRC Web site at *http://www.nrc.gov/site-help/eie.html* or through the NRC technical help lines. After a digital ID is assigned, that ID would provide the participant with access to all the EIE proceedings to which it is a participant; therefore, only one digital ID would be required per participant regardless of the number of proceedings in which it is involved. The NRC would reserve the right to revoke a digital ID certificate if it were being abused. A participant who anticipates participation in NRC proceedings may request a digital ID certificate prior to publication of a notice of opportunity for hearing.

In addition to digital IDs assigned to individuals, Group IDs may be assigned to firms or other organizations. Group IDs, which can be downloaded onto several computers, allow multiple individuals who do not have an individual digital ID to be served with a filing to the EIE, thus permitting those individuals to retrieve documents filed in the proceeding. Because Group IDs would be assigned to entities, the Group ID would not have an electronic signature associated with it and, thus, could not be used to electronically sign filings submitted to the EIE. At least one representative from the Group ID must obtain an individual digital ID to be able to file electronically.

F. Electronic Distribution List

Each proceeding with an electronic docket would have a distribution list, which includes the presiding officer, as well as all of the participants (such as the intervenor(s), applicant/licensee, interested governmental participant(s), and NRC staff) participating electronically in that specific proceeding. Upon receiving an initial filing from a participant, the Secretary will add the participant to the electronic distribution list, thereby providing the participant access to documents that have been and will be filed in the proceeding and enable it to electronically file and serve the presiding officer and others on the distribution list.

G. Certificates of Service and Service List

For the following reasons, E-filing will require that submitters attach a certificate of service, including a service list, to their filings to inform the recipients of the entities who received the filing and how they were served. This is because the EIE would not create a list of the entities selected to receive the filing. Also, the electronic distribution list may not be an all-inclusive list of the participants in the proceeding because it would not include any participants permitted to file by paper.

H. Signatures

All electronic documents would be signed and submitted electronically using the digital ID certificate assigned to the submitter of that document. Proposed § 2.304 (d) provides two ways for documents to be signed: with the assigned digital ID certificate or with a typed ''Original signed by'' designation.

To sign a filing with a digital ID certificate, proposed § 2.304 (d)(1)(I) requires that a signature page containing a signature block be added to the electronic document before it is submitted. The signature block would consist of the phrase ''Signed (electronically) by,'' followed by the signer's name and the capacity in which the person is signing. It would also contain the date of signature and the signer's postal address, phone number, and e-mail address. The participant would not need to sign a paper document if it chooses this method of signature. The digital signature would be added at the time of submittal to the EIE by the participant clicking the ''Click to Digitally Sign Documents'' button. A person authorized by the owner of the digital ID, such as a secretary or clerk, could type the signature block and submit the document on the owner's behalf. To sign with a typed-in ''Original signed by'' designation, the participant would add a signature block, as described above, and type in the phrase ''Original signed by'' on the signature line of the signature block. The participant would then sign a paper document and be required to retain that copy of the filing with the original signature in its records. The NRC staff could also use this method, but would type in ''/RA/,'' meaning ''Record Approved,'' which is the agency's current method of signing digitally filed documents.

Documents signed under oath or affirmation, such as affidavits, must be signed with the ''Original signed by'' designation. The participant submitting these documents is required to retain the original signed copy in its files.

I. Electronic Transmission

Under E-Filing, participants would convert their documents into the appropriate electronic formats detailed by the E-Filing Guidance and electronically transmit these documents to the presiding officer, the other participants, and the Secretary of the Commission. E-Filing Guidance would set technical standards for filing and service under the proposed rule and would define the file sizes and formats for electronic transmissions. By putting the technical provisions in the E-Filing Guidance, the Commission would be able to update the electronic transmission standards to keep pace with technology and the changing needs of the NRC and the participants in its adjudication without additional rulemaking. Exemptions to the electronic transmission requirement are discussed below. (See section III.K.).

J. Electronic Document Requirements

Because the EIE system can accept documents only in specified electronic formats, E-Filing, like the E-Rule and subpart J, would have specific electronic document standards that would be enumerated in the E-Filing Guidance. For the foreseeable future, the only acceptable formats are certain types of PDFs. In addition, individual submissions cannot exceed 50 megabytes (approximately 5000 pages of text), which the NRC considers the upper limit for practical Internet transmissions.

Similar to the guidance for subpart J, E-Filing Guidance would create three categories of documents: simple, large, and complex. Simple documents would be documents filed in an acceptable PDF format and could be transmitted to the EIE in a single transmission. Large documents, meaning documents exceeding 50 megabytes, also would be in an acceptable PDF format. The proposed E-Filing Guidance provides that these documents should be segmented into smaller files that meet the megabyte limit and then transmitted to the EIE, which reunites the files into one document. Participants would also be asked to physically deliver to all the participants in the proceeding OSMs containing the large document in a unified form that could be used as a reference copy. Complex documents would be those that (1) are not entirely in an acceptable PDF format; (2) contain Classified National Security Information or Safeguards Information; or (3) exceed the 50 megabyte limit and could not be segmented. The E-Filing Guidance

would ask participants to electronically submit to the EIE the sections of a complex document that are in PDF, do not contain Classified National Security Information or Safeguards Information, and could be segmented into less than 50 megabytes. The Guidance would also ask participants to deliver the entire complex document on an OSM.

As was previously noted, the current version of the proposed E-Filing Guidance considers only certain forms of PDF as qualifying formats. In choosing PDF over other formats, the NRC considered whether:

(1) The document format is of a type that can be entered as an official agency record;

(2) The format behaves consistently over a broad range of operating systems and platforms (meaning pagination remains identical regardless of the printer used);

(3) The format can be easily accessed by most users;

(4) The format is one to which other document formats can be easily converted;

(5) The format supports images, text, and other types of documentary material that can be useful in a hearings context; and

(6) The format had text-searching and text-capture capabilities.

PDF has all of these features.

K. Exemptions From the Electronic Filing and Service Requirements

In recent years, almost all participants to NRC adjudications have been filing and serving documents via e-mail in addition to submitting paper copies, which are generally regarded as the ''official'' versions of the documents. This use of e-mail submissions exists because a vast majority of the participants in NRC proceedings have ready access to computers, word processing programs, and the Internet. This trend has led the NRC to conclude that almost all potential parties are ready to take the next step and move to a fully electronic environment. The NRC recognizes that implementing a rule governing electronic submission could entail initial costs for some persons, since participants would need ready access to a computer, software that will save/render documents in PDF format, the Internet, and perhaps a scanner. The participants might recoup these expenses, however, through cost savings in labor, copying, and mailing paper documents to multiple participants. The NRC is seeking comments from affected stakeholders, particularly those with limited financial resources, about the potential costs and savings of the electronic filing requirements of this proposed rule.

(1) Good Cause Required for Exemption From Electronic Filing

Despite these advantages, the NRC recognizes that some individuals may not be able to file electronically for a variety of reasons. The NRC, therefore, would allow exemptions from the E-Filing rule for certain participants in appropriate circumstances. A person who requests an exemption from the electronic filing requirement should submit a request for authorization from the presiding officer with its first filing in the proceeding to participate using traditional paper filing and service. ''Good cause'' for such an exemption would depend on the party's circumstances and could include such matters as: Disability, lack of readily-available Internet access, or the cost of purchasing the necessary equipment or software. The presiding officer would determine if a participant met the good cause burden on a case-by-case basis.

A participant requesting an exemption after submitting its first filing electronically, would, in addition to the requisite showing of good cause, have to show that an unforeseen change in its circumstances occurred leading to the late request for exemption and that granting the exemption is in the interests of fairness. Until the presiding officer rules on the request, the participant would continue to file electronically.

E-Filing would provide exemptions from the requirement to send the filing to the EIE electronically as well as from the requirement to submit documents in computer file format. This is discussed below.

(2) Electronic Transmission Exemption

A participant willing to submit a document in PDF, but capable only of delivering the document via OSM or e-mail, could request an exemption from electronic transmission over the Internet to the EIE. This participant's filings would be exempt from the requirement of being sent to the EIE, and could deviate from the guidance that calls for filings to be in PDF format as set forth in the E-Filing Guidance.

(3) Electronic Document Exemption

A participant can also request an exemption from the requirement to file documents in PDF format as well as the electronic transmission requirement through the EIE. This participant would physically file and serve paper documents on the presiding officer and other participants in a manner determined by the presiding officer. In return, the presiding officer, other participants and the Secretary of the Commission would physically serve paper documents on a participant with this exemption.

Although these exemptions would be available for participants in NRC proceedings, the NRC believes that the cost savings from electronic filing will exceed electronic filing associated equipment/software/Internet access procurement costs and, thus, encourages potential participants to move to electronic filing and service, whenever possible, rather than seeking an exemption. When a participant is granted either a document exemption or a transmission exemption, E-Filing would permit a mixed service proceeding, which is discussed in the next section.

L. Mixed Service Proceedings and Computation of Time

The Commission recognizes the possibility that there could be a proceeding in which a participant will receive an exemption permitting the participant to file and serve paper copies, while the other participants will file and serve documents electronically. As mentioned previously, if an exemption from electronic filing and formatting is granted, the NRC would prefer mixed service proceedings to traditional proceedings that rely solely on paper. Mixed service proceedings would be proceedings in which some but not all of the participants file and serve by the same method. For example, rather than requiring that all participants physically serve and file paper documents when one participant to the proceeding is granted an electronic documents exemption, mixed service proceedings would allow the exempted participant to file, serve, and be served physically, while the rest of the participants file and serve each other electronically according to the standards in the E-Filing Guidance. Standards concerning timelines and the number of days for service would be established by the presiding officer who grants the electronic filing exemption on a case-by-case basis as fairness and efficiency considerations dictate.

M. Completeness of Electronic Filings

Under proposed § 2.302(d)(1), filing by electronic transmission or e-mail is considered complete ''when the filer performs the last act that it must perform to transmit a document electronically.'' For electronic transmissions and e-mail, the ''last act'' would occur when the participant hits the ''submit/transmission'' or ''send'' button. The language in § 2.302(d)(1)

and the meaning of ''last act'' are taken from the Advisory Committee Notes to the 2002 amendments to Rule 25(c)(4) of the Federal Rules of Appellate Procedure, which covers service requirements. The NRC proposes to adopt the ''last act'' standard for several reasons. First, the ''last act'' standard, which penalizes a party only for events within its control, is fair. Upon hitting the send or transmit button, a participant relinquishes all control over a document and cannot be certain when the document will be received by the NRC's system. Making completeness of filing dependent upon receipt of the transmission would subject participants to the vagaries of electronic transmission, which may include such problems as the filer's Internet connection being slower on the day of filing, the filer's Internet service disconnecting during transmission, or the filer's connection to the EIE server failing to connect because the allotted time for connection ran out.

Second, the ''last act'' standard conceptually coincides with the standard for filing by mail, when a filing is considered complete upon depositing the document in a mailbox. In effect, the ''last act'' of depositing the document in the mailbox is equivalent to hitting the ''submit/transmission'' or ''send'' button.

N. Completeness of Filing When Multiple Filing Methods Are Required

When two or more methods of filing are permitted in a mixed proceeding, proposed § 2.302(d)(4) indicates that filing is complete when all the methods of filing used are complete. For example, if a participant needs to make a filing consisting of three electronic documents, one of which is entirely Classified National Security Information, E-Filing Guidance would direct the filer to submit the two non-classified documents by electronic transfer and all three documents on an OSM. If the participant mails the OSM on Monday and performs the electronic transfer on Tuesday, filing would be complete Tuesday. Although the OSM mailed Monday would contain the entire filing, a filing would not be complete until all required filing methods have been performed.

O. Retrieving Documents Filed in a Proceeding

Upon receiving an electronic filing, the EIE would send an e-mail notification to all persons selected by the submitter from the electronic distribution list by the submitter. The e-mail would notify those selected that a filing has been made in the proceeding and would provide a link to the document. Each person would then click on the link to access the document for viewing and/or saving in PDF compatible software and could save the document to his or her own computer. By doing so, to re-open the document, the person would be able to access it from his or her own computer. Alternatively, once it is processed into the agency's ADAMS system, a person could access the document by logging onto the Electronic Hearing Docket (EHD) located in the Electronic Reading Room, which is available at *http://www.nrc.gov/reading-rm.html.* The EHD is a publicly available Web site and no digital ID certificate is required to retrieve documents from the EHD. A link to the EHD will be available on the NRC Web site.

IV. Section-by-Section Analysis of Substantive Changes

Although significant changes are proposed for some sections in 10 CFR part 2 subpart C, other sections in Title 10 require only minor modifications to language that currently provides only for paper documents. The analysis below focuses on only the sections to which significant changes are being proposed: §§ 2.302, 2.304, 2.305, 2.306, 13.9, 13.26, 13.27, 110.89, and 110.90.

A. Section 2.302—Filing of Documents

Proposed § 2.302 would contain the core of the E-Filing requirements. Because the electronic transmission and format requirements for filing would apply equally to service and to filing of a document, the service requirements in proposed section § 2.305 rely heavily upon the filing processes provided for in proposed § 2.302.

1. A New Way To File

Proposed § 2.302 (a) would introduce a new way to file documents—by electronic submission. Accompanying E-Filing Guidance would provide the technical standards for electronic submission to the EIE.

2. New Certificate of Service and Service List Requirement

Proposed § 2.302 (c) would require that certificates of service be included with all filings to the agency regardless of the method of filing. Participants would list all methods of service for each participant served, because under E-Filing Guidance, some filings, such as those containing Classified National Security Information or Safeguards Information, would be partially served electronically over the Internet as well as transmitted on a physically delivered OSM. In such cases, the participant would serve the other participants to the proceeding by both methods for service to be complete.

3. When Filings Are Complete

Proposed § 2.302 (d)(1)–(4) would specify when filings by various methods would be considered complete. For example, filing by expedited delivery service (e.g., express or overnight mail) would be complete when the document is deposited with the provider of the service. For electronic transmissions, the filing would be complete when the participant clicks the ''send'' or ''submit/transmission'' button.

4. Unsuccessful Transmissions of Filings

Proposed § 2.302 (e) would require participants filing by electronic transmission to make a good faith effort to transmit the entire filing. Under 2.302 (e), if the filer ''knows or has reason to know'' that the transmission was unsuccessful, then the filing would not be considered complete. A filer, however, would not be required to take any affirmative steps to ensure that an electronic transmission was successful. Filing would not be complete under subsection (e) if, for example, the filer's e-mail service notifies the filer that delivery was unsuccessful or the system otherwise indicates that the filing was not transmitted. In such cases, the good faith effort to transmit the entire filing may include, but not be limited to, repeated attempts by the same method, calls to applicable NRC technical help lines, the use of alternate means of electronic transmission, and, finally, if all else fails, the use of an expeditious form of physical delivery or mail. Participants aware that a filing was unsuccessful should notify the other participants immediately and explain what good faith efforts they are conducting to submit the filing successfully.

5. Requesting a Digital ID Certificate

Under proposed § 2.302(f), to electronically transmit documents to the EIE, all participants or representatives, including NRC staff and counsel, would need to request a digital ID certificate in advance of its first electronic filing. The NRC would issue a digital ID certificate that would provide access to the EIE. Application for a digital ID certificate can be submitted on the NRC Web site at *http://www.nrc.gov/site-help/eie.html.*

6. Filing Rrequirements

Under E-Filing, most participants in NRC adjudications would file according to the standards in proposed § 2.302

(g)(1). Paragraph (g)(1) would direct participants to file documents in an electronic format and transmit the documents electronically in accordance with the E-Filing Guidance. Also, proposed § 2.302 (g)(1) would establish that E-Filing Guidance sets out methods for filing documents containing Classified National Security Information or Safeguards Information, or electronic computer file formats that are not accepted by the EIE.

7. Exemptions From the Filing Requirements

E-Filing would provide for two exemptions to the filing requirements specified in paragraph (g)(1): the electronic transmission exemption and the electronic document exemption. (See section III.K.).

B. Section 2.304—Formal Requirements for Documents; Signatures; Acceptance for Filing

1. Requirements

Minor conforming amendments would be made to proposed § 2.304 (b) to clarify that those requirements apply only to paper filings. Proposed § 2.304(c) would contain requirements that apply to all methods of filing.

2. Signatures

Existing § 2.304(c) would be amended in proposed § 2.304(d) to include two methods of signing electronic documents: digital ID certificates or typed in designations. (See section III.H).

3. Multiple Copy Requirements Eliminated

The multiple copy requirement in the existing § 2.304(d) would be eliminated for electronic submissions to save participants time as well as the reproduction and mailing expenses associated with multiple copies. The multiple copy requirement in § 2.304(b) for paper filings would be retained.

C. Section 2.305—Service of Documents; Methods; Proof

1. Service of Documents by the Commission

Proposed § 2.305(a) would require the Secretary of the Commission to serve all documents issued by the Commission or the presiding officer by using the same method that the participants to the proceeding used when they filed and accepted service. Participants that filed by electronic transmission would receive Commission and presiding officer issuances by electronic transmission and would not receive paper copies. Participants granted an exemption under proposed § 2.302(g)(2) and (3) would receive service by the methods provided for by their exemption. Thus, the same electronic service requirements imposed upon the participants would apply to the Commission and the presiding officer.

2. Method of Service Accompanying a Filing.

Proposed § 2.305(c) would make several changes. First, it would allow for electronic service of documents submitted through the EIE. Also, proposed § 2.305(c) would no longer require that a paper copy accompany a filing served by e-mail because the documents would be filed electronically.

In addition, proposed § 2.305(c) would amend the mandate currently given to presiding officers to require service by the most expeditious means. Under proposed paragraph (c), a presiding officer would be able to tailor service requirements to the individual participants rather than utilize only the one method that all participants are able to use.

Proposed § 2.305(c)(1) would require a participant to serve the other participants in the proceeding by the same method that those participants filed, unless one of the exceptions in paragraphs (c)(2) or (c)(3) applied.

Proposed § 2.305(c)(2) would apply to a participant granted the electronic transmission exemption under § 2.302(g)(2). When a participant has been excused from the electronic transmission requirement, that participant would serve the participants in the proceeding that filed electronically by physically delivering or mailing OSMs and the other participants that did not file by electronic transmission by the method in which they filed, for example, first-class mail.

Proposed § 2.305(c)(3) would apply to a participant granted the electronic document exemption under § 2.302(g)(3). When a participant is relieved of both the electronic format and transmission requirements, that participant would serve the other participants who filed electronically either in person, by courier/express mail/expedited delivery service, or by first-class mail, subject to any orders of the presiding officer.

Proposed § 2.305(c)(4) would require a certificate of service and a service list for each filing served.

Proposed § 2.305(c) would be patterned after the proof of service requirement found in part 2, subpart J, and would include electronic acknowledgment, affidavits, and certificates of counsel. However, participants should be cautious when submitting an electronic acknowledgment as proof of service. An electronic certificate cannot be used as proof of service in mixed service proceedings when some, but not all, of the participants are served electronically or when a filing is partially electronically submitted and partially physically delivered/mailed. In such mixed service proceedings, an electronic acknowledgment would not establish that service by a method other than electronic transmission to the EIE was made. Further, because the timeliness of filing and service under E-Filing is determined by the time that the electronic transmission begins rather than ends (see proposed § 2.302(d)), the electronic acknowledgment sent from the EIE at the completion of the transmission would not necessarily correspond to the time service was made.

3. Method of Service Not Accompanying a Filing

Proposed § 2.305(d) governs material that typically may not be part of a ''filing,'' such as demonstrative evidence (e.g., physical exhibits or oversized maps or charts), pre-filed testimony, and discovery documents exchanged among participants. For material that is not filed with the agency, but is served upon other participants, as is often the case now with discovery exchanges, the NRC proposes that the participants should determine the most efficient and effective methods for serving such documents on each other.

4. Service on the Secretary

Proposed § 2.305 (e) would be the same as the existing § 2.305 (d), except provision is made for electronic service of pleadings and pre-filed testimony on the Secretary of the Commission.

5. When Service Is Complete

Proposed § 2.305 (f) would create a completed service standard for electronic submissions, as well as amend the standard for e-mail and clarify the standard for expedited delivery service. The standards for the completion of filing and service thus would be the same because receipt of the electronic filing by the EIE triggers an e-mail containing a link to the document that is considered to constitute service of the document upon the presiding officer and the other participants to the proceeding.

Proposed § 2.305 (f)(4) would clarify that service by expedited delivery service is complete when the document

is deposited at the expedited delivery provider, which is a method analogous to service by mail.

Proposed § 2.305 (f)(5) would amend the service completion standards for e-mail by no longer requiring that a paper copy containing a signature be transmitted to the Secretary. Proposed § 2.305 (f)(5) would adopt the ''last act'' standard used for filing completion in § 2.302 (d)(1) as the service completion standard for e-mail.

Proposed § 2.305 (f)(7) would provide that when multiple service methods are required, service would not be considered complete until each method is complete pursuant to paragraphs (f)(1)–(6) of proposed § 2.305. For example, according to E-Filing Guidance, for a large document, a participant would serve the complete document both by electronic transmission and by physically delivering or mailing an OSM. Therefore, the filing would be complete upon serving both the electronic transmission of the entire document and the physical delivery or mailing of an OSM. However, when a complex document containing Safeguards Information is filed, only the portions that do not contain the Safeguards Information would be electronically transmitted, while the entire document would be transmitted by physically delivering or mailing an OSM. In each instance, completion of service is dependant on both electronic transmission and the physical delivery or mailing of an OSM.

6. Service on the NRC Staff

Proposed § 2.305 (g) would require that service on the NRC staff be in the same or equivalent method as service upon the Secretary or the presiding officer.

D. Section 2.306—Time Computation

The proposed changes made to § 2.306 reflect two different goals. One is to expedite proceedings; the other is to ensure that in mixed service proceedings in which the filing participant serves some electronically and others by physical delivery or mail, the times provided for the other participants to respond do not cause unfairness.

1. Changes in the Number of Additional Days Allowed for Responding to the Service of a Notice or Other Document

Current § 2.306 grants an additional day for electronic filings received after 5 p.m. in the time zone of the participant receiving the filing. The proposed rule would eliminate that provision and grant no additional days for documents filed electronically. All electronic filings must be filed and served by midnight in the filer's time zone.

The proposed rule also would reduce from five days to three days the number of additional days given to participants responding to filings served by first-class mail. This amendment not only saves time over the course of a proceeding, but would be consistent with the Federal Rules of Civil Procedure. The concern that mail service in some parts of the country is slower and may take more than three days is ameliorated by a study of first-class mail service conducted by an independent auditing firm. According to the study, the U.S. Postal Service's cross-country service and service to and from rural areas is efficient. *See* 2003 Comprehensive Statement on Postal Operations, Ch. 2, p. 59. Also, three additional days ''is thought to represent a reasonable transmission time, and a fair compromise between the harshness of measuring time strictly from the date of mailing and the indefiniteness of attempting to measure from the date of receipt, which in many cases would be unverifiable.'' *See* Charles Alan Wright and Arthur R. Miller, Federal Practice and Procedure § 1171 (3d ed. 2002).

2. How Mixed Service Proceedings and Multiple Service Methods Affect the Number of Additional Days Granted for Responding to the Service of a Notice or Other Document

To handle the special time computation problems involved in mixed service proceedings, proposed § 2.306(b)(4) would give the Commission or presiding officer the authority to determine the proper period of time necessary to ensure fairness and efficiency in a mixed service proceeding.

E-Filing would provide for the use of multiple service methods when necessary, such as in proceedings where large or complex documents are filed. In these instances, response times would be computed according to the fastest method used to serve the entire document. For example, if a large document is filed, the filing would be complete upon sending the electronic transmission, even though the participant must also send an OSM containing the filing. However, when a complex document containing Safeguards Information is filed, the response time will depend on the physical delivery or mailing of an OSM, because that is when the Safeguards material would be filed.

E. Part 13—Program Fraud Civil Remedies

1. Section 13.9 Answer

Proposed § 13.9 indicates that answers should be electronically filed in accordance with proposed § 13.26.

2. Section 13.26 Filing and Service of Papers

The changes proposed to § 13.26 would conform the filing and service requirements of Part 13 to those in proposed §§ 2.302 and 2.305.

3. Section 13.27 Computation of Time

Revised § 13.27 (a) and (b) adopts the proposed wording of § 2.306 (a) and (b) regarding not counting Federal legal holidays and emergency closures of the Federal government if they are the last day of the period when computing the amount of time a participant would have to file a response. Proposed § 13.27 (c) adopts the same time computation scheme as in proposed § 2.306 (b).

Existing paragraph (c) would be withdrawn.

F. Part 110—Public Participation Procedures Concerning Export and Import of Nuclear Equipment and Materials License Applications

1. Section 110.89 Filing and Service

The changes proposed to § 110.89 would conform that section's filing and service requirements to those in proposed §§ 2.302 and 2.305.

2. Section 110.90 Computation of Time

Although § 110.90 (a) would adopt the proposed wording of § 2.306 (a), the substance of § 110.90 (a) would not be altered. The proposed language in paragraphs (a) and (b) of this section would no longer count emergency closures of the Federal government if it is the last day of the period when computing the amount of time a participant would have to respond. Proposed § 110.90 (c) adopts the same time computation scheme as in proposed § 2.306 (b). Existing paragraph (d) would be withdrawn.

V. Minor Conforming Changes

Several sections in Title 10 of the Code of Federal Regulations would require minor modifications to conform to the electronic filing and service methods in E-Filing. Changes are proposed to the language in §§ 1.5, 2.340, 2.390, 2.346, and 2.808 as well as the sections discussed above (e.g., § 2.305 (b)) to provide for electronic documents as well as for paper documents. The modifications consist of changing the word ''paper'' to

''document'' or ''motion.'' Sections containing language that does not exclude electronic documents, such as ''writing'' or ''written,'' would not be modified because those sections already conform to the electronic filing and service methods being proposed. In addition, minor changes include amending the paragraph indexing when proposed paragraphs would be inserted or current paragraphs deleted. If, as a result of public comments or the NRC's review, it determines conforming changes are needed to other sections of the NRC's regulations, the NRC will incorporate those changes into the final rule.

VI. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed by voluntary, private sector, consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. This proposed rule establishes requirements and standards for the submission of filings to an electronic docket in hearings under 10 CFR part 2 subpart C. Through this rulemaking, the agency would implement the requirement in the Government Paperwork Elimination Act, Public Law 105–277, that Federal agencies allow electronic submissions of information where practicable; therefore, this proposed rule does not constitute the establishment of a Government-unique standard as defined in Office of Management and Budget (OMB) Circular A–199 (1998).

VII. Environmental Impact: Categorical Exclusion

The proposed rule amends the filing and service procedures in 10 CFR part 2 subpart C and makes conforming changes to other parts of Title 10 and, therefore, qualifies as an action eligible for the categorical exclusion from environmental review under 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rulemaking.

VIII. Paperwork Reduction Act Statement

This proposed rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

IX. Regulatory Analysis

A regulatory analysis has not been prepared for this rulemaking. The amendments below will neither impose new, nor relax existing, safety requirements and, thus, do not call for the sort of safety/cost analysis described in the agency's regulatory analysis guidelines in NUREG/BR–0058. Further, the NRC is required by the Government Paperwork Elimination Act, Public Law 105–277 (44 U.S.C. 3505, note), to allow electronic submissions when practicable. The proposed rule states the requirements for electronic filing and service in all NRC hearings, except those conducted on a high-level radioactive waste repository application. The Commission, while strongly preferring that participants file and serve their documents electronically, nonetheless permits participants to submit paper filings if the participants can offer good cause for taking this alternative approach. An analysis of costs and benefits, therefore, would not alter the NRC's decision to implement the policy embodied in this rule.

The NRC believes that this proposed rule would reduce the current filing costs of persons who deal with the agency. Currently, most submissions to the Commission are electronically mailed with a conforming paper copy to follow. This rule would eliminate the need to mail the paper copy. Because a majority of the participants in NRC hearings electronically mail filings, they already have most, if not all, of the requisite equipment. Also, the cost of the additional equipment and software is minimal in relation to the savings expected from eliminating the expenses of copying and postage. Although a participant could purchase a scanner and a program that converts documents to PDF format for approximately $100 each, the savings in copying and postage costs could be hundreds, if not thousands, of dollars.

X. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605 (b), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. It is probable that some poorly funded entities seeking to intervene would be adversely affected by this Rule, but their number is too small to necessitate the preparation of a Regulatory Flexibility Certification. This rule applies in the context of Commission adjudicatory proceedings concerning nuclear reactors or nuclear materials. Reactor licensees are large organizations that do not fall within the definition of a small business found in section 3 of the Small Business Regulatory Enforcement Fairness Act of 1996, 15 U.S.C. 632, within the small business standards set forth in 13 CFR part 121, or within the size standards adopted by the NRC (10 CFR 2.810). Based upon the historically low number of requests for hearings involving materials licensees, it is not expected that this rule would have any significant economic impact on a substantial number of small businesses.

XI. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule because these amendments modify the procedures to be used in NRC adjudicatory proceedings, and do not involve any provisions that would impose backfits as defined in 10 CFR 50.109, 70.76, 72.62, and 76.76. Therefore, a backfit analysis has not been prepared for this proposed rule.

List of Subjects

10 CFR Part 1

Organization and function (Government agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 13

Claims, Fraud, Organization and function (Government agencies), Penalties.

10 CFR Part 110

Administrative practice and procedure, Classified information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing the following amendments to 10 CFR parts 1, 2, 13, and 110.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

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

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. §§ 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. § 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. §§ 5841, 5843, 5844, 5845, 5849); 5 U.S.C. §§ 552, 553, Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.5, paragraph (a) is revised to read as follows:

§ 1.5 Location of principal offices and Regional Offices.

(a) The principal NRC offices are located in the Washington, DC, area. Facilities for the service of process and documents are maintained in the State of Maryland at 11555 Rockville Pike, Rockville, Maryland 20852–2738. The agency's official mailing address is U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The locations of NRC offices in the Washington, DC area are as follows:

* * * * *

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

3. The authority citation for Part 2 is revised to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. §§ 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. § 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. § 5841); 5 U.S.C. § 552; sec 1704, 112 Stat. 2750 (44 U.S.C. § 3504 note).

4. Section 2.4 is amended to add in alphabetical order the following definitions:

§ 2.4 Definitions.

Digital ID certificate means a file stored on a participant's computer that contains the participant's name, e-mail address, and participant's digital signature, proves the participant's identity when filing documents and serving participants electronically through the EIE, and contains public keys, which allow for the encryption and decryption of documents so that the documents can be securely transferred over the Internet.

E-Filing Guidance means the document issued by the Commission that sets forth the transmission methods and formatting standards for filing and service under E-Filing. The document can be obtained by visiting the NRC's Web site at *http://www.nrc.gov*.

Electronic acknowledgment means a communication transmitted electronically from the EIE to the submitter confirming receipt of electronic filing and service.

Electronic Hearing Docket means the publicly available website which houses a visual presentation of the docket and a link to its files.

Electronic Information Exchange means the information system that acts as a portal to receive electronic filings and documents and notify participants that new filings have been received.

Optical Storage Medium means any physical computer component that meets E-Filing Guidance standards for storing, saving, and accessing electronic documents.

5. Section 2.302 is revised to read as follows:

§ 2.302 Filing of Documents.

(a) Documents filed in Commission adjudicatory proceedings subject to this part shall be electronically transmitted through the EIE, unless the Commission or presiding officer grants an exemption permitting an alternative filing method or unless the filing falls within the scope of paragraph (g)(1) of this section.

(b) Upon an order from the presiding officer permitting alternative filing methods, or otherwise set forth in E-Filing Guidance, documents may be filed by:

(1) *First-class mail:* Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff;

(2) *Courier, express mail, and expedited delivery services:* Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff; or

(3) *E-mail:* Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@nrc.gov*.

(c) All documents offered for filing must be accompanied by a certificate of service stating the names and addresses of the persons served as well as the manner and date of service.

(d) Filing is considered complete:

(1) By electronic transmission or e-mail when the filer performs the last act that it must perform to transmit a document electronically;

(2) By first-class mail as of the time of deposit in the mail;

(3) By courier, express mail, or expedited delivery service upon depositing the document with the provider of the service; or

(4) If a filing must be submitted by two or more methods, such as a filing that the E-Filing Guidance indicates should be transmitted electronically as well as physically delivered or mailed on an optical storage medium, the filing is complete when all methods of filing have been completed.

(e) For filings by electronic transmission, the filer must make a good faith effort to successfully transmit the entire filing. Notwithstanding paragraph (c) of this section, a filing will not be considered complete if the filer knows or has reason to know that the entire filing has not been successfully transmitted.

(f) Digital ID Certificates.

(1) Through digital ID certificates, the NRC permits participants in the proceeding to access the EIE to file documents, serve other participants, and retrieve documents in the proceeding.

(2) Any participant or participant representative that does not have a digital ID certificate shall seek one from the NRC before that participant or representative intends to make its first electronic filing to the EIE. A participant or representative may apply for a digital ID certificate on the NRC Web site at *http://www.nrc.gov/site-help/eie.html.*

(3) Group ID Certificate. A participant wishing to obtain a digital ID certificate valid for several persons may obtain a group digital ID certificate. A Group ID cannot be used to file documents. The Group ID provides access to the EIE for the individuals specifically identified in the group's application to retrieve documents recently received by the EIE. The Group ID also enables a group of people, all of whom may not have individual digital ID certificates, to be notified when a filing has been made in a particular proceeding.

(g) Filing Method Requirements.

(1) *Electronic filing requirement.* Unless otherwise provided by order, all filings must be made as electronic submissions in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions may be found in the E-Filing Guidance and on the NRC Web site at *http://www.nrc.gov/site-help/eie.html.* If a filing contains sections of information or electronic formats that may not be transmitted electronically for security or other reasons, the portions not containing those sections will be transmitted electronically to the EIE. In addition, an optical storage medium (OSM) containing the entire filing must be physically delivered or mailed. In such cases, the submitter does not need to apply to the Commission or presiding

officer for an exemption to deviate from the requirements in paragraph (g)(1) of this section.

(2) *Electronic transmission exemption.* Upon a finding of good cause, the Commission or presiding officer can grant an exemption from election transmission requirements found in paragraph (g)(1) of this section to a participant who is filing electronic documents. The exempt person is permitted to file electronic documents by physically delivering or mailing an optical storage medium containing the documents or by using another electronic transmission method, such as e-mail. A participant granted this exemption would still be required to meet the electronic formatting requirement in paragraph (g)(1) of this section.

(3) *Electronic document exemption.* Upon a finding of good cause, the presiding officer can exempt a participant from both the electronic (computer file) formatting and electronic transmission requirements in paragraph (g)(1) of this section. A participant granted such an exemption can file paper documents either in person or by courier, express mail, some other expedited delivery service, or first-class mail, as ordered by the presiding officer.

(4) *Requesting an exemption.* A filer seeking an exemption under paragraphs (g)(2) or (g)(3) of this section must submit the exemption request with its first filing in the proceeding. In the request, a filer must show good cause as to why he or she cannot file electronically. The filer may not change its formats and delivery methods for filing until a ruling on the exemption request is issued. Exemption requests under paragraphs (g)(2) or (g)(3) of this section sought after the first filing in the proceeding will be granted only if the requestor shows that a significant change in circumstances makes the electronic filing requirements onerous or if the interests of fairness so require.

6. Section 2.304 is revised to read as follows:

§ 2.304 Formal requirements for documents; signatures; acceptance for filing.

(a) Each document filed in an adjudication to which a docket number has been assigned must show the docket number and title of the proceeding.

(b) In addition to the requirements in this part, paper documents must be stapled or bound on the left side; typewritten, printed, or otherwise reproduced in permanent form on good unglazed paper of standard letterhead size; signed in ink by the participant, its authorized representative, or an attorney having authority with respect to it; and filed with an original and two conforming copies.

(c) Each page in a document must begin not less than one inch from the top, with side and bottom margins of not less than one inch. Text must be double-spaced, except that quotations should be single-spaced and indented. The requirements of this paragraph do not apply to original documents, or admissible copies, offered as exhibits, or to specifically prepared exhibits.

(d) The original of each document must be signed by the participant or its authorized representative, or by an attorney having authority with respect to it. The document must state the capacity of the person signing; his or her address, phone number, and e-mail address; and the date of signature. The signature of a person signing in a representative capacity is a representation that the document has been subscribed in the capacity specified with full authority, that he or she has read it and knows the contents, that to the best of his or her knowledge, information, and belief the statements made in it are true, and that it is not interposed for delay. If a document is not signed, or is signed with intent to defeat the purpose of this section, it may be stricken.

(1) To sign an electronic document, the filing participant can either use a digital ID certificate, or a typed in designation that the original has been signed.

(i) When signing an electronic document using a digital ID certificate, a signature page shall be added to the electronic document. This signature page should contain a typed signature block that includes: The phrase ''Signed (electronically) by,''; the name and the capacity of the person signing; the person's address, phone number, and e-mail address; and the date of signature.

(ii) When a group of people must sign a document, a typed-in designation with the phrase ''Original signed by'' typed into the signature line on the signature block indicating that the original has been signed shall be submitted.

(2) Paper documents must be signed in ink.

(e) The first document filed by any participant in a proceeding must designate the name and address of a person on whom service may be made. This document must also designate the e-mail address, if any, of the person on whom service may be made.

(f) Any document that fails to conform to the requirements of this section may be refused acceptance for filing and may be returned with an indication of the reason for nonacceptance. Any document that is not accepted for filing will not be entered on the Commission's docket.

7. Section 2.305 is revised to read as follows:

§ 2.305 Service of documents; methods; proof.

(a) *Service of documents by the Commission.* Except for subpoenas, the Commission shall serve all orders, decisions, notices, and other documents to all participants, by the same delivery method those participants file and accept service.

(b) *Who may be served.* Any document required to be served upon a participant shall be served upon that person or upon the representative designated by the participant or by law to receive service of documents. When a participant has appeared by attorney, service shall be made upon the attorney of record. For purposes of service of documents, the staff of the Commission is considered a participant.

(c) *Method of service accompanying a filing.* Service must be made electronically to the EIE. Upon an order from the presiding officer permitting alternative filing methods under § 2.302(g)(4), service may be made by personal delivery, courier, expedited delivery service, e-mail, or by first-class, express, certified or registered mail. If service is made by e-mail, the original signed copy must be transmitted to the Secretary by personal delivery, courier, expedited delivery service, or by first-class, express, certified, or registered mail. As to each participant that cannot serve electronically, the presiding officer shall require service by the most expeditious means permitted under this paragraph that are available to the participant, unless the presiding officer finds that this requirement would impose undue burden or expense on the participant.

(1) Unless otherwise provided in this paragraph(c)(1), a participant will serve documents on the other participants by the same method that those participants filed.

(2) A participant granted an exemption under § 2.302(g)(2) will serve the presiding officer, and the participants in the proceeding that filed electronically, by physically delivering or mailing an optical storage medium containing the electronic document.

(3) A participant granted an exemption under § 2.302(g)(3) will serve the presiding officer, and the other participants in the proceeding, by physically delivering or mailing a paper copy.

(4) A certificate of service stating the names and addresses of the persons served as well as the method and date of service must accompany any paper served upon participants to the proceeding.

(5) Proof of service, which states the name and address of the person served as well as the method and date of service, may be made as required by law, by rule, or by order of the presiding officer.

(d) *Method of service not accompanying a filing.* Unless otherwise provided in paragraph (c) of this section, a participant shall serve pre-filed testimony on the presiding officer electronically and will serve the other participants in the proceeding by the same method that those participants filed documents. Service of demonstrative evidence, e.g., maps and other physical evidence, may be made by first-class mail in all cases, unless the presiding officer directs otherwise or the participant desires to serve by a faster method. In instances when service of a document under § 2.336, such as a discovery document, will not accompany a filing with the agency, the participant may use any reasonable method of service to which the recipient agrees.

(e) *Service on the Secretary.* (1) All motions, briefs, pleadings, and other documents must be served on the Secretary of the Commission by the same or equivalent method, such as by electronic transmission or first-class mail, that they are served upon the presiding officer, so that the Secretary will receive the filing at approximately the same time that it is received by the presiding officer to which the filing is directed.

(2) When pleadings are personally delivered to a presiding officer conducting proceedings outside the Washington, DC area, service on the Secretary may be accomplished electronically to the EIE, as well as by courier, express mail, expedited delivery service, or e-mail.

(3) Service of demonstrative evidence (e.g., maps and other physical exhibits) on the Secretary of the Commission may be made by first-class mail in all cases, unless the presiding officer directs otherwise or the participant desires to serve by a faster method. All pre-filed testimony shall be served on the Secretary of the Commission by the same or equivalent method that it is served upon the presiding officer to the proceedings, i.e., electronically to the EIE, personal delivery or courier, express mail or expedited delivery service, or electronic transmission.

(4) The addresses for the Secretary are:

(i) Internet: the EIE at *http://www.nrc.gov.*

(ii) First-class mail: Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

(iii) Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemakings and Adjudications Staff; and

(iv) E-mail addressed to the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@nrc.gov.*

(f) *When service is complete.* Service upon a participant is complete:

(1) By the EIE, when filing electronically to the EIE is considered complete under § 2.302 (c) and (d).

(2) By personal delivery, upon handing the document to the person, or leaving it at his or her office with that person's clerk or other person in charge or, if there is no one in charge, leaving it in a conspicuous place in the office, or if the office is closed or the person to be served has no office, leaving it at his or her usual place of residence with some person of suitable age and discretion then residing there;

(3) By mail, upon deposit in the United States mail, properly stamped and addressed;

(4) By expedited service, upon depositing the document with the provider of the expedited service;

(5) By e-mail, when the participant performs the last act that he or she must perform to transmit the document electronically. Service will not be considered complete, however, if the participant making service knows or has reason to know that the document was not successfully transmitted. Participants shall make a good faith effort to successfully serve the presiding officer and the other participants; or

(6) When service cannot be effected by a method provided by paragraphs (f)(1)–(5) of this section, by any other method authorized by law.

(7) When two or more methods of service are required, service is considered complete when service by each method is complete under paragraphs (f)(1)–(5) of this section.

(g) *Service on the NRC staff.*

(1) Service shall be made upon the NRC staff of all documents required to be filed with participants and the presiding officer in all proceedings, including those proceedings where the NRC staff informs the presiding officer of its determination not to participate as a participant. Service upon the NRC staff shall be by the same or equivalent method as service upon the Office of the Secretary and the presiding officer, e.g., electronically, personal delivery or courier, express mail or expedited delivery service, or e-mail.

(2) If the NRC staff decides not to participate as a participant in a proceeding, it shall, in its notification to the presiding officer and participants of its determination not to participate, designate a person and address for service of documents.

8. Section 2.306 is revised to read as follows:

§ 2.306 Computation of time.

(a) In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, or Federal legal holiday at the place where the action or event is to occur, or emergency closure of the Federal government in Washington, DC, during which the NRC Headquarters does not open for business, in which event the period runs until the end of the next day that is not a Saturday, Sunday, Federal legal holiday, or emergency closure.

(b) Whenever a participant has the right or is required to do some act within a prescribed period after the service of a notice or other document upon him or her, no additional time is added to the prescribed period except in the following circumstances:

(1) If a notice or document is served upon a participant, by first-class mail only, three (3) calendar days will be added to the prescribed period for all the participants in the proceeding.

(2) If a notice or document is served upon a participant, by express mail or other expedited service only, two (2) calendar days will be added to the prescribed period for all the participants in the proceeding.

(3) If a document is to be served by multiple service methods, such as partially electronic and entirely on an optical storage medium, the additional number of days is computed according to the service method used to deliver the entire document, excluding courtesy copies, to all of the other participants in the proceeding.

(4) In mixed service proceedings when all participants are not using the same filing and service method, the number of days for service will be determined by the presiding officer based on considerations of fairness and efficiency. The same number of additional days will be added to the

prescribed period for all the participants in the proceeding with the number of days being determined by the slowest method of service being used in the proceeding.

(5) One (1) day will be added to the prescribed period for all the participants in the proceeding:

(i) For a documents served in person or by expedited service, in a document is received after 5 p.m. in the recipient's time zone; or

(ii) For a document served by the Hearings Network or by electronic mail, if a document is transmitted by the sender on or after midnight in the sender's time zone.

9. In § 2.340, paragraph (f)(2) is revised to read as follows:

§ 2.340 Initial decision in contested proceedings on applications for facility operating licenses; immediate effectiveness of initial decision directing issuance or amendment of construction permit or operating license.

* * * * *

(f) * * *

(2) Commission. Within sixty (60) days of the service of any presiding officer decision that would otherwise authorize issuance of a construction permit, the Commission will seek to issue a decision on any stay motions that are timely filed. These motions must be filed as provided by § 2.341. For the purpose of this paragraph, a stay motion is one that seeks to defer the effectiveness of a presiding officer decision beyond the period necessary for the Commission action described herein. If no stay motions are filed, the Commission will, within the same time period (or earlier if possible), analyze the record and construction permit decision below on its own motion and will seek to issue a decision on whether a stay is warranted. However, the Commission will not decide that a stay is warranted without giving the affected participants an opportunity to be heard. The initial decision will be considered stayed pending the Commission's decision. In deciding these stay questions, the Commission shall employ the procedures set out in § 2.342.

* * * * *

10. In § 2.346, the introductory text is revised to read as follows:

§ 2.346 Authority of the Secretary.

When briefs, motions or other documents are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary is authorized to:

* * * * *

11. In § 2.390, paragraph (b)(1)(iii) is revised to read as follows:

§ 2.390 Public inspections, exemptions, requests for withholding.

* * * * *

(b) * * *

(1) * * *

(iii) In addition, an affidavit accompanying a withholding request based on paragraph (a)(4) of this section must contain a full statement of the reason for claiming the information should be withheld from public disclosure. Such statement shall address with specificity the considerations listed in paragraph (b)(4) of this section. In the case of an affidavit submitted by a company, the affidavit shall be executed by an officer or upper-level management official who has been specifically delegated the function of reviewing the information sought to be withheld and authorized to apply for its withholding on behalf of the company. The affidavit shall be executed by the owner of the information, even though the information sought to be withheld is submitted to the Commission by another person. The application and affidavit shall be submitted at the time of filing the information sought to be withheld. The information sought to be withheld shall be incorporated, as far as possible, into a separate document. The affiant must designate with appropriate markings information submitted in the affidavit as a trade secret, or confidential or privileged commercial or financial information within the meaning of § 9.17(a)(4) of this chapter, and such information shall be subject to disclosure only in accordance with the provisions of § 9.19 of this chapter.

* * * * *

12. In § 2.808, the introductory text is revised to read as follows:

§ 2.808 Authority of the Secretary to rule on procedural matters.

When briefs, motions or other documents listed herein are submitted to the Commission itself, as opposed to officers who have been delegated authority to act for the Commission, the Secretary or the Assistant Secretary is authorized to:

* * * * *

PART 13—PROGRAM FRAUD CIVIL REMEDIES

13. The authority citation for Part 13 continues to read as follows:

Authority: Public Law 99–509, secs. 6101–6104, 100 Stat. 1874 (31 U.S.C. 3801–3812). Sections 13.13 (a) and (b) also issued under section Pub. L. 101–410, 104 Stat. 890, as amended by section 31001(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note.)

14. In § 13.9, paragraph (a) is revised to read as follows:

§ 13.9 Answer.

(a) The defendant may request a hearing by filing an answer with the reviewing official within thirty (30) days of service of the complaint. Service of an answer shall be made by electronically delivering a copy to the reviewing official in accordance with § 13.26. An answer shall be deemed a request for hearing.

* * * * *

15. Section 13.26 is revised to read as follows:

§ 13.26 Filing and service of papers.

(a) *Filing.* (1) Unless otherwise provided by order, all filings must be made as electronic submissions in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions may be found in the E-Filing Guidance and on the NRC Web site at *http://www.nrc.gov/site-help/eie.html*. If a filing contains sections of information or electronic formats that may not be transmitted electronically for security or other reasons, portions not containing those sections will be transmitted electronically to the EIE. In addition, an optical storage medium containing the entire filing must be physically delivered or mailed. In such cases, the submitter does not need to apply to the Commission for an exemption to deviate from the requirements in paragraph (a) of this section.

(2) Electronic transmission exemption. The ALJ may relieve a person who is filing electronic documents of the transmission requirements in paragraph (a) of this section. Such a person will file electronic documents by physically delivering or mailing an optical storage medium containing the documents or by another electronic transmission method, such as e-mail. The electronic formatting requirement in paragraph (a) of this section must be met. If service is made by e-mail, the original signed copy must be transmitted to the Secretary by personal delivery, courier, expedited delivery service, or by first-class, express, certified, or registered mail.

(3) Electronic document exemption. The ALJ may relieve a participant of both the electronic (computer file) formatting and transmission requirements in paragraph (a)(1) of this section. Such a participant will file

paper documents physically or by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Filing by mail is complete upon deposit in the mail.

(4) Requesting an exemption. A participant seeking an exemption under paragraph (a)(2) or (a)(3) of this section must submit the exemption request with its first filing in the proceeding. In the request, the requestor must show good cause as to why he or she cannot file electronically. The filer may not change its formats and delivery methods for filing until a ruling on the exemption request is issued. Exemption requests submitted after the first filing in the proceeding will be granted only if a significant change in circumstances makes the electronic filing requirements onerous or if the interests of fairness so require.

(5) Every pleading and paper filed in the proceeding shall contain a caption setting forth the title of the action, the case number assigned by the presiding officer, and a designation of the document (e.g., motion to quash subpoena).

(6) Every pleading and document shall be signed by, and shall contain the address and telephone number of the participant or the person on whose behalf the paper was filed, or his or her representative.

(7) All documents offered for filing must be accompanied by a certificate of service stating the names and addresses of the persons served as well as the methods and date of service.

(8) Filing is complete when the filer performs the last act that it must perform to submit a document, such as hitting the send/submit/transmit button for an electronic transmission or depositing the document in a mailbox.

(b) *Service.* A participant filing a document with the ALJ shall at the time of filing, serve a copy of such document on every other participant. Service upon any participant of any document other than those required to be served as prescribed in § 13.8 shall be made electronically to the EIE. When a participant is represented by a representative, service shall be made upon such representative in lieu of the actual participant. Upon an order from the ALJ permitting alternative filing methods under paragraphs (a)(2) or (a)(3) of this section, service may be made by e-mail, physical delivery, or mail. As to each participant that cannot serve electronically, the ALJ shall require service by the most expeditious means permitted under this paragraph that are available to the participant, unless the ALJ finds that this requirement would impose undue burden or expense on the participant.

(1) Unless otherwise provided in this paragraph, a participant will serve documents on the other participants by the same method that those participants filed.

(2) A participant granted an exemption under paragraph (a)(2) of this section will serve the participants in the proceeding that filed electronically by physically delivering or mailing an optical storage medium containing the electronic document.

(3) A participant granted an exemption under (a)(3) will serve the other participants in the proceeding by physically delivering or mailing a paper copy.

(4) A certificate of service stating the names and addresses of the persons served as well as the method and date of service must accompany any paper served upon participants to the proceeding.

(5) Proof of service, which states the name and address of the person served as well as the method and date of service, may be made as required by law, by rule, or by order of the Commission.

16. Section 13.27 is revised to read as follows:

§ 13.27 Computation of time.

(a) In computing any period of time under this part or in an order issued thereunder, the time begins with the day following the act, event, or default, and includes the last day of the period, unless it is a Saturday, Sunday, Federal legal holiday at the place where the action or event is to occur, or emergency closure of the Federal government in Washington, DC, during which the NRC Headquarters does not open for business, in which event it includes the next day that is not a Saturday, Sunday, holiday or emergency closure.

(b) When the period of time allowed is less than seven (7) days, intermediate Saturdays, Sundays, Federal legal holidays, and emergency closures shall be excluded from the computation.

(c) Whenever an action is required within a prescribed period by a document served pursuant to § 13.26, no additional time is added to the prescribed period except in the following circumstances:

(1) If a notice or document is served upon a participant, by first-class mail only, three (3) calendar days will be added to the prescribed period for all the participants in the proceeding.

(2) If a notice or document is served upon a participant, by express mail or other expedited service only, two (2) calendar days will be added to the prescribed period for all the participants in the proceeding.

(3) If a document is to be served by multiple service methods, such as partially electronic and entirely on an OSM, the additional number of days is computed according to the service method used to deliver the entire document, excluding courtesy copies, to all of the other participants in the proceeding.

(4) In mixed service proceedings where all participants are not using the same filing and service method, the same number of additional days will be added to the prescribed period for all the participants in the proceeding with the number of days being determined by the slowest method of service being used in the proceeding.

(5) One (1) day will be added to the prescribed period for all the participants in the proceeding:

(i) For a document served in person or by expedited service, if a document is received after 5 p.m. in the recipient's time zone; or

(ii) For a document served by the Hearings Network or by electronic mail, if a document is transmitted by the sender on or after midnight in the sender's time zone.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

17. The authority citation for Part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201, 2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d, 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123, 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under 5 U.S.C. 552, 554. Sections 110.130–110.135 also issued under 5 U.S.C. 553. Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et seq.).

18. Section 110.89 is revised to read as follows:

§ 110.89 Filing and service.

(a) Hearing requests, intervention petitions, answers, replies and accompanying documents must be filed with the Commission electronically through the EIE, unless one of the exemptions applies. Unless otherwise provided, all filings must be made as electronic submissions in a manner that enables the NRC to receive, read, authenticate, distribute, and archive the submission, and process and retrieve it a single page at a time. Detailed guidance on making electronic submissions may be found in the E-Filing Guidance and on the NRC Web site at *http://www.nrc.gov/site-help/eie.html*. Filing by electronic transmission is complete when the participant performs the last act that it must perform to transmit a document electronically.

(1) If a filing contains sections of information or electronic formats that are not to be transmitted electronically for security or other reasons, portions not containing those sections will be transmitted electronically to the EIE. In addition, an optical storage medium containing the entire filing must be physically delivered or mailed. In such cases, the submitter does not need to apply to the Commission for an exemption to deviate from the requirements in paragraph (a) of this section.

(2) Electronic transmission exemption. Upon a finding of good cause, the Commission may relieve a person who is filing electronic documents of the transmission requirements in paragraph (a) of this section. Such a person will file electronic documents by physically delivering or mailing an optical storage medium containing the documents or by another electronic transmission method, such as e-mail. The electronic formatting requirement in paragraph (a) of this section must be met. If service is made by e-mail, the original signed copy must be transmitted to the Secretary by personal delivery, courier, expedited delivery service, or by first-class, express, certified, or registered mail.

(3) Electronic document exemption. Upon a finding of good cause, the Commission may relieve a participant of both the electronic (computer file) formatting and transmission requirements in paragraphs (a) and (a)(1) of this section. Such a participant will file paper documents physically or by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff. Filing by mail is complete upon deposit in the mail.

(4) Requesting an exemption. A participant seeking an exemption under paragraph (a)(2) or (a)(3) of this section must submit the exemption request with its first filing in the proceeding. In the request, the requestor must show good cause as to why he or she cannot file electronically. The filer may not change its formats and delivery methods for filing until a ruling on the exemption request is issued. Exemption requests submitted by a participant after its first filing in the proceeding will be granted only if a significant change in circumstances makes the electronic filing requirements onerous or if the interests of fairness so require.

(5) All documents offered for filing must be accompanied by a certificate of service stating the names and addresses of the persons served as well as the methods and date of service.

(6) The Department of State or other Executive Branch agencies may file paper documents with the Commission and do not need to apply to the Commission for an exemption to deviate from the requirements in paragraph (a) of this section.

(b) All filings and Commission notices and orders must be served upon the applicant; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555; the Executive Secretary, Department of State, Washington, DC 20520; and participants if any. Hearing requests, intervention petitions, and answers and replies must be served by the person filing those pleadings.

(c) Service must be made electronically to the EIE. Upon an order from the Commission permitting alternative filing methods under paragraph (a)(2) or (a)(3) of this section, service may be made by e-mail, physical delivery, or mail. As to each participant that cannot serve electronically, the Commission shall require service by the most expeditious means permitted under this paragraph that is available to the participant, unless the Commission finds that this requirement would impose undue burden or expense on the participant.

(1) Unless otherwise provided in this subsection, a participant will serve documents on the other participants by the same method that those participants filed.

(2) A participant granted an exemption under paragraph (a)(2) of this section will serve the participants in the proceeding that filed electronically by physically delivering or mailing an optical storage medium containing the electronic document.

(3) A participant granted an exemption under paragraph (a)(3) of this section will serve the other participants in the proceeding by physically delivering or mailing a paper copy.

(4) A certificate of service stating the names and addresses of the persons served as well as the method and date of service must accompany any paper served upon participants to the proceeding.

(5) Proof of service, which states the name and address of the person served as well as the method and date of service, may be made as required by law, by rule, or by order of the Commission.

(6) Service to the Executive Secretary, Department of State, is completed by:

(i) Physically delivering the filing;

(ii) Depositing it in the United States mail, properly stamped and addressed;

(iii) Electronically through the EIE in cases where the Executive Secretary has obtained a digital ID; or

(iv) Any other method authorized by law, when service cannot be made as provided in paragraphs (c)(6)(i) through (c)(6)(iii) of this section.

19. Section 110.90 is revised to read as follows:

§ 110.90 Computation of time.

(a) In computing any period of time, the day of the act, event, or default after which the designated period of time begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday, Federal legal holiday at the place where the action or event is to occur, or emergency closure of the Federal government in Washington, DC, during which the NRC Headquarters does not open for business, in which event the period runs until the end of the next day that is not a Saturday, Sunday, holiday, or emergency closure.

(b) In time periods of less than seven (7) days, intermediate Saturdays, Sundays, Federal legal holidays, and emergency closures are not counted.

(c) Whenever an action is required within a prescribed period by a document served under § 110.89 of this part, no additional time is added to the prescribed period except in the following circumstances:

(1) If a notice or document is served upon a participant, by first-class mail only, three (3) calendar days will be added to the prescribed period for all the participants in the proceeding.

(2) If a notice or document is served upon a participant, by express mail or other expedited service only, two (2) calendar days will be added to the prescribed period for all the participants in the proceeding.

(3) If a document is to be served by multiple service methods, such as

partially electronic and entirely on OSM, the additional number of days is computed according to the service method used to deliver the entire document, excluding courtesy copies, to all of the other participants in the proceeding.

(4) In mixed service proceedings where all participants are not using the same filing and service method, the same number of additional days will be added to the prescribed period for all the participants in the proceeding with the number of days being determined by the slowest method of service being used in the proceeding.

(5) One (1) day will be added to the prescribed period for all the participants in the proceeding:

(i) For a documents served in person or by expedited service, in a document is received after 5 p.m. in the recipient's time zone; or

(ii) For a document served by the Hearings Network or by electronic mail, if a document is transmitted by the sender on or after midnight in the sender's time zone.

Dated at Rockville, Maryland, this 30th day of November, 2005.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

Note: *This Appendix will not be printed in the Code of Federal Regulations*

Proposed Guidance for Submission of Electronic Docket Materials Under 10 CFR Part 2, Subpart C, 10 CFR Part 13, 10 CFR Part 110

Table of Contents

1.0 Introduction
1.1 Background
1.2 Scope
1.3 Exceptions to Electronic Submission
2.0 Applicable Submittal Types
3.0 Parameters for Electronic File Submission
3.1 File Formats
3.2 File Size Limitations
3.3 Segmentation of Large Documents
3.4 Transmittal Letter
3.5 Electronic File Naming Conventions
3.6 Security/Access Settings
3.7 Resolution
3.8 Files with Special Printing Requirements
3.9 File Linkages
3.10 Viruses
3.11 Copyrighted Information
3.12 Accessibility (Section 508)
3.13 Sensitive Information
3.14 Classified and Safeguards Information
3.15 Document Updates
4.0 EIE Submissions
5.0 Optical Storage Media Submissions
Attachment A—Settings
Attachment B—Glossary
Attachment C—Sample Transmittal Letters and Corresponding EIE Forms
Attachment D—Sample Files Describing ''BLOBS'' or Physical Objects
Attachment E—Types of Hyperlinks and Need for Disclaimers

1.0 Introduction

1.1 Background

On December 16, 2005, the Nuclear Regulatory Commission (NRC) promulgated a final rule on electronic submission of filings to the agency. This rule modified provisions of Title 10, parts 2, subpart C (10 CFR part 2, subpart C), 13 (10 CFR part 13), and 110 (10 CFR part 110) to require that all filings submitted and all orders and decisions issued during the course of most proceedings must be transmitted electronically to participants in the proceeding, the presiding officer, and the Office of the Secretary of the Commission (SECY). The NRC maintains Electronic Hearing Dockets (EHDs), which contain the official record of documents and materials submitted in the NRC's electronic proceedings, for the electronic submission of filings. The final rule stated that the NRC would issue specific guidance on acceptable procedures for electronic submissions. That guidance is contained in this document. This guidance document is the source of information on the electronic submission of adjudicatory filings to the NRC. The NRC plans to update this guidance periodically to reflect changes in technology and agency experience by posting the latest version of the document on the NRC's Web site at *http://www.nrc.gov/sitehelp/eie.html.* The NRC recommends that parties in proceedings before the agency routinely check the NRC website before submitting documents to the agency electronically to ensure they have the most updated version of the guidance document. While the Commission mandates the submission of electronic filings, exemptions are available to submit paper documents if good cause is set forth by the requesting party.

The NRC has analyzed and evaluated the capabilities of current information technologies and the various document and record management processes executed by the Agency to handle the anticipated submittals. Based on those analyses, the NRC anticipates that some electronic submittals in NRC adjudicatory proceedings could be ''large documents'' consisting of hundreds of pages of textual and graphic-oriented materials with electronic file sizes more than several hundred megabytes (MB). To provide for the integrity and accessibility of the large and complex electronic documents in NRC proceedings, the NRC is providing this guidance document to facilitate, (1) submittal processing, (2) ready access to, and use of, such submittals by participants in NRC proceedings, and (3) public access to the EHDs. (Attachment B to this guidance presents a glossary of related terms.)

1.2 Scope

This guidance document contains the information on the electronic transmission and submission of filings to the NRC by all participants in adjudicatory proceedings conducted under 10 CFR part 2, subpart C, 10 CFR part 13, and 10 CFR part 110. This guidance does not apply to any proceeding governed by 10 CFR part 2, subpart J (Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste in a Geologic Repository).

This guidance includes the procedures for filing electronically with the NRC via the Internet using the Electronic Information Exchange (EIE) (section 4.0) and by Optical Storage Media (OSMs) (*e.g.*, CD–ROM (Compact Disk, Read Only Memory)) (section 5.0). Physical delivery of OSM is permitted, in part, in recognition that it may not be practical to submit some large and complex electronic files via the Internet.[1] *Any OSM delivered to the NRC should contain a complete copy of the electronic submission, including any and all associated files that were also transmitted by the EIE.*

Electronic filings may contain textual documents, graphic-oriented documents (*e.g.*, maps, photographs, charts, handwritten documents), or other large or complex electronic objects (*e.g.*, computer programs, computer simulations, spreadsheets, audio and/or video files, data files). Examples of documents submitted or issued in adjudicatory proceedings include:

- Adjudicatory documents (*e.g.*, intervention petitions, motions, responses, transcripts, exhibits, decisions, and orders)
- License Applications and supporting materials
- Environmental Impact Statements
- Responses to NRC requests for additional information

Generally, this guidance provides for service of adjudicatory docket materials

[1] The following electronic files may not be suitable for submission via the EIE:

- Multimedia files (*e.g.*, audio and/or video files, simulations);
- Executable programs, including database files, spreadsheets;
- Data files specific to commercially available software; and
- Data files specific to non-commercially available software.

via the Internet using the NRC's EIE (see section 4.0) in an electronic format that ''locks down'' the content and pagination of documentary material for ease of citation in the proceeding, thereby ensuring document integrity when accessed by the users on their computer desktops. The EIE system also uses a public key infrastructure and digital signature certificate technology to authenticate documents and validate the identity of the person submitting the information. That is, the system ensures that the exchanged information is secure and that the person submitting the material is, in fact, who is indicated. It requires the use of digital signatures and certain software plug-ins. Procedures for acquiring a digital signature certificate for communicating with the NRC via the EIE and for acquiring the required software can be found on the NRC's Web site at *http://www.nrc.gov/site-help/eie.html.*

Failure to comply with this guidance may result in the rejection of the submittal.

1.3 Exceptions to Electronic Submissions

The following must not be submitted electronically via the Internet using the EIE:

1. Classified Information (*i.e.*, National Security Information and Restricted Data), and Safeguards Information. This information may only be submitted electronically in an OSM.

2. Documents served on the NRC as a participant in Federal Court proceedings or in non-NRC administrative proceedings (such as administrative reviews before the Merit Systems Protection Board), unless electronic submission is authorized by rule or order issued by a Federal Court or Agency.

2.0 Applicable Submittal Types

The NRC anticipates that electronic documentary submittals will fall into three general categories based on the submittal type, size, and characteristics. The following table describes these categories and summarizes the applicable submission methods.

BILLING CODE 7590–01–P

Submittal Description Table

Submittal Type	Submittal Size	File Characteristics	Method
Simple	Less than 50 MB	One or more textual or graphic-oriented electronic files in Portable Document Format (PDF)	Use a single EIE transmission to submit the file(s) with a transmittal letter.*
Large	Greater than or equal to 50 MB	Textual or graphic-oriented electronic files in PDF that can logically be segmented into 50 MB or less files	• Use multiple EIE transmissions (≤50 MB each) to submit the files with a transmittal letter. ***— and —*** • Deliver a courtesy copy of the files submitted via the EIE on OSM
Complex	Any	Any combination of the following electronic object categories: • Textual or graphic-oriented electronic files in PDF • electronic files that can not be segmented into 50 MB or less files • Other electronic objects, such as computer programs, simulations, video, audio, pictures, data files, and files with special printing requirements	Use the Dual Submittal Method: • Use one or more EIE transmissions (≤50 MB each) to submit a transmittal letter and (**if applicable**), single or multiple segmented PDF files. ***— and —*** • Deliver the balance of the submission, ***together with all associated files transmitted via the EIE***, on OSM for a complete submission. Note: if documentary material is only being submitted on OSM, the transmittal letter is still sent via the EIE.

* A submittal of a single file less than 50 MB does not require a transmittal letter.

3.0 Parameters for Electronic File Submission

This section describes how documentary material should be constructed for submission to the NRC.

3.1 File Formats

Electronic documentary materials submitted in NRC adjudicatory proceedings should be submitted in PDF (a widely available format) or otherwise meet the specifications delineated in this section. Scanning of the best available copy of a paper document to create a Searchable Image (Exact) PDF file creates an accurate electronic copy of the original document.

The following table defines the particular PDF output file formats and their use when submitting electronic documents to the NRC:

PREFERRED PDF OUTPUT FILE FORMAT GENERAL INFORMATION TABLE

File format	Version	Filename extension	Recommended use
Adobe® Acrobat Portable Document Format (PDF) Formatted Text and Graphics (Formerly known as PDF Normal). Options should be set according to the settings described in Attachment A.	Current or 2 previous*	pdf	Textual documents converted from native applications only **, ***.
Adobe® Acrobat PDF Searchable Image (Exact) [formerly known as PDF Original Image with Hidden Text]. Options should be set according to the settings described in Attachment A.	Current or 2 previous*	pdf	Textual documents converted from scanned documents.
Adobe® Acrobat PDF Image Only. Options should be set according to the settings described in Attachment A.	Current or 2 previous*	pdf	Preferred format for graphic-, image-, and forms-oriented documents (cannot be used for textual documents because it is not Section 508 compliant****).

*The acceptable versions of PDF output files include the current market (non-beta) version distributed by the software vendor, the version distributed directly previous to the current version, and the version distributed two versions previous to the current version.

**Textual documents scanned from original paper copies converted to PDF Formatted Text and Graphics result in capture of only a text file that contains OCR conversion errors. This inaccurate representation of the original document is not acceptable for capture by the NRC as an archival record. If the native format of a document is not available for creating a PDF file, the NRC recommends that Searchable Image (Exact) PDF be generated from a scanned image of the document. This will create a PDF file that contains a 100% accurate representation of the original document which will be acceptable for transfer to the National Archives.

***''Adobe'' PDF Formatted Text and Graphics files that contain embedded images of text will not be accepted. These files are usually a result of cutting and pasting images of text instead of the text itself, from one document to another while creating documents using word processing applications. This practice results in a picture of the text being created that is not full text searchable. However, images of text that are intended as a graphical representation only and are not meant to convey the information contained in the text will be accepted.

****See Sec. 3.12 of this document for more section 508.

NOTE: Adobe has recently established a fourth PDF output file format (PDF Searchable Image (Compact)) that uses compression techniques to reduce file sizes of images. This is not an acceptable format for submission to the NRC.

Adobe® Distiller 6 provides various default optimizations when creating the Formatted Text and Graphics PDF. The NRC has reviewed these optimizations and has established a custom optimization that strikes a balance between print and screen optimizations. This custom optimization provides adequate retrieval response time for viewing online while providing sufficient clarity and resolution for printing. The settings contained within this custom optimization are in Attachment A and can be saved locally for use on all submittals to the NRC. The parameter values listed in Attachment A are specific to Adobe® Distiller 6; however, when PDF creation software other than Adobe® Distiller 6 is used, the PDF creation software should be configured with parameter values equivalent to those listed in Attachment A. All fonts should be embedded in the PDF file to ensure compliance with NARA guidelines.

Images originally created in a Tagged Image File Format (TIFF) that are primarily graphic-oriented in nature should be converted into PDF for submission to NRC using the PDF Image Only format as described above.

When submitting an electronic file using one of the acceptable formats listed in the tables above, the file name should contain the three-character default extension in which the file was created (e.g., a document prepared as ''license_amendment.pdf'' should be submitted with the ''.pdf'' file extension).

Spreadsheet Formats

The NRC requires that the results of spreadsheet applications be converted to one of the acceptable PDF file formats. The NRC staff may also request spreadsheet data to perform additional calculations/analyses. Spreadsheet data may be submitted using the following acceptable formats.

ACCEPTABLE FILE EXTENSIONS GENERAL INFORMATION TABLE

File format	Version	Filename extension	Preferred use
Microsoft® Excel®	Current or 2 previous*	xls	Spread Sheet calculations.
Corel® QuattroPro	Current or 2 previous*	wb3	Spread Sheet calculations.
Lotus® 1-2-3	Current or 2 previous*	wk3/wk4	Spread Sheet calculations.

*The acceptable versions of spreadsheets include the current market (non-beta) version distributed by the software vendor, the version distributed directly previous to the current version, and the version distributed two versions previous to the current version.

Graphic-Oriented and Large and Complex Electronic Objects

To the extent practical, textual files, graphic-oriented files, and other electronic objects (e.g., spreadsheets, audio and/or video files) should be submitted electronically as PDF files. In rare instances PDF conversion may not be successful due to technical reasons (e.g., fatal hardware, software, or operating systems errors that prevent completion of the conversion). In addition, if the applicable file size and resolution restrictions (see sections 3.2, 3.7) cannot be met for a given graphic-oriented file or other electronic object, users must not submit that file or object in PDF. Submission of non-PDF files should include a detailed statement for each file that explains why PDF is not practical.

The NRC recommends submitting oversize image files that, for technical reasons, do not successfully convert to PDF in a non-proprietary format that does not utilize lossy compression (e.g., tagged image file format, also known as TIFF). Similarly, the NRC recommends submitting video and audio files in a format compatible with commercially available playback devices.

Electronic objects specific to highly specialized software applications such as special-purpose computer programs, simulations, and data files are acceptable in their native file format. Submission of these specialized electronic objects that are specific to commercially available software should include the following information about the software:

- Software title and version
- Compatible computer operating system
- Hardware requirements (including the minimum recommended hardware configuration)
- A list of user-controlled parameters used with the software.

Submission of these specialized electronic objects that are specific to non-commercially available software should include (1) a freely distributable ''run-time'' version of all software components that the submitter used to create the files, and (2) the following information:

- Compatible computer operating system
- Software and hardware installation/configuration parameters
- Hardware requirements (including the minimum recommended hardware configuration)
- Other information to ensure seamless access to and review, duplication, and printing of the files.

3.2 File Size Limitations

Large files create challenges for users when transmitting, viewing, or downloading documents. Submitters should limit file sizes to 50 MB for electronic submittals and divide larger electronic files into segments of 50 MB or less at logical breaks in the document (e.g., at individual chapters) as described in section 3.3.

Compression techniques that are not inherent in authoring software used to produce PDF or TIFF files may not be used.

The 50 MB file size limitation will allow participants in the adjudicatory proceeding and the general public to access electronic files in the EHDs via the Internet. Test results indicate that 50 MB is a reasonable file size for downloading files via the Internet. In addition, larger files (greater than 50 MB) are difficult for end-users to navigate.

While we do not recommend a minimum file size, small files that are components of a larger document should be combined into one file to facilitate efficient distribution and use of the documentary material. For example, if a document consists of 15 separate 2 MB files, those 15 files should be combined to result in one 30 MB file.

3.3 Segmentation of Large Documents

Large documents with file sizes greater than 50 MB should be divided in file segments of 50 MB or less at logical breakpoints such as:

a. Chapters.
b. Sections.
c. Subsections.
d. Appendices.
e. Exhibits or attachments.
f. Charts; tables; formulae.
g. For large transcripts, the end of a witness' testimony or session recess.

If the recommended file size cannot be achieved, consider moving the graphics (which are often large files) to an appendix or attachment. Any graphic or other Binary Large Object (BLOB) that exceeds the 50 MB limit and that cannot logically be divided, should not be segmented. In this case, the graphic or BLOB cannot be sent via the EIE (see section 4.0) and should be provided on OSM in accordance with guidance in section 5.0.

When OSM are submitted, use electronic folders to organize the contents at the chapter level consistent with the file name guidance outlined in Section 3.5. In addition to the limit on file name length, the Joliet Extension to IS0 9660 allows an overall limit on *length of path* of 255 characters, including the file name and extension.[2] The numeric portion of the file name should be sequential across all folders. Therefore:

- Each Chapter will have its own folder which should then contain all files associated with that Chapter, including sections, subsections, and graphics (either embedded within those sections/subsections or provided separately).
- The sections/subsections should be placed in logical sequential order within a folder.
- Separate folders may be created for appendices, exhibits, or attachments. Each item should have the file name reflect the folder where it resides, if practical, in conjunction with complying with the file name guidance in section 3.5.

If multiple OSM are submitted (either alone or as a supplement to an EIE submission), place the Table of Contents for the entire submission on each OSM in a multi-set submission. Place all files submitted via the EIE on the first OSM and as many additional OSM as required to store those files submitted via the EIE. Submit other electronic objects such as computer programs, simulations, video, audio, data files, etc., on separate OSM and include any special software components, their configuration parameters, and any hardware configuration requirements, as applicable.

3.4 Transmittal Letter

Include with each submittal, a transmittal letter[3] (see Attachment C) that provides explanatory information that will enable the NRC to ensure the completeness and integrity of the submission. On the first page of the transmittal letter submitters should provide the following information:

- Organization or Individual Name/Address (Author);
- Docket Number (###–#####);
- Subject Line (a non-sensitive, brief but descriptive narrative of the subject of the submission); and
- Any requests for withholding from public disclosure in accordance with 10 CFR 2.390.

On the last page[s] of the transmittal letter, submitters should provide:

- The name, mailing and e-mail addresses, and phone number of a point of contact that can resolve discrepancies in document submittals should they arise;
- A complete listing of the document components (electronic files and/or

[2] See Glossary on page B2 for an explanation of these terms.

[3] A submittal of a single file less than 50 MB does not require a transmittal letter.

physical objects) that make up the submittal. The components should be listed in the order in which they appear in the document, and if applicable, the total number of OSM that are submitted by expedited delivery (e.g., same day courier, overnight) (see section 3.5);

- A detailed statement of any deviation from PDF (see section 3.1);
- A disclaimer statement for each file that may have links to another file(s) or the Internet (see section 3.9); and
- A list of parties served with the submission.

Each of the listed components should indicate the following information:

- The filename (as defined in section 3.5, including file extension);
- The size of the file;
- Sensitivity level (e.g., publicly available, proprietary, classified, etc.);
- An indication of whether the component is being submitted via the EIE and/or submitted on OSM; and
- A file that provides a non-sensitive description of all electronic components characterized as ''BLOBS'' or other physical objects.[4]

The NRC may reject any submittal if there are any inconsistencies, including omission, between the transmittal letter and the files or physical objects received. In such instances, the NRC will inform the submitter of the rejection. In addition, if one or more of the optical storage devices contain classified information (i.e., National Security Information and Restricted Data), sensitive unclassified information, or non-public documents, additional sensitive information requirements apply as described later in section 3.13.

3.5 Electronic File Naming Conventions

OSM identified in a transmittal letter submitted via the EIE should meet the ISO 9660 format. The Joliet Extension to ISO 9660 should be followed. The file naming conventions, for consistency, are applicable to files transmitted via the EIE as well as PDF files submitted on OSM.

The Joliet Extension allows file names of up to 64 characters; however, documents submitted via the EIE are programmatically provided a unique sequential number assigned to each of the files contained in the submission and a date of receipt for each file. This is a 15-character unique number. Documents submitted to the NRC should therefore have filenames that are limited to 49 characters in length (including the ''.'', spaces, and the three-character filename extension). This 49 character limit is subject to the following criteria:

- The first three characters of the file name should always be used to identify the sequence of the file in the organization of the document. For example, a document may be comprised of 3 separate files. The name of the first file for the document would start with ''001,'' the name of the second file that comprises the document would start with ''002'' and so on for as many files as necessary to comprise the document. For consistency, if a document is comprised of only one file, the file name should still begin with ''001.''
- The filenames should reflect, to the extent possible within the remaining characters, the section number and title of the file/segment being submitted, per the following:

'section number' 'title'.pdf

(Where 'section number' reflects the lowest level of document breakpoint and 'title' is a meaningful reference to the actual document title.)

- The default three-character file extension associated with the format in which the document was created needs to be retained. (Example: for files created to conform to PDF, ''.pdf'').

FILE NAMING EXAMPLE TABLE

Document title	File name
Multiple File Documents	
Chapter 1, Section 1 Estimate of Long-Term Geo-chemical Behavior ...	001_1.1 Estimate of Long-Term Geochem Behavior.pdf.
Chapter 2, Section 2 Estimate of Long-Term Geo-chemical Behavior ...	002_2.2 Estimate of Long-Term Geochem Behavior.pdf.
Appendix A Estimate of Long-Term Geo-chemical Behavior	003_Ap A Estimate—Long-Term Geochem Behavior.pdf.
Single File Documents	
Attachment II, CAL–EBS–NU–000017 Rev 003 Calculation, Radiolytic Specie Generation from Internal Waste Package Criticality.	001_Att 2 CAL–EBS–NU–000017 R003.pdf.
List and Schedule for Model Validation Reports related to Criticality	001_List_Sched for MVRs related to Criticality.pdf.

3.6 Security/Access Settings

Submissions should not contain any security settings, password protections, or any other attributes that will prevent full NRC access to and use of the files. NRC's internal security and archival processes will maintain the integrity of the materials that are submitted.

Encrypted documents are not acceptable for submittal to the NRC and will be rejected.

3.7 Resolution

To meet the expectations of the document users, and to comply with NARA Standards, PDF documents should be created using the following resolution guidelines:

- Bi-tonal (black and white) PDF resolution, not less than 300 dpi.
- Color PDF resolution, not less than 300 dpi.
- Grayscale PDF resolution, not less than 300 dpi.

Also see Attachment A for additional guidance on Adobe Acrobat settings.

Adobe® Acrobat ''downsampling'' (an optimization option available in Adobe Acrobat) may result in images with resolutions less than acceptable for submission to the NRC. Therefore, its use is not recommended.

The 300 dpi minimum resolution also applies to non-PDF graphic-oriented electronic files (*e.g.*, TIFF images).

3.8 Files With Special Printing Requirements

Documents that contain electronic files with special printing requirements, such as requiring the use of a plotter or other special equipment to print, oversize drawings or graphics that require a paper size larger than 11 inches by 17 inches, or other enhancements such as 3D images, etc., may only be submitted electronically via OSM as separate files. If special software components (e.g., printer

[4] Include any special instructions or information necessary to view or use the information, such as special instructions regarding the use of OSM, computer operating system or software requirements for data files, computer models, etc. (See Attachment D.)

drivers) are necessary, include those components, their configuration parameters, and any hardware configuration requirements on the same OSM.

3.9 File Linkages

Files containing objects (e.g., pictures, tables, spreadsheets, and images of text) using link protocols such as Object Linking and Embedding (OLE), Dynamic Data Exchange (DDE), or any other object linking between electronic files are not practicable for the NRC to accept because the relationships among links in multiple file submissions are lost when captured in ADAMS or other agency electronic recordkeeping systems.

However, links within a single electronic PDF file are acceptable, if those links are created using PDF authoring software. Multiple linked PDF files may be combined into a single PDF file using utilities often included in PDF authoring software.

Electronic submissions to the hearing docket cannot rely on the use of any hyperlinks to other electronic files or Web sites to generate additional documentary material. If the submittal contains such hyperlinks, then it must include a disclaimer to the effect that the hyperlinks are either inoperable or are not essential to the use of the filing. However, hyperlinks within a single electronic PDF file are acceptable and require no disclaimer provided that such links are created with PDF rendering software. Attachment E illustrates the various types of hyperlinks and the need for disclaimers.

If the submittal relies on Internet based material, then the Internet based material must be submitted as part of the filing. If the submittal contains hyperlinks to material in another electronic file, and such hyperlinks are necessary to access that material, then either a reference to the material must be provided or the material itself must be submitted.

Required Disclaimers

For a submittal that consists of a single PDF of less than 50 megabytes, include the following in the body of the submittal if the PDF contains hyperlinks to other PDFs or to the Internet:

''This PDF contains hyperlinks to other PDFs or to the Internet. These hyperlinks are either inoperable or are not essential to the use of the filing. Any material referenced by hyperlinks to the Internet that was essential for use of this filing has been submitted as part of the filing. Any material referenced by a hyperlink to another PDF that was essential for the use of this filing has either been included by reference or submitted as part of this filing.''

For a submittal that consists of more than one PDF, include the following in the transmittal memorandum if one or more PDFs contain hyperlinks to other PDFs or to the Internet:

This submittal contains PDFs, one or more of which contains hyperlinks to other PDFs or to the Internet. These hyperlinks are either inoperable or are not essential to the use of the filing. Any material referenced by hyperlinks to the Internet that was essential for use of this filing has been submitted as part of the filing. Any material referenced by a hyperlink to another PDF that was essential for the use of this filing has either been included by reference or submitted as part of this filing.

3.10 Viruses

Files received by the NRC will be checked for viruses prior to acceptance. Macros in files such as Microsoft® Excel are sometimes detected as viruses. Therefore, the use of macros should be limited because a file identified as having a virus will be rejected and the submitter notified of the rejection.

3.11 Copyrighted Information

Submitting information electronically to the NRC shall be deemed to constitute authority for the NRC to place a copy of the information on its public document database and to reproduce and distribute sufficient copies to carry out its official responsibilities. NRC use of the information specified herein does not constitute authority for others to use the information outside applicable requirements of copyright law.

3.12 Accessibility (Section 508)

Section 508 of the Rehabilitation Act and the accessibility standards set forth in implementing regulations requires that Federal agencies' electronic and information technology is accessible to people with disabilities. Tools and plug-ins are now available to allow PDF files to comply with section 508, but care must be taken in developing documents and converting them to PDF to ensure that the author has constructed the documents and used the appropriate tools with accessibility in mind. The submitter should consider accessibility issues during document authoring. The use of simple layouts, consistent application of styles, accessible table formats, and the inclusion of alternate text for images improves the ability of people with disabilities to use the information.

3.13 Sensitive Information

This section does not apply to documents containing Safeguards Information, which are discussed in section 3.14, below. If a document contains information that is deemed sensitive unclassified, proprietary, such as trade secrets, privileged, company confidential or financial information, personal privacy, or other official-use-only information, it may be submitted via the EIE. The document must be clearly marked (e.g., watermark or header/footer) and the transmittal letter must indicate the sensitivity for each document.

If it is not practical to submit a large document containing sensitive unclassified information via the EIE (see section 1.2, 3.3, 3.4), submit the document via OSM. Submissions made on OSM must be accompanied by a transmittal letter (see section 3.4) that contains information regarding the sensitivity level of the transmitted documents. This letter should contain a listing of each file contained in the submission, with a description and the sensitivity for each file clearly marked.

When submitting documents via OSM that contain both publicly and non-publicly available files, all of the files should be included. In addition, separate OSM must be provided that contains only the publicly available files. Each OSM must be clearly labeled indicating its availability. Files contained on OSM labeled as ''Publicly Available'' will be released to the public.

If sensitive unclassified, classified, or safeguards documents are appended to filings in the adjudicatory proceeding, the submitter shall seek an appropriate order from the presiding officer pursuant to 10 CFR part 2, subpart C, part 13, or part 110, or follow the procedures for Classified Information in 10 CFR part 2, subpart I.

3.14 Classified or Safeguards Information

Documents containing Classified or Safeguards Information may not be submitted via the EIE. OSM containing Classified Information must be processed and produced on systems approved under the provisions of 10 CFR 95.49. Each OSM must be clearly labeled as containing classified information. The mailing package containing OSM with documents comprised of Safeguards, proprietary, or Privacy Act information must be processed, marked and transmitted in accordance with the requirements set forth in 10 CFR 2.390(b), 73.21(e), 73.21(g), and 73.21(h), as appropriate. Documents containing Safeguards Information may not be submitted via the EIE. OSM containing Classified Information (i.e., National Security Information or Restricted Data), must be packaged and submitted to the NRC in

accordance with the requirements contained in 10 CFR 95.37, 95.39, and 95.41. If sensitive unclassified, classified, or safeguards documents are appended to filings in the adjudicatory proceeding, the submitter shall seek an appropriate order from the presiding officer pursuant to 10 CFR part 2, subpart C, part 13, or part 110, or follow the procedures for Classified Information in 10 CFR part 2, subpart I.

3.15 Document Updates

Document component updates will not be accepted. If changes to the submitted document are necessary, the entire document (including all of the electronic files and electronic objects that comprise the document), and all OSM sets in their entirety, should be re-submitted as that version will become a new document. The subsequent transmittal letter should indicate the part(s) (e.g., chapter, section, or graphic) that has been changed as well as the general scope of the change. The submittal guidelines given in section 3.4 of this guidance should once again be followed. The document should be identified as a new version and file identification information submitted accordingly.

4.0 EIE Submissions

Each individual that plans to transmit electronic filings via the EIE needs to obtain a digital signature certificate (digital ID certificate) and software plug-ins downloaded and installed on the user's computer. The NRC EIE Web page (located on the Internet at *http://www.nrc.gov* by choosing ''Site Map'' followed by ''Electronic Information Exchange'') has detailed information about the EIE and instructions on how to obtain a digital ID.

- All EIE users will be assigned a digital ID certificate necessary to use the EIE. A digital ID certificate is used to submit and digitally sign the form for the submission of electronic documents and will be required in order to access the EIE external server to retrieve documents, if appropriate. The EIE system requires the use of an NRC-issued digital ID certificate.
- All EIE system users will need to download and install software plug-ins. The specific plug-ins required are the Internet Form Viewer, which is a required plug-in regardless of the browser used, a signaturing plug-in for Netscape users, and a separate viewer plug-in for Microsoft® Internet Explorer users.
- Documents are submitted using the NRC's EIE form. The EIE form is a document based on Extensible Mark-up Language (XML). It allows participants to sign, enclose, submit, and verify documents via the Internet. The document to be submitted must be presented as an attachment to the form. Once the form is displayed, users will need to fill in the fields on the form and attach the document(s) for transmission to the NRC. After the fields have been filled in and the intended documents are attached, the form must be digitally signed. Large documents greater than 50 MB must be sent in separate segments.
- NRC regulations require that some documents be filed under oath or affirmation. There are currently two acceptable methods for providing this oath using the EIE processes.

1. Documents requiring oath or affirmation may use the EIE to digitally sign the affirmation on the document. Using this process, the document must conclude with a statement to this effect:

I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]''.

The electronic document must be digitally signed by the person affirming this statement. This person may then transmit the document directly to the NRC using EIE or may forward the document to someone else (e.g., the attorney for the sponsoring party) for transmission to the NRC. In the latter case, the transmitter must also sign the document to authorize the electronic transmission.

Except as set forth below, multiple documents requiring individual digital signatures by different persons cannot be sent in a single EIE transmission. Therefore, the NRC recommends that the method described below in item 2 be used for submissions that require multiple oath and affirmations.

Note: When digitally signing a document, the submitter is actually digitally signing the EIE transmission form, not the document. Signing the form is the equivalent of signing the document.

2. Oath or affirmation affidavits may also be signed with an ''Original signed by'' designation. The original paper copy must be retained by the submitter. The NRC staff may use a typed in ''/RA/'' meaning ''Record approved'' designation, rather than ''Original signed by.''

Note: Although there are other methods available to electronically sign documents using word processing and other software, these are not currently acceptable for use in signing documents for submission to the NRC because they do not provide the levels of authentication, certification, and non-repudiation that are present in the EIE process.

- *Verification of Receipt:* The NRC EIE form must be digitally signed. Any submission sent via the EIE that is successfully received will receive a date/time stamp and the EIE will return a ''message received'' confirmation. In the absence of this confirmation, it is the submitter's responsibility to follow-up and verify that the submittal was received. The NRC will compare the files delivered to the list identified in the transmittal letter to ensure that all files have been delivered. The NRC will reject the submittal and notify the submitter in the following situations:
- If a period of 8 hours has elapsed between the beginning of the transmittal of the first file of a given EIE submission and notification of receipt of the last file of the same EIE submission, and the EIE system has not yet received all files. This time limit is intended to address the transmittal of multiple EIE forms and their attachments in situations where the size of the submission requires more than one EIE transmission to accomplish delivery of all attachments that comprise the submission.
- In the event that the NRC identifies discrepancies between the transmittal letter and the files actually received via the EIE (e.g., a file is listed but not included, an unidentified file is sent, or the total number of attachments stated does not equal the number actually received).
- If the OSM received do not contain all of the files described in the transmittal letter.
- If the OSM do not arrive within the time specified in section 5.0.

The processes and steps described above are specific to both Netscape Navigator/Communicator 4.6 or higher and Microsoft Internet Explorer 5.0 or higher. Other browser types, such as AOL or Mosaic, are not currently supported for use in the EIE system. The recommended workstation configuration requires a Pentium 900 MHZ processor (or higher) with a minimum of 128 MB of RAM, adequate available disk space,[5] a device for creating and/or reading OSM, and access to the World Wide Web (web) through an Internet Service Provider (ISP). The operating system should be either Windows NT or Windows 95 (or higher).

[5] The requirement for disk space is dependent on the volume of material the participant intends to submit and/or retrieve. To calculate required disk space, multiply the size of the submittal or retrieval by 2, for example, a 33 MB file will require 66MB of available disk space.

5.0 Optical Storage Media Submissions

OSM should be used in the following circumstances:

- The documentary material cannot be transmitted via the EIE (e.g., file size, complex document).
- The EIE submittal exceeds 50 MB and is comprised of multiple segmented files.
- A document segment cannot be submitted via the EIE although the remaining document portions could be transmitted via the EIE.
- The document contains sensitive unclassified information (i.e., Safeguards information) or classified information (i.e., National Security information and Restricted Data).

In addition:

- The transmittal letter should be included on the OSM (see section 3.4 for transmittal letter guidelines).
- NRC regulations require that some documents be filed under oath or affirmation.
- If such a document is submitted on OSM, either the transmittal letter or the first page of the document contained on the OSM must contain the oath and the signature of the person swearing to the accuracy of the information submitted. Specifically, the letter must include the following statement with the signature of the person affirming it:

''I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]''.

If the oath or affirmation is submitted on the transmittal letter, it must contain the ''Original signed by'' designation of the person swearing to the accuracy of the information or, in the case of the NRC staff, an ''/RA/'' designation.

- Include the entire submission (*i.e.*, all files submitted separately through the EIE and those submitted only on OSM). Place files submitted through the EIE on an OSM that is separate from the OSM containing the files submitted only on OSM.

Software used to produce the OSM should be configured to ensure that the OSM is ''read only'' prior to its delivery to NRC.

All OSM content should be readable either by commercially available software, or by providing, where appropriate, executable programs that are located on the OSM.

The OSM should be labeled with the Transfer Media Configuration (e.g., drive transfer rate) as well as any numbering, exterior marking, or labeling that should reference the submittal provided through the EIE. If appropriate, the version number may also be included.

As stated in sections 3.3 and 3.5, the acceptable OSM format must be compliant with ISO–9660, using the Joliet Extension.

Submitters should transmit the OSM, along with a paper copy of the transmittal letter, by expedited delivery service. Given the paramount importance of submittal and document integrity and fidelity, expedited delivery of the OSM is essential to ensure proper coordination of the companion submittals transmitted via the EIE and on OSM. In addition, to ensure that all intended information has been received, the NRC will not deem a submittal complete, ''in-hand,'' or ready for further processing and staff review until the agency has received the last document/segment.

Subsequent to the anthrax mailings in late September 2001, incoming mail addressed to the Federal government is irradiated prior to delivery. Irradiation of electronic information media may result in damage to the media and its contents. Therefore, packages containing OSM submission should be clearly marked ''Contents Contain Optical Storage Media Do Not Irradiate.''

The following address is to be used for delivering OSM to the NRC:

Courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, Attention: Rulemakings and Adjudications Staff.

BILLING CODE 7590–01–P

ATTACHMENT A - SETTINGS

The following table provides guidance on the settings to be used when using Adobe® Distiller 6 to produce an optimal PDF for submission and subsequent use by NRC staff and the public. When PDF creation software other than Adobe® Distiller 6 is used, the PDF creation software should be configured with parameter values equivalent to those listed below.

Options		Recommendation Optimal on 5.0
General		
	Compatibility	Acrobat 6.0 (PDF 1.5)
	Object Level Compression	Off
	Auto-Rotate	
	Binding	Left
	Resolution (dpi)	300
	Embed Thumbnails	
	Optimize for Fast Web	X
Compression		
	Color Images	
	Downsample	Off
	Pixels per inch	300
	Compression	Zip
	Grayscale	
	Downsample	Off
	Pixels per inch	450
	Compression	Zip
	Monochrome	
	Downsample	Off
	Pixels per inch	450
	Compression	CCITT - Group 4
	Anti - Alias to Gray	Off
Font		
	Embed All Fonts[1]	X
	Subset embedded fonts when percent of characters used is less than	100%
	When Embedding Fails	Warn & Continue
Color		
	Setting File	None
	Color Management Policy	Tag Everything for Color Management

[1] You must check the license(s) for any font(s) you intend to embed, to verify that embedding is allowed. In some cases, the program will warn you if a font is not licensed for embedding, but this varies by vendor. Fonts must be embedded to comply with NARA guidelines.

	Intent:	Default
	Gray	None
	RGB	SRGB IEC61966-2.1
Color	CMYK	US Web Coated (SWOP) v2
	Preserve Under Color	X
	Transfer Function	Preserve
	Preserve Halftone	
Advanced		
	Allow PS to Override Job	X
	Allow PS X Objects	
	Gradients to Smooth	X
	Create JD File	
	Preserve Level 2 Semantics	X
	Preserve Overprint Settings	X
	Overprinting Default is	X
	Save PDF Settings in File	X
	Save Original JPEG in PDF	
	Save Job Ticket	
	Use Prologue ps &	X
	Process DSC Comments	X
	Log DSC Warnings	
	Preserve EPS Info	X
	Preserve OPI Comments	X
	Preserve Doc Info from	X
	Resize EPS	X
PDF/X		
	PDF/X - 1a	
	PDF/X - 3	

Attachment B—Glossary

Agencywide Documents Access and Management System (ADAMS)

ADAMS is the NRC's primary records management system that contains the bibliographic header (metadata) about a record, searchable text, and an image of a record (either in PDF or TIFF formats). Two access methods for the public are offered today:

- Through the Citrix server (which provides client/server-type access to ADAMS);
- A Web browser based interface to publicly available records.

Bibliographic Header

A structured description of a document, file, or object.

Binary Large Object File (BLOB)

A large file, typically an image or sound file, that must be handled (for example, uploaded, downloaded, or stored in a database) in a special way because of its size.

Complex Document

A document that consists (entirely or in part) of electronic files having substantial portions that are neither textual nor image in nature, and graphic or other Binary Large Objects that exceed 50 megabytes and cannot logically be divided.

Courtesy Copy

A non-required copy of a document provided as a useful reference copy of an official document.

Document

A document is any written, printed, recorded, magnetic, graphic matter, or other documentary material, regardless of form or characteristic.

Documentary Material

Documentary material means any information upon which a party, potential party, or interested governmental participant intends to rely and/or to cite in support of its position in the proceeding.

Electronic Information Exchange (EIE)

Electronic Information Exchange is the electronic transfer mechanism established by the NRC for electronic transmission of documents to the agency via the Internet, where the documents are transmitted in a verifiable and certifiable mode that includes digital signatures. EIE is a Public Key Infrastructure (PKI) system using RSA Labs' 128-bit encryption, Verisign's Public Key Certificate Services (PKCS), and PureEdge's Extensible Forms Definition Language (XFDL) webform.

File Format

A file format is the layout of a file in terms of how the data within the file is organized. A program that uses the data in a file must be able to recognize and access data within the file. A particular file format is often indicated as part of a file's name by a file name extension (suffix). Conventionally, the extension is separated by a period from the name and contains three or four letters that identify the format. Examples are: (1) Word processing (.doc for MS® Word, .wpd for Corel® WordPerfect), (2) spreadsheet (.xls for MS® Excel, .wb3 for Corel® Quattro Pro), (3) ''generic'' (.pdf for Adobe® Systems' Acrobat).

Length of Path (ISO 9660, Joliet Extension)

The Joliet Extension to ISO 9660 allows filenames of 64 characters in length and is the least restrictive interchangeable format. However, the ISO 9660 standard imposes a limit on length of path to each file that cannot exceed 255 characters. Length of path is the sum of the lengths of all relevant directories, the length of the file name and extension, and the number of relevant directories.

Macro

A symbol, name, or key that represents a list of commands, actions, or keystrokes. For example, in Microsoft Word and other programs, a macro is a saved sequence of commands or keyboard strokes that can be stored and then recalled with a single command or keyboard stroke.

Optical Character Recognition (OCR)

Optical Character Recognition is the recognition of printed or written text characters by a computer. This involves the photo scanning of the text character-by-character, the analysis of the scanned-in image, and then translation of the character image into character codes, such as ASCII. The scanned-in image is analyzed for light and dark areas in order to identify each alphabetic letter or numeric digit. When a character is recognized, it is converted into an ASCII code. OCR can be accomplished either through software alone, or through a combination of specialized hardware and software.

Portable Document Format (PDF)

This is Adobe® Systems, Incorporated's Acrobat document publishing software package output format. The PDF standard, though it is proprietary to Adobe, has been published, is freely available, and the capability to create PDF documents has been integrated into many other software applications. PDF documents can be generated from any application that can generate Postscript printer files (a popular printing language standard); thus, anything that can be printed can be represented in PDF. When files are converted from standard applications to PDF, the information and pagination are ''locked down'' for the general user, who can access the content through the use of PDF viewer software. The following are definitions of the various types of PDFs:

- *Formatted Text & Graphics.*

Formerly known as ''PDF Normal''. This type of PDF is a popular output file format created when materials have been produced on a word processing or publishing system. It contains the full text of the page with appropriate coding to define fonts, sizes, etc. The files are relatively small and screen display and printed versions are comparable in readability of content.

- *Searchable Image.*

Formerly known as ''PDF Original Image with Hidden Text.'' When a document is created in this type of PDF, the resultant file consists of two layers: a bit-mapped layer and a hidden text layer. The bitmapped layer maintains the visual representation of the original document. The text layer is created through optical character recognition software (OCR). There are two ''flavors'' of this type of PDF:

- *Searchable Image (Exact).*

Formally known as 'PDF Image + Hidden Text.' This creates the largest file size, but is the more accurate of the two ''flavors''. When the plug-in is launched, a layer of text is placed behind the image, making the page appear exactly as it did when scanned, but now it is searchable. Thus, the Searchable Image (Exact) preserves the look of the original scanned image, making it an ideal format for meeting legal requirements. Therefore, NRC will only accept PDF documents in this ''flavor''.

- *Searchable Image (Compact).*

This captures the same image as searchable image (exact), producing smaller files sizes than the Exact method. The general look and feel of the image is retained and it becomes searchable. The quality is not quite as good as the Exact method, as the compression routines used are ''lossy'' techniques. Because of the lossy techniques used here, the NRC *will not* accept any documents created in this format. This decision is consistent with guidance from NARA.

- *Image Only.*

This type of PDF is essentially a scanned image of the page in a PDF wrapper and contains no searchable text. There is no ability for text searching. The image quality is dependent on the quality of the source materials and the quality of the scanning operation. The NRC cannot accept text documents in this type of PDF because the format is not ADA 508 compliant.

Segment

A segment is subpart, or subunit, of a document usually created at a logical division such as a chapter, section, or subsection of a large document.

Submittal

An information package delivered to the NRC for a specific purpose and may consist of one or more documents.

Target File

A file required by most electronic document management systems to store and retrieve bibliographic header information.

BILLING CODE 7590–01–P

ATTACHMENT C - Sample Transmittal Letters and Corresponding EIE Forms

SIMPLE SUBMITTAL

State of Xxxx
Office of the Governor
12345 Main Street
Anywhere, XX 56789

September 23, 2005

United States Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Attn: Document Control Desk
11555 Rockville Pike
Rockville, MD 20852

WM-00011(PRE)

Enclosed are the State of XXXX's Response to DOE Interrogatories 3 and 7 and Notice of Appearance for J. Doe, Esq.

Questions concerning this submittal may be directed to:
State of XXXX
Office of the Governor
Attn: Mary Smith (000) 555-xxxx
e-Mail: MESmith@stateofXX.us
12345 Main Street
Anywhere, XX 56789

Sincerely,
J. Doe
Attorney for the State of XX

cc: Provide list of parties served

Document Components:
001 State Transmittal Letter.pdf 1024 bytes (EIE)
002 State Response to 3 &7.pdf, 15,683,112 bytes (EIE)
003 Notice of Appearance-Doe.pdf, 1,056,011 bytes (EIE)

Submittal Form

WM-00011

Hearing Form

ASLBP #		LSN #	
Affiliation		Document Date	09-23-2005
Author Name	John Doe	Document Title	State of XX Response to DOE Interrogatories 3 & 7
Document Type	Legal - Interrogatories and Response		Click For Exhibit Info >>
Issues		Party Identifier	
Panel Judges			

☐ Check box if this is part of a multi-part submission

Unique ID

This is part ☐ of ☐

Service List: Click For Service list

Attach File ... | Extract File... | View... | Remove File...

Click to Authorize Transmission

Submit Document

LARGE SUBMITTAL

United States Department of Energy
Office of the General Counsel
Hearing Division
Washington, DC 20585

September 18, 2005

United States Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Attn: Document Control Desk
11555 Rockville Pike
Rockville, MD 20852

WM-00011(PRE)

Enclosed are DOE's Response to Interrogatories Related to Quality Control Procedures

Questions concerning this submittal may be directed to:
US Department of Energy
Hearing Division
Attn: S. Smith (202) 555-xxxx
e-Mail: SESmith@usdoe.gov
Washington, DC 20585

J. Doe, Attorney for DOE

cc: Provide list of parties served

Document Components:
001 DOE Transmittal Letter.pdf 1024 bytes (EIE)
002 Evaluation Quality Control (1 of 4).pdf 48,321,678 bytes (EIE)
003 Evaluation Quality Control (2 of 4).pdf 47,421,178 bytes (EIE), Proprietary
004 Evaluation Quality Control (3 of 4).pdf 49,223,167 bytes (EIE)
005 Evaluation Quality Control (4 of 4).pdf 37,522,178 bytes (EIE)

Submittal Form

WM-00011

Hearing Form

ASLBP #		LSN #	
Affiliation		Document Date	09-23-2005
Author Name	J. Doe	Document Title	Response to Interrogatories Related to Quality Control Procedures
Document Type	Legal - Interrogatories and Response		Click For Exhibit Info >>
Issues		Party Identifier	
Panel Judges			

☑ Check box if this is part of a multi-part submission

Unique ID

This is part of ☐ ☐

Service List: Click For Service list

Attach File ... | Extract File... | View... | Remove File...

Click to Authorize Transmission

Submit Document

COMPLEX SUBMITTAL

United States Nuclear Regulatory Commission
Office of the General Counsel
Hearing Division
Washington, DC 20555

September 30, 2005

United States Nuclear Regulatory Commission
Atomic Safety and Licensing Board
Attn: Document Control Desk
11555 Rockville Pike
Rockville, MD 20852

WM-00011(PRE)

Enclosed are NRC Motion in Support of DOE's Site Characterization Plan - Estimates on Groundwater Travel in Area 16 of the Yucca Mountain Facility and Notice of Appearance for J. Jones, Esq.

Questions concerning this submittal may be directed to:
United States Nuclear Regulatory Commission
Office of the General Counsel
Hearing Division
Attn: Jane Doe, (301) 415-xxxx
e-Mail: xxx@nrc.gov
11555 Rockville Pike
Rockville, MD 20852

Jane A. Doe, Attorney for the NRC

cc: Provide list of parties served

Document Components:
001 NRC Transmittal Letter.pdf 1024 bytes (EIE)
002 NRC Motion in Support of DOE Analysis.pdf, 15,679,411 bytes (EIE)
003 Notice of Appearance for J. Jones, Esq.pdf, 1,056,911 bytes (EIE)
004 Description Analytical Code DOE Site Plan.pdf, 142,846 bytes (EIE), Proprietary
005 Description Core Sample 3.pdf, 1,032,116 bytes (EIE), LSN-########
006 Description Video - Jan. 21, 2003.pdf, 156,936 bytes (EIE), LSN-########

OSM#1:

Located in the OSM root:
000 Table of Contents.pdf

Located in the "documents" folder:
001 NRC Transmittal Letter.pdf 1024 bytes (EIE)
002 NRC Motion in Support of DOE Analysis.pdf, 15,679,411 bytes (EIE)
003 Notice of Appearance for J. Jones, Esq.pdf, 1,056,911 bytes (EIE)
004 Description Analytical Code DOE Site Plan.pdf, 142,846 bytes (EIE), LSN-########

005 Description Core Sample 3.pdf, 1,032,116 bytes (EIE), LSN-########
006 Description Video - Jan. 21, 2003.pdf, 156,936 bytes (EIE), LSN-########

OSM#2

Located in the OSM root:
000 Table of Contents.pdf

Located in the "Analytical Code" folder:
001 DOE Site Characterization Plan Analysis.exe 123,311,123 bytes, (Description submitted via the EIE), Proprietary

Located in the "Video" folder:
002 Video Recording of Jan. 21, 2003 Meeting.wmv, 236,561,440 bytes, (Description submitted via the EIE), LSN-########

Submittal Form

Hearing Form

WM-00011

ASLBP #		**LSN #**	
Affiliation		**Document Date**	09-23-2005
Author Name	J. Doe	**Document Title**	Motion in Support of Site Plan
Document Type	Legal - Motion		Click For Exhibit Info >>
Issues		**Party Identifier**	
Panel Judges			

☑ Check box if this is part of a multi-part submission

Unique ID

This is part of ☐ ☐

Service List Click For Service list

Attach File ... | Extract File... | View... | Remove File...

Click to Authorize Transmission

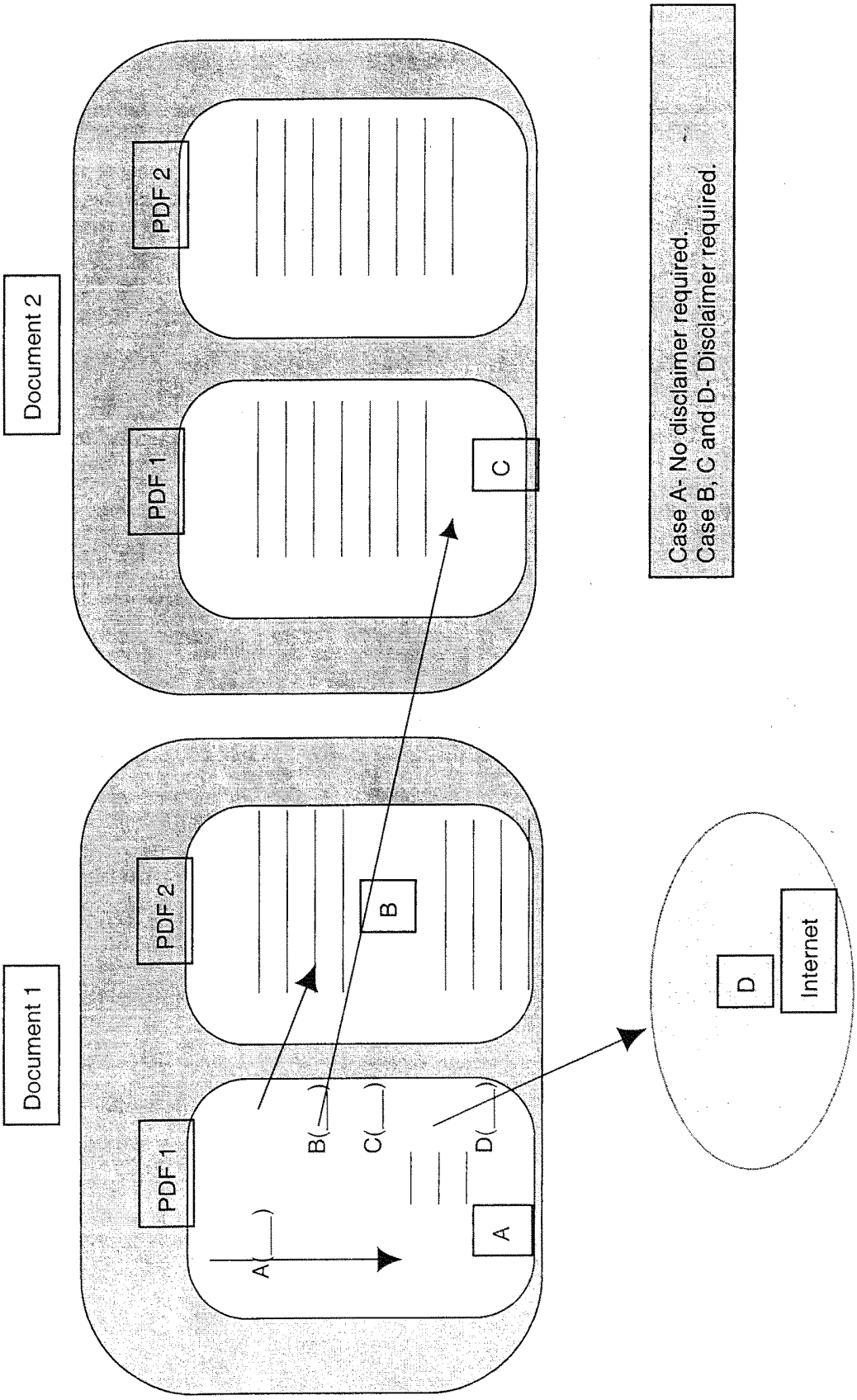
Submit Document

ATTACHMENT D - Sample Files Describing "BLOBS" or Physical Objects

004 Analytical Code Used for DOE Site Characterization Plan, Chpt 4, Groundwater Level Analysis, (Description submitted via the EIE) LSN-D4567823

This enclosure provides the Analytical Code used for the analysis of information presented in Chapter 4 of DOE's Site Characterization. Code is run on a UNIX PC utilizing abcd Operating system,~~~

ATTACHMENT E - TYPES OF HYPERLINKS AND NEED FOR DISCLAIMERS



[FR Doc. 05–24081 Filed 12–15–05; 8:45 am]
BILLING CODE 7590–01–C

Federal Register

Friday,
December 16, 2005

Part V

Department of Housing and Urban Development

Proposed Metropolitan Area Definitions for FY2006 Income Limits and Estimates of Median Family Income; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5011–N–01; HUD–2005–0075]

Proposed Metropolitan Area Definitions for FY2006 Income Limits and Estimates of Median Family Income

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of Proposed Metropolitan Area Definitions for Fiscal Year (FY) 2006 Income Limits and Median Family Income Estimates.

SUMMARY: This notice proposes changes in the metropolitan area definitions used to calculate HUD median family income estimates and income limits. In this notice, HUD is proposing to issue FY2006 income limits that are based on current Office of Management and Budget (OMB) metropolitan statistical area (MSA) definitions based on 2000 Census data rather than to continue to use old OMB metropolitan area definitions based on 1990 Census data.

OMB revises metropolitan area definitions after each Decennial Census. It issued its 2000-Census based definitions in 2003, which contained substantial changes to several metropolitan area definitions. These changes were made to better reflect metropolitan area commuting and economic patterns. The OMB metropolitan area definitions are used on a widespread basis throughout the federal government for both data collection and program administrative purposes.

HUD proposed implementing these definitions in its 2004 publication of proposed FY2005 Section 8 Fair Market Rents. It planned to issue FY2005 income limits using the same area definitions. In response to public comments, it reverted to use of old OMB definitions in its final FY2005 Fair Market Rent (FMR) publication. HUD noted in this publication that it intended to continue exploring how to best implement the new definitions, and subsequently received a number of comments supporting use of the new definitions. To meet the needs of agencies required to use current OMB metropolitan area definitions, it published a separate set of FY2005 income estimates based on the new definitions. HUD's final FY2006 FMR publication of October 3, 2005, uses the new OMB definitions in defining metropolitan areas, but modified these definitions to permit subareas based on old metropolitan area definitions in instances when FMRs based on the old definitions differed significantly from the new metropolitan area-wide FMRs.

The new approach leaves open the question of whether a hold-harmless provision of some type should be applied in instances where the new metropolitan area definitions produce decreases in estimates of median family income and/or income limits. The statute governing how income limits are to be defined is relatively detailed, but the Secretary of HUD does have limited discretion over its application. Given the number of changes associated with OMB's new metropolitan area definitions, the Department wishes to solicit public comments on this matter prior to implementation.

In order to provide directly comparable estimates on the impacts of the changes in metropolitan area definitions on income limits, revised FY2005 income limits were calculated using the new area definitions. The actual FY2006 estimates using the new definitions are likely to be at least somewhat higher than the comparable FY2005 estimates. To provide detailed information on the impacts of the new metropolitan area definitions, HUD prepared a table that compares FY2005 actual income limits with the equivalent FY2005 income limits calculated using the new metropolitan area definitions. Two versions of revised FY2005 income limits are provided—one without any hold-harmless policy and one with a hold-harmless policy based on the published FY2005 income limits for the primary old-definition component of the new metropolitan area. This table identifies all of the component parts of the new metropolitan areas and shows which parts previously had different income limits. The table may be obtained at *www.huduser.org/datasets/il.html*.

In addition to inviting comments on the hold-harmless policy, HUD is also interested in comments on FMR area definitions for areas where two or more metropolitan areas were merged under the new definitions. In preparing its proposed FY2006 FMRs, HUD opted to disaggregate such areas when their FMRs differed by more than 5 percent so as to better reflect local market conditions. In reviewing the impacts of FMR area changes on income limits, it was found that most areas had minimal changes in income limits. There were two notable exceptions. Under the new area definitions, the former Bergen-Passaic and Monmouth-Ocean metropolitan areas were added to New York City and the former Fort Lauderdale and West Palm Beach-Boca Raton metropolitan areas were added to Miami. In both instances, the old metropolitan areas had very similar 2000 Census-based FMRs to those of the metropolitan areas to which they were being added, but they had significantly higher median family income and income limit amounts. HUD therefore wishes to invite comments as to whether any of these areas should be treated as distinct subparts of their new OMB metropolitan areas, as was done for subparts with measurably different FMRs. Establishing separate income limit areas would mean that separate FMR areas would also be established. In these specific instances, however, the changes in FMR area configurations would have no impact on FY2006 FMRs and would be likely to have very little impact on FY2007 FMRs.

HUD believes that the primary area hold-harmless appears to provide the best compromise between program objectives and program administrative considerations. Given that there are methodological changes involved, however, HUD wishes to obtain public comments before calculating and publishing FY2006 income limits.

DATES: *Comments Due Date:* February 14, 2006.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's use of new OMB metropolitan area definitions for purposes of income limit computations. The HUD definitions follow OMB metropolitan area definitions, but allow subareas as described in the proposed FY2006 FMR publication in the June 2, 2005, **Federal Register**. All comments should be sent to the Office of the General Counsel, Rules Docket Clerk, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0001. Communications should refer to the above docket number and title and should contain the information specified in the ''Request for Comments'' section. To ensure that the information is fully considered by all of the reviewers, each commenter is requested to submit two copies of its comments, one to the Rules Docket Clerk and the other to the Headquarters Economic and Market Analysis Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 8224, Washington, DC 20410–0001. A copy of each communication submitted will be available for public inspection and copying during regular business hours (8 a.m. to 5 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: For technical information on the

methodology used to develop income limits and median family income estimates, please call the HUD USER information line at (800) 245–2691 or access the information on the HUD Web site, *http://www.huduser.org/datasets/il.html*. That website has current and historical income limits plus a section on proposed FY2006 income limits. The FY2005 HUD Income Limits Briefing Material provides detailed information on how current HUD income limits were calculated, provides statutory references, and has listings of all metropolitan areas where any adjustments were made to the normal income limit percentages and the formula basis for such exceptions.

For informational purposes, the FY2006 Income Limits Alternatives section of the website contains a file that provides detailed information on the impacts of the proposed changes. It is ordered alphabetically by state. It uses FY2006 FMR metropolitan area definitions, but shows every component county and county subpart that comprise the new area. The table contains the following information:

- Column one identifies the FY2006 FMR area name and the county or township subparts;
- Column two shows the currently effective FY2005 four-person very low-income limit (i.e., 50 percent of median, as defined in statute) for each FMR area subpart;
- Column three shows the equivalent FY2005 income limit calculated using FY2006 FMR area definitions and no hold-harmless policy (i.e., the income limits are allowed to be less than the in-place income limits);
- Column four shows the recalculated FY2005 income limit calculated using a hold-harmless policy that does not allow the revised FY2005 income limit to be less than the published FY2005 income limit for the largest old component of the new metropolitan area (e.g., if two metro areas are combined, the income limits would not be allowed to be less than those of the largest of the two old areas);
- Column five shows the percentage change between the published FY2005 income limit and the revised FY2005 income limit with no hold-harmless policy; and,
- Column six shows the percentage change between the published FY2005 income limit and the revised FY2005 income limit with the proposed primary area hold-harmless policy.

Questions on further methodological explanations may be addressed to Marie L. Lihn or Lynn A. Rodgers, Economic and Market Analysis Division, Office of Economic Affairs, Office of Policy Development and Research, telephone (202) 708–0590. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339. (Other than the HUD USER information line and TTY numbers, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION

I. Background

Section 3(b)(2) of the United States Housing Act of 1937 (USHA) defines ''low-income families'' and ''very low-income families'' as families whose incomes are below 80 percent and 50 percent, respectively, of the median family income for the area with adjustments for family size. In addition, the Act specifies conditions under which income limits are to be adjusted either on a designated area basis or based on unusually high or low family incomes. Legislative history as well as the statutory language provides that income limits are to be calculated on a metropolitan statistical area basis except when specified otherwise in the statute. These income limits are generally referred to as Section 8 income limits because of the historical and statutory links with that program. Section 8 income limits have always been calculated using Section 8 FMR area definitions, which in turn are based on OMB metropolitan area definitions.

HUD has always followed the OMB metropolitan area classification scheme in defining FMR areas. In reviewing the 1990 Census-based metropolitan area definitions, however, HUD assigned some peripheral county parts of large OMB-defined metropolitan areas their own income limits. This was done in instances where the counties had significantly lower incomes and rents than the core of their respective metropolitan area, and where they were considered to have limited interaction with the core metropolitan area to which they were assigned. The approach proposed in this notice continues to make limited use of HUD's discretion to define income limit areas within the boundaries of OMB metropolitan area definitions.

Electronic Data Availability: This **Federal Register** notice is available electronically from the HUD news page: *http://www.hudclips.org.* **Federal Register** notices also are available electronically from the U.S. Government Printing Office Web site: *http://www.gpoaccess.gov/fr/index.html.*

II. Procedures for the Development of HUD Income Limit Areas

Since passage of the Housing and Community Development Act of 1974 that established HUD Section 8 income limits, HUD has established income limit areas using Section 8 FMR area boundaries except in one instance where HUD is directed to do otherwise by statute (Rockland County, NY). The related statutory directives and details of the methodology used is contained in the *FY2005 HUD Income Limits Briefing Material* found on the *www.huduser.org* Web site previously referenced. The proposed FY2006 income limits calculation methodology differs from that used in calculating the FY2005 HUD Section 8 income limits in two respects: (1) it assumes use of the proposed FY2006 Section 8 FMR areas as defined in **Federal Register** publication of June 2, 2005, and also available at *www.huduser.org/datasets/fmr.html*; and, (2) it proposes comments on two possible hold-harmless income limit policies (continuation of past policies without adjustment is inconsistent with the new area definitions);

III. Metropolitan Area Definitions

The proposed FY2006 income limit areas are identical to proposed Section 8 FMR areas except for the one statutory exception previously noted. For FY2006, HUD is using the new county-based statistical areas as defined by OMB in 2003 and since updated with minor changes. HUD has, however, modified the application of the new definitions so as to minimize changes in FMRs and thereby minimize program management problems. This also serves to reduce the changes in income limits that would otherwise result. The only difference between FMR area definitions and the new OMB metropolitan area definitions is that HUD has established metropolitan area submarkets for purposes of income limit and FMR determinations in some instances where old FMR and income limit areas have been significantly modified. All proposed metropolitan FMR areas consist of areas within new OMB metropolitan areas. Any parts of old metropolitan areas, or formerly nonmetropolitan counties, with a sufficient number of recent mover rental units in the 2000 Census to permit a separate FMR estimate and that would have more than a 5 percent increase or decrease in their FMRs as a result of implementing the new OMB definitions are defined as separate FMR areas. In general, HUD applies the same update

factors to the rents of all FMR areas within the same new metropolitan area.

The changes in area definitions have resulted in different proposed income limits than if an area was subject to the normal updating of last year's values, particularly in counties that were in old metropolitan areas that are now considered nonmetropolitan under the new OMB definitions. This approach, however, makes HUD FMR area definitions more consistent with current local housing market relationships, makes them more consistent with those used by most other federal agencies, and facilitates use of the extensive new Census data that will become available from the American Community Survey.

A. Background

In June 2003, OMB issued new metropolitan area definitions based on 2000 Census data and a revised methodology that placed increased weight on commuting patterns. This methodology had been developed and made subject to public comment prior to and after the 2000 Census data collection, and reflected the consensus thinking of numerous experts. HUD economists and demographers were involved in this process and believe that the new definitions are technically superior to the old definitions and better reflect how local housing markets should be evaluated.

OMB metropolitan definitions are important for two reasons. One is that they are the basis on which the federal government collects and reports data (e.g., new Census data collections will base samples and issue reports using the new definitions). The Census American Community Survey (ACS), which the Census Bureau began administering in full in 2005 to replace decennial census sample data (the current source of base income and most base rent data), will provide extensive and relatively current data on rents and incomes using the new OMB definitions. The other reason OMB definitions are important is that federal agencies are expected to use these definitions in administering their programs unless there is some strong program reason to do otherwise.

HUD proposed using the new OMB definitions in an August 6, 2004 (69 FR 48040), **Federal Register** publication that issued proposed FY2005 FMRs. That publication introduced use of both the new OMB definitions and 2000 Census data. There were an unusually large number of proposed increases and decreases related to use of the new data and definitions. In response to the limited timeframe available for public comments and the number of comments received opposing use of the new definitions, HUD reverted to using the old definitions in its final FY2005 FMR publication and in the FY2005 income limit publication. HUD subsequently received a number of complaints from members of the public and the Congress related to its failure to implement the new OMB definitions.

Following publication of proposed FY2006 FMRs and a review of public comments received, HUD published final FY2006 FMRs effective on October 1, 2005, that were calculated using new OMB metropolitan area definitions. There are statutory and administrative linkages between HUD FMR and income limit areas, and HUD therefore proposes to implement the revised FMR area definitions in calculating FY2006 income limits. In addition to statutory and administrative considerations, HUD believes that it is important to implement the new definitions for the following reasons: (1) The new definitions better reflect local housing market relationships; (2) inconsistencies with other federal program standards will be minimized, (3) it will facilitate the use of the extensive new ACS data that the Census will begin releasing next year that is collected and processed based on the new OMB definitions; and, (4) it is responsive to complaints received after issuance of the final FY2005 FMRs and income limits from areas regarding HUD's failure to implement the new OMB definitions.

According to OMB guidance on the use of metropolitan area definitions for non-statistical programs, such as setting FMRs for the Housing Choice Voucher program and income limits for all programs, HUD may alter OMB definitions of metropolitan areas to better suit program operations. As stated in OMB Bulletin 04–03 defining metropolitan areas:

> OMB establishes and maintains the definitions of Metropolitan * * * Statistical Areas * * * solely for statistical purposes. * * * OMB does not take into account or attempt to anticipate any non-statistical uses that may be made of the definitions[.] In cases where * * * an agency elects to use the Metropolitan * * * Area definitions in non-statistical programs, it is the sponsoring agency's responsibility to ensure that the definitions are appropriate for such use. An agency using the statistical definitions in a non-statistical program may modify the definitions, but only for the purposes of that program. In such cases, any modifications should be clearly identified as deviations from the OMB statistical area definitions in order to avoid confusion with OMB's official definitions of Metropolitan * * * Statistical Areas.

B. Modified Implementation of New OMB Definitions

HUD had three objectives in defining FMR areas for FY2006: (1) To incorporate new OMB metropolitan area definitions so the FMR estimation system can better use new data collected using those definitions; (2) to better reflect current housing markets; and, (3) to minimize the number of large changes in FMRs due to use of the new OMB definitions. A reduction in changes in income limits was also of interest but given a secondary priority for reasons noted in item IV of this notice. The proposed FMR area definitions were developed to achieve these objectives as follows:

- FMRs were calculated for each of the new OMB metropolitan areas using 2000 Census data.
- Subparts of any of the new areas that had separate FMRs under the old OMB definitions were identified, and 2000 Census Base Rents for these subparts were calculated. Only the subparts within the new OMB metropolitan area were included in this calculation (*e.g.*, counties that had been excluded from the new OMB metropolitan area were not included).
- Metropolitan subparts of new areas that had previously had separate FMRs were assigned their own FMRs and income limits if their 2000 Census Base Rents differed by more than 5 percent from the new OMB area 2000 Census Base Rent.
- Formerly metro counties removed from old metropolitan areas get their own FMRs and income limits, which accounts for most of the large decreases in FMRs and income limits.
- Formerly nonmetropolitan counties that were added to the new OMB metropolitan areas and did not have enough renters to calculate separate 2000 Census Base Rents were assigned the FMRs and income limits for the appropriate adjoining metropolitan counties, which accounted for most of the large increases in FMRs and income limits.

The area-specific data and computations used to calculate proposed FY2006 FMRs and FMR area definitions can be found at *www.huduser.org/datasets/fmr/fmrs/.*

C. Future Section 8 FMR and Income Limit Annual Updates

HUD believes the new OMB definitions of Metropolitan Statistical Areas (MSAs) are reasonable definitions of housing markets whose relevance will increase with time. That is, while HUD has permitted some subdivisions of new MSA's to correspond with old

MSA boundaries based on 2000 Census rent data, the new MSAs are believed likely to be increasingly good reflections of housing market growth patterns over time. Future updates to income limits will be made at the metropolitan area level except in instances where there are sufficient ACS data to calculate median family income estimates for FMR/income limit submarkets within an OMB metropolitan area.

IV. Impacts of Income Limit Area Changes

The tables in this section provide information on the impacts of two different income limit policies. As noted previously, some of these changes are due to elimination of existing hold-harmless income limits and some are due to the new definitions. Once admitted into the public housing or Section 8 program, a family remains eligible for assistance even if their income increases. Thus, changes in income limits will only affect new admissions into assisted housing. Income limits are generally far above the incomes of most applicants, which partly reflects the fact that assisted housing benefits are inversely related to income. In nearly all instances income limits are and will remain above the income levels of applicants.

Although changes in HUD income limits would have very little impact on HUD assisted housing programs, they would impact other programs. The largest programs affected would be HUD's Community Development Block Grant and HOME programs, the Department of the Treasury's Low Income Housing Tax Credit (LIHTC) program, and the Department of Agriculture's Rural Housing Services' assisted housing programs.

HUD has in the past selectively frozen income limits in instances where reductions would result due to changes in income estimates, income estimation methodology, or income limit methodology. This ''hold-harmless'' approach was intended to minimize program administrative burdens and misunderstandings, as well as avoid placing the financial feasibility of existing housing projects into question in instances where program rents were tied to income limits (*i.e.*, as with the LIHTC program). In such instances, income limits are frozen until such time as normal income limit calculations produce increases. The widespread scope of the 2003 OMB definitional changes, however, led to problems in applying a simple hold-harmless approach.

Table 1 provides information on how published FY2005 income limits compare with FY2005 income limits calculated using FY2006 FMR area definitions, which match new OMB metropolitan area definitions but allow some areas to be subdivided along the lines of old metropolitan area definitions. In Table 1, the revised FY2005 income limits are calculated without any of the hold-harmless provisions that were contained in the published FY2005 income limits.

TABLE 1.—DIFFERENCES BETWEEN ACTUAL FY2005 INCOME LIMITS AND INCOME LIMITS CALCULATED USING FY2006 FMR AREA DEFINITIONS WITH NO HOLD-HARMLESS POLICY

Income limit change (percent)	2000 population	Percent	Cumulative population	Cumulative percent
Less than −20	4,830,632	1.7	4,830,632	1.7
−20 to −15.01	3,014,346	1.1	7,844,978	2.7
−15 to −10.01	8,747,501	3.1	16,592,479	5.8
−10 to −5.01	24,421,108	8.6	41,013,587	14.4
−5 to −1.00	91,578,905	32.1	132,592,492	46.5
Less than +/−1	128,074,050	44.9	260,666,542	91.3
+1.0% to 5	11,709,325	4.1	272,375,867	95.4
+5.01 to 10	9,835,536	3.4	282,211,403	98.9
+10.01 to 15	2,227,150	0.8	284,438,553	99.7
+15.01 to 20	336,345	0.1	284,774,898	99.8
Greater than 20	630,634	0.2	285,405,532	100.0

The largest Table 1 income limit decreases are concentrated in Puerto Rico, in a limited number of New England metropolitan areas with large area definitional changes, and in counties that have been re-assigned from metropolitan areas to non-metropolitan status and therefore have income limits based on county rather than metropolitan area data. In practice, since most or all FY2006 estimates of median family income will be higher than equivalent FY2005 estimates, the actual income limit decreases will be less than shown in Tables 1and 2 and the increases will be greater.

Table 2 shows the impacts of implementing a hold-harmless policy based on using the FY2005 income limits for the largest old component part of the new metropolitan area as the hold-harmless income limits. That is, if the definition of a new metropolitan area included parts of two old FMR/income limit areas, part A with a population of 200,000 and part B with a population of 100,000, the hold-harmless income limits used would be those of part A. Part A's FY2005 income limits would be used to set the new FMR area's FY2006 income limits in the event that normal income limit calculations produced lower income limits. As shown in Table 2, only 1.9 percent of the population resided in areas subject to income limit decreases of more than 10 percent had the new income limits been effective in FY2005. Again, since most FY2006 median family income estimates will be higher than FY2005 estimates, the percentages shown in Table 2 overstate the FY2006 decreases of this approach and understate the increases.

TABLE 2.—DIFFERENCES BETWEEN ACTUAL FY2005 INCOME LIMITS AND INCOME LIMITS CALCULATED USING FY2006 FMR AREA DEFINITIONS WITH PRIMARY AREA HOLD-HARMLESS POLICY

Income limit change (percent)	2000 population frequency	Percent	Cumulative population frequency	Cumulative percent
Less than −20	0	0.0	0	0.0
−20 to −15.01	1,437,963	0.5	1,437,963	0.5
−15 to −10.01	3,986,037	1.4	5,424,000	1.9
−10 to −5.01	827,944	0.3	6,251,944	2.2
−5 to −1.00	879,452	0.3	7,131,396	2.5
Less than +/−1	253,073,450	88.7	260,204,846	91.2
+1.0 to 5	11,861,397	4.2	272,066,243	95.3
+5.01 to 10	988,7843	3.5	281,954,086	98.8
+10.01 to 15	2,181,860	0.8	284,135,946	99.6
+15.01 to 20	281,344	0.1	284,417,290	99.7
Greater than 20	988,242	0.3	285,405,532	10.0

The major concern with this approach is that it would result in large increases in income limits solely because of the addition of a county or county subpart that is small in relationship to the FMR/income limit area. There are a few such instances where the resulting income limits would be so much higher than if based on the area's true median family income estimates that its income limits would need to remain frozen for several years. In such instances, area income limits would be much higher than income limits permitted in other areas of the country with similar economic and demographic characteristics. Given the widespread use of HUD income limits in other Federal programs, this outcome would be unacceptably inequitable.

There are two reasons why it is undesirable to artificially raise income limits through implementation of a hold-harmless policy. One is simply that it is inconsistent with Congressional intent to have higher income limits than specified in the law, since they have the effect of reducing the intended Congressional targeting of program benefits to low and very-low income households and undermine the Congressional intent to establish similar income limits for areas with similar housing and economic characteristics. The other reason for caution in permitting higher income limits is that it can have the effect of artificially increasing allowed rents and profits in the Low Income Housing Tax Credit program at the same time it makes the long-term financial viability of such projects uncertain because changes in maximum allowed rents will be prohibited for an indefinite period of time, sometimes for several years. For instance, if a change in income limit calculation procedures has the effect of increasing income limits by 15 percent, the maximum allowed rents for any Low Income Housing Tax Credit projects in the area automatically increase by 15 percent. The major reason for considering a hold-harmless policy is that Low Income Housing Tax Credit projects in areas with income limit decreases automatically have proportional decreases in their maximum allowed rent charges, which can adversely impact their financial viability. Very few such projects would be affected using a primary area hold-harmless policy (Table 2).

A significant part of the income limit reductions that would occur if a primary area hold-harmless policy is implemented are associated with two metropolitan areas. As noted previously, in some instances the new OMB definitions had the effect of merging two or more metropolitan areas. In preparing its proposed FY2006 FMRs, HUD opted to disaggregate such areas when their FMRs differed by more than 5 percent so as to better reflect housing market relationships. In reviewing the impact of income limit changes due to FMR area definitional changes, it was found that most proposed FMR area mergers remaining after the 5 percent test was applied had similar income limits. As noted previously, this was not true for the metropolitan areas added to the Miami and New York City metropolitan areas. The Bergen-Passaic and Monmouth-Ocean former metropolitan areas that were added to New York City had significantly higher median family incomes and income limits than those for New York City, although their FMRs were similar. The same was true for the former metropolitan areas of Fort Lauderdale and West Palm Beach-Boca Raton that were added to Miami. Application of a primary area hold-harmless policy does not benefit the old metropolitan areas being added to Miami and New York City, because the primary areas are much larger than the areas being added and have much lower income limits. Using a primary area hold-harmless policy produces the following results:

Area	Income limit change (percent)
Miami Metropolitan Area:	No Change.
Fort Lauderdale Part	−10
W. Palm Beach-Boca Raton	−14
New York City Metro Area:	No Change.
Bergen-Passaic	−18
Monmouth-Ocean	−12

HUD believes that the magnitude of these differences in income limits warrants reconsideration of the FMR area definitions for these two newly defined OMB metropolitan areas. The few other metropolitan areas experiencing decreases had decreases that were so small that they are likely to disappear once FY2005 income limits are updated to FY2006, which is when the new numbers would become effective. HUD therefore wishes to invite comments as to whether any of the areas identified above should be made into separate subparts of their new OMB metropolitan areas, as was done for subparts with measurably different FMRs. Establishing separate income limit areas would mean that separate FMR areas would also be established. The FY2006 FMRs for all areas in question would remain unchanged in FY2006, and the FY2007 FMRs for the two primary areas and their OMB-defined additions would be likely to be almost identical.

V. Request For Public Comments

HUD seeks public comments on the proposed income limit methodology. Both general and area-specific comments will be accepted. General comments should provide program-related reasons for supporting, modifying, or opposing the proposed income limit approach. Area-specific calculation comments need to be

accompanied by information and analysis supporting any recommendation made. HUD believes it generally has the best available current information on incomes, but is interested in reviewing any additional information that can be supplied.

Dated: December 8, 2005.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

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Federal Register

Vol. 70, No. 241

Friday, December 16, 2005

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FEDERAL REGISTER PAGES AND DATE, DECEMBER

72065–72194 1
72195–72348 2
72349–72576 5
72577–72698 6
72699–72880 7
72881–73122 8
73123–73346 9
73347–73552 12
73553–73904 13
73905–74192 14
74193–74638 15
74639–74994 16

CFR PARTS AFFECTED DURING DECEMBER

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:
7967 72575
7968 73903

5 CFR

300 72065
307 72065
315 72065
316 72065
330 72065
335 72065
550 72065
551 72065
720 72065

Proposed Rules:
337 73646
930 73646
1216 74714

7 CFR

210 72349
220 72349
226 72349
272 72350
274 72350
276 72350
278 72350
279 72350
280 72350
301 73553
305 72881
319 ..... 72068, 72881
800 73556
906 73123
979 72699
984 ..... 72195, 72892
985 72355
1030 73126
1902 73347

Proposed Rules:
319 74215
330 74215
340 74215
927 73167
1124 74166
1131 74166
1207 73945
1209 73945
1220 72257
1496 74717

9 CFR

94 73905

10 CFR

Proposed Rules:
1 74950
2 74950
13 74950
110 74950

11 CFR

Proposed Rules:
109 73946

12 CFR

229 73128
707 72895
796 72702
1805 73887

Proposed Rules:
Ch.III 73652

13 CFR

121 72577
123 72577
300 74193
301 ..... 74193, 74196
304 ..... 74193, 74196
308 74195

14 CFR

23 ..... 72068, 72070
25 ..... 73559, 73561
39 ..... 72358, 72361, 72363, 72366, 72368, 72595, 72902, 73347, 73351, 73355, 73358, 73361, 73364, 73576, 73577, 73579, 73581, 73583, 73919, 73921, 73923, 73925, 73930, 73933, 73935, 74639, 74641, 74645, 74647
71 ..... 72371, 72905, 73129, 73131, 73132, 73134, 74197
97 ..... 72703, 72705, 73367, 73785

Proposed Rules:
13 72403
39 ..... 72083, 72085, 72088, 72327, 72406, 72409, 72599, 72601, 72726, 72938, 72939, 72942, 72945, 72947, 73171, 73173, 73391, 73392, 73633, 73665, 73668, 73671, 74235, 74237
47 72403
61 72403
71 ..... 72949, 72950, 73959
91 72403
93 73674
183 72403
399 73960

15 CFR

748 72073

16 CFR

303 73369
801 73369
803 73369

17 CFR

200 72566

201.....72566
229.....72372
231.....73344
239.....72372
241.....73344
271.....73344
420.....73378
Proposed Rules:
4.....74240
15.....74246
16.....74246
17.....74246
18.....74246
19.....74246
21.....74248
240.....74598
249.....74598
274.....74598

18 CFR

Proposed Rules:
41.....72730
158.....72730
284.....72090
286.....72730
349.....72730

19 CFR

360.....72373

20 CFR

422.....74649
423.....73135
655.....72556
Proposed Rules:
260.....73175
320.....73175
341.....73176
404.....72411, 72416
416.....72411, 72416

21 CFR

Ch. I.....72074
172.....72906
510.....74652
520.....73136
524.....73137
558.....74652
610.....72197
1300.....74653
1308.....74653
Proposed Rules:
310.....73178
358.....73178
610.....72257

24 CFR

203.....72696
941.....72908
Proposed Rules:
3282.....73966

26 CFR

1 .....72376, 72908, 72914
31.....74198
32.....74198
301.....74658
602.....72908, 72914
Proposed Rules:
1 .....72260, 72952, 73393, 73967, 74259
54.....72953
301 .....72954, 73393, 74259

27 CFR

9 .....72707, 72710, 72713, 72717
Proposed Rules:
4.....72731
5.....72731
7.....72731
9.....72733

28 CFR

1617.....72199
905.....73587
906.....74200

29 CFR

4011.....72074
4022.....72074, 74200
4044 .....72076, 72205, 73330, 74200
Proposed Rules:
161811.....73413

30 CFR

204.....72381
250.....74659

31 CFR

Proposed Rules:
1.....72739

32 CFR

285.....73378
346.....72917
Proposed Rules:
635.....73181

33 CFR

104.....74663
105.....74663
117.....73380, 73937
151.....74669
153.....74669
160.....74663
165.....74202, 74676
Proposed Rules:
100.....72964
117.....72419, 72967
155.....74259
157.....74259

34 CFR

Proposed Rules:
200.....74624
300.....74624

36 CFR

1011.....73587

37 CFR

253.....72077

38 CFR

3.....72211
20.....72211

39 CFR

111.....72221
232.....72078

40 CFR

52 .....72597, 72720, 73380
60 .....73138, 74679, 74870
61.....73138, 73595
63.....73138, 73595
80.....74552
82.....73604
86.....72917
180.....74679, 74688
420.....73618
710.....74696
Proposed Rules:
51.....72268
52 .....72740, 72741, 72744, 73414, 74259
55.....72094
61.....73183, 73675
63 .....72330, 73098, 73183, 73675
80.....74582
81.....73183
86.....72970
96.....72268
112.....73518, 73524
122.....73676
180.....72757

41 CFR

60-250.....72148
Proposed Rules:
51-2.....74721
51-3.....74721
51-4.....74721

42 CFR

405.....73623
Proposed Rules:
1001.....73186

44 CFR

64.....72078, 74204
65.....73634
Proposed Rules:
67.....73677

45 CFR

Proposed Rules:
1180.....73967

46 CFR

4.....74669

47 CFR

73 .....72723, 73939, 73940, 73941, 73942
Proposed Rules:
73.....72763, 73972
76.....73973

48 CFR

1.....73415
2.....73415
4.....73415
5.....73415
6.....73415
7.....73415
8.....73415
9.....73415
12.....73415
13.....73415
15.....73415
16.....73415
17.....73415
19.....73415
22.....73415
25.....73415
28.....73415
30.....73415
32.....73415
36.....73415
42.....73415
48.....73415
49.....73415
50.....73415
52.....73415
53.....73415
205.....73148
211.....73150
216.....73151
217.....73151
223.....73150
225.....73152, 73153
226.....73148
252 .....73148, 73150, 73152, 73153
1852.....74206
9901.....73423
9903.....73423
Proposed Rules:
Ch. 2.....73187
208.....73187
225.....73189
252.....73187, 73189
253.....73187

49 CFR

105.....73156
106.....73156
107.....73156
110.....73156
171.....73156
172.....73156
173.....72930, 73156
174.....73156
175.....73156
176.....73156
177.....73156
178.....73156
180.....73156
234.....72382
236.....72382
571.....73383
1540.....72930
Proposed Rules:
192.....74262, 74265
195.....74265
229.....73070
238.....73070
571.....74270

50 CFR

17 .....73820, 74112, 74138
23.....74700
300.....73943
622.....73383
635 .....72080, 72724, 74712
648.....72082, 72934
660.....72385
679.....73389, 74208
Proposed Rules:
17 .....72776, 72973, 73190, 73699, 74284, 74426
216.....73426
223.....72099
635.....73980
648.....72100, 74285
660.....72777
679.....74723, 74739
697.....73717

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 DECEMBER 16, 2005

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Atlantic highly migratory species—
Atlantic bluefin tuna; published 12-16-05

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Maryland; published 11-16-05
Pesticide, food, and feed additive petitions:
Syngenta Crop Protection, Inc.; published 12-16-05
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenazate; published 12-16-05
Toxic substances:
Chemical inventory update reporting; published 10-17-05

HOMELAND SECURITY DEPARTMENT
Federal Emergency Management Agency
Flood insurance; communities eligible for sale:
Various States; published 12-15-05

SOCIAL SECURITY ADMINISTRATION
Organization and procedures:
Social Security Number (SSN) Cards; replacement limitations; published 12-16-05

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Foreign entities; classification; published 12-16-05

RULES GOING INTO EFFECT DECEMBER 17, 2005

FEDERAL DEPOSIT INSURANCE CORPORATION
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one year post-employment restrictions; published 11-17-05

FEDERAL RESERVE SYSTEM
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one year post-employment restrictions; published 11-17-05

TREASURY DEPARTMENT
Comptroller of the Currency
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one year post-employment restrictions; published 11-17-05

TREASURY DEPARTMENT
Thrift Supervision Office
Intelligence Reform and Terrorism Prevention Act; implementation:
Senior examiners; one year post-employment restrictions; published 11-17-05

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hass avocado promotion, research, and information order; comments due by 12-20-05; published 10-21-05 [FR 05-21081]
Nectarines and peaches grown in—
California; comments due by 12-19-05; published 11-29-05 [FR 05-23327]

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Asian longhorned beetle; comments due by 12-23-05; published 10-24-05 [FR 05-21169]

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Food stamp program:
Quality control system; comments due by 12-22-05; published 9-23-05 [FR 05-19020]

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Central contractor registration; taxpayer identification number validation; comments due by 12-19-05; published 10-19-05 [FR 05-20869]

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Electric utility steam generating units and removal of coal- and oil-fired electric utility steam generating units from Section 112(c) list
Reconsideration petitions; comments due by 12-19-05; published 10-28-05 [FR 05-21456]
Air pollution control; new motor vehicles and engines:
Diesel fuel sulfur transition provisions; highway and nonroad diesel and Tier 2 gasoline programs; comments due by 12-22-05; published 11-22-05 [FR 05-22806]
Air pollution; standards of performance for new stationary sources:
Electric utility steam generating units; mercury performance standards
Reconsideration petitions; comments due by 12-19-05; published 10-28-05 [FR 05-21457]
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana; comments due by 12-23-05; published 11-23-05 [FR 05-23221]
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 12-23-05; published 11-23-05 [FR 05-23089]
Hazardous waste program authorizations:
Massachusetts; comments due by 12-19-05; published 11-18-05 [FR 05-22891]
Michigan; comments due by 12-23-05; published 11-23-05 [FR 05-23213]
Water pollution; effluent guidelines for point source categories:
Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Wireless telecommunications services—
Wireless radio services; radiated power rules; comments due by 12-19-05; published 10-19-05 [FR 05-20928]

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Central contractor registration; taxpayer identification number validation; comments due by 12-19-05; published 10-19-05 [FR 05-20869]

HEALTH AND HUMAN SERVICES DEPARTMENT
Centers for Disease Control and Prevention
Possession, use and transfer of select agents and toxins:
1918 pandemic influenza virus; reconstructed replication competent forms; comments due by 12-19-05; published 10-20-05 [FR 05-20946]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Cattle brains and spinal cords; prohibited use; comments due by 12-19-05; published 10-6-05 [FR 05-20196]
Human drugs:
Positron emission tomography drug products; current good manufacturing practice; comments due by 12-19-05; published 9-20-05 [FR 05-18510]

HOMELAND SECURITY DEPARTMENT
Coast Guard
Drawbridge operations:
Connecticut; comments due by 12-23-05; published 12-8-05 [FR 05-23752]
Ports and waterways safety; regulated navigation areas, safety zones, security zones, etc.:
Narragansett Bay, RI and Mt. Hope Bay, MA; Providence River regulated navigation area; comments due by 12-21-05; published 11-21-05 [FR 05-22951]

HOMELAND SECURITY DEPARTMENT
Federal Emergency Management Agency
Disaster assistance:

Special Community Disaster Loans Program; implementation; comments due by 12-19-05; published 10-18-05 [FR 05-20920]

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Manufactured Housing Dispute Resolution Program; comments due by 12-19-05; published 10-20-05 [FR 05-20953]

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Critical habitat designations—

Alameda whipsnake; comments due by 12-19-05; published 10-18-05 [FR 05-20145]

Findings on petitions, etc.—

Mexican bobcat; comments due by 12-23-05; published 11-23-05 [FR 05-23032]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Central contractor registration; taxpayer identification number validation; comments due by 12-19-05; published 10-19-05 [FR 05-20869]

ARTS AND HUMANITIES, NATIONAL FOUNDATION

National Foundation on the Arts and the Humanities

Privacy Act; implementation; comments due by 12-23-05; published 11-23-05 [FR 05-23118]

SOCIAL SECURITY ADMINISTRATION

Social security benefits and supplemental security income:

Federal old age, survivors, and disability insurance, and aged, blind, and disabled—

Work report receipts, benefit payments for trial work period service months after fraud conviction, student earned income exclusion, etc.; comments due by 12-19-05; published 10-18-05 [FR 05-20803]

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]

Rolls-Royce Corp.; comments due by 12-19-05; published 10-18-05 [FR 05-20779]

Airworthiness standards:

Special conditions—

Garmin AT, Inc. Raytheon A36 airplanes; comments due by 12-19-05; published 11-18-05 [FR 05-22917]

Garmin AT, Inc. Raytheon B58 airplanes; comments due by 12-19-05; published 11-18-05 [FR 05-22918]

Restricted areas; comments due by 12-19-05; published 11-2-05 [FR 05-21878]

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Track safety standards:

Continuous welded rail; joints inspection; comments due by 12-19-05; published 11-2-05 [FR 05-21845]

TREASURY DEPARTMENT

Comptroller of the Currency

Practice and procedure:

Fees assessment; comments due by 12-19-05; published 11-17-05 [FR 05-22815]

VETERANS AFFAIRS DEPARTMENT

Compensation, pension, burial and related benefits:

Dependency and indemnity compensation benefits; comments due by 12-20-05; published 10-21-05 [FR 05-21026]

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 ''P L U S'' (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. 584/P.L. 109–125

Department of the Interior Volunteer Recruitment Act of 2005 (Dec. 7, 2005; 119 Stat. 2544)

H.R. 680/P.L. 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; 119 Stat. 2546)

H.R. 1101/P.L. 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; 119 Stat. 2548)

Last List December 7, 2005

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