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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23649; Directorate Identifier 2006–CE–08–AD; Amendment 39–14542; AD 2006–07–15]

RIN 2120–AA64

Airworthiness Directives; Thrush Aircraft, Inc. Model 600 S2D and S2R (S–2R) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) to supersede AD 2003–07–01, which applies to certain Thrush Aircraft, Inc. Model 600 S2D and S2R (S–2R) series airplanes (type certificate previously held by Quality Aerospace, Inc. and Ayres Corporation). AD 2003–07–01 currently requires you to repetitively inspect the 1/4-inch and 5/16-inch bolt hole areas on the lower wing spar caps for fatigue cracking; replace or repair any lower wing spar cap where fatigue cracking is found; and report any fatigue cracking found. This AD is the result of the analysis of data from 112 cracks found in the last 8 years on similar design Model 600 S2D and S2R (S–2R) series airplanes, and FAA's determination that an immediate initial inspection and more frequent repetitive inspections are necessary to address the unsafe condition for certain airplanes. Consequently, this AD would require you to increase the frequency of the repetitive inspections on Groups 1, 2, 3, and 6 airplanes; and decrease the hours time-in-service (TIS) for the initial inspection on Group 2 airplanes. We are issuing this AD to prevent lower wing spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

DATES: This AD becomes effective on April 18, 2006.

As of July 25, 2000 (65 FR 36055), the Director of the Federal Register previously approved the incorporation by reference of Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996; and Ayres Corporation Custom Kit No. CK–AG–29, dated December 23, 1997.

As of May 20, 2003 (68 FR 15653), the Director of the Federal Register previously approved the incorporation by reference of Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

We must receive any comments on this AD by May 16, 2006.

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

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Fax:* 1–202–493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

To get the service information identified in this proposed AD, contact Thrush Aircraft, Inc. at 300 Old Pretoria Road, PO Box 3149, Albany, Georgia 31706–3149. You can also find service information on their Web site at *http://www.thrushaircraft.com.*

To view the comments to this AD, go to *http://dms.dot.gov.* The docket number is FAA–2006–23649; Directorate Identifier 2006–CE–08–AD.

For Further Information Contact One of the Following:

—Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097; e-mail: *cindy.lorenzen@faa.gov;* or
—Mike Cann, Aerospace Engineer, ACE–117A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6038; facsimile: (770) 703–6097; e-mail: *michael.cann@faa.gov.*

SUPPLEMENTARY INFORMATION:

History of AD Actions

An accident on a Thrush S2R series airplane (type certificate previously held by Quality Aerospace, Inc. and Ayres Corporation), where the wing separated from the airplane in flight, caused us to issue AD 97–13–11, Amendment 39–10071 (62 FR 36978, July 10, 1997). AD 97–13–11 required you to do the following:

—Inspect the 1/4-inch and 5/16-inch bolt hole areas on the lower wing spar caps for fatigue cracking;
—Replace any lower wing spar cap where fatigue cracking is found; and
—Report any fatigue cracking to FAA.

AD 97–17–03, Amendment 39–10195 (62 FR 43926, August 18, 1997) superseded AD 97–13–11. AD 97–13–11 incorrectly referenced the Model S2R–R1340 airplanes as Model S2R–1340R. AD 97–17–03 corrected the model designation and retained the actions of AD 97–13–11.

AD 2000–11–16, Amendment 39–11764 (65 FR 36055, June 7, 2000) superseded AD 97–17–03. AD 2000–11–16 made the inspections required in AD 97–17–03 repetitive, added airplanes to the applicability of the AD, changed the initial compliance time for all airplanes, and arranged the affected airplanes into six groups based on usage and configuration. AD 2000–11–16 required you to do the following:

—Repetitively inspect the 1/4-inch and 5/16-inch bolt hole areas on the lower wing spar caps for fatigue cracking;
—Replace or repair any lower wing spar cap where fatigue cracking is found; and
—Report any fatigue cracking to FAA.

AD 2003–07–01, Amendment 39–13097 (68 FR 15653, April 1, 2003) superseded AD 2000–11–16. AD 2003–07–01 added some airplanes that were manufactured with a similar design to the applicability table and added a third repair option.

Recent Events That Initiated This Current AD Action

AD 2003–07–01 required submitting reports to FAA when any crack was found on the affected airplanes. Recent FAA analysis of data from those reports and other historical and statistical data indicate that the current AD inspections are not completely addressing the unsafe condition. Specifically, the data indicate a risk that some airplanes in the Thrush fleet may currently have cracks. The airplanes with cracks may be unable to meet ultimate strength requirements.

The repetitive inspection interval required by AD 2003–07–01 was designed to give owners/operators two opportunities to detect a crack before the critical crack length is reached. The high rate of cracking in the fleet combined with the industry standard of a 90-percent probability of detection with the inspection methods used means that eventually an inspection will not find an existing crack. A completely severed spar cap was found on one of the affected airplanes. Analysis indicates a crack existed during the last two repetitive inspections of that spar cap, but the crack was undetected by the inspections. Fortunately, the wing remained intact until the crack was found.

This in-service incident correlates with other historical probability data that indicate there may be cracks in other lower wing spar caps in the fleet now, and those cracks may go undetected with current inspection intervals. The FAA used a probability approach when analyzing the risks from data obtained from reports of 112 lower wing spar cap cracks found on Model 600 S2D and S2R (S–2R) series airplanes since 1997. This analysis indicates there is an ever-increasing risk of another crack being missed during an inspection.

To increase the chances of detecting a crack in the lower wing spar cap prior to the crack reaching critical length, we are increasing the frequency of the repetitive inspections on Groups 1, 2, 3, and 6 airplanes and decreasing the hours TIS for the initial inspection on Group 2 airplanes. These actions are necessary to ensure the continued airworthiness of Groups 1, 2, 3, and 6 airplanes. There has been one crack reported on Groups 4 and 5 airplanes; however, this is not enough statistical data to show an increasing risk for these airplanes at this time. Until additional information is obtained, we are not changing the initial inspection times or the repetitive inspection intervals for Groups 4 and 5 airplanes.

Wing spar cap failure caused by undetected fatigue cracks could result in loss of a wing with consequent loss of airplane control.

Relevant Service Information

The following service information was included in AD 2003–07–01 and will remain in effect for this AD:

—Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996;

—Ayres Corporation Custom Kit No. CK–AG–29, dated December 23, 1997; and

—Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001.

The service information includes procedures for:

—Inspecting the 1/4-inch and 5/16-inch bolt hole areas on the lower wing spar caps for fatigue cracking;

—Reworking the spar cap if a small crack is found in the 1/4-inch spar cap hole;

—Replacing the butterfly center splice plate, part number 20211–3, from the aft surface of the wing spar join area; and

—Installing Kaplan splice blocks that repair small cracks in the 1/4-inch and 5/16-inch bolt holes.

FAA's Determination and Requirements of the AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other Thrush Aircraft, Inc. Model 600 S2D and S2R (S–2R) series airplanes of the same type design. Therefore, we are issuing this AD to prevent lower wing spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

This AD supersedes AD 2003–07–01 with a new AD that retains the actions of the previous AD, but increases the frequency of the repetitive inspections on Groups 1, 2, 3, and 6 airplanes; and decreases the hours TIS for the initial inspection on Group 2 airplanes.

In preparing this rule, we contacted type clubs and aircraft operators to get technical information and information on operational and economic impacts. We have included a discussion of information that may have influenced this action in the rulemaking docket.

For any of the affected airplanes that exceed the new repetitive inspection interval at the effective date of this AD, the compliance times are graduated based on the increasing risk of the airplanes with the most hours since their last inspection. Graduated compliance times will help alleviate overcrowding at inspection facilities while still addressing the increased risk for airplanes that have accumulated the most flight hours since the last inspection. We are working with Thrush to develop a future terminating action.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2006–23649; Directorate Identifier 2006–CE–08–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us through a nonwritten communication, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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 AD.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA–2006–23649; Directorate Identifier 2006–CE–08–AD'' in your request.

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 Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2003–07–01, Amendment 39–13097 (68 FR 15653, datee April 1, 2003), and by adding a new AD to read as follows:

2006–07–15 Thrush Aircraft, Inc. (Type Certificate Previously Held by Quality Aerospace, Inc. and Ayres Corporation): Amendment 39–14542; Docket No. FAA–2006–23649; Directorate Identifier 2006–CE–08–AD.

Effective Date

(a) This AD becomes effective on April 18, 2006.

Affected ADs

(b) The following lists a history of the ADs affected by this AD action:

(1) This AD supersedes AD 2003–07–01; Amendment 39–13097;

(2) AD 2003–07–01 superseded AD 2000–11–16, Amendment 39–11764;

(3) AD 2000–11–16 superseded AD 97–17–03, Amendment 39–10195; and

(4) AD 97–17–03 superseded AD 97–13–11, Amendment 39–10071.

Applicability

(c) This AD affects the following airplane models and serial numbers that are certificated in any category. The table also identifies the group that each airplane belongs in when determining inspection compliance times:

TABLE 1.—APPLICABILITY AND AIRPLANE GROUPS

Model	Serial Nos.	Group
(1) S–2R	5000R through 5100R, except 5010R, 5031R, 5038R, 5047R, and 5085R	1
(2) S2R–G1	G1–101 through G1–106	1
(3) S2R–R1820	R1820–001 through R1820–035	1
(4) S2R–T15	T15–001 through T15–033	1
(5) S2R–T34	6000R through 6049R, T34–001 through T34–143, T34–145, T34–147 through T34–167, T34–171, T34–180, and T34–181.	1
(6) S2R–G10	G10–101 through G10–136, G10–138, G10–140, and G10–141	2
(7) S2R–G5	G5–101 through G5–105	2
(8) S2R–G6	G6–101 through G6–147	2
(9) S2RHG–T65	T65–002 through T65–018	2
(10) S2R–R1820	R1820–036	2
(11) S2R–T34	T34–144, T34–146, T34–168, T34–169, T34–172 through T34–179, and T34–189 through T34–232, and T34–234.	2
(12) S2R–T45	T45–001 through T45–014	2
(13) S2R–T65	T65–001 through T65–018	2
(14) 600 S2D	All serial numbers beginning with 600–1311D	3
(15) S–2R	1380R, 1416R through 2592R, 3000R, and 3002R	3
(16) S2R–R1340	R1340–001 through R1340–035	3
(17) S2R–R3S	R3S–001 through R3S–011	3
(18) S2R–T11	T11–001 through T11–005	3
(19) S2R–G1	G1–107, G1–108, and G1–109	4
(20) S2R–G10	G10–137, G10–139, and G10–142	4
(21) S2R–T34	T34–225, T34–236, T34–237, and T34–238	4
(22) S2R–G1	G1–110 through G1–115	5
(23) S2R–G10	G10–143 through G10–165	5
(24) S2R–G6	G6–148 through G6–155	5
(25) S2RHG–T34	T34HG–102	5
(26) S2R–T15	T15–034 through T15–040	5
(27) S2R–T34	T34–239 through T34–270	5
(28) S2R–T45	T45–015	5
(29) S–2R	5010R, 5031R, 5038R, 5047R, and 5085R	6

Note 1: The serial numbers of the Model S2R–T15 airplanes could incorporate T15–xxx and T27–xxx (xxx is the variable for any of the serial numbers beginning with T15– and T27–). This AD applies to both of these serial number designations as they are both Model S2R–T15 airplanes.

Note 2: The serial numbers of the Model S2R–T34 airplanes could incorporate T34–xxx, T36–xxx, T41–xxx, or T42–xxx (xxx is the variable for any of the serial numbers beginning with T34–, T36–, T41– and

T42–). This AD applies to all of these serial number designations as they are all Model S2R–T34 airplanes.

Note 3: Any Group 3 airplane that has been modified with a hopper of a capacity more than 410 gallons, a piston engine greater than 600 horsepower, or any gas turbine engine, makes the airplane a Group 1 airplane for the purposes of this AD. Inspect the airplane at the Group 1 compliance time specified in this AD.

Note 4: Group 6 airplanes were originally manufactured with turbine engines, but were converted to radial engines. They are now configured identical to Group 3 airplanes.

Unsafe Condition

(d) This AD is the result of the analysis of data from 112 cracks found in the last 8 years on similar design Model 600 S2D and S2R (S–2R) series airplanes, and FAA's determination that an immediate initial inspection and more frequent repetitive inspections are necessary to address the unsafe condition for certain airplanes. We are issuing this AD to prevent lower wing spar cap failure caused by undetected fatigue cracks. Such failure could result in loss of a wing with consequent loss of airplane control.

Compliance

(e) To address the problem, do the following:

(1) If you have already done an inspection per AD 2003–07–01, identify the number of hours time-in-service (TIS) since your last inspection per AD 2003–07–01. You will need this to establish the inspection interval for next inspection required by this AD.

(2) Inspect the 1/4-inch and 5/16-inch bolt hole areas on each wing lower spar cap for fatigue cracking using magnetic particle, ultrasonic, or eddy current procedures. If Kaplan splice blocks, part number (P/N) 22515–1/–3 or 88–251 per Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001, are installed, inspect the three bolt hole areas on each wing lower spar cap for fatigue cracking using magnetic particle, ultrasonic, or eddy current procedures. Use the compliance times listed in paragraph (e)(3) of this AD for the initial inspection and the compliance time listed in paragraphs (e)(5), (e)(6), or (e)(7) of this AD for the repetitive inspections. The cracks may emanate from the bolt hole on the face of the spar cap or they may occur in the shaft of the hole. You must inspect both of those areas.

(i) If using the magnetic particle method for the inspection, inspect using the ''Inspection'' portion of the ''Accomplishment Instructions'' and ''Lower Splice Fitting Removal and Installation Instructions'' in Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996. You must follow American Society for Testing and Materials E 1444–01, using wet particles meeting the requirements of the Society for Automotive Engineers AMS 3046. *CAUTION:* You must firmly support the wings during the inspection to prevent movement of the spar caps when the splice blocks are removed. This will allow easier realignment of the splice block holes and the holes in the spar cap for bolt insertion.

(ii) The inspection must be done by or supervised by a Level 2 or Level 3 inspector certified following the guidelines established by the American Society for Nondestructive Testing or MIL–STD–410.

(iii) If using ultrasonic or eddy current methods for the inspection, a procedure must be sent to the FAA, Atlanta Aircraft Certification Office (ACO), for approval before doing the inspection. Send your proposed procedure to the FAA, Atlanta ACO, Attn: Cindy Lorenzen, One Crown Center, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia 30349. You are not required to remove the splice block for either the ultrasonic or eddy current inspections, unless corrosion is visible.

(iv) If you change the inspection method used (magnetic particle, ultrasonic, or eddy current), the TIS intervals for repetitive inspections are based on the method used for the last inspection.

(3) If airplanes have not reached the threshold for the initial inspection required in AD 2003–07–01, AD 2000–11–16, AD 97–17–03, or AD 97–13–11, initially inspect following the wing lower spar cap hours TIS schedule below or within 50 wing lower spar cap hours TIS after April 18, 2006 (the effective date of this AD), whichever occurs later:

TABLE 2.—INITIAL INSPECTION

Airplane group	Initially inspect within the following lower wing spar cap hours TIS
(i) Group 1	2,000 hours TIS.
(ii) Group 2	1,400 hours TIS.
(iii) Group 3	6,400 hours TIS.
(iv) Group 4	2,500 hours TIS.
(v) Group 5	6,200 hours TIS.
(vi) Group 6	(A) Serial number (S/N) 5010R: 5,530 hours TIS.
	(B) S/N 5038R: 5,900 hours TIS.
	(C) S/N 5031R: 6,400 hours TIS.
	(D) S/N 5047R: 6,400 hours TIS.
	(E) S/N 5085R: 6,290 hours TIS.

(4) Airplanes in all groups must meet the following conditions before doing the repetitive inspections required in paragraphs (e)(5), (e)(6), or (e)(7) of this AD:

(i) No cracks have been found previously on wing spar;

(ii) Small cracks have been repaired through cold work (or done as an option if never cracked) per SB–AG–39;

(iii) Small cracks have been repaired by reaming the 1/4-inch bolt hole to 5/16 inches diameter (or done as an option if never cracked) per Ayres Corporation Custom Kit No. CK–AG–29, Part I, dated December 23, 1997;

(iv) Small cracks have been repaired through previous alternative methods of compliance (AMOC); or

(v) Small cracks have been repaired by the installation of Kaplan splice blocks, P/N 22515–1/–3 or 88–251 (or done as an option if never cracked) per Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001.

(5) Repetitively inspect Groups 1, 2, 3, and 6 airplanes that do not have butterfly plates, P/N 20211–09 and P/N 20211–11, installed per Ayres Corporation Custom Kit No. CK–AG–29, Part II, dated December 23, 1997, and meet the conditions in paragraph (e)(4) of this AD. Follow the wing lower spar cap hours TIS compliance schedule below:

TABLE 3.—REPETITIVE INSPECTIONS FOR AIRPLANE GROUPS 1, 2, 3, AND 6 WITHOUT BUTTERFLY PLATES

When airplanes accumulate the following hours TIS on the wing lower spar cap, since the last inspection required in AD 2003–07–01,	Inspect within the following hours TIS after April 18, 2006 (the effective date of this AD),	Inspect thereafter at intervals of . . .
(i) *Magnetic particle inspection*	.....	250 hours TIS.
(A) 450 or more hours	25 hours TIS.	
(B) 350 through 449 hours TIS	50 hours TIS.	
(C) 175 through 349 hours TIS	75 hours TIS.	
(D) Less than 175 hours TIS	upon accumulating 250 hours TIS.	
(ii) *Ultrasonic inspection*	.....	275 hours TIS.
(A) 500 or more hours TIS	25 hours TIS.	
(B) 400 through 499 hours TIS	50 hours TIS.	
(C) 200 through 399 hours TIS	75 hours TIS.	
(D) Less than 200 hours TIS	upon accumulating 275 hours TIS.	
(iii) *Eddy Current inspection*	350 hours TIS..	
(A) 625 or more hours TIS	25 hours TIS.	
(B) 500 through 624 hours TIS	50 hours TIS.	
(C) 275 through 499 hours TIS	75 hours TIS.	

TABLE 3.—REPETITIVE INSPECTIONS FOR AIRPLANE GROUPS 1, 2, 3, AND 6 WITHOUT BUTTERFLY PLATES—Continued

When airplanes accumulate the following hours TIS on the wing lower spar cap, since the last inspection required in AD 2003–07–01,	Inspect within the following hours TIS after April 18, 2006 (the effective date of this AD),	Inspect thereafter at intervals of . . .
(D) Less than 275 hours TIS	upon accumulating 350 hours TIS.	

(6) Repetitively inspect Groups 1, 2, 3, and 6 airplanes that have butterfly plates, P/N 20211–09 and P/N 20211–11, installed per Ayres Corporation Custom Kit No. CK–AG–29, Part II, dated December 23, 1997, and meet the conditions in paragraph (e)(4) of this AD. Follow the wing lower spar cap hours TIS compliance schedule below:

TABLE 4.—REPETITIVE INSPECTIONS FOR GROUPS 1, 2, 3, AND 6 WITH BUTTERFLY PLATES

When airplanes accumulate the following hours TIS on the wing lower spar cap, since the last inspection required in AD 2003–07–01,	Inspect within the following hours TIS after April 18, 2006 (the effective date of this AD),	Inspect thereafter at intervals of . . .
(i) *Magnetic particle inspection*		450 hours TIS.
(A) 800 or more hours TIS	25 hours TIS.	
(B) 650 through 799 hours TIS	50 hours TIS.	
(C) 375 through 649 hours TIS	75 hours TIS.	
(D) Less than 375 hours TIS	upon accumulating 450 hours TIS.	
(ii) *Ultrasonic inspection*		475 hours TIS.
(A) 825 or more hours TIS	25 hours TIS.	
(B) 675 through 824 hours TIS	50 hours TIS.	
(C) 400 through 674 hours TIS	75 hours TIS.	
(D) Less than 400 hours TIS	upon accumulating 475 hours TIS.	
(iii) *Eddy Current inspection*		625 hours TIS
(A) 1125 or more hours TIS	25 hours TIS.	
(B) 900 through 1124 hours TIS	50 hours TIS.	
(C) 550 through 899 hours TIS	75 hours TIS.	
(D) Less than 550 hours TIS	upon accumulating 625 hours TIS.	

(7) Repetitively inspect Groups 4 and 5 airplanes that meet the conditions in paragraph (e)(4) of this AD. Follow the wing lower spar cap hours TIS compliance schedule below:

TABLE 5.—REPETITIVE INSPECTION FOR GROUPS 4 AND 5

When using the following inspection methods,	Repetitively inspect at intervals of . . .
(i) Magnetic particle inspection.	900 hours TIS.
(ii) Ultrasonic inspection	950 hours TIS.
(iii) Eddy current inspection	1,250 hours TIS.

Note 5: Groups 4 and 5 airplanes had the butterfly plates installed at the factory.

(f) If any cracks are found in any inspection required by this AD, you must repair the cracks or replace the lower wing spar before further flight.

(1) Use the cold work process to ream out small cracks as defined in Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996; or

(2) Ream the ¼-inch bolt holes to 5/16 inches diameter as defined in Part I of Ayres Corporation Custom Kit No. CK–AG–29, dated December 23, 1997; or

(3) Install Kaplan Splice Blocks as defined in Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001; or

(4) Replace the affected spar cap in accordance with the maintenance manual.

Note 6: If a crack is found, the reaming associated with the cold work process may remove a crack if it is small enough. Some aircraft owners/operators were issued alternative methods of compliance with AD 97–17–03 to ream the ¼-inch bolt hole to 5/16 inches diameter to remove small cracks. Ayres Corporation Custom Kit No. CK–AG–29, Part I, dated December 23, 1997, also provides procedures to ream the ¼-inch bolt hole to 5/16 inches diameter, which may remove a small crack. Resizing the holes to the required size to install a Kaplan splice block may also remove small cracks. If you use any of these methods to remove cracks and the airplane is re-inspected immediately with no cracks found, you may continue to follow the repetitive inspection intervals for your airplane listed in paragraphs (e)(5), (e)(6), or (e)(7) of this AD.

(g) For all inspection methods (magnetic particle, ultrasonic, or eddy current), hours TIS for initial and repetitive inspections intervals start over when wing spar is replaced.

(1) If the wings or wing spars were replaced with new or used wings or wing spars during the life of the airplane and logbook records positively show the hours TIS of the wings or wing spars, then initially inspect at applicable wing or wing spar times in paragraph (e)(3) and repetitively inspect at intervals in paragraphs (e)(5), (e)(6), or (e)(7) of this AD.

(2) If the wings or wing spars were replaced with new or used wings or wing spars during the life of the airplane and logbook records cannot positively show the hours TIS of the wings or wing spars, then inspect within 25 hours TIS after April 18, 2006 (the effective date of this AD), unless already done, and repetitively inspect at intervals in paragraphs (e)(5), (e)(6), or (e)(7) of this AD.

(h) Report any cracks you find within 10 days after the cracks are found or within 10 days after April 18, 2006 (the effective date of this AD), whichever occurs later. Send your report to Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta ACO, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097; e-mail: *cindy.lorenzen@faa.gov*. The Office of Management and Budget (OMB) approved the information collection requirements contained in this regulation under the provisions of the Paperwork Reduction Act and assigned OMB Control Number 2120–0056. Include in your report the following information:

(1) Aircraft model and serial number;

(2) Engine model;

(3) Aircraft hours TIS;

(4) Left and right wing lower spar cap hours TIS;

(5) Hours TIS on the spar cap since last inspection;

(6) Crack location and size;

(7) Procedure (magnetic particle, ultrasonic, or eddy current) used for the last inspection; and

(8) Information on corrective action taken, whether cold working has been done or modifications incorporated such as installation of butterfly plates, and when this corrective action was taken.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Atlanta Aircraft Certification Office, FAA, ATTN: Cindy Lorenzen, Aerospace Engineer, ACE–115A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, GA 30349; telephone: (770) 703–6078; facsimile: (770) 703–6097; e-mail: *cindy.lorenzen@faa.gov*; or Mike Cann, Aerospace Engineer, ACE–117A, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6038; facsimile: (770) 703–6097; e-mail: *michael.cann@faa.gov*, has the authority to approve AMOCs for this AD, if requested using the procedures in 14 CFR 39.

(j) AMOCs approved for AD 2003–07–01, AD 2000–11–16, AD 97–13–11, and/or AD 97–17–03 are approved as AMOCs for this AD.

Material Incorporated by Reference

(k) You must do the actions required by this AD following the instructions in Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996; Ayres Corporation Custom Kit No. CK–AG–29, dated December 23, 1997; and Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001.

(1) As of July 25, 2000 (65 FR 36055), the Director of the Federal Register previously approved the incorporation by reference of Ayres Corporation Service Bulletin No. SB–AG–39, dated September 17, 1996; and Ayres Corporation Custom Kit No. CK–AG–29, dated December 23, 1997, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) As of May 20, 2003 (68 FR 15653), the Director of the Federal Register previously approved the incorporation by reference of Quality Aerospace, Inc. Custom Kit No. CK–AG–30, dated December 6, 2001, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(3) To get a copy of this service information, contact Thrush Aircraft, Inc. at 300 Old Pretoria Road, P.O. Box 3149, Albany, Georgia 31706–3149 or go to *http://www.thrushaircraft.com.* To review copies of this service information, go to the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html* or call (202) 741–6030. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–001 or on the Internet at *http://dms.dot.gov.* The docket number is FAA–2006–23649; Directorate Identifier 2006–CE–08–AD.

Issued in Kansas City, Missouri, on March 28, 2006.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 06–3162 Filed 4–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF STATE

22 CFR Part 62

[Public Notice: 5360]

RIN 1400–AC13

Rule Title: Secondary School Student Exchange Programs

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: The Department adopts as final certain proposed amendments to existing regulations set forth at 22 CFR 62.25. These amendments require program sponsors to complete criminal background checks for officers, employees, agents, representatives and volunteers acting on their behalf and require monthly contact with host families and students. Also adopted as final is a requirement that all adult members of a host family household undergo a criminal background check. A requirement to report any allegation of sexual misconduct to both the Department and local law enforcement authorities is also adopted.

DATES: *Effective Date:* This rule is effective May 4, 2006.

FOR FURTHER INFORMATION CONTACT: Stanley S. Colvin, Director, Office of Exchange Coordination and Designation, U.S. Department of State, SA–44, 301 4th Street, SW., Room 734, Washington, DC 20547; or e-mail at *jexchanges@state.gov.*

SUPPLEMENTARY INFORMATION: The Department of State designates academic and private sector entities to conduct educational and cultural exchange programs pursuant to a broad grant of authority provided by the Mutual Educational and Cultural Exchange Act of 1961, as amended. Under this authority, some 1,450 program sponsors facilitate the entry of more than 275,000 exchange participants each year. Secondary school students have been a vital component of these private sector exchange activities since 1956 and serve to inform the opinion of foreign youth of the United States and its people.

The safety and security of these participants are of paramount importance to the Department. Although participants are generally 17 to 18 years of age, some participants are as young as 15 and often away from home for the first time. Given the vulnerable status of such a population, the Department proposed certain amendments to existing regulation through publication of a proposed rule on August 12, 2005 (70 FR 47152–55), with minor correction on August 24, 2005 (70 FR 49595–16). Of the 81 comments received regarding criminal background checks, almost all expressed strong support of the proposal regarding criminal background or sex offender checks. Accordingly, all officers, employees, representatives, agents, and volunteers acting on the sponsors' behalf must not only be adequately trained and supervised but, if they have direct personal contact with exchange students, must also pass a criminal background check. This change is consistent with requirements that have been adopted nationwide for volunteers and employees of organizations serving youth populations. The Department concludes that a sufficient network of local and state mechanisms is now in place to provide for the convenient and cost effective vetting of these individuals.

As a related issue, the Department adopts a requirement that all adult members of a prospective host family also undergo a criminal background check. The Department proposed that host family members be vetted through a sex offender registry maintained by the state in which the host family resides. These registries have been established over the last few years and are now available in 48 of the 50 states. Although the registries are easily accessed and require only the name and zip code of the individual being vetted, commenters pointed out that this information would also be contained in a criminal background report. Such a report would be more comprehensive and would also provide information regarding violent acts or crimes of moral turpitude. The Department is persuaded by the logic of this position and adopts a criminal background report rather than sex offender registry requirement. To further protect student participants, the Department adopts a requirement that sponsors provide written information to each participant regarding the reporting of sexual abuse or exploitation. The Department concludes that such information is well advised given the youth of the participants and cross cultural differences that may contribute to a reluctance to speak out regarding such matters.

To provide greater clarity regarding program eligibility, the Department proposed amendment of existing regulations set forth at 62.25(e) to require that student participants be bona fide students not more than 18 years and six months of age as of the program start date. Numerous comments questioned the utility of this change and pointed out that some countries have

educational systems that make it impractical for students to participate in an exchange until they have completed their studies in the home country. To accommodate this small population of potential participants the Department will deem as eligible those students who are not more than 18 and a half years of age as of their program start date regardless of their having completed secondary studies in their home country. This fact must be disclosed to the appropriate school officials of the prospective school placement who may accept or decline their enrollment.

As the oversight and monitoring of students is central to successful administration of these programs, the Department proposed to limit the responsibility of area representatives. Currently this limitation is based on a geographical radius of not more than 150 miles. The Department proposed to amend this requirement by substituting a two-hour driving time limitation. Of the eighteen comments received on this proposal, all were negative and suggested that a geographical limitation be maintained. The Department agrees with these comments and adopts a 120-mile geographical radius based upon the realities of both rural and urban student placements.

Analysis of Comments

The Department received a total of 208 comments on the proposed secondary school student regulations set forth at 22 CFR 62.25. The following is a breakdown of the related sections:

Section 62.25(d)(1) received 81 comments of which 67 were favorable;

Section 62.25(d)(2) received 18 comments of which all were opposed to the change and recommended that the Department stay with a mileage distance instead of a time frame.

Section 62.25(d)(4) received 4 comments of which all were favorable.

Section 62.25(e)(1) & (2) received 143 comments each of which all were opposed to the change.

Section 62.25(f)(1) received 23 comments of which all but one were opposed to the change.

Section 62.25(g)(1) received 13 comments of which 11 were favorable.

Section 62.25(j)(1) received 8 comments of which all were favorable.

Section 62.25(j)(7) received 52 comments of which 34 were favorable.

Section 62.25(m)(1) received 23 comments of which 8 were favorable and several other accepted with modification.

In addition, 21 additional comments were received regarding miscellaneous suggestions and comments.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department is publishing this rule as a final rule, after it was published as a proposed rule on August 12, 2005.

Regulatory Flexibility Act/Executive Order 13272: Small Business

These proposed changes to the regulations are hereby certified as not expected to have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act, 5 U.S.C. 601–612, and Executive Order 13272, section 3(b).

Unfunded Mandates Reform Act of 1995

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by 5 U.S.C. 804 for the purposes of Congressional review of agency rulemaking under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801–808). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 12988

The Department has reviewed this regulation in light of sections 3(a) and 3(b)(2) of Executive Order 12988 to eliminate ambiguity, minimize litigation, establish clear legal standards, and reduce burden.

Executive Orders 12372 and 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to require consultations or warrant the preparation of a federalism summary impact statement. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this regulation.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Part 62

Cultural exchange programs.

■ Accordingly, 22 CFR part 62 is to be amended as follows:

PART 62—EXCHANGE VISITOR PROGRAM

■ 1. The authority citation for part 62 continues to read as follows:

Authority: 8 U.S.C. 1101(a)(15)(J), 1182, 1184, 1258; 22 U.S.C. 1431–1442, 2451–2460; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, 112 Stat. 2681 *et seq.*; Reorganization Plan No. 2 of 1977, 3 CFR, 1977 Comp. p. 200; E.O. 12048 of March 27, 1978; 3 CFR, 1978 Comp. p. 168.

■ 2. Section 62.25 is revised to read as follows:

§ 62.25 Secondary school students.

(a) *Introduction.* This section governs Department of State designated exchange visitor programs under which foreign national secondary school students are afforded the opportunity for up to one year of study in a United States accredited public or private secondary school, while living with an American host family or residing at an accredited U.S. boarding school.

(b) *Program sponsor eligibility.* Eligibility for designation as a secondary school student exchange visitor program sponsor is limited to organizations:

(1) With tax-exempt status as conferred by the Internal Revenue Service pursuant to section 501(c)(3) of the Internal Revenue Code; and

(2) Which are United States citizens as such terms are defined in § 62.2.

(c) *Program eligibility.* Secondary school student exchange visitor programs designated by the Department of State must:

(1) Require all participants to be enrolled and participating in a full course of study at an accredited educational institution;

(2) Allow entry of participants for not less than one academic semester (or quarter equivalency) nor more than two academic semesters (or quarter equivalency) duration; and

(3) Be conducted on a U.S. academic calendar year basis, except for students from countries whose academic year is opposite that of the United States. Exchange students may begin in the second semester of a U.S. academic year if specifically permitted to do so, in writing, by the school in which the exchange visitor is enrolled. Both the host family and school must be notified prior to the exchange student's arrival in the United States that the placement is for either an academic semester or year, or calendar year program.

(d) *Program administration.* Sponsors must ensure that all officers, employees, representatives, agents, and volunteers acting on their behalf:

(1) Are adequately trained and supervised and that any such person in direct personal contact with exchange students has been vetted through a criminal background check ;

(2) Make no student placement beyond 120 miles of the home of a local organizational representative authorized to act on the sponsor's behalf in both routine and emergency matters arising from an exchange student's participation in the exchange visitor program;

(3) Ensure that no organizational representative act as both host family and area supervisor for any exchange student participant;

(4) Maintain, at minimum, a monthly schedule of personal contact with the student and host family, and ensure that the school has contact information for the local organizational representative and the program sponsor's main office; and

(5) Adhere to all regulatory provisions set forth in this Part and all additional terms and conditions governing program administration that the Department may from time to time impose.

(e) *Student selection.* In addition to satisfying the requirements of § 62.10(a), sponsors must ensure that all participants in a designated secondary school student exchange visitor program:

(1) Are secondary school students in their home country who have not completed more than eleven years of primary and secondary study, exclusive of kindergarten; or are at least 15 years of age but not more than 18 years and six months of age as of the program start date;

(2) Demonstrate maturity, good character, and scholastic aptitude; and

(3) Have not previously participated in an academic year or semester secondary school student exchange program in the United States or attended school in the United States in either F–1 or J–1 visa status.

(f) *Student enrollment.* (1) Sponsors must secure prior written acceptance for the enrollment of any exchange student participant in a United States public or private secondary school

Such prior acceptance must:

(i) Be secured from the school principal or other authorized school administrator of the school or school system that the exchange student participant will attend; and

(ii) Include written arrangements concerning the payment of tuition or waiver thereof if applicable.

(2) Under no circumstance may a sponsor facilitate the entry into the United States of an exchange student for whom a written school placement has not been secured.

(3) Sponsors must maintain copies of all written acceptances and make such documents available for Department of State inspection upon request.

(4) Sponsors must provide the school with a translated ''written English language summary'' of the exchange student's complete academic course work prior to commencement of school, in addition to any additional documents the school may require. Sponsors must inform the prospective host school of any student who has completed secondary school in his/her home country.

(5) Sponsors may not facilitate the enrollment of more than five exchange students in one school unless the school itself has requested, in writing, the placement of more than five students.

(6) Upon issuance of Form DS–2019 to a prospective participant, the sponsor accepts full responsibility for placing the student, except in cases of voluntary student withdraw or visa denial.

(g) *Student orientation.* In addition to the orientation requirements set forth at § 62.10, all sponsors must provide exchange students, prior to their departure from the home country, with the following information:

(1) A summary of all operating procedures, rules, and regulations governing student participation in the exchange visitor program along with a detailed summary of travel arrangements;

(2) Age and language appropriate information on how to identify and report sexual abuse or exploitation;

(3) A detailed profile of the host family in which the exchange student is placed. The profile must state whether the host family is either a permanent placement or a temporary arrival family;

(4) A detailed profile of the school and community in which the exchange student is placed; and

(5) An identification card, which lists the exchange student's name, United States host family placement address and telephone number, and a telephone number which affords immediate contact with both the program sponsor, the program sponsor's organizational representative, and Department of State in case of emergency. Such cards may be provided in advance of home country departure or immediately upon entry into the United States.

(h) *Student extra-curricular activities.* Exchange students may participate in school sanctioned and sponsored extra-curricular activities, including athletics, if such participation is:

(1) Authorized by the local school district in which the student is enrolled; and

(2) Authorized by the State authority responsible for determination of athletic eligibility, if applicable.

(i) *Student employment.* Exchange students may not be employed on either a full or part-time basis but may accept sporadic or intermittent employment such as babysitting or yard work.

(j) *Host family selection.* Sponsors must adequately screen and select all potential host families and at a minimum must:

(1) Provide potential host families with a detailed summary of the exchange visitor program and the parameters of their participation, duties, and obligations;

(2) Utilize a standard application form that must be signed and dated by all potential host family applicants which provides a detailed summary and profile of the host family, the physical home environment, family composition, and community environment. Exchange students are not permitted to reside with relatives.

(3) Conduct an in-person interview with all family members residing in the home;

(4) Ensure that the host family is capable of providing a comfortable and nurturing home environment;

(5) Ensure that the host family has a good reputation and character by securing two personal references for each host family from the school or community, attesting to the host family's good reputation and character;

(6) Ensure that the host family has adequate financial resources to undertake hosting obligations;

(7) Verify that each member of the host family household eighteen years of age and older has undergone a criminal background check; and

(8) Maintain a record of all documentation, including but not limited to application forms, background checks, evaluations, and interviews, for all selected host families for a period of three years.

(k) *Host family orientation.* In addition to the orientation requirements set forth in Sec. 62.10, sponsors must:

(1) Inform all host families of the philosophy, rules, and regulations governing the sponsor's exchange visitor program;

(2) Provide all selected host families with a copy of Department of State-promulgated Exchange Visitor Program regulations; and

(3) Advise all selected host families of strategies for cross-cultural interaction and conduct workshops which will familiarize the host family with cultural differences and practices.

(l) *Host family placement.* (1) Sponsors must secure, prior to the student's departure from his or her home country, a permanent or arrival host family placement for each exchange student participant. Sponsors may not:

(i) Facilitate the entry into the United States for an exchange student for whom a host family placement has not been secured;

(ii) Place more than one exchange student with a host family without the express prior written consent of the Department of State. Under no circumstance may more than two exchange students may be placed with one host family.

(2) Sponsors must advise both the exchange student and host family, in writing, of the respective family compositions and backgrounds of each, whether the host family placement is a permanent or temporary placement, and facilitate and encourage the exchange of correspondence between the two prior to the student's departure from the home country.

(3) In the event of unforeseen circumstances which necessitate a change of host family placement, the sponsor must document the reason(s) necessitating such change and provide the Department of State with an annual statistical summary reflecting the number and reason(s) for such change in host family placement in the program's annual report.

(m) *Reporting requirements.* Along with the annual report required by regulations set forth at § 62.15, sponsors must file with the Department of State the following information:

(1) Sponsors must immediately report to the Department any incident or allegation involving the actual or alleged sexual exploitation or abuse of an exchange student participant. Sponsors must also report such allegations as required by local or state statute or regulation. Failure to report such incidents to the Department and, as required by state law or regulation, to local law enforcement authorities shall be grounds for the summary suspension and termination of the sponsor's Exchange Visitor Program designation.

(2) A summation of all situations which resulted in the placement of exchange student participants with more than one host family or school placement; and

(3) Provide a report of all final academic year and semester program participant placements by August 31 for the upcoming academic year or January 15 for the Spring semester and calendar year. The report must provide at a minimum, the exchange visitor student's full name, Form DS–2019 number (SEVIS ID #), host family placement (current U.S. address), and school (site of activity) address.

Dated: March 23, 2006.

Stanley S. Colvin,

Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 06–3208 Filed 4–3–06; 8:45 am]

BILLING CODE 4710–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 18

[FRL–8053–3]

RIN 2030–AA91

Environmental Protection Research Fellowships and Special Research Consultants for Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action on the implementation of the EPA's statutory authority in Title II of the Interior, Environment, and Related Agencies Appropriations Act of 2006 (Pub. L. 109–54) that will allow the EPA to establish fellowships in environmental protection research, appoint fellows to conduct this research, and appoint special research consultants to advise on environmental protection research. Under an administrative provision of Public Law 109–54, the Administrator may, after consultation with the Office of Personnel Management, make up to five (5) appointments in any fiscal year from 2006 to 2011 for the Office of Research and Development. Appointees under this authority shall be employees of the EPA and will engage in activities related to scientific and engineering research that support EPA's mission to protect the environment and human health.

DATES: This rule is effective on June 5, 2006 without further notice, unless the EPA receives adverse comment by May 4, 2006. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OARM–2006–0249, by one of the following methods:

- Federal Docket Management System (FDMS): *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- Mail: John O'Brien, Office of Human Resources/Office of Administration and Resources Management, Mail Code: 3631M, United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: *obrien.johnt@epa.gov.*
- Hand Delivery: Office of Environmental Information Docket, Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OARM–2006–0249. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Federal Docket Management System (FDMS) or

e-mail. FDMS is an ''anonymous access'' system. This means that the 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 the EPA without going through FDMS, 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. The EPA recommends that you include your name and other contact information in the body of your electronic comment with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in FDMS at *http://www.regulations.gov.* 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 FDMS or in hard copy at the Office of Environmental Information Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: For further information, please contact John O'Brien at (202) 564–7876, Office of Human Resources/Office of Administration and Resources Management, Mail Code 3631M, Room 1136 EPA-East, United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: *obrien.johnt@epa.gov.* You may also contact William Ocampo at (202) 564–0987 or Robert Stevens at (202) 564–5703, Office of Research and Development, Mail Code 8102R, United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail addresses: *ocampo.william@epa.gov* and *stevens.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comment. We anticipate no adverse comment because this rule implements statutory authority for activities that affect management and personnel functions of the EPA with little or no impact on the entities that are normally regulated by the Agency or on the public in general. However, in the ''Proposed Rules'' section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to implement the EPA's statutory authority (in Title II of the Interior, Environment, and Related Agencies Appropriations Act of 2006 (Pub. L. 109–54) that together with 42 U.S.C. 209 will allow the EPA to establish fellowships in environmental protection research, appoint fellows to conduct this research, and appoint special research consultants to advise on environmental protection research) if adverse comments are filed. This rule will be effective on June 5, 2006 without further notice unless we receive adverse comment by May 4, 2006. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

The EPA now has authority under 42 U.S.C. 209 to (1) Establish fellowships in environmental protection research and appoint fellows to conduct this research and (2) appoint environmental protection special consultants to advise on environmental protection research. This authority is not subject to the federal civil service laws for employees specified in 5 U.S.C. The EPA acquired this appointment authority in an administrative provision in Title II of the Interior, Environment and Related Agencies Appropriations Act. This provision authorizes the Administrator, after consultation with the Office of Personnel Management, to make up to five (5) appointments in any fiscal year from 2006 to 2011 for the Office of Research and Development under the authority provided in 42 U.S.C. 209. The EPA has not previously used the 42 U.S.C. 209 appointment authority, and hereby proposes to establish such rules as are necessary to implement the authority. Appointees under this authority will engage in activities related to scientific and engineering research that support the EPA's mission to protect the environment and human health and will be employees of the EPA.

Statutory and Executive Order Reviews

Executive Order 12866, Regulatory Planning and Review: Under Executive Order 12866, (58 FR 51,735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant,'' and therefore, subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may: 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; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866, and is therefore, not subject to OMB review because the authority for establishing fellowships and appointing fellows and special consultants does not meet any of the criteria.

Paperwork Reduction Act: This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The action will authorize the Agency to recruit candidates for position vacancies and to require that candidates submit information relating to their qualifications for the vacancy. The information collected for such recruitment activities will follow the same guidelines as are currently followed by the Agency. 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; 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 the EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Regulatory Flexibility Act: Today's final rule is not subject to the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBRERA), 5 U.S.C. 601 *et seq.* The RFA generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because the rule pertains to agency management or personnel whom the APA expressly exempts from notice and comment rule making requirements (5 U.S.C. 553(a)(2)).

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

Executive Order 13132—Federalism: Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, Executive Order 13132 does not apply to this rule.

Executive Order 13175—Consultation and Coordination with Indian Tribal Governments: Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This final rule does not have tribal implications, as specified in Executive Order 13175. This final rule pertains to the management and personnel functions of the EPA. Thus, Executive Order 13175 does not apply to this rule.

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

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

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

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

Congressional Review Act: The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added to by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the

Congress and to the Comptroller General of the United States. Section 804 exempts from section 801 the following types of rules of particular applicability: rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties (5 U.S.C. 804(3). The EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule relating to agency personnel.

List of Subjects in 40 CFR Part 18

Environmental protection, Administrative practice and procedure, Special employment actions.

Dated: March 27, 2006.

Stephen L. Johnson,

Administrator.

■ For the reasons set out in the preamble, 40 CFR chapter I is amended by adding part 18 as follows:

PART 18—ENVIRONMENTAL PROTECTION RESEARCH FELLOWSHIPS AND SPECIAL RESEARCH CONSULTANTS FOR ENVIRONMENTAL PROTECTION

Sec.

18.1 Definitions.
18.2 Applicability.
18.3 Purpose of Environmental Protection Research Fellowships.
18.4 Establishment of Environmental Protection Research Fellowships.
18.5 Qualifications of Environmental Protection Research Fellows.
18.6 Method of Application.
18.7 Selection and Appointment of Environmental Protection Research Fellows.
18.8 Stipends, Allowances, and Benefits.
18.9 Duration of Environmental Protection Research Fellowships.
18.10 Appointment of Special Research Consultants for Environmental Protection.
18.11 Standards of Conduct and Financial Disclosure.

Authority: 42 U.S.C. 209; Pub. L. 109–54, 119 Stat. 531.

§ 18.1 Definitions.

As used in this part, continental United States does not include Hawaii or Alaska. The Administrator means the Administrator of the EPA and any other officer or employee of the Agency to whom the authority involved may be delegated. An Environmental Protection Research Fellowship is one which requires the performance of services, either full or part time, for the EPA. A Special Research Consultant for Environmental Protection is a special consultant appointed to assist and advise in the operations of the research activities of the EPA.

§ 18.2 Applicability.

The regulations in this part apply to the establishment of Environmental Protection Research Fellowships, the designation of persons to receive such fellowships, the appointment of Environmental Protection Research fellows, and the appointment of Special Research Consultants for environmental protection in the EPA. The EPA's statutory authority for these actions is established in Title II of the Interior, Environmental and Related Agencies Appropriations Act of 2006 (Pub. L. 109–54). Under an administrative provision of Public Law 109–54 the Administrator may, after consultation with the Office of Personnel Management, make up to five (5) appointments in any fiscal year from 2006 to 2011 for the Office of Research and Development under the authority provided in 42 U.S.C. 209. Appointees under this statutory authority shall be employees of the EPA.

§ 18.3 Purpose of Environmental Protection Research Fellowships.

Environmental Protection Research Fellowships in the Agency are for the purpose of encouraging and promoting research, studies, and investigations related to the protection of human health and the environment. Such fellowships may be provided to secure the services of talented scientists and engineers for a period of limited duration for research that furthers the EPA's mission where the nature of the work or the character of the individual's services render customary employing methods impracticable or less effective.

§ 18.4 Establishment of Environmental Protection Research Fellowships.

All Environmental Protection Research fellowships shall be established by the Administrator or designee. In establishing an Environmental Protection Research fellowship, or a series of Environmental Protection Research fellowships, the Administrator shall prescribe in writing the conditions (in addition to those provided in the regulations in this part) under which Environmental Protection Research fellows will be appointed and will hold their fellowships.

§ 18.5 Qualifications for Environmental Protection Research Fellowships.

Scholastic and other qualifications shall be prescribed by the Administrator or designee for each Environmental Protection Research fellowship, or series of Environmental Protection Research fellowships. Each individual appointed to an Environmental Protection Research fellowship shall: have presented satisfactory evidence of general suitability, including professional and personal fitness; possess any other qualifications as reasonably may be prescribed; and meet all requirements and standards for documentation and disclosure of conflicts of interest and ethical professional conduct.

§ 18.6 Method of Application.

Application for an Environmental Protection Research fellowship shall be made in accordance with procedures established by the Administrator or designee.

§ 18.7 Selection and appointment of Environmental Protection Research Fellows.

The Administrator or designee shall do the following: prescribe a suitable professional and personal fitness review and an examination of the applicant's qualifications; designate in writing persons to receive Environmental Protection Research fellowships; and establish procedures for the appointment of Environmental Protection Research fellows.

§ 18.8 Stipends, Allowances, and Benefits.

(a) *Stipends.* Each Environmental Protection Research fellow shall be entitled to such stipend as is authorized by the Administrator or designee.

(b) *Travel and transportation allowances.* Under conditions prescribed by the Administrator or designee, an individual appointed as an Environmental Protection Research fellow may be authorized travel and transportation or relocation allowances for his or her immediate family under subchapter I of chapter 57 of title 5 U.S.C. 5701, in conjunction with travel authorized by the Administrator or designee. Included under this part is travel from place of residence, within or outside the continental United States, to first duty station; for any change of duty station ordered by the Administrator or designee during the term of the fellowship; and from last duty station to the place of residence which the individual left to accept the fellowship, or to some other place at no greater cost to the Government. An Environmental Protection Research fellow shall be entitled to travel allowances or transportation and per diem while traveling on official business away from his or her permanent duty station during the term of the fellowship. Except as otherwise provided herein, an Environmental Protection Research fellow shall be entitled to travel and transportation allowances authorized in this part at the same rates as may be

authorized by law and regulations for other civilian employees of the EPA. If an Environmental Protection Research fellow dies during the term of a fellowship, and the place of residence that was left by the fellow to accept the fellowship was outside the continental United States, the payment of expenses of preparing the remains for burial and transporting them to the place of residence for interment may be authorized. In the case of deceased fellows whose place of residence was within the continental United States, payment of the expenses of preparing the remains and transporting them to the place of residence for interment may be authorized as provided for other civilian employees of the Agency.

(c) *Benefits.* In addition to other benefits provided herein, Environmental Protection Research fellows shall be entitled to benefits as provided by law or regulation for other civilian employees of the Agency.

(d) *Training.* Environmental Protection Research fellows are eligible for training at Government expense on the same basis as other Agency employees.

§ 18.9 Duration of Environmental Protection Research Fellowships.

Initial appointments to Environmental Protection Research fellowships may be made for varying periods not in excess of 5 years. Such an appointment may be extended for varying periods not in excess of 5 years for each period in accordance with procedures and requirements established by the Administrator or designee.

§ 18.10 Appointment of Special Research Consultants for Environmental Protection.

(a) *Purpose.* When the EPA requires the services of consultants with expertise in environmental sciences or engineering who cannot be obtained when needed through regular civil service appointment or under the compensation provisions of the Classification Act of 1949, Special Research Consultants may be appointed to assist and advise in the operations of the EPA, subject to the provisions of the following paragraphs and in accordance with such instructions as may be issued from time to time by the Administrator or designee.

(b) *Appointments.* Appointments, pursuant to the provisions of this section, may be made by those officials in the EPA to whom authority has been delegated by the Administrator or designee.

(c) *Compensation.* The per diem or other rates of compensation shall be fixed by the appointing officer in accordance with criteria established by the Administrator or designee.

§ 18.11 Standards of Conduct and Financial Disclosure.

All individuals appointed to an Environmental Protection Research Fellowship or as a Special Research Consultant shall be subject to the same current standards and disclosure regulations and requirements as Title 5 appointees.

[FR Doc. 06–3204 Filed 4–3–06; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[EPA–HQ–OPPT–2004–0123; FRL–7687–9]

Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under the Toxic Substances Control Act (TSCA); Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Agency is making available a guide for complying with the Toxic Substances Control Act (TSCA) regulations for the cleanup and disposal of polychlorinated biphenyl (PCB) contamination. In August 2003, EPA determined that the distribution in commerce of real property contaminated with PCBs is not a prohibited distribution in commerce of PCBs. As a result, the transfer in ownership of contaminated real property may serve to expedite cleanup efforts of contaminated properties and result in increased opportunities for economic redevelopment of land that otherwise would remain barren and unsightly. The guidance document, ''Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under the Toxic Substances Control Act (TSCA),'' will assist individuals in navigating the TSCA PCB regulations in 40 CFR part 761 for relevant PCB cleanup and disposal requirements. It should be useful to individuals who are planning or are engaged in PCB remediation activities (e.g., the redevelopment of sites with PCB contamination), as well as State environmental officials who are implementing State response programs, in complying with the PCB waste management requirements promulgated under section 6(e) of TSCA.

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: Rebecca Woods or Sara McGurk, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1277 or (202) 566–0480; e-mail address: *woods.rebecca@epa.gov* or *mcgurk.sara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you own or acquire real property that has been contaminated with PCBs. The requirements for cleanup and disposal of PCB remediation waste are codified at 40 CFR 761.50(b)(3) and 761.61 and are applicable to the cleanup of wastes resulting from the disposal (e.g., spills, leaks, or any uncontrolled discharge) of liquids containing PCBs. Since the PCB regulations promulgated under section 6(e) of TSCA are not delegable, these Federal requirements serve as the baseline for the management of PCB wastes. Potentially affected entities may include, but are not limited to:

- Oil and Gas Extraction (NAICS code 21111), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Electric Power Generation, Transmission and Distribution (NAICS code 2211), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Construction (NAICS code 23), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Food Manufacturing (NAICS code 311), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Paper Manufacturing (NAICS code 322), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Petroleum and Coal Products Manufacturing (NAICS code 324), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Primary Metal Manufacturing (NAICS code 331), e.g., Former and existing facilities with surfaces contaminated by PCBs.
- Rail Transportation (NAICS code 48211), e.g.,Former and existing facilities with surfaces contaminated by PCBs.

• Lessors of Real Estate (NAICS code 5311), e.g., Former and existing facilities with surfaces contaminated by PCBs.

• Professional, Scientific and Technical Services (NAICS code 54), e.g., Testing laboratories, environmental consulting.

• Waste Treatment and Disposal (NAICS code 5622), e.g., Former and existing facilities with surfaces contaminated by PCBs.

• Repair and Maintenance (NAICS code 811), e.g., Repair and maintenance of appliances, machinery, and equipment.

• Public Administration (NAICS code 92), e.g., Federal, State, and local agencies.

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

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

1. *Docket*. EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2004–0123. Publicly available docket materials are available electronically at *http://www.regulations.gov* or in hard copy at the OPPT Docket, EPA Docket Center (EPA/DC), EPA West, Rm. B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center 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 OPPT Docket is (202) 566–0280.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings *at http://www.epa.gov/fedrgstr*.

II. What Action is the Agency Taking?

This action announces the availability of a guidance document entitled, *Polychlorinated Biphenyl (PCB) Site Revitalization Guidance Under the Toxic Substances Control Act (TSCA)*. This guidance document was developed to provide assistance to individuals who need to navigate the TSCA PCB regulations for the requirements applicable to the cleanup and disposal of PCB remediation waste. As guidance, this document presents existing requirements and is not intended to impose any new requirements. The primary focus of this guidance is the self-implementing aspects of the PCB remediation waste provision at 40 CFR 761.61 which governs the management of PCB waste generated as the result of PCB spills and associated cleanup activities.

Polychlorinated biphenyls are a class of 209 synthetic compounds which have no known counterpart in the natural environment. They were first manufactured for commercial use in 1929 under the brand name ''Arochlor.'' PCBs have been used in many electrical devices due to their superior cooling, insulating, and dielectric properties. In addition, PCBs have been used in various products for example as plasticizers, pesticide extenders, flame retardants and fillers. The unique combination of physical and chemical properties of PCBs, which made them so valuable commercially, are the same traits that make releases environmentally detrimental (e.g., very stable compounds which resist breakdown from high temperatures and aging; are not biodegradable and are therefore persistent in the environment; are not considered volatile; are odorless unless mixed with other solvents and additives). The Toxic Substances Control Act, enacted October 1976, mandated specific prohibitions and/or restrictions on the manufacture, processing, use, and distribution in commerce of PCBs, and any combination of those activities (see section 6(e) of TSCA). Regulations implementing these requirements are promulgated at 40 CFR part 761.

The Agency anticipates this guidance will be beneficial to individuals who want to use the self-implementing cleanup procedures and to State environmental officials who are implementing voluntary cleanup and response programs, and seek to be in compliance with the Federal requirements under TSCA for PCB remediation waste management activities. Finally, the guidance document provides EPA's interpretation of the use authorization for contaminated porous surfaces at 40 CFR 761.30(p) in light of the Court's ruling in *Utility Solid Waste Activities Group* v. *EPA*, 236 F.3d 749 (D.C. Circuit 2001) (USWAG). In USWAG, the Court vacated a technical amendment to the use authorization for porous surfaces because the amendment was not promulgated through notice and comment rulemaking (see the **Federal Register** of June 20, 2003 (68 FR 36927) (FRL–7314–2) for additional background information). In the future, EPA plans to initiate notice and comment rulemaking to further clarify the applicability of the use authorization for contaminated porous surfaces.

Copies of the guidance document are available from these sources:

1. The Agency's PCB website at *http://www.epa.gov/pcb* under ''Interpretive Guidance.''

2. *http://www.regulations.gov*.

3. The TSCA Assistance Information Service (TAIS), call (202) 554–1404 or send an e-mail to *TSCA-Hotline@epa.gov*.

4. Either technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls (PCBs), Reporting and recordkeeping requirements.

Dated: March 23, 2006.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 06–3206 Filed 4–3–06; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7784]

List of Communities Eligible for the Sale of Flood Insurance

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

ACTION: Final rule.

SUMMARY: This rule identifies communities that are participating and suspended from the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of

properties located in the communities listed below.

DATES: The effective date for each community is listed in the fourth column of the following tables.

ADDRESSES: Flood insurance policies for properties located in the communities listed below can be obtained from any licensed property insurance agent or broker serving the eligible community or from the NFIP by calling 1–800–638–6620.

FOR FURTHER INFORMATION CONTACT: William H. Lesser, Mitigation Division, 500 C Street, SW., Room 412, Washington, DC 20472, (202) 646–2807.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance that is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Because the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for properties in these communities.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 202 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4016(a), requires the purchase of flood insurance as a condition of Federal or Federally-related financial assistance for acquisition or construction of buildings in the SFHAs shown on the map.

The Administrator finds that delayed effective dates would be contrary to the public interest and that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

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

Regulatory Flexibility Act. The Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 is revised to read as follows:

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

§ 64.6 [Amended]

■ The tables published under the authority of § 64.6 are amended as follows:

State	Location	Community No.	Effective date of eligibility	Current effective map date
New Eligibles: Emergency Program				
Region VII				
Iowa	Prescott, City of, Adams County.	190004	October 12, 2005	FHBM dated November 5, 1976.
Region IV				
Kentucky	Brodhead, City of, Rockcastle County.	210201	October 20, 2005	FHBM dated February 27, 1976.
*Do	Calloway County, Unincorporated Areas.	210313	.....do	FHBM dated December 2, 1977.
Region V				
Illinois	Montrose, Village of, Cumberland and Effingham Counties.	170230	December 15, 2005	Unmapped.
Wisconsin	Siren, Village of, Burnett County.	550041	.....do	Unmapped.
Region IV				
Kentucky	Union County, Unincorporated Areas.	210301	December 21, 2005	Unmapped.
Region IV				
Alabama	Cuba, Town of, Sumter County.	010379	December 29, 2005	FHBM dated March 16, 1979.
North Carolina	Calypso, Town of, Duplin County.	370661	.....do	Never Mapped.
Do	Warsaw, Town of, Duplin County.	370633	.....do	Never Mapped.
Do	Webster, Town of, Jackson County.	370281	.....do	FHBM dated February 10, 1978.
New Eligibles: Regular Program				
Region I				
Maine	**Mariaville, Town of, Hancock County.	230286	October 1, 2005	FHBM dated March 14, 1975, converted to FIRM by letter October 1, 2005.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Region VII				
Iowa	**Beaman, City of, Grundy County.	190400	October 19, 2005	October 19, 2005.
Do	**Grundy Center, City of, Grundy County.	190403	.....do	Do.
Region IV				
Tennessee	**Ramer, Town of, McNairy County.	470131	November 1, 2005	FHBM, dated November 29, 1974, converted to FIRM by letter November 1, 2005.
Region V				
Ohio	Clayton, City of, Montgomery County.	390821	November 10, 2005	January 6, 2005.
Region VII				
Nebraska	Knox County, Unincorporated Areas.	310451	November 14, 2005	August 18, 2005.
Kansas	Cheney, City of, Sedgwick County.	200478	November 30, 2005	Use Sedgwick County (CID 200321) FIRM panel 0175A, dated June 3, 1986.
Missouri	**Wardsville, City of, Cole County.	290633	December 2, 2005	December 2, 2005.
Region VIII				
Colorado	Glendale, City of, Arapahoe County.	080247	December 5, 2005	August 16, 1995.
Region VII				
Iowa	Kamrar, City of, Hamilton County.	190406	December 6, 2005	November 17, 2005.
Region IV				
Alabama	**Cowarts, Town of, Houston County.	010103	December 16, 2005	December 16, 2005.
Region VIII				
Utah	**West Haven, City of, Weber County.	490249	.....do	Do.
Region II				
New York	East Hills, Village of, Nassau County.	361627	December 19, 2005	April 2, 1997.
Region IV				
Alabama	Lee County, Unincorporated Areas.	010250	December 29, 2005	September 16, 1981.
Do	Summerdale, Town of, Baldwin County.	010328	.....do	June 17, 2002.
North Carolina	Dortches, Town of, Nash County.	370652	.....do	November 3, 2004.
Do	Momeyer, Town of, Nash County.	370657	.....do	Do.
Region V				
Ohio	Philo, Village of, Muskingum County.	390851	.....do	FHBM dated March 30, 1979, and Muskingum County FIRM (CID 390425) dated September 5, 1990.
Nebraska	Crofton, City of, Knox County	310361	October 6, 2005	August 18, 2005.
Region II				
New Jersey	East Rutherford Borough of, Bergen County.	340028	October 13, 2005	September 30, 2005.
Region IV				
Kentucky	Owsley County, Unincorporated Areas.	210296	November 3, 2005	August 5, 1985.
Region VII				
Missouri	Argyle, Village of, Osage County.	290491	November 10, 2005	September 2, 2005.
Region VII				
Iowa	Pierson, City of, Woodbury County.	190295	November 14, 2005	September 18, 1985.
Region VIII				
Utah	Nibley, City of, Cache County	490023	December 1, 2005	August 5, 1986.
Region VII				
Kansas	Auburn, City of, Shawnee County.	200332	December 6, 2005	January 16, 1981.
Region II				
New York	Belfast, Town of, Allegany County.	361096	December 7, 2005	August 6, 1982.
Region I				
Maine	Franklin, Town of, Hancock County.	230282	December 9, 2005	July 16, 1991.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Region V				
Illinois	Virginia, City of, Cass County	170024	.....do	September 1, 1986.
Withdrawals				
None.				
Suspensions				
Region IV				
Tennessee	McNairy County, Unincorporated Areas.	470127	June 16, 1986, Emerg; July 1, 1988, Reg; October 24, 2005, Susp.	October 19, 2005.
Do	Benton County, Unincorporated Areas.	470218	October 4, 1989, Emerg; July 2, 1991, Reg; December 19, 2005, Susp.	December 16, 2005.
Probation				
None.				
Suspension Rescissions				
Region VII				
Missouri	Alton, City of, Oregon County	290490	October 24, 2005 Suspension Notice Rescinded.	October 19, 2005.
Do	Thayer, City of, Oregon County.	290267	.....do	Do.
Region I				
Maine	Windsor, Town of, Kennebec County.	230251	November 1, 2005 Suspension Notice Rescinded.	February 4, 1987.
Region IV				
North Carolina	Jacksonville, City of, Onslow County.	370178	.....do	November 3, 2005.
Do	North Topsail Beach, Town of, Onslow County.	370466	.....do	Do.
Do	Onslow County, Unincorporated Areas.	370340	.....do	Do.
Do	Richlands, Town of, Onslow County.	370341	.....do	Do.
Do	Swansboro, Town of, Onslow County.	370179	.....do	Do.
Do	Freemont, Town of, Wayne County.	370492	December 1, 2005 Suspension Notice Rescinded.	December 2, 2005.
Do	Smithfield, Town of, Johnston County.	370140	.....do	Do.
Do	Walnut Creek, Village of, Wayne County.	370435	.....do	Do.
Do	Wayne County, Unincorporated Areas.	370254	.....do	Do.
Region VII				
Missouri	Cole County, Unincorporated Areas.	290107	.....do	Do.
Do	Jefferson, City of, Cole County.	290108	.....do	Do.
Nebraska	Bellevue, City of, Sarpy County.	310191	.....do	Do.
Do	Bennington, City of, Douglas County.	310074	.....do	Do.
Do	Douglas County Unincorporated Areas.	310073	.....do	Do.
Do	Elkhorn, City of, Douglas County.	310075	.....do	Do.
Do	La Vista, City of, Sarpy County.	310192	.....do	Do.
Do	Omaha, City of, Douglas County.	315274	.....do	Do.
Do	Papillion, City of, Sarpy County.	315275	.....do	Do.
Do	Ralston, City of, Douglas County.	310077	.....do	Do.
Do	Sarpy County Unincorporated Areas.	310190	.....do	Do.

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Valley, City of, Douglas County.	310078	.....do	Do.
Region I				
Connecticut	South Windsor, Town of, Hartford County.	090036	December 16, 2005 Suspension Notice Rescinded.	December 16, 2005.
Region IV				
North Carolina	Currituck County Unincorporated Areas.	370078	.....do	Do.
Tennessee	Camden, City of, Benton County.	470010	.....do	Do.
Region VI				
New Mexico	Jal, City of, Lea County	350030	.....do	Do.
Region VIII				
Utah	North Ogden, City of, Weber County.	490214	.....do	Do.
Do	Ogden, City of, Weber County	490189	.....do	Do.
Do	Plain City, City of, Weber County.	490217	.....do	Do.
Do	Riverdale, City of, Weber County.	490190	.....do	Do.
Do	Roy, City of, Weber County	490223	.....do	Do.
Do	South Ogden, City of, Weber County.	490191	.....do	Do.
Do	Uintah, City of, Weber County	490192	.....do	Do.
Do	Weber County, Unincorporated Areas.	490187	.....do	Do.
Do	West Haven, City of, Weber County.	490249	.....do	Do.

* .....do = Ditto.

** Designates communities converted from Emergency Phase of participation to the Regular Phase of participation.

Code for reading fourth and fifth columns: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension; With.-Withdrawn; NSFHA-Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

Dated: March 24, 2006.

Michael K. Buckley,

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

[FR Doc. 06–3191 Filed 4–3–06; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7917]

Suspension of Community Eligibility

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

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are scheduled for suspension on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If FEMA receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will not occur and a notice of this will be provided by publication in the **Federal Register** on a subsequent date.

DATES: The effective date of each community's scheduled suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you want to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR ADDITIONAL INFORMATION CONTACT: William H. Lesser, Mitigation Division, 500 C Street SW., Washington, DC 20472, (202) 646–2807.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the NFIP, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, FEMA has identified the Special Flood Hazard Areas (SFHAs) in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM, if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance

pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in identified SFHAs for communities not participating in the NFIP and identified for more than a year, on FEMA's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives 6-month, 90-day, and 30-day notification letters addressed to the Chief Executive Officer stating that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications were made, this final rule may take effect within less than 30 days.

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

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless remedial action takes place.

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

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR Part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for part 64 is revised to read as follows:

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

§ 64.6 [Amended]

■ The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Region IV				
North Carolina:				
Carolina Beach, Town of, New Hanover County.	375347	May 21, 1971, Emerg; May 2, 1975, Reg; April 3, 2006, Susp.	04/03/06	04/03/06
Kure Beach, Town of, New Hanover County.	370170	September 12, 1974, Emerg; January 6, 1982, Reg; April 3, 2006, Susp.	04/03/06	04/03/06
New Hanover County, Unincorporated Areas.	370168	June 23, 1972, Emerg; July 17, 1978, Reg; April 3, 2006, Susp.	04/03/06	04/03/06
Wilmington, City of, New Hanover County.	370171	January 16, 1974, Emerg; April 17, 1978, Reg; April 3, 2006, Susp.	04/03/06	04/03/06
Wrightsville Beach, Town of, New Hanover County.	375361	June 12, 1970, Emerg; November 6, 1970, Reg; April 3, 2006, Susp.	04/03/06	04/03/06
Region V				
Ohio:				
Adena, Village of, Jefferson County ...	390295	February 18, 1977, Emerg; December 1, 1983, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Bellaire, Village of, Belmont County ...	390025	August 1, 1975, Emerg; November 2, 1983, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Belmont County, Unincorporated Areas.	390762	June 3, 1976, Emerg; February 4, 1988, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Bethesda, Village of, Belmont County	390674	July 13, 1990, Emerg; July 13, 1990, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Bridgeport, Village of, Belmont County.	390026	November 2, 1974, Emerg; February 1, 1979, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Brookside, Village of, Belmont County	390027	March 20, 1975, Emerg; February 4, 1988, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Columbiana County, Unincorporated Areas.	390076	May 12, 1977, Emerg; March 5, 1990, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Holloway, Village of, Belmont County	390028	August 11, 1975, Emerg; September 18, 1985, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Irondale, Village of, Jefferson County	390741	February 9, 1977, Emerg; October 18, 1983, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Martins Ferry, City of, Belmont County.	390029	June 2, 1975, Emerg; July 5, 1983, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
New Waterford, Village of, Columbiana County.	390663	June 12, 1975, Emerg; May 1, 1987, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Rogers, Village of, Columbiana County.	390645	August 8, 1990, Emerg; December 1, 1991, Reg; April 5, 2006, Susp.	04/05/06	04/05/06

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain federal assistance no longer available in SFHAs
Salineville, Village of, Columbiana County.	390628	March 21, 1978, Emerg; August 5, 1991, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Shadyside, Village of, Belmont County.	390031	January 21, 1975, Emerg; July 18, 1983, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Steubenville, City of, Jefferson County.	390302	August 6, 1975, Emerg; January 6, 1983, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Stratton, Village of, Jefferson County	390303	June 27, 1975, Emerg; October 15, 1982, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Tiltonsville, Village of, Jefferson County.	390634	July 30, 1975, Emerg; October 15, 1982, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Washingtonville, Village of, Columbiana County.	390087	January 26, 1996, Emerg; April 5, 2006, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Wellsville, Village of, Columbiana County.	390088	February 27, 1975, Emerg; September 29, 1978, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Yorkville, Village of, Belmont and Jefferson Counties.	390033	May 9, 1975, Emerg; October 15, 1982, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Region VII				
Missouri:				
Arnold, City of, Jefferson County	290188	October 29, 1973, Emerg; January 16, 1980, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Byrnes Mill, City of, Jefferson County	290891	May 16, 1983, Emerg; May 16, 1983, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Festus, City of, Jefferson County	290191	September 3, 1971, Emerg; February 14, 1976, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Herculaneum, City of, Jefferson County.	290192	January 28, 1974, Emerg; May 15, 1978, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Hillsboro, City of, Jefferson County	290573	September 25, 2003, Emerg; April 1, 2004, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Jefferson County, Unincorporated Areas.	290808	June 10, 1975, Emerg; May 15, 1983, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Kimmswick, City of, Jefferson County	290193	April 15, 1974, Emerg; January 6, 1982, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Pevely, City of, Jefferson County	290677	September 20, 1976, Emerg; September 18, 1985, Reg; April 5, 2006, Susp.	04/05/06	04/05/06
Scotsdale, Town of, Jefferson County	290949	October 21, 2002, Emerg; October 21, 2002, Reg; April 5, 2006, Susp.	04/05/06	04/05/06

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: March 23, 2006.

David I. Maurstad,

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

[FR Doc. 06–3189 Filed 4–3–06; 8:45 am]

BILLING CODE 9110–12–P

Proposed Rules

Federal Register
Vol. 71, No. 64
Tuesday, April 4, 2006

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. APHIS–2005–0103]

RIN 0579–AB98

Special Need Requests Under the Plant Protection Act

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend our domestic quarantine regulations to establish a process by which a State or political subdivision of a State could request approval to impose prohibitions or restrictions on the movement in interstate commerce of specific articles that are in addition to the prohibitions and restrictions imposed by the Animal and Plant Health Inspection Service. The Plant Protection Act provides that States or political subdivisions of States may make such special need requests, but there are currently no procedures in place for their submission or consideration. This action would establish a process by which States may make a special need request.

DATES: We will consider all comments that we receive on or before June 5, 2006.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and, in the lower ''Search Regulations and Federal Actions'' box, select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click on ''Submit.'' In the Docket ID column, select APHIS–2005–0103 to submit or view public comments and to view supporting and related materials available electronically. After the close of the comment period, the docket can be viewed using the ''Advanced Search'' function in Regulations.gov.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2005–0103, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2005–0103.

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

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

FOR FURTHER INFORMATION CONTACT: Mr. James Writer, Agriculturist, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 137, Riverdale, MD 20737–1231; (301) 734–7121.

SUPPLEMENTARY INFORMATION:

Background

The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) gives authority to the Secretary of Agriculture to prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, article, or means of conveyance if the Secretary determines that the prohibition or restriction is necessary to prevent the introduction of a plant pest or noxious weed into the United States, or the dissemination of a plant pest or noxious weed within the United States. The Secretary has delegated this authority to the Administrator of the Animal and Plant Health Inspection Service (APHIS).

Under section 436 of the PPA (7 U.S.C. 7756), no State or political subdivision of a State may regulate the movement in interstate commerce of any article, means of conveyance, plant, biological control organism, plant pest, noxious weed, or plant product in order (1) to control a plant pest or noxious weed; (2) to eradicate a plant pest or noxious weed; or (3) to prevent the introduction or dissemination of a biological control organism, plant pest, or noxious weed if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this prohibition are when a State or political subdivision of a State imposes regulations which are consistent with and do not exceed the regulations or orders issued by the Secretary, or when the State or political subdivision of a State demonstrates to the Secretary, and the Secretary finds, that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

Although the PPA provides that the Secretary may grant a request from a State or political subdivision of a State for a special need exception, APHIS has not issued criteria regarding the content, submission, and consideration of such requests. Therefore, in this document, we are proposing to amend our domestic quarantine notices in 7 CFR part 301 by adding a new ''Subpart—Special Need Requests'' (7 CFR 301.1 through 301.1–3) in which we would set out procedures for the submission and handling of special need requests. Proposed § 301.1 would detail the purpose and scope of the new subpart, and proposed § 301.1–1 would provide definitions for certain terms used in the subpart. Proposed § 301.1–2 would spell out the information that a State or a political subdivision of a State applying for a special need exception would have to provide, and proposed § 301.1–3 would explain the actions that APHIS would take following its receipt of a special need request.

Purpose and Scope

Section 301.1 of the proposed regulations would explain the purpose of the new subpart and how the subpart may be used in accordance with the PPA and the implementing regulations. Paragraph (a) would describe what a special need request is in the context of the PPA. Paragraph (b) would explain that the subpart contains instructions for the submission and consideration of special need requests under the PPA.

Definitions

Section 301.1–1 of the proposed regulations would contain eight

standard definitions that are consistent with those used elsewhere in our regulations. We would define *Administrator* as the Administrator of the Animal and Plant Health Inspection Service or any person authorized to act for the Administrator; *Animal and Plant Health Inspection Service (APHIS)* as the Animal and Plant Health Inspection Service of the United States Department of Agriculture; and *biological control organism* as any enemy, antagonist, or competitor used to control a plant pest or noxious weed. We would also define *interstate commerce* as trade, traffic, or other commerce (A) from one State into or through any other State; or (B) within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States; *move (moved, movement*) as shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved; and *noxious weed* as any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health or the environment. In addition, we would define *plant pest* as any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof or any processed, manufactured, or other products of plants; and *State* as the District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

Submission of Requests

Section 301.1–2 of the proposed regulations would describe the information that would have to be included in any request to the Administrator for a special need exception. As our contacts are at the State level, paragraph (a) would provide that a special need request generated by a political subdivision of a State would have to be submitted to APHIS through the State. Paragraph (a) would also state that all special need requests must be signed by the appropriate executive official or a plant protection official of the State and must contain the following information:

- Data drawn from a scientifically sound detection survey, showing that the biological control organism, noxious weed, or plant pest of concern does not exist in the State or political subdivision or, if already present in the State or political subdivision, the distribution of the biological control organism, noxious weed, or plant pest of concern;
- If the biological control organism, noxious weed, or plant pest is not present in the State or political subdivision, a risk analysis or other scientific data showing that the biological control organism, noxious weed, or plant pest could enter the State or political subdivision and become established;
- Specific information showing that, if introduced into or allowed to spread within the State or political subdivision, the biological control organism, noxious weed, or plant pest would harm or injure the environment, and/or cause economic harm to industries in the State or political subdivision, including direct information about what harm or injury would result from establishment of the biological control organism, noxious weed, or plant pest in the State or political subdivision;
- Specific information showing that the State or political subdivision has characteristics that make it particularly vulnerable to the biological control organism, noxious weed, or plant pest, such as unique plants, diversity of flora, historical concerns, or any other special basis for the request for additional restrictions or prohibitions; and
- Information detailing the proposed additional prohibitions or restrictions, and scientific data demonstrating that the proposed additional prohibitions or restrictions would be necessary and adequate, and that there is no less drastic action that is feasible and that would be adequate, to prevent the introduction and spread of the biological control organism, noxious weed, or plant pest in the State or political subdivision.

We believe that this specific information, which would be considered along with more general information available to APHIS, would be necessary for the Administrator to be able to determine whether to grant or deny a request for a special need exception. Paragraph (b) would provide an address for the submission of requests.

Action on Special Need Requests

Section 301.1–3 of the proposed regulations would explain the process APHIS would use following the receipt of a special need request. Paragraph (a) would provide that, upon receipt of a complete special need request submitted in accordance with § 301.1–2, we would publish a notice in the **Federal Register** announcing the availability of the special need request. This notice would provide a location where the public could view the request along with all materials submitted in support of the request.

Paragraph (b) would state that, following the close of the comment period, we would publish another notice to advise the public of the Administrator's decision to either grant or deny the special need request. The Administrator's determination would be based upon his or her review and evaluation of the information submitted by the State or political subdivision in support of its request and would take into account any comments received.

The Administrator's finding that the State or political subdivision has demonstrated, based on sound scientific data or a thorough risk assessment, that there is a special need for additional prohibitions or restrictions would mean that the State or political subdivision would be authorized to impose specific prohibitions or restrictions that go beyond those identified in the regulations or orders issued by APHIS. APHIS would work with the State to ensure that the additional prohibitions or restrictions are within the scope of the special need exception granted by the Administrator. If the Administrator denied a special need request, the reasons for the denial would be communicated to the State or political subdivision and reported in a follow-up **Federal Register** notice. A State or political subdivision that has had its request denied would be given the opportunity to submit additional supporting information in order to request a reconsideration of its request. If the Administrator withdraws approval of a special need exception, the reasons for the withdrawal would be communicated to the State or political subdivision and reported in the **Federal Register.** Reasons for withdrawal of approval of a special need exception may include the availability of new scientific data or changes in APHIS regulations.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this rule, we have prepared an economic analysis. The economic analysis provides a cost-benefit analysis

as required by Executive Order 12866, as well as an analysis of the potential economic effects of this proposed rule on small entities, as required under 5 U.S.C. 603. The economic analysis is set forth below.

Introduction

Under the Plant Protection Act, section 436 (7 U.S.C. 7756(b)(2)), States and political subdivisions of States may request restrictions and prohibitions that are in addition to restrictions and prohibitions imposed by our Federal regulations if there is a special need for a higher level of protection for that State or political subdivision. APHIS proposes to require that States and political subdivisions of States that wish to request additional restrictions or prohibitions on the interstate movement of articles into their jurisdictions provide the following information, and APHIS would evaluate the information to determine whether States or political subdivisions have adequately demonstrated a special need under the Plant Protection Act:

- A State or political subdivision of a State that requests additional restrictions or prohibitions based on a special need must show that the pest of concern does not exist in the State. Therefore a request should include current data showing that a scientifically sound detection survey was performed in the State, and the pest was not found.
- The pest should be a true concern for the State or political subdivision of a State, which would be documented with a pest risk assessment or other scientific data showing that the pest could enter the State and become established.
- The pest should be of significant concern for the State or political subdivision of a State, in that it would harm or injure the environment, and/or cause economic harm to industries in the State. The request should contain direct information about what harm or injury would result from establishment of the pest in the State.
- The State or political subdivision of a State should list characteristics that make it particularly vulnerable to the pest, such as unique plants, diversity of flora, historical concerns, or any other special basis for the request for additional restrictions or prohibitions.

Expected Benefits

The principal benefit for entities in a special need area would be the pest risk reduction attributable to the action. The risk of entry and establishment of a pest of concern both prior to and after the granting of a special need request would need to be estimated before the benefit of the reduced risk could be determined. It is unlikely that these risk levels would be measurable.

Other possible benefits of a special need request would be easier to calculate. Reduced pest risk due to additional restrictions or prohibitions may mean that certain mitigation measures in the special need area would no longer be considered necessary. There may be less need for inspections, special permits, certain pesticide applications, special handling or packaging, or other safeguards practiced or required prior to the granting of the special need request. Costs forgone once the request has been granted would represent benefits of the action.

Agricultural and other entities in a special need area may also benefit from the reduced availability of articles restricted or prohibited because of the special need request. Restricted supplies from sources outside the special need area could create increased market opportunities for suppliers within the area. If quantities normally purchased could not be provided by suppliers within the special need area (or from outside sources that do not present a pest risk), then suppliers likely would benefit from an increase in price.

Expected Costs

Costs would be incurred both in the special need area and in the area placed under additional restrictions or prohibitions. In each case, the size of the impact would depend upon the volume of supply affected by a special need request. As just described, prices in a special need area may increase if the available quantity of an article is reduced because of restrictions or prohibitions. But gains for suppliers within the special need area from price increases would come at the expense of the area's consumers, and overall there would be a net loss in social welfare. Losses may be incurred not only by end-users, but also by intermediary entities. Stores selling the restricted articles (nurseries, landscaping companies, grocery stores) may face declining demand, depending upon the response of consumers to the price increase, and reduced net revenues.

For the area placed under additional restrictions or prohibitions because of a special need request, sales of affected articles may decline if other replacement markets are not found. Even if shipments to the special need area can be maintained, additional costs may be incurred. For example:

- Growers may be required to have inspections conducted more frequently than APHIS would otherwise require (a cost that may be borne by the State or political subdivision).
- Growers (or the State or political subdivision) may be required to pay for special phytosanitary certificates or permits.
- Growers may incur costs related to additional risk mitigations, such as particular pesticide applications or treatments, netting, or special greenhouse equipment.
- Additional inspections or restrictions may result in shipping delays.
- Shipping companies may experience reduced business or may face additional costs related to container or sealing requirements of the special need request.

Expected Net Effects

The overriding benefit for an area granted a special need request would be the reduced risk of pest entry and establishment. Other, market-related benefits are likely to be outweighed by costs incurred in the special need area and in the area placed under additional restrictions or prohibitions. Costs, including those associated with additional risk mitigation requirements, may be borne by agricultural entities, the public sector, or, most likely, a combination of the two.

Initial Regulatory Flexibility Analysis

Objectives and legal basis. Section 436(b) of the Plant Protection Act requires that a State demonstrate to the Secretary that it has a special need for additional restrictions or prohibitions, that the Secretary agree that there is a special need, and that the additional restrictions and prohibitions requested by the State be based on sound scientific data or a thorough risk assessment. The proposed rule would establish specific criteria by which a special need request from a State would be evaluated.

Reason for the action. The desirability of specific criteria for evaluating special need requests has become apparent from requests received by the Agency from several States for additional restrictions or prohibitions on the interstate movement of articles that would be more restrictive than those imposed by the *Phytophthora ramorum* regulations in 7 CFR 301.92 through 301.92–11.

Small entities that may be affected. Agricultural and other entities would not be affected by the proposed rule, per se, but rather by the special need requests that follow. The proposed rule would simply establish a process by which States may make a special need request and provide the Agency with a specific set of evaluation criteria.

U.S. agricultural businesses are predominantly small entities. At all stages of economic activity—production, transportation, processing, and wholesale and retail sales—agricultural industries are generally composed of a large number of small firms and a small number of large firms (with the latter usually generating the major share of industry revenue). Given this prevailing pattern, any impacts that special need requests may have on agricultural businesses can be expected generally to affect a large if not substantial number of small entities. The number of affected small entities would vary by request, and would depend on the particular circumstances in the affected States or political subdivisions.

Reporting, recordkeeping and other compliance requirements. This proposed rule contains various recordkeeping and reporting requirements. These requirements are described in this document under the heading ''Paperwork Reduction Act.''

We expect that costs related to preparing a special need request would be borne by the public sector, but it is possible that agricultural industries (and therefore small entities) could incur indirect costs depending on arrangements for generating the required information. Also, the Regulatory Flexibility Act's definition of small entities includes small governmental jurisdictions, that is, ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' Thus, it is possible that special need areas could correspond to or include small governmental jurisdictions.

Of greater impact than costs associated with the preparation of a request will be the costs and benefits of complying with the additional restrictions or prohibitions, once a special need request is granted by the Agency. Types of benefits and costs that may result from a special need request are identified at the beginning of this document.

Duplicating, overlapping, or conflicting Federal rules. APHIS has not identified any duplication, overlap, or conflict of the proposed rule with other Federal rules.

Alternatives that would accomplish the stated objectives and minimize any significant economic impact on small entities. The proposed rule would establish a set of criteria for APHIS to use in evaluating special need requests submitted by special need areas. Alternatives to the proposed rule would be to either leave the regulations unchanged, or to require a different set of criteria than is proposed. Leaving the regulations unchanged would be unsatisfactory for the public and for APHIS. Granting of special need requests is currently not efficient due to the lack of an explicit set of criteria that States and political subdivisions know will be used to evaluate special need requests. Information contained in a special need request therefore may be either inadequate or superfluous. The proposed set of criteria would provide an unambiguous basis for the equitable evaluation of special need requests.

APHIS considers the proposed set of criteria to be fully sufficient for evaluation purposes. We invite the public to comment on the proposed criteria; suggested changes should be supported by an explanation of why the changes should be considered. We would also appreciate any comments on expected impacts of special need requests for small entities, and on how the proposed rule could be modified to reduce expected costs or burdens for small entities consistent with its objectives. We reiterate that the proposed rule, in itself, would not affect small entities, but rather would influence future actions—granting of special need requests—that would affect small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS–2005–0103. Please send a copy of your comments to: (1) Docket No. APHIS–2005–0103, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

In this document, we are proposing to amend the domestic quarantine notices in 7 CFR part 301 by adding a new ''Subpart-Special Need Requests'' (7 CFR 301.1 through 301.1–3) in which we would set out procedures for the submission and handling of special need requests. The request would have to contain specific information substantiating the request, including data showing the absence or distribution of the biological control organism, noxious weed, or plant pest; a risk analysis or other scientific data showing that it could enter the State or political subdivision and become established; a description of its potential to cause environmental or economic harm and any factors that make the area particularly vulnerable to such harm; and information detailing the proposed additional prohibitions or restrictions. We are asking OMB to approve the use of these information collection activities in connection with our efforts to establish a process for special need requests.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

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

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

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information

is estimated to average 160 hours per response.

Respondents: State Governments.

Estimated annual number of respondents: 10.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 10.

Estimated total annual burden on respondents: 1,600 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

Government Paperwork Elimination Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the Government Paperwork Elimination Act (GPEA), which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. For information pertinent to GPEA compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR 301

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

Accordingly, we propose to amend 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 would continue to read as follows:

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. Part 301 would be amended by adding a new ''Subpart—Special Need Requests,'' §§ 301.1 through 301.1–3, to read as follows:

Subpart—Special Need Requests

Sec.

301.1 Purpose and scope.
301.1–1 Definitions.
301.1–2 Criteria for special need requests.
301.1–3 Action on special need requests.

Subpart—Special Need Requests

§ 301.1 Purpose and scope.

(a) Under section 436 of the Plant Protection Act (7 U.S.C. 7756), a State or political subdivision of a State may not impose prohibitions or restrictions upon the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds if the Secretary has issued a regulation or order to prevent the dissemination of the biological control organism, plant pest, or noxious weed within the United States. The only exceptions to this are:

(1) If the prohibitions or restrictions issued by the State or political subdivision of a State are consistent with and do not exceed the regulations or orders issued by the Secretary, or

(2) If the State or political subdivision of a State demonstrates to the Secretary and the Secretary finds that there is a special need for additional prohibitions or restrictions based on sound scientific data or a thorough risk assessment.

(b) The regulations in this subpart provide for the submission and consideration of special need requests when a State or a political subdivision of a State seeks to impose prohibitions or restrictions on the movement in interstate commerce of articles, means of conveyance, plants, plant products, biological control organisms, plant pests, or noxious weeds that are in addition to the prohibitions or restrictions imposed by this part or by a Federal Order.

§ 301.1–1 Definitions.

The following definitions apply in this subpart:

Administrator. The Administrator, Animal and Plant Health Inspection Service (APHIS), or any person authorized to act for the Administrator.

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

Biological control organism. Any enemy, antagonist, or competitor used to control a plant pest or noxious weed.

Interstate commerce. Trade, traffic, or other commerce:

(1) From one State into or through any other State; or

(2) Within the District of Columbia, Guam, the Virgin Islands of the United States, or any other territory or possession of the United States.

Move (moved, movement). Shipped, offered to a common carrier for shipment, received for transportation or transported by a common carrier, or carried, transported, moved or allowed to be moved.

Noxious weed. Any plant or plant product that can directly or indirectly injure or cause damage to crops (including nursery stock or plant products), livestock, poultry, or other interests of agriculture, irrigation, navigation, the natural resources of the United States, the public health or the environment.

Plant pest. Any living stage of any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances which can directly or indirectly injure or cause disease or damage in any plants or parts thereof or any processed, manufactured, or other products of plants.

State. The District of Columbia, Puerto Rico, the Northern Mariana Islands, or any State, territory, or possession of the United States.

§ 301.1–2 Criteria for special need requests.

(a) A special need request, as described in § 301.1, may be generated by a State or a political subdivision of a State. If the request is generated by a political subdivision of a State, the request must be submitted to APHIS through the State. All special need requests must be signed by the executive official or a plant protection official of the State and must contain the following:

(1) Data drawn from a scientifically sound detection survey, showing that the biological control organism, noxious weed, or plant pest of concern does not exist in the State or political subdivision or, if already present in the State or political subdivision, the distribution of the biological control organism, noxious weed, or plant pest of concern;

(2) If the biological control organism, noxious weed, or plant pest is not present in the State or political subdivision, a risk analysis or other scientific data showing that the biological control organism, noxious weed, or plant pest could enter the State or political subdivision and become established;

(3) Specific information showing that, if introduced into or allowed to spread within the State or political subdivision, the biological control organism, noxious weed, or plant pest would harm or injure the environment and/or cause economic harm to industries in the State or political subdivision. The request should contain detailed information about what harm or injury would result from the introduction or dissemination of the biological control organism,

noxious weed, or plant pest in the State or political subdivision;

(4) Specific information showing that the State or political subdivision has characteristics that make it particularly vulnerable to the biological control organism, noxious weed, or plant pest, such as unique plants, diversity of flora, historical concerns, or any other special basis for the request for additional restrictions or prohibitions; and

(5) Information detailing the proposed additional prohibitions or restrictions and scientific data demonstrating that the proposed additional prohibitions or restrictions are necessary and adequate, and that there is no less drastic action that is feasible and that would be adequate, to prevent the introduction or spread of the biological control organism, noxious weed, or plant pest in the State or political subdivision.

(b) All special need requests must be submitted to [*Address to be added in final rule*].

§ 301.1–3 Action on special need requests.

(a) Upon receipt of a complete special need request submitted in accordance with § 301.1–2, APHIS will publish a notice in the **Federal Register** to inform the public of the special need request and to make the request and its supporting information available for review and comment for at least 60 days.

(b) Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either grant or deny the special need request. The Administrator's determination will be based upon the evaluation of the information submitted by the State or political subdivision of a State in support of its request and would take into account any comments received.

(1) If the Administrator grants the special need request, the State or political subdivision of a State will be authorized to impose only the specific prohibitions or restrictions identified in the request and approved by APHIS. APHIS will coordinate with the State, or with the State on behalf of the political subdivision of the State, to ensure that the additional prohibitions or restrictions are in accord with the special need exception granted by the Administrator.

(2) If the Administrator denies the special need request, the State or political subdivision of a State will be notified in writing of the reason for the denial and may submit any additional information the State or political subdivision of a State may have in order to request a reconsideration.

(c) If the Administrator determines that there is a need for the withdrawal of a special need exception, the reasons for the withdrawal would be communicated to the State or to the political subdivision of the State and APHIS will publish a notice in the **Federal Register** to inform the public of the withdrawal of the special need exception and to make the information supporting the withdrawal available for review and comment for at least 60 days. Reasons for withdrawal of approval of a special need exception may include, but are not limited to, the availability of new scientific data or changes in APHIS regulations. Following the close of the comment period, APHIS will publish another notice announcing the Administrator's decision to either withdraw or uphold the special need exception. The Administrator's determination will be based upon the evaluation of the information submitted in support of the withdrawal and would take into account any comments received.

Done in Washington, DC, this 29th day of March 2006.

Jeremy Stump,

Acting Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E6–4840 Filed 4–3–06; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24289; Directorate Identifier 2005–NM–186–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 B2 and A300 B4 Series Airplanes; Model A300 B4–600, B4–600R, and F4–600R Series Airplanes, and Model A300 C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and A310–200 and –300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Airbus airplanes identified above. This proposed AD would require improving the routing of certain electrical wire bundles in certain airplane zones, as applicable to the airplane model. This proposed AD results from fuel system reviews conducted by the manufacturer. We are proposing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

DATES: We must receive comments on this proposed AD by May 4, 2006.

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

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

Contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Thomas Stafford, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1622; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24289; Directorate Identifier 2005–NM–186–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that web site, anyone can find and read the

comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

Examining the Docket

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (67 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (*i.e.*, type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with another latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A300 B2 and A300 B4, A300–600, A310–200, and A310–300 series airplanes. The DGAC recommends improving the routing of certain electrical wire bundles in certain airplane zones to minimize the risk of explosion. We have determined that the actions identified in this AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Airbus has issued the service bulletins identified below. These service bulletins describe procedures for six different actions related to improving the routing of certain electrical wire bundles in certain airplane zones, as applicable to the airplane model. Each action is described in detail after the table.

AIRBUS SERVICE BULLETINS

Action	Applicable to model—	Described in service bulletin—	Prior or concurrent action—
	A300 B2 and A300 B4 series airplanes.	A300–28–0057, Revision 02, dated January 8, 2001.	None.
	A300–600 series airplanes ..	A300–28–6018, Revision 1, dated September 15, 1988.	None.
2	A300 B2 and A300 B4 series airplanes.	A300–28–0070, Revision 01, dated March 18, 1999.	None.
	A300–600 series airplanes ..	A300–28–6048, dated September 19, 1996.	Do a visual inspection for damage (chafing and burn marks) of the protective conduits behind specified access doors, and replace or repair any damaged wires, in accordance with Airbus Service Bulletin A300–28–6010, Revision 1, dated September 17, 1986.
	A310–200 and –300 Series Airplanes.	A310–28–2112, dated September 19, 1996.	Do a visual inspection for damage (chafing and burn marks) of the protective conduits behind specified access doors, and replace or repair any damaged wires, in accordance with Airbus Service Bulletin A310–28–2008, Revision 2, dated May 14, 1990.

AIRBUS SERVICE BULLETINS—Continued

Action	Applicable to model—	Described in service bulletin—	Prior or concurrent action—
3	A300 B2 and A300 B4 series airplanes.	A300–24–0085, Revision 06, dated October 13, 2005.	Do repetitive inspections of the wire looms on the wing trailing edge for improperly held wires in the clamps, repair any damaged wires, restore the electrical bundles to good condition, and replace the affected nylon clamps with metallic clamps that have white silicone lining, in accordance with Airbus Service Bulletin A300–24–0073, Revision 04, dated June 30, 1998.
	A300–600 series airplanes ..	A300–24–6043, Revision 06, dated October 13, 2005.	Do repetitive inspections of the wire looms on the wing trailing edge for improperly held wires in the clamps, repair any damaged wires, restore the electrical bundles to good condition, and replace the affected nylon clamps with metallic clamps that have white silicone lining, in accordance with Airbus Service Bulletin A300–24–6004, Revision 03, dated June 30, 1998.
4	A300–600 series airplanes ..	A300–28–6056, dated February 18, 1998.	None.
5	A300–600 series airplanes ..	A300–24–6004, Revision 03, dated June 30, 1998.	None.
	A310–200 and –300 Series Airplanes.	A310–24–2009, Revision 03, dated June 30, 1998.	None.
6	A300 B2 and A300 B4 series airplanes.	A300–24–0100, dated April 7, 2005.	None.
	A300–600 series airplanes ..	A300–24–6084, Revision 01, dated June 28, 2005.	None.
	A310–200 and –300 Series Airplanes.	A310–24–2091, dated March 4, 2005.	None.

Action 1—Install a heat-shrinkable sleeve along the complete length of the electrical supply bundle of the fuel pumps. These electrical supply bundles are located in metallic protective conduits in zones 571 and 671.

Action 2—Install a heat-shrinkable sleeve along the complete length of the electrical supply bundle of the fuel pumps. These electrical supply bundles are located in metallic protective conduits in zones 575 and 675.

Action 3—Modify the retaining and protection system for the electrical bundles located at the wing-to-fuselage junctions, under the flap control screw jack. The modification involves installing a modified blanking plate and its related hardware, inspecting the bundles for damaged wires, repairing the wires if necessary, installing protective tape, and adding clamping to the bundles in order to improve their fastening capability. For some airplane models, Action 5 or Action 6 is necessary before or concurrently with this action.

Action 4—Modify the electrical wiring of routes 1P and 2P (along the top panel of the shroud box and the rear spars of the wings) by extending the protective conduits up to the next support, and replace the two existing clamps on this support with new improved clamps.

Action 5—Do repetitive inspections of the wire looms on the wing trailing edge for improperly held wires in the clamps, repair any damaged wires, restore the electrical bundles to good condition, and replace the affected nylon clamps with metallic clamps that have white silicone lining.

Action 6—Replace the nylon clamps of the electrical routes in the hydraulic compartment and in the shroud box with new metallic clamps that have white silicone lining (for Model A310–200 and –300 series airplanes); or replace the nylon clamps and change the location of routes 1P and 2P to improve the retention of the wiring loom (for all other affected models).

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2005–112 R1, dated September 14, 2005, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. We have examined the DGAC's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require accomplishing the actions specified in the service information described previously.

Clarification of Inspection Terminology

In this proposed AD, the ''inspection'' specified in Airbus Service Bulletins A300–24–0073, A300–24–0085, A300–24–6004, A300–24–6043, and A310–24–2009; and the ''visual inspection'' specified in Airbus Service Bulletin A310–28–2008; are referred to as a ''general visual inspection.'' We have included the definition for a general visual inspection in a note in the proposed AD.

Costs of Compliance

This proposed AD would affect about 169 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD. The average labor rate is $80 per work hour.

ESTIMATED COSTS

For airplanes on which this action is required—	Work hours	Parts	Cost per airplane
Action 1, Install heat-shrinkable wrap (zones 571 and 671)	10	Operator Supplied	$800.
Action 2, Install heat-shrinkable wrap (zones 575 and 675)	16 to 37	$1,533 to $1,790	$2,813 to $4,750.
Action 3, Modify the retaining and protection system	4 to 16	$836 to $1,056	$1,156 to $2,336.
Action 4, Modify the electrical wiring of routes 1P and 2P	2	$720	$880.
Action 5, Inspect the wire looms on the wing trailing edge	8	Operator Supplied	$640.
Action 6, Replace the nylon clamps of the electrical routes in the hydraulic compartment and in the shroud box.	44 to 98	$100 to $5,700	$3.620 to $13,540.

Based on these figures, the estimated cost of the proposed AD for U.S. operators is up to $3,877,874, or up to $22,946 per airplane.

The following table provides the estimated costs for U.S. operators to comply with the applicable prior or concurrent requirements in this proposed AD.

ESTIMATED COSTS—PRIOR OR CONCURRENT REQUIREMENTS

Action—	Work hours	Parts	Cost per airplane
Inspect the wire looms on the wing trailing edge for improperly held wires, in accordance with Airbus Service Bulletin A300–24–6004.	8	None	$640.
Inspect for damage of the protective conduits behind specified access doors in accordance with Airbus Service Bulletin A300–28–6010 or A310–28–2008, as applicable.	4 to 7	None	$320 to $560.
Inspect the wire looms on the wing trailing edge for improperly held wires in accordance with Airbus Service Bulletin A300–24–0073.	8	None	$640.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2006–24289; Directorate Identifier 2005–NM–186–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 4, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all Airbus Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes; Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and Model C4–605R Variant F airplanes; and A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from fuel system reviews conducted by the manufacturer. We are issuing this AD to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss 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.

Action 1—Install Heat-Shrinkable Sleeve, Zones 571 and 671

(f) For all airplanes identified in paragraphs (f)(1) and (f)(2) of this AD: Within 26 months after the effective date of this AD, install a heat-shrinkable sleeve along the complete length of the electrical supply bundles for the fuel pumps. These electrical

supply bundles are located in metallic protective conduits in zones 571 and 671.

(1) For Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes: Do the action specified in paragraph (f) of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–0057, Revision 02, dated January 8, 2001.

(2) For Model A300 B4–601, B4–603, B4–620, B4–622, A300 B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes; except those on which Airbus Modification 6803 has been done: Do the action specified in paragraph (f) of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–6018, Revision 1, dated September 15, 1988.

Action 2—Install Heat-Shrinkable Sleeve, Zones 575 and 675

(g) For all airplanes identified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD: Within 26 months after the effective date of this AD, install a heat-shrinkable sleeve along the complete length of the electrical supply bundles for the fuel pumps. These electrical supply bundles are located in metallic protective conduits in zones 575 and 675. For airplanes identified in paragraphs (g)(2) and (g)(3) of this AD: Prior to or concurrently with this installation, do a general visual inspection for damage of the protective conduits behind specified access doors, and do any applicable corrective action before further flight; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–6010, Revision 1, dated September 17, 1986; or Airbus Service Bulletin A310–28–2008, Revision 2, dated May 14, 1990; as applicable.

(1) For Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes: Do the actions specified in paragraph (g) of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–0070, Revision 01, dated March 18, 1999.

(2) For Model A300 B4–601, B4–603, B4–620, B4–622, A300 B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes; except those on which Airbus Modification 10505 has been done: Do the actions specified in paragraph (g) of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–6048, dated September 19, 1996.

(3) For Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, except those on which Airbus Modification 10505 has been done: Do the actions specified in paragraph (g) of this AD in accordance with the Accomplishment Instructions of Airbus Service Bulletin A310–38–2112, dated September 19, 1996.

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

Action 3—Modify the Retaining and Protection System

(h) For all airplanes identified in paragraphs (h)(1), and (h)(2) of this AD: Within 26 months after the effective date of this AD, modify the retaining and protection system for the electrical bundles located at the wing-to-fuselage junction, under the flap control screw jack. Prior to or concurrently with this action for airplanes identified in paragraphs (h)(1) and (h)(2) of this AD: Do a general visual inspection for improperly held wires of the wire looms on the wing trailing edge, restore the electrical bundles to good condition, and replace the affected nylon clamps with metallic clamps that have white silicone lining; and do any applicable corrective action before further flight; in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–24–0073, Revision 04, dated June 30, 1998; or Airbus Service Bulletin A300–24–6004, Revision 03, dated June 30, 1998; as applicable.

(1) For Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes: Do the actions specified in paragraph (h) of this AD in accordance with the Accomplishment Instructions Airbus Service Bulletin A300–24–0085, Revision 06, dated October 13, 2005.

(2) For Model A300 B4–601, B4–603, B4–620, B4–622, A300 B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes, except those on which Airbus Modification 11276 has been done: Do the action specified in paragraph (h) of this AD in accordance with the Accomplishment Instructions Airbus Service Bulletin A300–24–6043, Revision 06, dated October 13, 2005.

Action 4—Modify the Electrical Wiring of Routes 1P and 2P

(i) For Model A300 B4–601, B4–603, B4–620, B4–622, A300 B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes; except those on which Airbus Modification 11741 has been done: Within 26 months after the effective date of this AD, modify the electrical wiring of routes 1P and 2P (along the top panel of the shroud box and the rear spars of the wings) by extending the protective conduits up to the next support, and replace the two existing clamps on this support with new improved clamps. Do all actions in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–28–6056, dated February 18, 1998.

Action 5—Inspect the Wire Looms

(j) For all airplanes identified in paragraphs (j)(1) and (j)(2) of this AD: Within 24 months after the effective date of this AD, do a general visual inspection of the wire looms on the wing trailing edge for improperly held wires in the clamps, restore the electrical bundles to good condition, and replace the affected nylon clamps with metallic clamps that have an elastometer lining. Do any applicable corrective action before further flight. Repeat the inspection thereafter at intervals not to exceed 24 months until all clamps have been replaced.

(1) For Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes; except those on which Airbus Modification 6478 has been done: Do the actions specified in paragraph (j) of this AD in accordance with the Accomplishment Instructions Airbus Service Bulletin A300–24–6004, Revision 03, dated June 30, 1998.

(2) For Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, except those on which Airbus Modification 478 has been done: Do the actions specified in paragraph (j) of this AD in accordance with the Accomplishment Instructions Airbus Service Bulletin A310–24–2009, Revision 03, dated June 30, 1998.

Action 6—Improve the Quality of the Electrical Routes

(k) For all airplanes identified in paragraphs (k)(1), (k)(2), and (k)(3) of this AD: Within 26 months after the effective date of this AD, replace the nylon clamps of the electrical routes in the hydraulic compartment and in the shroud box with new metallic clamps that have white silicone lining (for airplanes identified in paragraph (k)(1) of this AD); or replace the nylon clamps and change the location of routes 1P and 2P to improve the retention of the wiring loom (for airplanes identified in paragraphs (k)(2) and (k)(3) of this AD).

(1) For Model A300 B2–1A, B2–1C, B2K–3C, B2–203, B4–2C, B4–103, and B4–203 airplanes; except those on which Airbus Modification 11763 has been done: Do the action specified in paragraph (k) of this AD in accordance with the Accomplishment Instructions Airbus Service Bulletin A300–24–0100, dated April 7, 2005.

(2) For Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and A300 C4–605R Variant F airplanes; except those on which Airbus Modifications 11763 and 12995 have been done: Do the action specified in paragraph (k) of this AD in accordance with the Accomplishment Instructions Airbus Service Bulletin A300–24–6084, Revision 01, dated June 28, 2005.

(3) For Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, except those on which Airbus Modification 11763 has been done: Do the action specified in paragraph (k) of this AD in accordance with the Accomplishment Instructions as identified in Airbus Service Bulletin A310–24–2091, dated March 4, 2005.

Parts Installation

(l) After the effective date of this AD, no person may install on any airplane plate assemblies with part numbers A5351088000000 or A5351088000100 unless they have been modified in accordance with paragraph (h) of this AD.

Actions Accomplished According to Previous Revisions of Service Bulletins

(m) Actions done before the effective date of this AD in accordance with the service bulletins identified in Table 1 of this AD are acceptable for compliance with the corresponding requirement in this AD.

TABLE 1.—PREVIOUS REVISIONS OF SERVICE BULLETINS

Airbus service bulletin	Revision level	Date
A300–28–0070	Original	September 19, 1996.
A300–24–0073	3	February 24, 1995.
A300–24–0085	Original	December 12, 1994.
A300–24–0085	03	January 17, 1996.
A300–24–0085	04	July 23, 1996.
A300–24–0085	05	March 6, 2001.
A300–28–057	1	September 15, 1988.
A300–24–073	Original	June 9, 1986.
A300–24–073	1	January 28, 1988.
A300–24–073	2	September 10, 1990.
A300–24–6004	1	January 28, 1988.
A300–24–6004	2	February 24, 1995.
A300–28–6018	Original	June 21, 1988.
A300–24–6043	Original	December 12, 1994.
A300–24–6043	01	February 7, 1995.
A300–24–6043	02	May 10, 1995.
A300–24–6043	03	January 17, 1996.
A300–24–6043	04	March 6, 2001.
A300–24–6043	05	August 30, 2001.
A300–24–6084	Original	March 4, 2005.
A310–24–2009	Original	May 31, 1985.
A310–24–2009	1	January 28, 1988.
A310–24–2009	2	February 24, 1995.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

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

Related Information

(o) French airworthiness directive F–2005–112 R1, dated September 14, 2005, also addresses the subject of this AD.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–4825 Filed 4–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20689; Directorate Identifier 2004–NM–197–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757 Airplanes

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

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: The FAA is revising an earlier proposed airworthiness directive (AD) for certain Boeing Model 757 airplanes. The original NPRM would have required, for certain airplanes, reworking the spar bonding path and reapplying sealant; and, for certain other airplanes, testing the electrical bond between the engine fuel feed hose and the wing front spar and, if applicable, reworking the spar bonding path and reapplying sealant. The original NPRM also would have required, for all airplanes, an inspection to ensure the electrical bonding jumper is installed between the engine fuel feed tube and the adjacent wing station. The original NPRM resulted from fuel system reviews conducted by the manufacturer. This action revises the original NPRM by requiring operators that may have installed an incorrect O-ring to install the correct part and do a re-test. We are proposing this supplemental NPRM to prevent arcing or sparking at the interface between the bulkhead fittings of the engine fuel feed tube and the front spar during a lightning strike, which could provide a possible ignition source for the fuel vapor inside the fuel tank and result in a fuel tank explosion.

DATES: We must receive comments on this supplemental NPRM by May 1, 2006.

ADDRESSES: Use one of the following addresses to submit comments on this supplemental NPRM.

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

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

FOR FURTHER INFORMATION CONTACT: Tom Thorson, Aerospace Engineer, Propulsion Branch, ANM–140S, Seattle Aircraft Certification Office, FAA,1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6508; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this supplemental NPRM. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''Docket No. FAA–2005–20689; Directorate Identifier 2004–NM–197–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this supplemental NPRM. We will consider all comments received by the closing date and may amend this supplemental NPRM in light of those comments.

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

Examining the Docket

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

Discussion

We proposed to amend 14 CFR part 39 with a notice of proposed rulemaking (NPRM) for an AD (the ''original NPRM'') for certain Boeing Model 757 airplanes. The original NPRM was published in the **Federal Register** on March 23, 2005 (70 FR 14594). The original NPRM proposed to require, for certain airplanes, reworking the spar bonding path and reapplying sealant; and, for certain other airplanes, testing the electrical bond between the engine fuel feed hose and the wing front spar and, if applicable, reworking the spar bonding path and reapplying sealant. The original NPRM also proposed to require, for all airplanes, an inspection to ensure the electrical bonding jumper is installed between the engine fuel feed hose and the adjacent wing station.

Actions Since Original NPRM Was Issued

Since we issued the original NPRM, the manufacturer informed us that a part number (P/N) for an O-ring installation was identified incorrectly in Boeing Alert Service Bulletin 757–28A0076 and Boeing Alert Service Bulletin 757–28A0077, both dated August 27, 2004. These service bulletins were referenced as the appropriate source of service information for accomplishing the required actions in the original NPRM. This supplemental NPRM (SNPRM) will propose to require compliance with Revision 1 of the service bulletins, which cite the O-ring's P/N correctly. For Group 1 airplanes on which the installation was done in accordance with the original issue of the service bulletins, and for Group 2 airplanes that failed the bonding resistance test done in accordance with the original NPRM, this SNPRM will propose to require installing an O-ring with the correct P/N and doing a re-test.

Relevant Service Information

We have reviewed Boeing Service Bulletin 757–28A0076, Revision 1, dated October 20, 2005; and Boeing Service Bulletin 757–28A0077, Revision 1, dated October 20, 2005. The service bulletins describe procedures that are essentially the same as those described in the original NPRM, except the service bulletins, Revision 1, identify the correct part number for the O-ring. However, the service bulletins describe additional work for airplanes that incorporated the initial releases of the service bulletins. The additional work includes disassembling the coupling for the engine fuel feed tube at the front spar (left and right wings), and replacing the O-ring that has the incorrect P/N with a new O-ring with the correct P/N. The additional work also includes doing a leak test of the re-assembled coupling. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Comments

We have considered the following comments about the original NPRM.

Request To Extend Compliance Time

The Air Transport Association (ATA), Continental Airlines, United Airlines, Delta Airlines, U.S. Airways, and American Airlines request that we extend the proposed compliance time for doing the bonding resistance test and for inspecting the electrical bonding jumper. The commenters request that we extend the compliance time from 48 months to either 60 months or 72 months. The commenters request the extension to all of the AD actions to be scheduled to coincide with heavy maintenance intervals when other activities that require entering the fuel tank are also scheduled. The commenters state that extending the compliance time would minimize the number of fuel tank entries and also minimize the manpower requirements for draining the tank and doing entry procedures. Several commenters note that AD 2004–10–06, amendment 39–13636 (69 FR 28046, May 18, 2004), which is a similar AD for hydraulic tube bonding in the fuel tank for lightning protection, has a compliance time of 60 months, which provides an adequate level of safety. One commenter notes that there have been no large-jet transport accidents related to lightning strikes or bonding-related hazards since 1977, when the FAA strengthened certification standards for bonding. The same commenter notes that there have been no lightning-induced fuel tank events on Boeing Model 757 airplanes.

We partially agree with the commenters. We agree with extending the compliance time to 60 months because we have assessed these specific actions on other Boeing airplane models and we have evaluated similar ADs such as AD 2004–10–06, and AD 2005–04–01, amendment 39–13973 (70 FR 7841, February 16, 2005). In addition, we find that extending the compliance time will not adversely affect safety. The manufacturer supports extending the compliance time to 60 months, and Revision 1 of Boeing Service Bulletins 757–28A0076 and 757–28A0077 include this revised time. We do not agree with extending the compliance time to 72 months. The commenters that request this extension do not provide a technical justification; however, operators may request an alternate method of compliance (AMOC) in accordance with the procedures in paragraph letter (l) of this proposed AD.

Request To State that Bonding Jumper Is Attached to a Fuel Tube

The Boeing Company requests that we revise three sections of the proposed AD in order to correctly identify that the bonding jumper is attached to a fuel tube mating with a fuel hose end fitting, and not with the fuel hose. Boeing states that this change will clarify that the electrical bonding jumper is installed between the engine fuel feed tube and the adjacent wing section.

We agree. The suggested wording will clarify the proposed AD. We have changed the ''Summary'' section and paragraph (i) of the proposed AD as requested. However, we have not changed the ''Relevant Service Information'' section because that section of the SNPRM does not contain the same information as the same section of the original NPRM.

Request To Correct Discrepancies in Service Bulletins

Continental Airlines states that the Work Instructions in Boeing Alert Service Bulletins 757–28A0076 and 757–28A0077, both dated August 27, 2004, have discrepancies that prevent accomplishing certain proposed actions. Specifically, the following items are not included in the alert service bulletins: Removal and installation instructions for the forward flap track fairing; a statement that a special tool is required for removing and reinstalling the forward fitting of the fuel feedline; and a note to clarify that leak tests of the fuel system are required following rework. Continental states that alternative rework instructions would have to be approved as AMOCs for each airplane to comply successfully with the requirements of the proposed AD.

We partially agree. We agree that a note that leak tests of the fuel system are necessary following rework would clarify the service bulletin; Boeing has added this note to Revision 1 of Boeing Service Bulletins 757–28A0076 and 757–28A0077. Also, Boeing verified that a special tool is not necessary because a standard ''crow's foot'' tool is readily available that is sufficient to complete the task. In addition, the instructions for removing and reinstalling the forward fitting are already included in the service bulletins by reference to the applicable airplane maintenance manuals (AMM). Boeing can answer additional questions if the commenter requires further information. We disagree that it is necessary for us to mandate the changes proposed by Continental because these changes have to do with the content of the service bulletins rather than the content of this proposed AD, and they do not affect the AD action. No changes to the proposed AD are necessary.

Request To Revise Cost Estimate

The ATA, American Airlines, and Delta Airlines request that we revise the hours estimated to complete the proposed actions. The commenters state that the estimates do not accurately reflect the operations required for defueling, access, and other prerequisites for the proposed actions.

We disagree. The cost estimate discussed in AD rulemaking actions represents 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. However, Boeing updated the work-hour estimates for the bonding test and sealant application, and for the bonding test, hose fitting and spar bonding rework, and sealant application. These changes are reflected in the Cost Estimate table below.

In addition, after the original NPRM was issued, we reviewed the figures we have used over the past several years to calculate AD costs to operators. To account for various inflationary costs in the airline industry, we find it necessary to increase the labor rate used in these calculations from $65 per work hour to $80 per work hour. The costs of compliance, below, reflect this increase in the specified hourly labor rate.

Request To Remove Rework Requirement for Certain Conditions

Delta Airlines states that, for certain airplanes, Boeing Alert Service Bulletins 757–28A0076 and 757–28A0077 require removing, cleaning, and re-installing the fuel feedline fitting to ensure an adequate bond is present for lightning protection. Delta requests that we revise the proposed AD to require reworking the fitting only if a preliminary resistance measurement fails. Delta states that the proposed AD does not take into account installations that may have been completed per the revised AMM procedures, which are consistent with the service information.

We disagree. The resistance measurement by itself does not ensure that an adequate bond is present for lightning protection. The only way to ensure the presence of an adequate bond capable of carrying the heavy electrical currents that are caused by an attached lightning strike is by a rigorous cleaning and assembly process, with an electrical bonding check as a final measure to ensure proper assembly. However, interested parties may submit an AMOC in accordance with the procedures in paragraph letter (l) of this proposed AD, if they can substantiate the following: That an airplane has a fuel feedline fitting that is installed in accordance with a procedure equivalent to the service bulletins referenced in the proposed AD; and that the current resistance measurement is within the value required by the service bulletins. No changes to the proposed AD are necessary.

Request To Revise ''Discussion'' Section

The Boeing Company requests that we revise the ''Discussion'' section to be similar to that provided in NPRM Docket No. FAA–2004–19680 (69 FR 68272, November 24, 2004). Boeing states that the issue addressed in this proposed AD is similar to that in NPRM Docket No. FAA–2004–19680 in that it was identified before the SFAR 88 safety assessment. Boeing states that the ''Discussion'' section does not reflect this fact.

We disagree. Although the issue was identified before the Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83) safety assessment, the non-compliance was identified and included in the Boeing 757 SFAR 88 Safety Analysis documents. This non-compliance was tracked administratively and identified as an unsafe condition requiring AD action through the SFAR 88 process. Therefore, it is considered an SFAR 88-related AD. No changes to the proposed AD are necessary.

FAA's Determination and Proposed Requirements of the SNPRM

Certain changes discussed above expand the scope of the original NPRM; therefore, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment on this SNPRM.

Difference Between the SNPRM and the Service Bulletins

Although the referenced service bulletins would allow an operator's equivalent procedures to be used for aircraft maintenance manuals (AMM) referenced in the service bulletins, this proposed AD would require you to use the referenced AMMs except as provided in paragraph (k) of this SNPRM.

Clarification of 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.

Costs of Compliance

There are about 1,040 airplanes of the affected design in the worldwide fleet. This proposed AD would affect about 700 airplanes of U.S. registry. The average labor rate is estimated to be $80 per work hour. Parts would be supplied from operator stock. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action/airplanes affected	Work hours	Cost per airplane
Hose fitting and spar bonding rework and sealant application (Group 1 airplanes)	11	$880
Bonding test and sealant application (Group 2 airplanes that pass bonding test)	12	960
Bonding test, hose fitting and spar bonding rework and sealant application (Group 2 airplanes that fail bonding test)	18	1,440
Replace O-ring for airplanes that incorporated original release of the service bulletins	3	240

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Boeing: Docket No. FAA–2005–20689; Directorate Identifier 2004–NM–197–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 1, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 757–200, –200PF, and –200CB, series airplanes as identified in Boeing Alert Service Bulletin 757–28A0076, Revision 1, dated October 20, 2005; and Model 757–300 series airplanes as identified in Boeing Alert Service Bulletin 757–28A0077, Revision 1, dated October 20, 2005; certificated in any category.

Unsafe Condition

(d) This AD resulted from fuel system reviews conducted by the manufacturer. We are issuing this AD to prevent arcing or sparking at the interface between the bulkhead fittings of the engine fuel feed tube and the front spar during a lightning strike, which could provide a possible ignition source for the fuel vapor inside the fuel tank and result in a fuel tank explosion.

Compliance

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

Service Bulletin References

(f) The term ''service bulletin(s),'' as used in this AD, means the Accomplishment Instructions of the following service bulletins, as applicable.

(1) For Model 757–200, –200CB, and –200PF series airplanes: Boeing Service Bulletin 757–28A0076, Revision 1, dated October 20, 2005.

(2) For Model 757–300 series airplanes: Boeing Service Bulletin 757–28A0077, Revision 1, dated October 20, 2005.

Hose Fitting and Spar Bonding Rework and Sealant Application

(g) For Group 1 airplanes as identified in the service bulletins: Within 60 months after the effective date of this AD, rework the spar bonding path between the end fitting of the fuel feed hose and the front spar, and apply sealant to the hose fitting on the forward and aft side of the front spar and to the fitting and tube coupling on both sides of the dry bay wall, in accordance with the applicable service bulletin.

Bonding Resistance Test

(h) For Group 2 airplanes as identified in the service bulletins: Within 60 months after the effective date of this AD, do a bonding resistance test between the fuel feed hose and the front spars of the left and right wings, in accordance with the service bulletins.

(1) If the test meets required resistance limits, before further flight, apply sealant to the end fitting of the fuel feed hose on the aft side of the front spar and to the fitting and tube coupling on both sides of the dry bay wall, in accordance with the applicable service bulletin.

(2) If the test does not meet required resistance limits, before further flight, remove any existing sealant at the front spar; rework the spar bonding path between the end fitting of the fuel feed hose and the front spar to meet bonding resistance test requirements; and apply sealant to the end fitting of the fuel feed hose on the forward and aft sides of the front spar, and to the fitting and tube

coupling on both sides of the dry bay wall, in accordance with the applicable service bulletin.

Inspection of Electrical Bonding Jumper

(i) For all airplanes as identified in the service bulletins: Within 60 months after the effective date of this AD, perform a general visual inspection and applicable corrective actions to ensure that an electrical bonding jumper is installed between the engine fuel feed tube and the adjacent wing station 285.65 rib in the left and right wing fuel tanks, in accordance with the service bulletins.

Replacement of O-Ring and Test

(j) For airplanes on which the actions in paragraphs (g) or (h)(2) of this AD were done before the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–28A0076, dated August 27, 2004; and Boeing Alert Service Bulletin 757–28A0077, dated August 27, 2004; as applicable: Within 60 months after the effective date of this AD, replace the O-ring, part number (P/N) MS29513–330 with a new O-ring, P/N MS29513–328, and do a leak test before further flight after reassembly. Do all actions in accordance with Part B of the Accomplishment Instructions of the applicable service bulletin.

Exception to Accomplishment Instructions in Service Bulletins

(k) Although Boeing Service Bulletin 757–28A0076, Revision 1, and Boeing Service Bulletin 757–28A0077, Revision 1, both dated October 20, 2005, permit operator's equivalent procedures (OEP), this AD would require you to use the referenced Airplane Maintenance Manuals, except that operators may use their own FAA-approved OEPs to drain the left and right engine fuel tubes, to drain and ventilate the fuel tanks, and to enter the fuel tanks.

Actions Accomplished in Accordance With Original Issues of Service Bulletins

(l) Actions done before the effective date of this AD in accordance with Boeing Service Bulletin 757–28A0076, and Boeing Service Bulletin 757–28A0077, both dated August 24, 2004, are acceptable for compliance only with the requirements of paragraph (h)(1) of this AD.

Alternative Methods of Compliance (AMOCs)

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

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

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–4827 Filed 4–3–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–24290; Directorate Identifier 2005–NM–243–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100, DHC–8–200, and DHC–8–300 Series Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Bombardier Model DHC–8–100, DHC–8–200, and DHC–8–300 series airplanes. This proposed AD would require repetitive inspections of the fluorescent light tube assemblies of the cabin, lavatory, and sidewall, and corrective actions if necessary. This proposed AD would also provide for optional terminating action for the repetitive inspections. This proposed AD results from reports of overheating due to arcing between the fluorescent tube pins and the lamp holder contacts. The tubes had not been properly seated during installation. We are proposing this AD to prevent fumes, traces of visible smoke, and fire at the fluorescent light tube assembly.

DATES: We must receive comments on this proposed AD by May 4, 2006.

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

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

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

FOR FURTHER INFORMATION CONTACT: Douglas Wagner, Aerospace Engineer, Systems and Flight Test Branch, ANE–172, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7306; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–24290; Directorate Identifier 2005–NM–243–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

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

Examining the Docket

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, advised us that an unsafe condition may exist on certain Bombardier Model DHC–8–100, DHC–8–200, and DHC–8–300 series airplanes. TCCA advises that numerous service difficulty reports have indicated damage to fluorescent lamp holders in the cabin, lavatory, and sidewall due to overheating. The overheating can result from arcing between the fluorescent tube pins and the lamp holder contacts if the tube is not properly seated during installation. This condition, if not corrected, could result in fumes, traces of visible smoke, and fire at the fluorescent light tube assembly.

Relevant Service Information

The manufacturer has revised certain procedures for inspecting certain fluorescent tube assemblies. These procedures for detailed visual inspections are described in the temporary revisions (TRs) to the de Havilland DASH–8 Maintenance Program Manual, as identified in the following table.

DE HAVILLAND MAINTENANCE PROGRAM MANUAL TRS

Area	DHC–8 series	Task No.	TR	Date	PSM No.
Cabin	100	3320/01	MRB–146	August 31, 2004	1–8–7
	200	3320/01	MRB 2–24	August 31, 2004	1–82–7
	300	3320/01	MRB 3–155	August 31, 2004	1–83–7
Lavatory	100	3320/03	MRB–147	May 3, 2005	1–8–7
	200	3320/03	MRB 2–25	May 3, 2005	1–82–7
	300	3320/03	MRB 3–156	May 3, 2005	1–83–7
Sidewall	100	3320/02	MRB–147	May 3, 2005	1–8–7
	200	3320/02	MRB 2–25	May 3, 2005	1–82–7
	300	3320/02	MRB 3–156	May 3, 2005	1–83–7

Bombardier has issued Service Bulletins 8–33–52, dated April, 15, 2005, and 8–33–51, Revision 'A,' dated April 20, 2005. The service bulletins describe procedures for replacing certain ballasts with new ''Arc Protection'' ballasts.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. TCCA mandated the inspections specified in the TRs, and prohibited future replacement of an existing ballast except in accordance with the service bulletins. TCCA issued Canadian airworthiness directive CF–2004–26R1, dated September 28, 2005, to ensure the continued airworthiness of these airplanes in Canada.

FAA's Determination and Requirements of the Proposed AD

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. We have examined TCCA's findings, evaluated all pertinent information, and determined that we need to issue an AD for airplanes of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require repetitive inspections to detect signs of arcing in the fluorescent light tube assemblies of the cabin, lavatory, and sidewall, and corrective actions if necessary. This proposed AD would also provide for optional terminating action for the repetitive inspections.

Differences Between Service Information/Canadian Airworthiness Directive

The following differences apply to this proposed AD:

1. The Canadian airworthiness directive does not specify intervals for repeating the inspections. Instead, it requires incorporating the TRs previously identified into the applicable Maintenance Review Board (MRB) document, which contains the repetitive intervals for the inspections. TCCA requires operators in Canada to use the information—including the repetitive intervals—in the latest revision of the MRB. However, since the MRB is not mandatory in the U.S., this proposed AD would require that operators repeat the inspections.

2. The Canadian airworthiness directive requires the initial inspection at the earlier of the next C-check or within 36 months. But maintenance schedules vary among operators, so a compliance time specified as the next C-check would not ensure that the airplane would be inspected in a timely manner. We have been advised that the average C-check interval is 5,000 flight hours; therefore, this proposed AD would require the initial inspection within the earlier of 36 months or 5,000 flight hours.

3. This proposed AD would allow the repetitive inspections to be terminated if all ballasts installed on the airplane are ''Arc Protection'' ballasts. Although this provision is not specifically stated in the Canadian airworthiness directive, TCCA's intent was to consider total ballast replacement as terminating action for the repetitive inspections.

4. The service bulletins do not provide for corrective action for signs of arcing. This proposed AD would require repairing those conditions before further flight using a method approved by the FAA or TCCA (or its delegated agent). In light of the type of repair that would be required to address the unsafe condition, and consistent with existing bilateral airworthiness agreements, we have determined that a repair approved by the FAA or TCCA would be acceptable for compliance with this proposed AD. Chapter 33–20–00, Section D, of the Airplane Maintenance Manual is one approved method.

5. The TRs specify ''detailed visual inspections'' of the fluorescent light tube assemblies of the cabin, lavatory, and sidewall. We have determined that the procedures in the TRs should be described as a ''detailed inspections.'' Note 1 in this proposed AD defines this type of inspection.

These differences have been coordinated with TCCA.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD. This proposed AD would affect about 121 U.S.-registered airplanes.

ESTIMATED COSTS, PER INSPECTION CYCLE

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane
Inspection, per inspection cycle.	6 maximum	$80	None	Up to $480.
Ballast replacement (optional)	2, per ballast [1]	80	$486, per ballast	Up to $41,990.

[1] NUMBER OF BALLASTS PER AIRPLANE

Area	Airplane model	Number of ballasts
Lavatory	DHC–8–100 and –200	1
	DHC–8–300	1
Sidewall	DHC–8–100 and –200	19
	DHC–8–300	30
Cabin	DHC–8–100 and –200	21
	DHC–8–300	33

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2006–24290; Directorate Identifier 2005–NM–243–AD.

Comments Due Date

(a) The FAA must receive comments on this AD action by May 4, 2006.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes; certificated in any category; serial numbers 003 through 407 inclusive, 409 through 412 inclusive, and 414 through 433 inclusive; excluding those with Hunting interiors.

Unsafe Condition

(d) This AD results from reports of overheating due to arcing between the fluorescent tube pins and the lamp holder contacts. The tubes had not been properly seated during installation. We are issuing this AD to prevent fumes, traces of visible smoke, and fire at the fluorescent light tube assembly.

Compliance

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

Inspection

(f) Within 5,000 flight hours or 36 months after the effective date of this AD, whichever occurs first: Perform detailed inspections to detect signs of arcing of the fluorescent tube assemblies of the cabin, sidewalls, and lavatory, in accordance with the applicable temporary revision (TR) of the maintenance program manual (MPM) identified in Table 1 of this AD. If any sign of arcing is found, repair before further flight using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or Transport Canada Civil Aviation (or its delegated agent). Chapter 33–20–00, Section D, of the Airplane Maintenance Manual is one approved method. Repeat the inspection at intervals not to exceed 5,000 flight hours, until all Ballast part numbers BA08006–1 or BA08006–28–1 have been replaced in accordance with paragraph (g) of this AD.

TABLE 1.—TRS

Inspect the fluorescent tube assemblies of the—	In accordance with Task No.—	of de Havilland TR—	To the de Havilland DASH 8 series—	For model—
Cabin	3320/01	MRB 2–24, dated August 31, 2004.	200 MPM PSM 1–82–7	DHC–8–201 and –202 airplanes.
	3320/01	MRB 3–155, dated August 31, 2004.	300 MPM PSM 1–83–7	DHC–8–301, –311, –314, and –315 airplanes.
	3320/01	MRB–146, dated August 31, 2004.	100 MPM PSM 1–8–7	DHC–8–102, –103, –106 airplanes.
Lavatory	3320/03	MRB –147, dated May 3, 2005.	100 MPM PSM 1–8–7	DHC–8–102, –103, –106 airplanes.
	3320/03	MRB 2–25, dated May 3, 2005.	200 MPM PSM 1–82–7	DHC–8–201 and –202 airplanes.
	3320/03	MRB 3–156, dated May 3, 2005.	300 MPM PSM 1–83–7	DHC–8–301, –311, –314, and –315 airplanes.
Sidewall	3320/02	MRB 2–25, dated May 3, 2005.	200 MPM PSM 1–82–7	DHC–8–201 and –202 airplanes.
	3320/02	MRB 3–156, dated May 3, 2003.	300 MPM PSM 1–83–7	DHC–8–301, –311, –314, and –315 airplanes.
	3320/02	MRB –147, dated May 3, 2003.	100 MPM PSM 1–8–7	DHC–8–102, –103, –106 airplanes.

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.''

Terminating Action

(g) The repetitive inspections required by this AD may be terminated if all ballasts installed on the airplane have part number (P/N) BR9000–21, installed in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 8–33–51, Revision 'A,' dated April 20, 2005 (to replace ballast P/N BA08006–1), or 8–33–52, dated April 15, 2005 (to replace ballast P/N BA08006–28–1). Ballasts installed before the effective date of this AD are also acceptable if done in accordance with Bombardier Service Bulletin 8–33–51, dated August 16, 2002.

Parts Installation

(h) As of the effective date of this AD: No person may install a ballast P/N BA08006–1 or BA08006–28–1 on any airplane.

Alternative Methods of Compliance (AMOCs)

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

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

Related Information

(j) Canadian airworthiness directive CF–2004–26R1, dated September 28, 2005, also addresses the subject of this AD.

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

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–4841 Filed 4–3–06; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 18

[FRL–8053–4]

RIN 2030–AA91

Environmental Protection Research Fellowships and Special Research Consultants for Environmental Protection

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking direct final action on the implementation of the EPA's statutory authority in Title II of the Interior, Environment, and Related Agencies Appropriations Act of 2006 (Pub. L. 109–54) that will allow the EPA to establish fellowships in environmental protection research, appoint fellows to conduct this research, and appoint special research consultants to advise on environmental protection research. Under an administrative provision of Public Law 109–54, the Administrator may, after consultation with the Office of Personnel Management, make up to five (5) appointments in any fiscal year from 2006 to 2011 for the Office of Research and Development. Appointees under this authority shall be employees of the EPA and will engage in activities related to scientific and engineering research that support EPA's mission to protect the environment and human health.

In the ''Rules and Regulations'' section of the **Federal Register**, we are approving implementation of the EPA's statutory authority (to establish fellowships in environmental protection research and appoint fellows to conduct this research and appoint special research consultants to advise on environmental protection research) in Title II of the Interior, Environmental and Related Agencies Appropriations Act of 2006 (Pub. L. 109–54) with 42 U.S.C. 209 as a direct final rule without prior proposal because we view this as a non-controversial revision and anticipate no adverse comment. We have explained our reasons for this approval in the preamble to the direct final rule. If we receive no adverse comment, no further action on this proposed rule will be taken. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: Comments on this proposed rule must be received by May 4, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–

OARM–2006–0249, by one of the following methods:

• Federal Docket Management System (FDMS): *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.

• Mail: John O'Brien, Office of Human Resources/Office of Administration and Resources Management, Mail Code: 3631M, Room 1136–EPA–East, United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: *obrien.johnt@epa.gov*.

• Hand Delivery: Office of Environmental Information Docket, Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OARM–2006–0249. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through FDMS or e-mail. FDMS is an ''anonymous access'' system. This means that the 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 the EPA without going through FDMS, 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. The EPA recommends that you include your name and other contact information in the body of your electronic comment with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in FDMS at *http://www.regulations.gov*. 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 FDMS or in hard copy at the Office of Environmental Information Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Office of Environmental Information Docket is (202) 566–1752.

FOR FURTHER INFORMATION CONTACT: For further information, please contact John O'Brien at (202) 564–7876, Office of Human Resources/Office of Administration and Resources Management, Mail Code 3631M, Room 1136 EPA-East, United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail address: *obrien.johnt@epa.gov*. You may also contact William Ocampo at (202) 564–0987 or Robert Stevens at (202) 564–5703, Office of Research and Development, Mail Code 8102R, United States Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; e-mail addresses: *ocampo.william@epa.gov* and *stevens.robert@epa.gov.*

SUPPLEMENTARY INFORMATION: This document concerns the EPA's authority under 42 U.S.C. 209 to (1) establish fellowships in environmental protection research and appoint fellows to conduct this research and (2) appoint environmental protection special consultants to advise on environmental protection research. The provisions proposed here are identical to those contained in the Direct Final Rule located in the ''Rules and Regulations'' section of this **Federal Register** publication. Please refer to the preamble and regulatory text of the direct final action for further information and the actual text of the revisions. Additionally, all information regarding Statutory and Executive Orders for this proposed rule can be found in the Statutory and Executive Order Review section of the direct final action.

Dated: March 27, 2006.

Stephen L. Johnson,

Administrator.

[FR Doc. 06–3205 Filed 4–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 278

[EPA–HQ–RCRA–2006–0097; FRL–8050–8]

RIN 2050–AG27

Criteria for the Safe and Environmentally Protective Use of Granular Mine Tailings Known as ''Chat''

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or Agency) is proposing mandatory criteria for the environmentally protective use of chat for transportation construction projects carried out in whole or in part with Federal funds, and a certification requirement. Chat used in transportation projects must be encapsulated in hot mix asphalt concrete or Portland cement concrete unless the use of chat is otherwise authorized by a State or Federal response action undertaken pursuant to applicable Federal or State environmental laws. Such response actions are undertaken with consideration of risk assessments developed in accordance with State and Federal laws, regulations, and guidance. EPA is also proposing to establish recommended criteria as guidance on the environmentally protective use of chat for non-transportation cement and concrete projects. The chat covered by this proposal is from the lead and zinc mining area of Oklahoma, Kansas and Missouri, known as the Tri-State Mining District.

DATES: Submit comments on or before May 4, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2006–0097, by one of the following methods:

• *http://www.regulations.gov:* Follow the online instructions for submitting comments.

• *E-mail:* Comments may be sent by electronic mail (e-mail) to *rcra-docket@epa.gov,* Attention Docket ID No. EPA–HQ–RCRA–2006–0097. 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.

• *Fax:* Comments may be faxed to 202–566–0272.

• *Mail:* Send two copies of your comments to Criteria for the Safe and Environmentally Protective Use of Granular Mine Tailings Known as Chat, Environmental Protection Agency, Mailcode: 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

• *Hand Delivery:* Deliver two copies of your comments to the Criteria for the Safe and Environmentally Protective Use of Granular Mine Tailings Known as Chat Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–RCRA–2006–0097. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Criteria for the Safe and Environmentally Protective Use of Granular Mine Tailings Known as Chat Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is (202) 566–0270. 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 Criteria for the Safe and Environmentally Protective Use of Granular Mine Tailings Known as Chat Docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Stephen Hoffman, Office of Solid Waste (5306W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 308–8413, e-mail address *hoffman.stephen@epa.gov.* For more information on this rulemaking, please visit *http://www.epa.gov/epaoswer/other/mining/chat/.*

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply To Me?

These proposed criteria may affect the following entities: Aggregate, asphalt, cement, and concrete facilities, likely limited to the tri-state mining area. Other types of entities not listed could also be affected. To determine whether your facility, company, business, organization, etc., is affected by this action, you should examine the applicability criteria in Section I.B.6 of this preamble. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. What Should I Consider as I Prepare My Comments for EPA?

1. *Tips for Preparing Your Comments.* When submitting comments, remember to:

• Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).

• 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.

• Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

• Describe any assumptions and provide any technical information and/or data that you used.

• If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

• Provide specific examples to illustrate your concerns, and suggest alternatives.

• Explain your views as clearly as possible.

• Make sure to submit your comments by the comment period deadline identified.

2. *Docket Copying Costs.* The first 100 copies are free. Thereafter, the charge for making copies of Docket materials is 15 cents per page.

III. How Should I Submit CBI to the Agency?

Do not submit information that you consider to be CBI electronically through *http://www.regulations.gov* or by e-mail. Send or deliver information identified as CBI only to the following address: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–RCRA–2006–0097. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD ROM, 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 CBI). Information so marked will not be disclosed, except in accordance with procedures set forth in 40 CFR Part 2.

In addition to one complete version of the comment that includes any 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 and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please contact: LaShan Haynes, Office of Solid Waste (5305W), U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, telephone (703) 605–0516, e-mail address *haynes.lashan@epa.gov.*

The contents of the **SUPPLEMENTARY INFORMATION** are listed in the following outline:

I. Background Information
A. What Is the Statutory Authority for This Action?
B. What Action Is EPA Taking?
1. What Is Chat?
2. What Is the Areal Scope for This Action?
3. Are There Any Current Regulations or Criteria for the Management or Use of Chat?
4. Physical and Chemical Characteristics of Chat.
5. What Are the Environmental and Health Effects Associated with Pollutants Released From Raw Chat?
6. Who Is Affected by This Action?
C. What Was the Process EPA Used in Developing This Action?
II. Summary of the Proposed Rule
A. What Criteria Are EPA Establishing for the Use of Chat?
1. Transportation Construction Uses
a. What is our proposed action?
b. What is the rationale for the Proposed Rule?
c. Is the EPA soliciting comments on specific issues?
2. Non-Transportation Uses—Cement and Concrete Projects
a. What is our proposed approach?
b. What is the rationale for the Proposed Rule?
c. Is the EPA soliciting comments on specific issues?
B. Relationship of Proposed Criteria to Other State and Federal Regulations and Guidance
C. How Does This Proposal Affect Chat Sales From Lands Administered by the U.S. Bureau of Indian Affairs or Directly from Tribal Lands?
D. How Does This Proposal Affect CERCLA Liability, Records of Decision, and Removal Decisions?
III. Impacts of the Proposed Rule
A. What Are the Potential Environmental and Public Health Impacts From the Use of Chat?
B. What Are the Economic Impacts?
IV. Executive Orders and Laws Addressed in This Action
A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act of 1995
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 and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

For the purposes of this action, the Agency defines the following terms as follows:

• *Encapsulated*—incorporated into hot mix asphalt concrete or Portland cement concrete (PCC).

• *Hot mix asphalt*—a hot mixture of asphalt binder and size-graded aggregate, which can be compacted into a uniform dense mass.

• *Pozzolanic*—a silica and lime containing material which, in the presence of moisture, forms a strong cement.

• *State or Federal remediation action*—State or federal response action undertaken pursuant to applicable federal or state environmental laws. Such response actions are undertaken with consideration of risk assessments developed in accordance with state and or federal laws, regulations, and guidance.

• *Raw chat*—unmodified lead-zinc ore milling waste.

• *Washed chat*—lead-zinc ore milling waste that has been wet-screened to remove the fine-grained fraction and which is sized so as not to pass through a number 40 sieve (0.425 mm opening size) or smaller.

• *Sized chat*—lead-zinc ore milling waste that has been wet-screened (washed) or dry sieved to remove the fine-grained fraction smaller than a number 40 sieve (0.425 mm opening size).

• *Non-transportation cement and concrete projects are:*

—Construction uses of cement and concrete for non-residential structural uses limited to weight bearing purposes such as foundations, slabs, and concrete wall panels. Other uses include commercial/industrial parking and sidewalk areas. Uses do not include the residential use of cement or concrete (*e.g.,* concrete counter tops).

• *Transportation construction uses* [1] are:

—*Asphalt concrete*—pavement consists of a combination of layers, which include an asphalt surface constructed over an asphalt base and an asphalt subbase. The entire pavement structure is constructed over the subgrade. Pavements, bases, and subbases must be constructed using hot mix asphalt.

—*Portland cement concrete*—(PCC) pavements consisting of a PCC slab that is usually supported by a granular (made of compacted aggregate) or stabilized base and a subbase. In some cases, the PCC slab may be overlaid with a layer of asphalt concrete. Uses include bridge supports, bridge decking, abutments, highway sound barriers, jersey walls, and non-residential side walks adjacent to highways.

—*Flowable fill*—refers to a cementitious slurry consisting of a mixture of fine aggregate or filler, water, and cementitious materials which is used primarily as a backfill in lieu of compacted earth. This mixture is capable of filling all voids in irregular excavations, is self leveling, and hardens in a matter of a few hours without the need of compaction in layers. Most applications for flowable fill involve unconfined compressive strengths of 2.1 MPa (300 lb/in^2) or less.

—*Stabilized base*—refers to a class of paving materials that are mixtures of one or more sources of aggregate and cementitious materials blended with a sufficient amount of water that result in the mixture having a moist nonplastic consistency that can be compacted to form a dense mass and gain strength. The class of base and subbase materials is not meant to include stabilization of soils or aggregates using asphalt cement or emulsified asphalt.

—*Granular bases*—are typically constructed by spreading aggregates in thin layers of 150 mm (6 inches) to 200 mm (8 inches) and compacting each layer by rolling over it with heavy compaction equipment. The aggregate base layers serve a variety of purposes, including reducing the stress applied to the subgrade layer and providing drainage for the pavement structure. The granular subbase forms the lowest (bottom) layer of the pavement structure and acts as the principal foundation for the subsequent road profile.

—*Embankment*—refers to a volume of earthen material that is placed and compacted for the purpose of raising the grade of a roadway above the level of the existing surrounding ground surface.

• *Unencapsulated*—material that is not incorporated into hot mix asphalt concrete or Portland cement concrete.

[1] User Guidelines for Waste and By-Product Materials in Pavement Construction Publication No. FHWA–RD–97–148 April 1998, U.S. Department of Transportation, Federal Highway Administration.

Abbreviations and Acronyms Used in This Document

CAA—Clean Air Act (42 USCA 7401).
CERCLA—Comprehensive Environmental Response Compensation and Liability Act (42 USCA 9601).
CFR—Code of Federal Regulations.
CWA—Clean Water Act (33 USCA 1251).
EPA—Environmental Protection Agency.
FHWA—Federal Highway Administration.
FR—Federal Register.
ICR—Information Collection Request.
MCL—Maximum Contaminant Level (Safe Drinking Water Act).
NPL—National Priorities List.
ppmv—parts per million by volume.
ppmw—parts per million by weight.
Pub. L.—Public Law.
RCRA—Resource Conservation and Recovery Act (42 USCA 6901).
SMCL—Secondary Maximum Contaminant Level (Safe Drinking Water Act).
SPLP—Synthetic Precipitation Leaching Procedure (SW 846 Method 1312).
TCLP—Toxicity Characteristic Leaching Procedure (SW 846 Method 1311).
U.S.C.—United States Code.
DOT—United States Department of Transportation.

I. Background Information

A. What Is the Statutory Authority for This Action?

Through Title VI, Section 6018 of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act of 2005 (H.R. 3 or ''the Act''), Congress amended Subtitle F of the Solid Waste Disposal Act (42 U.S.C. 6961 *et seq.*) by adding Sec. 6006. This provision requires the Agency to develop environmentally protective criteria (including an evaluation of whether to establish a numerical standard for concentration of lead and other hazardous substances) for the safe use of granular mine tailings from the Tar Creek, Oklahoma Mining District, known as 'chat,' in cement and concrete projects and in transportation construction projects that are carried out, in whole or in part, using Federal funds. Section 6006(a)(4) requires that any use of the granular mine tailings in a transportation project that is carried out, in whole or in part, using Federal funds, meet EPA's established criteria.

In establishing these criteria, Congress directed EPA to consider the current and previous uses of granular mine tailings as an aggregate for asphalt and any environmental and public health risks from the removal, transportation, and use in transportation projects of granular mine tailings; *i.e.*, chat. The Act also directs EPA to solicit and consider comments from the public, and to consult with the Secretary of Transportation and the heads of other Federal agencies in establishing the criteria.

B. What Action Is EPA Taking?

In today's action, we are proposing, and requesting comment on, criteria requiring encapsulation in hot mix asphalt concrete or Portland cement concrete, for granular mine tailings, known as 'chat,' from the Tri-State lead and zinc mining area of Oklahoma, Kansas and Missouri, used in transportation construction projects that are carried out, in whole or in part, using Federal funds. EPA is also proposing that the requirement of encapsulation in asphalt concrete or Portland cement concrete would not apply if the use of chat is otherwise authorized by a State or federal response action undertaken pursuant to applicable federal or state environmental laws. Such response actions are undertaken with consideration of risk assessments developed in accordance with state and federal laws, regulations, and guidance. For example, unencapsulated uses of chat may be authorized in a State or federal remediation action. EPA is proposing that these criteria would apply to the use of chat derived from the Tri-State area, wherever the use occurs, including outside of the Tri-state area. Section 6006(a)(4) mandates that transportation construction projects, carried out in whole or in part, using Federal funds, must comply with these criteria.

The Agency is also proposing recommended criteria as guidance on the encapsulation of chat in non-transportation uses, to identify those uses that EPA believes are environmentally protective. Such uses would be limited to those where the Agency has reasonable assurances that such uses inherently limit direct exposure. It should be pointed out that the Agency has reviewed the literature and conducted interviews with Oklahoma, Kansas, and Missouri regulatory officials and Tribes and has determined that there is no evidence that chat is currently being used in non-transportation construction projects.

1. What Is Chat?

Chat is the waste material that was formed in the course of milling operations employed to recover lead and zinc from metal-bearing ore minerals in the Tri-State mining district of Southwest Missouri, Southeast Kansas and Northeast Oklahoma. Chat is primarily composed of chert, a very hard rock. The primary properties that make chat useful in asphalt and concrete are grain size distribution, durability, non-polishing, and low absorption.

2. What Is the Areal Scope for This Action?

The Act directed EPA to develop criteria for chat from the Tar Creek, Oklahoma Mining District. There is no definition of the term ''Tar Creek Oklahoma Mining District.'' Available literature references the ''Tar Creek Superfund site,'' which is in Oklahoma, but the term ''mining district'' is only used in reference to the ''Tri-State Mining District.'' For purposes of today's action, the Agency is proposing the areal scope to include chat originating from the Tri-State mining district of Ottawa County, Oklahoma, Cherokee County of southeast Kansas and Jasper and Newton Counties of southwest Missouri, regardless of where it is used.

In 1979, the U.S. Bureau of Mines completed a study to identify all mined areas and mine-related hazards which confirmed that lead-zinc mining covers a portion of each of the States of Kansas, Missouri, and Oklahoma. This area is the same area known as the Tri-State mining district.

Chat located in the Tri-State historical mining district is a product of similar mineralization processes that sets it aside from related lead-zinc mineralization districts elsewhere in the United States. The Tri-State mineralization is specifically associated with wall rock alteration into dolomite and microcrystalline silica (chert). The term chat is derived from the word 'chert,' which is from the cherty wallrock found in this mining district. The lead/zinc ore and its related waste, chat, in this district also have a well defined lead to zinc ratio.

During close to one hundred years of activity ending in 1970, the Tri-State mining district has been the source of a major share of all the lead and zinc mined in the United States. Surface piles of chat, as well as underground mining areas, extend uninterrupted across the Oklahoma-Kansas state line. In communications with Kansas, Missouri, and Oklahoma environmental regulatory agencies and the departments of transportation and Tribes, government experts confirmed that there is no real factual distinction between chat derived from these three areas, and agreed that it would be reasonable to apply today's proposal to

the areal extent of the Tri-State mining district. Therefore, in today's action, the Agency is proposing criteria that extends to all chat generated and currently located in the following counties: Ottawa county, Oklahoma, Cherokee county, Kansas, and Newton and Jasper counties in Missouri.

Given the ambiguity in the term ''Tar Creek Oklahoma Mining District,'' the Agency is soliciting comment on whether it should limit the scope of today's action to chat only located in Oklahoma. There is also some uncertainty regarding the exact boundary of the Tri-State mining district. The Agency is therefore soliciting comments on whether additional counties, such as Lawrence and Barry Counties in southwest Missouri, should be added to the scope.

3. Are There Any Current Regulations or Criteria for the Management or Use of Chat?

During the preparation of this proposal, the Agency assessed existing regulations in Oklahoma, Kansas, and Missouri for hot mix asphalt plants, and cement plants to determine whether residual chat wastes from those operations are adequately managed. (See memorandum entitled: ''Evaluation of State Regulations'' in the docket.) Those regulations set standards for point and fugitive air emission sources and also set requirements for water discharges from point and non-point discharges. Each State also has fugitive dust and point source particulate emission permitting requirements for both hot mix asphalt plants and ready mix concrete plants.

- Kansas air quality regulations require a Class II point source particulate operating permit for hot mix asphalt and ready mix concrete plants (K.A.R. 28–19–500). Operators must comply with all applicable air quality regulations whether or not addressed in the permit. Missouri requires an operating permit for all facilities with the potential to emit any point source particulate matter of 25 tons per year or more, or particulate matter with a diameter less than or equal to 10 micrometers (PM_{10}) in the amount of 10 tons per year or more (10 CSR 10–6.065). Missouri regulations require operators to comply with the State's air quality control requirements, including restrictions on point source particulate emissions beyond the premises of origin (10 CSR 10–6.170). Oklahoma requires a point source air pollution control operating permit for new minor facilities (OAC 252:100–7) and all facilities with the potential to emit 100 tons per year, or more, of any criteria pollutant (which includes particulate matter), or 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants (OAC 252:100–8). Oklahoma regulations require that operators not exceed ambient air quality standards (OAC 252:100–29).
- In Oklahoma and Missouri, stormwater runoff is regulated through stormwater discharge permits (OAC 252:606–5–5, 10 CSR 20–6.200). Oklahoma's Pollutant Discharge Elimination System Standards incorporate the National Pollutant Discharge Elimination System (NPDES) standards. Oklahoma also has a general permit for stationary and mobile concrete batch plants. In Kansas, stormwater discharges are regulated under the State's water quality regulations (K.A.R. 28–16). The regulations prohibit degradation of surface and groundwater and set effluent limitations for aquatic, livestock, and domestic uses. Kansas has not finalized its General Permit for Stormwater Discharges Associated from Industrial Activity; however, facility operators are required to file a Notice of Intent to discharge under the NPDES requesting coverage under the State's general water pollution control permit. Operators are also required to develop and implement a Stormwater Pollution Prevention plan. Permittees are obligated to comply with the general permit which sets effluent limitations and monitoring requirements.
- The Agency also assessed existing regulations in Oklahoma, Kansas, and Missouri for chat washing facilities to determine whether residual chat wastes from those operations are adequately managed. The Agency found that the States do not have regulations specific to chat washing facilities. However, these facilities are covered under the States' general fugitive air and general non-point source discharge regulations. These state general permits require that fugitive dusts and runoff be controlled in a fashion so that dusts do not leave the property line or the boundary of the construction activity. Additionally, the Bureau of Indian Affairs (BIA) is establishing air and water standards for chat washing facilities for chat originating on Tribal lands and lands administered by BIA. BIA's requirements include that the chat washing facility manage waste water discharges so that they do not exceed state standards, that fugitive dusts be controlled, and that fines are handled and disposed of so that they do not contaminate ground water.
- BIA is requiring all purchasers of chat from Tribal lands, or lands administered by BIA, to certify that the chat will be used in accordance with authorized uses set forth in EPA fact sheets and other guidance. (See report titled, *Chat Sales Treatability Study Workplan for the Sale of Indian-owned Chat within the Tar Creek Superfund Site, Ottawa County, Oklahoma,* June 23, 2005.) BIA also requires that trucks transporting chat from Tribal lands be covered to prevent blowing dust from the chat.
- The Oklahoma Department of Environmental Quality (ODEQ) has determined that the following transportation uses of chat are inappropriate: Use in residential driveways and use as gravel or unencapsulated surface material in parking lots, alleyways, or roadways (See *A Laboratory Study to Optimize the Use of Raw Chat in Hot Mix Asphalt for Pavement Application: Final Report, August 2005* [2]). The ODEQ report also identified the following non-transportation uses of raw chat that are deemed inappropriate:

—Fill material in yards, playgrounds, parks, and ball fields.
—Playground sand or surface material in play areas.
—Vegetable gardening in locations with contaminated chat.
—Surface material for vehicular traffic (*e.g.*, roadways, alleyways, driveways, or parking lots).
—Sanding of icy roads.
—Sandblasting with sand from tailings ponds or other chat sources.
—Bedding material under a slab in a building that has underfloor air conditioning or heating ducts.
—Development of land for residential use (*e.g.*, for houses or for children's play areas, such as parks or playgrounds) where visible chat is present or where the Pb concentration in the soil is equal to or greater than 500 mg/kg unless the direct human contact health threat is eliminated by engineering controls (*e.g.*, removing the contaminated soil or capping the contaminated soil with at least 18 inches of clean soil).

[2] The University of Oklahoma 2005 study entitled, A Laboratory Study to Optimize the Use of Raw Chat in Hot Mix Asphalt for Pavement Application, was reviewed internally by Drs. Tom Landers, Robert Knox, and Joakim Laguros and externally reviewed by various Oklahoma Department of Environmental Quality personnel. This report was designed to meet USEPA 1994 Data Quality Objectives which assure proper study design, sample collection and sample analyses. A separate Sampling and Analysis Plan was prepared for this effort which includes a QA/QC plan which was managed by a OU Quality Assurance Officer. Samples were collected and analyzed in accordance with EPA methods and lab results were verified by outside laboratories.

• EPA Region 6 issued a Tar Creek Mining Waste Fact Sheet on June 28, 2002 that identified the following as acceptable uses of chat: (1) Applications that bind (encapsulate) the chat into a durable product (*e.g.*, concrete and asphalt), (2) applications that use the chat as a material for manufacturing a safe product where all waste byproducts are properly disposed, and (3) applications that use the chat as sub-grade or base material for highways (concrete and asphalt) designed and constructed to sustain heavy vehicular traffic. This fact sheet also incorporated the ODEQ list of unacceptable uses of chat. The Region 6 fact sheet is available at *http://www.epa.gov/Arkansas/6sf/pdffiles/tar_creek_june_2002_waste.pdf.*

• EPA Region 7 issued a Mine Waste Fact Sheet in 2003 that identified uses of chat that are not likely to present a threat to human health or the environment. Those uses are: (1) Applications that bind material into a durable product; these would include its use as an aggregate in batch plants preparing asphalt and concrete, (2) applications below paving on asphalt or concrete roads and parking lots, (3) applications that cover the material with clean material, particularly in areas that are not likely to ever be used for residential or public area development, and (4) applications that use the material as a raw product for manufacturing a safe product. The fact sheet also lists mine waste (chat) uses that may present a threat to human health or the environment which are similar to those listed by ODEQ and the Region 6 fact sheet. However, the Region 7 fact sheet also lists use as an agricultural soil amendment to adjust soil alkalinity as a use that may present a threat to human health or the environment. The Region 7 fact sheet is available at *http://www.epa.gov/Region7/news_events/factsheets/fs_minewaste_moks_0203.pdf.*

A copy of these regulations/reports/fact sheets are available in the Docket to today's rulemaking.

Based on the review of the States' regulations, EPA concludes that today's proposal does not need to establish additional criteria to address any environmental concerns arising from hot mix asphalt and batch concrete facilities or from chat washing facilities. The Agency believes that potential fugitive dust emissions and stormwater runoff from chat piles are adequately addressed by existing State regulations. Additionally, as stated previously, BIA requires covers on trucks transporting chat from Tribal lands to prevent blowing of chat dust. However, the Agency seeks information and comment on the adequacy of state and BIA requirements and solicits comment on requiring truck covers for transportation of chat. To address potential leaching to groundwater and runoff to surface streams, the Agency solicits comment on whether to require storage to be designed to control run-on and run-off, leachate to ground water, fugitive dusts, and that chat be stored in a building, or on a concrete, clay, or synthetic lined pad, or covered, if storage exceeds 90 days.[3]

Furthermore, as discussed later in the preamble, the Agency expects that most chat used will be used within the Tri-state area because of transportation costs. Thus, the Agency has only evaluated the air and water rules in Oklahoma, Missouri and Kansas. However, there is nothing in this rule that would limit its use in these three states. Therefore, the Agency solicits comment on whether it should adopt general criteria for the management of chat in today's rule if the chat is managed in other states or whether other states would have similar types of controls that Oklahoma, Missouri and Kansas have in place.

Today's action would require that chat used in Federally funded transportation projects be encapsulated in hot mix asphalt or concrete, unless the use is otherwise authorized by a State or federal response action. Such response actions are undertaken with consideration of risk assessments developed in accordance with state and federal laws, regulations, and guidance. This mandatory criteria is more restrictive than the guidances issued by Regions 6 and 7 since it is the Agency's current belief that the use of unencapsulated chat should be restricted to state or federal remediation actions, where a regulatory agency exerts oversight. This position was taken because the data generally lead EPA to believe that unencapsulated uses are not protective of human health and the environment. However, because state and federal remediation actions are based on site specific determinations that take into account a wide variety of factors at the site, EPA believes that such assessments provide sufficient safeguards that would ensure that any unencapsulated uses of chat authorized through this mechanism would be protective of human health and the environment.

[3] While the Agency is not proposing that chat be sized before it is encapsulated, we are aware that chat is sized before it is beneficially used in certain instances. In these instances, we would expect that any residuals that are generated would be handled in connection with the remediation plans at the site.

4. Physical and Chemical Characteristics of Chat

Some of the important physical properties of chat include hardness, soundness (durability), gradation, shape and surface texture. Bulk raw chat includes both large and small particle sizes.

Physical Characteristics

In a University of Oklahoma (OU) study *(A Laboratory Study to Optimize the Use of Raw Chat in Hot Mix Asphalt for Pavement Application: Final Report (August 2005))*, the specific gravity of the raw chat was found to be 2.67, which is similar to some commonly used aggregates such as limestone and sandstone.

According to an ODEQ study (''Summary of Washed and Unwashed Mining Tailings (Chat) from Two Piles at the Tar Creek Superfund Site, Ottawa County Oklahoma,'' Revised June 2003), chat consists of materials ranging in diameter from 15.875 mm (5/8 inch) to less than 0.075 mm (the size fraction that passes the No. 200 sieve).

Since raw chat is a crushed material from mining operations, raw chat particles have fractured faces. Raw chat also has numerous voids in the loose aggregate form. The more angular the aggregate the higher the amount of voids. The uncompacted void content or the fine aggregate angularity of raw chat was found to be 46%. Raw chat has higher fine aggregate angularity than required by most state DOTs.

Raw chat is harder than some other aggregates such as limestone. The L.A. abrasion value (determined by the Test for Resistance to Degradation of Aggregate by Abrasion and Impact in the Los Angeles Abrasion Machine) of raw chat was found to be 18% which is lower than that of limestone (23%) used in the OU study.

Cubical shape is a desirable property of a good aggregate. The coarse aggregate in raw chat (particles retained on a 4.75 mm (#4) sieve) has less than 5% flat or elongated particles. Therefore, chat is viewed as a desirable aggregate material.

State DOTs specify minimum aggregate durability indices of approximately 40%. In the OU study, the aggregate durability index of raw chat was found to be 78%. The insoluble residue of raw chat was found to be 98%. The minimum requirement for insoluble residue is 40%.

State DOTs also specify aggregate requirements for hot mix asphalt and Portland cement concrete. Most State DOTs, including Kansas, Oklahoma and Missouri, have adopted aggregate standards developed by the American

Association of State Highway and Transportation Officials (AASHTO). According to AASHTO, the 0.075 mm (#200) sieve size is the dividing line between sand-size particles and the finer silts and clays. These finer particles often adhere to larger sand and gravel particles and can adversely affect the quality of hot mix asphalt cement and Portland cement concrete. The AASHTO standards for Fine Aggregate for Bituminous Paving Mixtures (M 29–03) and Fine Aggregate for Portland Cement Concrete (M 6–03) specify limits for the amount of aggregate, on a percent mass basis, in hot mix asphalt cement and Portland cement concrete according to aggregate size and gradation. The aggregate sizes included in the AASHTO standards range from .075 mm to 9.5 mm which is within the range of particles found in raw chat. The AASHTO standards do not preclude the use of fine chat particles in hot mix asphalt or Portland cement concrete. Depending on the designated grading, AASHTO limits particles finer than sieve size #50 in the range of 7 to 60% for aggregate in asphalt. Fine aggregate for use in concrete is limited by the States of Oklahoma and Missouri to 5 to 30% for particles less than sieve size #50, while the values are 7 to 30% in Kansas.

Chemical Characteristics

Two studies [Dames and Moore, 1993 and 1995; ''Sampling and Metal Analysis of Chat Piles in the Tar Creek Superfund sites for the Oklahoma Department of Environmental Quality,'' 2002; Datin and Cates; ''Summary of Washed and Unwashed Mining Tailings (Chat) from Two Piles at the Tar Creek Superfund Site, Ottawa County Oklahoma, Revised June 2003,'' ODEQ] provide data on metals concentrations in washed and unwashed (or raw) chat. The Dames and Moore study indicated total lead concentrations in the raw chat ranged from 100 mg/kg to 1,660 mg/kg, while the Datin and Cates study noted that lead concentrations from piles located throughout the Tri-State area had mean total lead concentrations of 476 to 971 mg/kg. The Site Characterization report [AATA International, Inc. December 2005; Draft: Remedial Investigation Report for Tar Creek OU4 RI/FS Program] notes, however, that the concentration of lead in the raw chat ranged from 210 mg/kg to 4,980 mg/kg with an average of 1,461 mg/kg; cadmium ranged from 43.1 mg/kg to 199.0 mg/kg with an average of 94.0 mg/kg; and zinc ranged from 10,200 mg/kg to 40,300 mg/kg with an average of 23,790 mg/kg.

These studies also showed that as chat sizes become smaller, the metals content increases. The Datin and Cates report, ''Summary of Washed and Unwashed Mining Tailings (Chat) from Two Piles at the Tar Creek Superfund Site, Ottawa County Oklahoma, Revised June 2003,'' noted TCLP testing of all dry sieve sizes greater than 40 do not exceed 5mg/l and could be classified as non-hazardous under RCRA.[4] This same study also shows that total metals testing of wet screened material (larger fractions) resulting from chat washing have lead concentrations which range from 116 to 642 mg/kg, while TCLP testing of the same materials have lead concentrations of 1.028 to 3.938 mg/l (also well below 5mg/l). Therefore, the data show that either dry physical sieving of raw chat or chat washing generate chat aggregate (greater than sieve size 40) with considerably lower metals concentrations than raw chat.

5. What Are the Environmental and Health Effects Associated With Pollutants Released From Raw Chat?

The Tri-State mining district includes four National Priority List (NPL) Superfund sites that became contaminated from the mining, milling, and transportation of ore and the management practices for chat. These sites are located in Tar Creek in Ottawa County, Oklahoma, Cherokee County in southeast Kansas, and Jasper and Newton Counties in southwest Missouri. Cleanup activities related to the millions of tons of mining waste that were deposited on the surface of the ground at these sites have been designated as Operable Units (OUs). OUs are groupings of individual waste units at NPL sites based primarily on geographic areas and common waste sources.

Raw chat has caused threats to human health and the environment as a result of the concentrations of lead present in the chat. Evaluation of raw chat, noted above, also indicates that this waste in unencapsulated uses has the potential to leach lead into the environment at levels which may cause threats to humans (elevated blood lead concentrations in area children). Such threats have been fully documented in Records of Decision (RODs) for the OUs at these NPL sites (See Tri-State Mining District RODs in the docket to this action). Copies of Site Profiles and RODs can be searched at *http://www.epa.gov/superfund/sites/rods/index.htm.*

Lead toxicity targets the nervous system, both in adults and children. Long-term exposure of adults can result in decreased performance of the nervous system. It may also cause weakness in the fingers, wrists, or ankles. Lead exposure also causes small increases in blood pressure, particularly in middle-aged and older people and can cause anemia. Exposure to high lead levels can severely damage the brain and kidneys in adults or children and ultimately cause death. (Agency for Toxic Substances and Disease Registry (ATSDR) Fact Sheet for Lead, September 2005.)

Recent risk assessments conducted at the Tar Creek NPL site indicate that cadmium and zinc may not pose a human health risk. Nevertheless, breathing high levels of cadmium may severely damage the lungs and can cause death. Eating food or drinking water with high levels of cadmium may severely irritate the stomach, leading to vomiting and diarrhea. Long-term exposure to lower levels of cadmium in air, food, or water may lead to a buildup of cadmium in the kidneys and possible kidney disease. Other long-term effects are lung damage and fragile bones. (ATSDR Fact Sheet for Cadmium, June 1999.)

Zinc in the aquatic environment is of particular importance because the gills of fish are physically damaged by high concentrations of zinc (NAS1979). Harmful human health effects from zinc generally begin at levels from 10–15 times the recommended daily allowance (in the 100 to 250 mg/day range). Long-term exposure may cause anemia, pancreas damage, and reduced levels of high density lipoprotein cholesterol (the good form of cholesterol). Breathing large amounts of zinc (as dust or fumes) may cause a specific short-term disease called metal fume fever. (ATSDR Fact Sheet for Zinc, September 1995.)

6. Who Is Affected by This Action?

When promulgated, the proposed criteria will affect users of chat used in transportation construction projects that are carried out, in whole or in part, using federal funds. In addition, unencapsulated chat can be used provided it is part of and otherwise authorized by a State or federal response action undertaken pursuant to applicable federal or state environmental laws. Such response actions are undertaken with consideration of risk assessments developed in accordance with state and federal laws, regulations, and guidance. The Agency is also proposing

[4] Since chat is a mining waste covered by the Bevill Amendment to the Solid Waste Disposal Act, it is not subject to the hazardous waste regulations under RCRA Subtitle C. However, we are using the TCLP leachate value for lead simply as a comparative measure.

recommended criteria as guidance that will be applicable to the use of chat in non-residential non-transportation uses.

C. What Was the Process EPA Used To Develop This Action?

The Agency initially reviewed information concerning the environmental effects of the improper placement and disposal of chat found in the Records of Decision cited above for the four NPL sites located in the Tri-State mining district (Tar Creek, Jasper County, Cherokee County, Newton County). The Agency then reviewed reports which identified current or past uses of chat, primarily studies prepared to support Governor Keating's Taskforce (Governor Frank Keating's Tar Creek Superfund Task Force, Chat Usage Subcommittee Final Report, September 2000) and research on chat uses conducted by the University of Oklahoma (*A Laboratory Study to Optimize the Use of Raw Chat in Hot Mix Asphalt for Pavement Application: Final Report August 2005*). The Agency interviewed the principal authors of the University of Oklahoma studies to further evaluate their findings and representatives of the Departments of Transportation in Oklahoma, Kansas, and Missouri. The Agency met with the U.S. Department of Transportation, Federal Highway Administration to discuss the use of aggregate substitutes in road surfaces and relied on the joint EPA/FHWA document of the use of wastes in highway construction [User Guidelines for Waste and Byproduct Material in Pavement Construction, FHWA, 1997 (*http://www.rmrc.unh.edu/Partners/UserGuide/begin.htm*)]. Additionally, EPA met with the BIA to discuss BIA requirements for the sale of chat on Tribal lands. The Agency also conducted a series of interviews with the environmental regulatory agencies in the three states to further identify acceptable versus unacceptable uses of chat. Moreover, the Agency conducted interviews with companies currently washing and selling chat and with asphalt and cement companies which either were currently using or had used chat. EPA visited the Tri-State area to observe the condition of chat piles and confirm the location of chat washing and asphalt companies in the area. The Agency has communicated with the tribal members in the Tri-State area to inform them about this action and seek information about current uses and has met the requirements of Executive Order 13175. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits any additional comment on this proposed rule from tribal officials.

II. Summary of the Proposed Rule

A. What Criteria Are EPA Establishing for the Use of Chat?

EPA views chat uses in two basic categories: Unencapsulated and encapsulated. Unencapsulated uses of chat have contributed to human health and environmental risks resulting in EPA placing four sites on the NPL. Additionally, the use of unencapsulated chat in driveways and as fill material has contributed to lead contamination of soils in residential property that has resulted in elevated blood lead concentrations in area children. Therefore, EPA cannot establish specific criteria for individual unencapsulated uses of chat that are safe and environmentally protective. However, EPA has established a criterion that such uses will be safe and environmentally protective if they are part of, and otherwise authorized by a State or federal response action undertaken pursuant to applicable federal or state environmental laws. Such response actions are undertaken with consideration of risk assessments developed in accordance with state and federal laws, regulations, and guidance. By contrast, uses that encapsulate chat limit the release of the constituents of concern. Therefore, encapsulation of chat forms the basic criterion in today's proposal.

1. Transportation Construction Uses

Transportation construction uses of chat are transportation construction projects funded, wholly or in part, with federal funds. The Agency has evaluated all the transportation construction uses defined previously and has concluded that the only transportation construction uses that are safe and environmentally protective are uses which encapsulate chat in hot mix asphalt concrete or in Portland cement concrete.

a. What is our proposed action?

Today's action, if finalized as proposed, would require that chat used in transportation construction projects funded, wholly or in part, with Federal funds be encapsulated in asphalt concrete or Portland cement concrete, unless the use is authorized by a State or Federal response action undertaken pursuant to applicable Federal or State environmental laws.

In addition, for all chat used in transportation construction projects funded in whole or in part using Federal funds that is not subject to the U.S. Department of Interior, Bureau of Indian Affairs Chat Use Certification requirements described in Section I.B.3. above, the Agency is proposing a certification requirement similar to that required by BIA. Specifically, EPA proposes that the acquirer of the chat would submit a signed, written certification that the chat will be used in accordance with EPA's criteria. The certification will also include the location of origin of the chat and the amount of chat acquired.

EPA proposes that the certification be provided to the environmental regulatory agency in the State where the chat is acquired, except for chat acquired on lands administered by the BIA which is subject to the BIA certification requirements. The Agency also proposes that if the acquirer sells or otherwise transfers the chat, the new owner of the chat must also submit a signed, written certification as described in this section. Finally, the Agency proposes that the acquirer, or any other person that receives a copy of the certification, maintain a copy of the certification in its files for three years following transmittal to the State environmental regulatory agency.

Today's action does not, in itself, modify or limit any existing state or Federal policies (including EPA Regions 6 and 7 guidances on chat use), positions, or decisions, nor any existing agreements or contracts among private or governmental entities. Because this action is a proposed rulemaking, provisions of the proposal, as well as EPA's assumptions and rationale leading to them, are subject to public notice and comment. Therefore, until a final rule governing these materials is issued, EPA's policies, positions or decisions regarding the use of chat remain unchanged.

b. What is the rationale for the Proposed Rule?

The Agency is basing this action on our review of various studies and data that show that certain encapsulated uses of chat are reasonably expected to be environmentally safe.

i. Asphalt

There are a number of factors which lead us to conclude that the encapsulation of chat into hot mix asphalt is safe and environmentally protective:

- Several studies have been conducted on the use of chat in hot mix asphalt. The most comprehensive study was conducted by the University of Oklahoma (OU) School of Civil Engineering and Environmental Science. OU published their findings in

a report titled, *A Laboratory Study to Optimize the Use of Raw Chat in Hot Mix Asphalt for Pavement Application: Final Report (August 2005*). OU tested the durability and leaching potential of a variety of mixtures of hot mix asphalt with raw chat for road surfaces and for road bases. In addition, OU milled (sawed) samples to simulate weathering. The Agency relied on these findings as one of the principal sources of data supporting the use of chat in hot mix asphalt. This study confirms an earlier study conducted by the U.S. Army Corps of Engineers (Tar Creek Superfund Site, Ottawa County, Oklahoma, Final Summary Report: Chat-Asphalt Paved Road Study U.S. Army Corps of Engineers—Tulsa District, February 2000).

• Comparison of the Synthetic Precipitation Leaching Procedure (SPLP) results of milled (weathered) chat asphalt samples in the OU study with the National Primary and Secondary Drinking Water Standards (*http://www.epa.gov/safewater/mcl.html*), without dilution and attenuation, show that milled surface and road base mixtures did not exceed the primary drinking water standard for lead (0.015 mg/l) or cadmium (0.005 mg/l). The OU results also show that milled asphalt road bases and surfaces did not exceed the secondary drinking water standard for zinc (5 mg/l).[5]

• The TCLP test was designed as a screening test to simulate leaching of materials in a municipal solid waste landfill. The SPLP test is also a screening test, and was designed to simulate leaching of materials when exposed to acid rain. It is highly unlikely that road surfaces would be exposed to leaching conditions found in municipal solid waste landfills. Therefore, the Agency believes that of these two tests, the SPLP tests on raw chat asphalt samples is likely to better mimic the leaching potential of such mixtures when they are to be used in road construction.

• The OU study tested unweathered and milled samples. The Agency believes milled samples represent worst case scenarios because milling exposes more surface area to leaching.

• In a dissertation submitted to the University of New Hampshire titled ''Contributions to Predicting Contaminant Leaching from Secondary Material Used in Roads,'' Defne S. Apul, September 2004, the author noted that if pavement is built on highly adsorbing soils, the concentrations of contaminants reaching groundwater are more than several orders of magnitude lower than the MCLs. Moreover, the Agency considered in its Report on Potential Risks that it is highly unlikely that leachate would be ingested directly by humans.

The report entitled ''Summary of Washed and Unwashed Mining Tailings (Chat) from Two Piles at the Tar Creek Superfund Site, Ottawa County Oklahoma, Revised June 2003,'' ODEQ, also evaluated leachate from asphalt containing chat removed from the Will Rogers Turnpike located near Quapaw, Oklahoma. This evaluation was conducted to determine if asphalt that used chat as an aggregate removed at the end of its useful life posed threats from metals leaching into the environment. TCLP results for lead ranged from less than 0.050 mg/l to 0.221 mg/l. There are no SPLP test data in this report. Based on best professional judgement and review of TCLP versus SPLP results, EPA believes that there would be a reduction in lead concentrations of approximately one order of magnitude. Therefore, we believe that SPLP results would not exceed the MCL for lead. Based on these results, EPA does not believe the disposal of chat asphalt should present risks to the environment.

The Agency therefore concludes that the use of chat in hot mix asphalt for pavement (which accounts for about 95% of the current chat usage), base, and sub base is an environmentally protective use. EPA does not believe that it is necessary to establish specifications of what constitutes ''hot mix asphalt'' because transportation construction uses are required to comply with federal and state Department of Transportation material specifications. These specifications delineate requirements which ensure that when chat is used in hot mix asphalt, the resulting product will be structurally stable.

ii. Concrete

The Agency also believes that the encapsulation of chat into Portland cement concrete is safe and environmentally protective:

• An undated University of Oklahoma Surbec-Art Environmental study[6] and a 2000 University of Oklahoma Study[7] conducted the only known assessments of the total metals and TCLP on concrete matrices mixed with raw chat. The 2000 OU results are also presented in the 2005 OU study. Following are the results from those studies.

	S1		S2		C40	
	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)	Total (mg/kg)	TCLP (mg/l)
Lead	178	0.92	379	0.17	150	1
Cadmium	30 (R)	0.09	35 (R)	0.12	35	0.1
Zinc	4200	0.23	4400	0.16	4100	.....

(R) = rounded to nearest whole number.

• While not a direct measure of the leaching potential of Portland cement concrete, waste stabilization technologies and their effectiveness are well defined in the Agency's Final Best Demonstrated Available Technology (BDAT) Background Document for Universal Standards, Volume A, July 1994 and Proposed Best Demonstrated Available Technology (BDAT) Background Document for Toxicity Characteristic Metal Wastes D004–D011, July 1995. One of those technologies is stabilization, such as encapsulation in a cement matrix, to reduce the mobility of the metal in the waste. The metals are chemically bound into a solid matrix that resists leaching when water or a

[5] Several hot mix asphalt samples were also tested in the OU study using the toxicity characteristic leaching procedure (TCLP). For surface samples, TCLP average concentrations for lead ranged from <0.005 to a high of 0.46 mg/l. TCLP average concentrations for cadmium ranged from <0.010 to 0.223 mg/l and zinc concentration averages ranged from 11.3 to 28.53 mg/l. Road base samples usually have higher metals concentrations than do surface samples. For road base samples, average TCLP lead concentrations ranged from 0.069 to 2.008 mg/l, while average TCLP cadmium concentrations ranged from 0.011 to 0.087 mg/l and average TCLP zinc concentrations ranged from 19.9 to 41.33 mg/l.

[6] ''Preliminary Report on the Findings of Environmental and Engineering Tests Performed on Mine Residual Materials from Ottawa County, Oklahoma.''

[7] ''Development of Holistic Remediation Alternatives for the Catholic 40 and Beaver Creek.''

mild acid comes into contact with the waste. The Agency evaluated contaminant levels in unstabilized versus stabilized wastes to determine the reduction in mobility of metals, including lead and cadmium, when those wastes were stabilized in a cement matrix. These results indicate that stabilization with cement generally reduced lead and cadmium mobility by two to three orders of magnitude (See Table A4 of the July 1994 document cited above).

• Although chat was not specifically discussed in the BDAT Background Documents, the data and information contained in the technical background documents cited in the previous bullet leads us to believe that chat added to concrete will bind a significant amount of metals and therefore limit the leaching potential of chat concrete. While limited leaching of metals from concrete may still occur, we believe metals in chat can be encapsulated in an environmentally protective manner for the following reasons:

—As shown in the table above, TCLP levels from raw chat contained in concrete, as measured in the undated and 2000 OU studies, for lead (0.17 to 1.0 mg/l) and cadmium (0.01 to 0.12 mg/l) are within the TCLP levels from the 2005 OU study for weathered (milled) hot mix asphalt (<0.005 to 2.008 mg/l for lead and <0.010 to 0.223 mg/l for cadmium).

—The Agency does not have SPLP data for concrete. In hot mix asphalt, the SPLP concentrations for both lead and cadmium were <0.01 mg/l, significantly below the TCLP levels for the same constituents. Should additional environmental release studies of chat used in concrete be performed, use of SPLP would be preferred over TCLP, since SPLP would better replicate the environmental conditions of the chat reuse.

—Because the Agency believes that it is highly unlikely that the leachate would be directly ingested by humans, applying a dilution and attenuation factor would lead to even lower metals concentrations.

• In a dissertation submitted to the University of New Hampshire titled ''Contributions to Predicting Contaminant Leaching from Secondary Material Used in Roads,'' Defne S. Apul, September 2004, the author noted that if pavement is built on highly adsorbing soils, the concentrations of contaminants reaching groundwater are more than several orders of magnitude lower than the MCLs. Moreover, the Agency considered in its Report on Potential Risks that it is highly unlikely that leachate would be ingested directly by humans.

• The Agency evaluated highway design specifications; *i.e.*, layering of compacted material (Apul) and the movement of water through concrete (hydraulic conductivity),[8] and concludes that such designs in general retard the movement of rainwater through concrete and into groundwater.

• The University of Oklahoma (OU) 2005 study summarized previous uses of raw chat in concrete and also noted that in the past chat had been used for concrete pavement. During interviews with the Ottawa County Roads Department (Memo to File: Interviews with the Ottawa County, Oklahoma Roads Department found in the docket to today's action), it was noted that chat had been used in concrete pavement, although that use had stopped at least 15 years ago. The discontinuance of the use of chat in concrete in the Tri-State area is likely due to the fact that cheaper sand is locally available, that chat used as a silica substitute is difficult to grind, and that such use may have resulted in the past with poorer quality material.

iii. Unencapsulated Uses of Chat

As already noted, the Agency is concerned that unencapsulated uses of chat allow leachate to form which may contain metals concentrations that could cause environmental threats. Unencapsulated chat has contributed to the contamination at four NPL sites, and use of chat in driveways and as fill material has contributed to lead contamination of soils in residential property which resulted in elevated blood lead concentrations in area children (See Tri-State Mining District RODs which are available in the docket to today's action). EPA expects that using this material in an unencapsulated manner would generally pose unacceptable risks. (See Section III. A. below, ''What Are the Environmental and Health Impacts?'') One exception is use of unencapsulated chat that is otherwise authorized by a State or Federal response action undertaken pursuant to applicable Federal or State environmental laws. Such remedial actions are undertaken after site specific risk evaluations are completed which account for the full variety of conditions at the site, such as existing contamination, in assessing risks to human health and the environment. For example, Region 7 assessed the protectiveness of using unencapsulated chat as road base for a proposed highway bypass within the Tar Creek Superfund Site boundary and, as a result of a site specific assessment, determined that such use, compared to other alternatives, was a more protective action (USEPA Region 7, Engineering/Cost Analysis—Highway 71, Jasper County, Missouri, August 2000).

In today's action, EPA is also proposing a certification requirement because the Agency believes it is important that the acquirer of chat that is not part of demolished asphalt or concrete certify that the chat will be used in accordance with authorized uses which are environmentally protective. This certification will assure that chat is not used in a manner likely to cause substantial environmental contamination that would necessitate federal or state clean up actions. The Agency is proposing this action to be consistent with the BIA Chat Use Certification requirements.

c. Is the EPA soliciting comments on specific issues?

The Agency is soliciting comments on all aspects of today's proposal. In particular:

• The Agency has defined the term ''Tar Creek Mining District'' to include chat piles located in the Tri-State Mining District—that is, Ottawa County, Oklahoma, Cherokee County in Southeast Kansas and Jasper and Newton Counties in Southwest Missouri. The Agency is soliciting comment on whether it should limit the scope of today's action to chat currently located in Oklahoma. Also, the Agency is soliciting comment on whether additional counties, such as Lawrence and Barry Counties in southwest Missouri, should be added to the scope.

• In today's notice, EPA has tentatively concluded that the use of chat in concrete (both hot mix asphalt concrete and Portland cement concrete) in transportation projects is environmentally protective. EPA solicits comments on whether users of chat encapsulated concrete should be required to conduct leach testing prior to use. If the Agency were to require leach testing, the Agency solicits comments on whether the TCLP or SPLP test method, as described in Methods 1311 and 1312 of EPA's SW–846 analytical methods, or some other leach testing procedure should be used.

• If the Agency were to require leachate testing, the Agency would need to establish specific criteria. For example, the Agency could specify that the results of testing would need to meet the Primary and Secondary Drinking Water Standards for lead, cadmium, and

[8] According to the Portland Cement Association, the hydraulic conductivity of a typical Portland cement concrete is 1×10^{-12} cm/sec.

zinc. The Agency also solicits comment on whether the leachate should be measured against the National Recommended Water Quality Criteria which address acute and chronic biological effects. In addressing this issue, commenters will need to provide the rationale for any levels suggested.

• Additionally, the Agency could develop leach test criteria with the use of a Dilution and Attenuation Factor (DAF). Test results using DAFs could reflect how contaminant concentrations may change as they move through the environment. If commenters believe that a DAF should be applied, the Agency requests comment on what DAF should be applied and what is the rationale for its use.

• While the Agency is not proposing to require that chat be sized before it is encapsulated, the Agency is soliciting comment on whether chat should be limited to particles that exceed a specific sieve size (via physical or washing methods). Based on available data, particles finer than sieve size #40 in unencapsulated raw chat tend to have a TCLP for lead of greater than 5mg/l, while larger particles in the raw chat tend to have a TCLP for lead of less than 5 mg/l. By establishing a minimum size of chat that can be used, the Agency would possibly be limiting the amount of metals in the chat, as well as the leaching potential of these uses. Specifically, the Agency seeks comment on whether the binding properties of the encapsulation are sufficient to prevent undue environmental risks associated with leaching, whether dust control practices associated with demolition adequately address the higher metal concentrations of the fine particulates, and whether subsequent recycling or disposal options could pose undue risks due to the higher metal levels in the fine particles. While it is the goal of the Agency to balance the beneficial use and reuse of materials, while also limiting the introduction back into the environment of materials with high metals loadings, we seek comment on whether it is appropriate to require the sizing of chat to limit the addition of lead bearing materials into use and their related exposure in the environment. There are a series of factors which should be considered in submitting comments on these issues:

—As identified in consultation with the Quapaw tribe, the tests conducted by the University of Oklahoma on asphalt containing ''pile run'' or raw chat, did not show problematic leaching levels. AASHTO standards for aggregate in asphalt limit fines less than sieve size #50 to 7 to 60%, depending on the grading. There are, however, no direct measurements on the use of raw chat for 100% of the aggregate in asphalt—in the University of Oklahoma study, chat comprised 30 to 80% of the aggregate.

—The limited data that exists for concrete involves raw chat, but there is no direct data on the use of chat for cement manufacturing.

—With regard to demolition, the fugitive dust controls are a routine requirement for demolition projects.

—For post demolition recycling and disposal, approximately 90% of the asphalt is recycled into new asphalt, while 70% of concrete from transportation projects is recycled as fill or base. Recycling of concrete from residential buildings is about 60% versus 88% for commercial buildings.

—Requiring sizing would result in the generation of some chat fines, which would not be used in concrete or asphalt and thus, would be a waste stream that would need to be managed. Based on the review of the States' regulations, however, EPA concludes that additional criteria would not be needed to address any environmental concerns arising from the handling and disposal of fines generated by the sizing of chat.

• Today's criterion does not include the use of chat in cold mix asphalt (CMA) or slurry seals. It is the Agency's understanding that CMA or slurry seals are typically used for temporary repairs. At least one State, Kansas, has specifications for CMA using chat; however, EPA has no information that chat is being used in CMA or slurry seals. The Agency solicits comments on the following: (1) Whether chat is being used in cold mix asphalt or slurry seals and, (2) whether the existing data would support the inclusion of chat used in cold mix asphalt or slurry seals in the criteria proposed today. The Agency also solicits data on the ability of CMA or slurry seals to bind metals.

• Another possible use of chat is in a stabilized road base. A stabilized base has the advantage of using a pozzolanic material which should reduce the mobility of the metals. However, the stabilized road base could use cement in amounts 4 to 6 percent by weight which is less than that used in concrete. While the nature of this binding may not be as great as concrete, the fact that the stabilized base is covered by an asphalt concrete or Portland cement concrete road surface reduces the level of leachate. Capillary effects along the road's edge will still cause considerable wetting of the base, and EPA solicits comment on whether the combination of stabilization and coverage by the road surface adequately limits metals releases. EPA therefore solicits comment on whether the use of chat as stabilized road base would be an environmentally protective use of chat and whether this use should be allowed in federally funded transportation projects.

• Material like chat is also sometimes used as flowable fill. While flowable fill involves the use of a pozzolanic material, the binding may not be as sound as that for concrete. Like a stabilized road base, flowable fill could use cement in amounts as little as 3 to 5 percent by weight. The EPA solicits comments on the degree to which flowable fill matches the binding characteristics of concrete or stabilization practices associated with waste management, and whether use of flowable fill would be appropriate for chat. If use as flowable fill were allowed, should leachate testing and compliance with some standard (*e.g.*, MCLs) (with or without consideration of dilution and attenuation) be required?

• Today's criterion does not include the use of unencapsulated chat as road bed beneath asphalt or concrete pavement. Use of unencapsulated chat as a free-draining subbase capped with an asphalt concrete or Portland cement concrete pavement may be an environmentally protective use. However, the Agency has no data on whether use of unencapsulated chat in this manner would prevent leaching of metals found in chat into the environment. Therefore, the Agency requests comments and supporting data on whether the use of unencapsulated chat as road bed, capped with an asphalt concrete or Portland cement concrete pavement, would be an environmentally protective use.

• In today's action, EPA is proposing that certification be provided to the environmental agency in the State where the chat is acquired. The Agency is soliciting comments on whether certification should also be provided to the environmental agency in the State where the material is ultimately used.

• Today's proposal allows the use of unencapsulated chat where it has been authorized by a State or Federal response action undertaken pursuant to applicable Federal or State environmental laws. It has also been suggested that unencapsulated uses be allowed if data are presented to EPA that demonstrate that the proposed use will be environmentally benign. EPA takes comment on this option, as well as the possibility that this function be deferred to the relevant state authority.

2. Non-Transportation Uses—Cement and Concrete Projects

Non-transportation uses of chat include its use as a raw material in the manufacture of cement, and as an aggregate in Portland cement concrete. Based on its analysis on the possible use of chat in concrete in roads (discussed above), EPA believes that health and environmental concerns would be minimal for chat used in concrete in non-transportation, non-residential construction projects and for structural purposes.

a. What is our proposed approach?

The Agency is proposing to establish a criterion that would recommend the encapsulation of chat into cement and concrete for non-transportation, non-residential uses, as defined above, such as for non-residential structural uses limited to weight bearing purposes and for commercial/industrial parking and sidewalk areas.

b. What is the rationale for the Proposed Rule?

In the past, chat had been used in the manufacture of cement and used in concrete for building foundations and roads. Ash Grove Cement, in a communication with EPA (Memo to File: Conversation with Ash Grove Cement Regarding Use of Chat, which is available in the docket to today's action), indicated that it had produced cement clinker in 2001–2003 using chat as a silica substitute. According to Ash Grove, the clinker produced with chat met American Society for Testing and Materials (ASTM) standards for clinker. However, Ash Grove is no longer producing cement with chat. The Agency also reviewed published data and conducted interviews with chat sellers and state regulators and determined that chat is not currently being used in cement manufacturing or non-transportation Portland cement concrete projects.[9]

Pursuant to section 6006(a)(1), the Agency reviewed the possible use of chat as aggregate in concrete, and as it did in its transportation evaluations, concludes that certain uses of chat in concrete are environmentally protective. The criterion being considered would recommend that chat be encapsulated in concrete and recommend that only those uses be allowed where exposure to chat concrete would be limited to workers installing and maintaining projects. To meet this goal, the Agency is recommending that non-transportation, non-residential cement and concrete projects be limited to weight bearing structural uses such as non-residential foundations, slabs, and concrete wall panels. Other uses include non-residential retaining walls, commercial/industrial parking and sidewalk areas. Uses would not include any use of cement or concrete inside or adjacent to residences (*e.g,* concrete countertops, sidewalks, driveways). This guidance is somewhat more restrictive than current guidance issued by Regions 6 and 7. The Agency is taking this more restrictive approach in limiting its criterion since there is little information the Agency can use to determine if residential uses of chat cement or concrete are environmentally protective. Depending on what the Agency finally promulgates and issues as guidance, the Agency may modify those Fact Sheets. However, EPA solicits data to demonstrate this possible use would be environmentally benign.

The Agency has reviewed OSHA standards governing worker health and safety related to the construction and demolition of non-residential non-transportation uses of cement and concrete and concludes that existing standards adequately protect those workers from dusts and metals found in chat. It should be noted that when chat is used as an aggregate in concrete, worker exposures would be limited since the metals would already be bound.

c. Is the EPA soliciting comments on specific issues?

The Agency is soliciting comments on all aspects of today's proposal. In particular:

- The Agency solicits comments on whether the available information supports the establishment of criteria in determining that the use of chat contained in cement or concrete in non-residential, non-transportation uses is environmentally protective.
- Today's action would recommend that uses be limited to non-residential non-transportation uses. The Agency is soliciting comment on whether the data support expanding the criteria to include some structural residential uses. Today's action does not include the use of chat in non-structural residential uses; *e.g.*, concrete countertops, sidewalks, and driveways. The Agency also solicits comments and supporting data on whether non-structural residential uses would be environmentally protective.
- Today's action does not require non-transportation users of encapsulated chat in cement or Portland cement concrete to conduct leach testing prior to use. The Agency is, however, soliciting comments on whether leachate testing should be conducted prior to each encapsulated use. If the Agency were to recommend leach testing, the Agency solicits comments on whether the TCLP or SPLP test method, as described in Methods 1311 and 1312 of EPA's SW–846 analytical methods, or some other leach testing procedure would be appropriate.
- If the Agency were to require leachate testing, the Agency would need to establish specific criteria, either with or without the use of a Dilution and Attenuation Factor (DAF). Test results using DAFs could reflect how contaminant concentrations may change as they move through the environment. The Agency solicits comment on what the criteria would be, whether or not a DAF should be applied, and what the rationale would be for their use.
- The Agency solicits comment on whether chat users should provide certification to the environmental agency in the state(s) where the material is acquired. The agency is further soliciting comment on whether the certification should also be provided to the environmental agency in the state(s) where the chat is ultimately used.

B. Relationship of Proposed Criteria to Other State, Tribal and Federal Regulations and Guidance

For all uses of chat in transportation construction projects carried out in whole or in part with federal funds that is affected by this action, users must meet the relevant specifications (*e.g.*, for durability, granularity) established by the relevant state departments of transportation and the Federal Highway Administration (FHWA) , prior to it being used in transportation projects. This proposal would not change that—that is, EPA is not setting different specifications and is only informing users that other agencies already have established specifications and engineering testing requirements that must continue to be met.[10]

The FHWA established minimum standards at 23 CFR 626 for Highways (including references to the AASHTO Standard Specifications for Transportation Materials and Methods

[9] The Agency is aware of proposals to use unencapsulated chat as mine backfill. The Agency has conducted a study to determine if chat mixed with cement or concrete is being used for this purpose and found that it is not. See Memo to File: Mine backfill.

[10] The Agency also explored whether the use of chat in concrete had the potential to cause alkali-silica reactions. The Agency has reviewed studies on the use of zinc slags in concrete (A.M. Dunster, *et al.*, 2005) which indicate that zinc slags with zinc concentrations from 90,000 to 120,000 ppm have successfully been incorporated in concrete without detrimental engineering effects.

of Sampling and Testing) and at 23 CFR 633 Required Contract Provisions. Aggregate requirements for Concrete include AASHTO—6 Fine Aggregate for Portland Cement Concrete and AASHTO—80 Coarse Aggregates for Portland Cement Concrete. Technical requirements for Hot Mix Asphalt include AASHTO—29 Fine Aggregate For Bituminous Paving Mixtures and ASTM D6155 Standard Specification for Nontraditional Coarse Aggregates for Bituminous Paving Mixtures. FHWA National Highway *Standard Specifications and Supplements* is divided into topic areas corresponding to the divisions used in the ''Guide Specifications for Highway Construction'' Manual published by the AASHTO and can be accessed at (*http://fhwapap04.fhwa.dot.gov/nhswp/servlet/LookUpAgency?category=Standard+Specifications+and+Supplements*).[11]

ASTM Standard C–33 restricts the amount of chert that may be mixed into Portland cement concrete when the chert has a specific gravity (ratio of its density to the density of water) less than 2.4. Chat in the Tri-State area, a form of chert, has a specific gravity greater than 2.4. Therefore, ASTM Standard C–33 would not be applicable to the use of chat in Portland cement concrete.

The Agency also considered potential risks posed by the release of fine particles, principally into the air, during road resurfacing and replacement operations. Milling (grinding prior to resurfacing) and demolition of chat-containing asphalt and Portland cement may result in the release of fine chat particles. The Agency considered two scenarios: (1) Storage or disposal of asphalt or Portland cement concrete containing chat in piles from milling and demolition activities and, (2) a continuous milling, remixing, and resurfacing process. Under the first scenario, the potential risks would be posed by leachate from piles. As noted previously, based on leach tests of asphalt containing chat removed from the Will Rogers Turnpike, EPA does not believe storage in piles or disposal of chat asphalt should present risks to the environment. EPA concludes that it is not necessary to propose additional standards to address this issue. Under both scenarios, exposure to fine particles released during milling and demolition operations would be limited to on-site workers (for the basis of this conclusion, see Section III. A). The Occupational Safety and Health Administration has established limits for worker exposure to the metals found in chat (29 CFR 1926.55—Safety and Health Regulations for Construction, Gases, Vapors, Fumes, Dusts, and Mists, available at: *http://www.osha.gov/pls/oshaweb/owastand.display_standard_group?p_toc_level=1&p_part_number=1926*). EPA has reviewed the OSHA standards (See Section III. A. below, ''What Are the Environmental and Health Impacts?'') and concludes that it is not necessary to propose additional standards to address this issue.

Oklahoma, Kansas, and Missouri currently regulates chat washing facilities to assure that those operations do not further contaminate the environment (Memo to File: Evaluation of Chat Washing, found in the docket to this action). These regulations set standards for point and fugitive air emissions, as well as for point and non-point water discharges. In addition, these regulations specifically address fine grained wastes (fines) from these operations. The Agency's review of these regulations leads us to conclude that today's proposal does not need to address these activities, since existing state regulations are deemed adequate.

Oklahoma, Kansas, and Missouri also currently regulates hot mix asphalt plant operations. The Agency reviewed these regulations to determine if the storage of chat (and potential run-on/runoff and dust impacts) at such facilities are covered by those regulations. These regulations set standards for point and fugitive air emissions, as well as standards for point and non-point water discharges. The Agency concludes that the existing state regulations are adequate and, consequently, today's proposal does not need to address them.

USEPA Regions 6 and 7 have issued guidance on chat use (Region 6 Tar Creek Mining Waste Fact Sheet, June 28, 2002 and Region 7 Mine Waste Fact Sheet, 2003). The Region 6 and 7 guidances note that acceptable uses of chat in transportation include applications that bind (encapsulate) the chat into a durable product (asphalt and concrete) and applications that use chat as a sub-base or base material for highways (asphalt and concrete). This proposal establishes criteria for chat used in transportation construction projects funded, wholly or in part, with federal funds and proposes recommended criteria as guidance for non-transportation uses of chat. As noted earlier in the preamble, the proposed mandatory criteria and guidance in today's notice is more restrictive than the guidance issued by Regions 6 and 7. Depending on what the Agency finally promulgates and issues as guidance, the Agency may modify those Fact Sheets.

C. How Does This Proposal Affect Chat Sales From Lands Administered by the U.S. Bureau of Indian Affairs or Directly From Tribal Lands?

The Bureau of Indian Affairs (BIA) signed a Memorandum of Agreement with EPA Region 6 in February 2005 which is designed to lead to the renewed sale of chat from tribal lands and from lands administered by the BIA. EPA's proposal does not prevent chat sales, nor is it intended to delay such sales. Today's proposal is consistent with BIA chat sales requirements.

The draft sales agreement prepared by BIA, a copy of which is available in the Docket for today's proposal, includes an end use certification which requires buyers of chat to certify that when they sell their chat into commerce, the buyer must use the chat in a fashion which is deemed acceptable by EPA. This proposal is consistent with the end use provision in BIA's model contract, since this proposal will require a similar end use certification for the use of chat, regardless of its source (tribal or private).

D. How Does This Proposal Affect CERCLA Liability, Records of Decision, and Removal Decisions?

If waste material, such as chat, is used in a way that creates a threat to human health or the environment, the owner of the property and the party responsible for creating the hazardous situation could be liable for a cleanup under CERCLA or a State response action.

In today's action, EPA establishes criteria for chat use in federally funded transportation projects. However, such federal funding does not include compensation for removal and disposal of chat or other hazardous substances undertaken in accordance with State or Federal response actions.

Finally, nothing in this proposal shall affect existing Records of Decision issued at EPA National Priorities List sites or Removal Decisions associated with chat nor does the proposal affect the determination of liability as noted in CERCLA Sections 104, 106, and 107 or State corrective action decisions.

[11] State highway construction specifications can be found at the following internet web sites for Oklahoma (*http://www.okladot.state.ok.us/materials/700index.htm*), Kansas (*http://www.ksdot.org/burMatrRes/specification/default.asp*), and Missouri (*http://www.modot.state.mo.us/business/standards_and_specs/highwayspecs.htm*).

III. Impacts of the Proposed Rule

A. What Are the Potential Environmental and Public Health Impacts From the Use of Chat?

As noted above, two types of uses of chat, transportation uses and non-transportation uses, are covered by today's action. This section addresses potential risks and economic impacts associated with those uses, as well as end of life issues.

The Agency evaluated existing information related to the usage of chat throughout its life cycle in order to identify likely exposure pathways and receptors associated with various scenarios and to characterize the environmental and public health effects that may result from the release of metals from the use of chat in transportation construction projects. The types of information we considered include: total metal concentrations in raw chat and road construction products containing chat; leachable concentrations for metals in raw chat and road construction products containing chat; environmental sampling data for metals in the proximity of historical chat storage and usage sites; and existing evaluations of human health and wildlife impacts associated with metal contamination likely associated with mining activities. The goals of this effort were to determine if there are sufficient data: (1) To characterize the environmental releases (potential or demonstrated) of metals from chat during use applications; and (2) to evaluate the environmental and public health impacts (potential or demonstrated) from the transportation, storage, and use of chat in transportation applications.

1. Transportation Uses and Demolition

As previously described in the preamble, chat can be managed or used directly in the environment or can be encapsulated before it is managed or used in the environment. Examples of unacceptable uses that we identified for unencapsulated chat in transportation applications are: gravel for county roads and driveways, and fill material. Transportation-related uses of encapsulated chat are primarily as aggregate for hot mix asphalt in asphalt surface mix, and for use as an aggregate in stabilized base for roadway construction. Chat was found to be allowed as an aggregate in cold mix asphalt for microsurfacing applications to an existing pavement surface; however, the Agency has no evidence that chat is used in this manner.

For encapsulated chat, we found that the reports and study data on health and environmental effects focused almost exclusively on evaluating the leaching potential for various mix formulations used to develop asphalt products containing chat (*e.g.*, hot mix asphalt). Data were available on the total metal concentrations and leaching characteristics of (1) Asphalt surface and base mix formulations prior to roadway application, (2) asphalt and stabilized base samples from roads currently in use, (3) spent asphalt samples that were broken up and stored in piles, and (4) milled asphalt samples intended to simulate weathering. Metals appear to be tightly bound in the encapsulated matrix when the total metals concentrations in asphalt samples are compared to corresponding TCLP and SPLP leachate concentrations. In particular, for asphalt surface mix and stabilized road base uses for all 4 categories above, the highest TCLP concentrations reported for lead and cadmium were below the toxicity characteristic (TC) regulatory limits (5 mg/L and 1 mg/L, respectively). In fact, when the metals were detected, in many cases, they were below the drinking water MCLs for lead and cadmium.[12] For zinc, when detected, the TCLP concentrations were found to be generally above the SMCL (5 mg/L) by up to a dilution and attenuation factor of 15. As we have noted earlier, however, we believe that use of the TCLP in evaluating the leaching potential of encapsulated uses of chat in transportation projects is inappropriate since it does not accurately reflect the environmental conditions of the management scenario. Rather, we believe the SPLP is a more representative test of the conditions expected to lead to leaching of metals from this material. In addition, where leachate testing was conducted using the TCLP and SPLP methods, in all cases, the concentrations of the metals were approximately an order-of-magnitude lower for the SPLP as compared to the TCLP. In most cases, the SPLP concentrations were below the MCLs for lead and cadmium and were always below the SMCL for zinc. As a result, based on the available data, we conclude that the use of chat in asphalt is likely to pose a negligible health risk through the groundwater pathway.

On the other hand, limited leaching data were available for encapsulated chat in Portland cement concrete (TCLP only) and no data were found for flowable fill. For Portland cement concrete, the TCLP concentrations for lead and cadmium were below the TC limits yet above the MCLs. The concentrations for zinc were below the SMCL. However, as noted above, we believe that using the TCLP to evaluate the potential for environmental release is inappropriate. While no data were identified presenting the SPLP concentrations for chat encapsulated in Portland cement concrete or flowable fill, we believe the potential groundwater impacts from the use of chat in Portland cement concrete would be negligible as the metals binding capacity of Portland cement concrete is expected to be similar to asphalt because of similar pozzolanic characteristics.

Environmental quality information presented in several studies indicated that damages to streams had been documented for the Tri-State Mining Area; however, these studies were not specific to encapsulated chat uses, but were from multiple sources of contamination associated with lead and zinc mining, including subsurface sources (flooded mine shafts), surface sources (chat piles, tailing sites), and smelting operations. SPLP analyses for chat encapsulated in hot mix asphalt (OU, 2005) show that for zinc, when detected, concentrations were below EPA's National Recommended Water Quality Criteria (*www.epa.gov/waterscience/criteria/wqcriteria.html*) for the protection of aquatic life. This study did not find lead or cadmium in any leachate using the SPLP method. While the study's detection limits for lead and cadmium were at least an order of magnitude above EPA's National Recommended Water Quality for the protection of aquatic life, we do not believe this to be a concern. The environmental conditions would need to be extremely favorable for the metals to reach surface waters at levels of concern either through run-off to nearby soils which would have subsequent attenuation before reaching surface waters, or through additional attenuation and dilution in groundwater before reaching nearby receiving waters.

The transportation and storage of chat to be used as road construction aggregate could result in local environmental releases to various media (air, groundwater, soil). Agency review of existing regulations indicate that those transport and storage concerns are adequately addressed by existing State regulations.

The milling and demolition of chat-containing asphalt and Portland cement concrete would likely involve emissions

[12] Comparisons of leachate concentrations with drinking water criteria assume that no dilution or attenuation occurs before the dissolved metals reach a drinking water well or surface water. The Agency believes this worst case scenario is highly unlikely to occur in the area of the country where chat use in asphalt is occurring.

of fine chat particles, with subsequent dispersion and deposition to nearby soils. These emissions would occur episodically and infrequently (that is, at the end of the useful life of the pavement which could be on the order of 15 years). The Agency believes that, with regard to worker safety, these potential sources of releases are adequately regulated by the States or by OSHA. However, the potential exists for these fine chat particles to be dispersed into populated areas. As these emissions would be infrequent, the Agency believes that the potential exposure to a local population would be minimal.

In particular, during the demolition and resurfacing of asphalt road surfaces, it is often the practice to score, cut, and crush the old surface layer so that it may be fed directly into mobile equipment that heats this material (or mixes it with fresh asphalt) and immediately lay down a new asphalt surface. Any fugitive dust emissions from this process would occur episodically and infrequently (that is, at the end of the useful life of the pavement which could be on the order of 15 years). Oklahoma DOT regulations limit the amount of fine aggregate in hot mix asphalt because they have adopted the AASHTO aggregate asphalt standard. Aggregate makes up approximately 80 to 90 percent of HMA by weight. The OU (2005) study show that the total concentration of lead in surface mix asphalt blends is approximately 200 to 400 mg/kg. The percent of chat aggregate in the blends were 40 to 80 percent (by weight). EPA has found no emissions data during demolition and resurfacing of asphalt roads to evaluate potential exposures to workers. While the Agency does not believe this potential exposure poses a significant risk, we are asking for information on whether such dusts may present risks and seek comment on how to address such risks.

Road surfaces using a chat concrete mixture may also be demolished at the end of their useful life (like asphalt, the useful life could be on the order of 15 years). The demolition of road surfaces containing chat would likely involve low emissions of encapsulated chat dust particles, theoretically with subsequent dispersion and deposition to nearby soils. Based on discussions with demolition contractors, it is apparent that dusts from such demolitions are regulated under the state fugitive dust regulations. Exposure to such dusts probably would be limited to workers because existing State regulations require that dusts be contained within the area of origin. As noted above, OSHA has established exposure limits for dusts and metals for workers in construction and demolition. Most if not all road concrete which is demolished is reused as fill or as road base. While the Agency also does not believe that exposure to chat concrete road demolition presents a significant risk, we are soliciting comment on whether this rule should require some form of notification to demolition workers since they may not be aware that chat had been used in the concrete.

2. Non-Transportation Uses and Demolition

Dusts during the demolition of nonresidential buildings which used chat concrete was also considered by the Agency.[13] For today's action, the Agency is assuming a use life for buildings of 30 years (based on the Internal Revenue Service allowable straight-line depreciation for non-residential real property of 31.5 years). Demolition therefore will likely occur only once every 30 years. The Agency determined that demolition practices, as noted by the National Association of Demolition Contractors, only generate dusts for periods rarely in excess of 20–30 minutes when buildings are imploded. Furthermore, the Agency has reviewed the fugitive dust demolition regulations (see above) in Oklahoma, Missouri, and Kansas and found that building demolition requires a general fugitive dust permit that mandates that demolition related dusts must be contained within the property line (most often through the use of water sprays). Based on this information, the Agency concludes that dusts from chat concrete demolition of nonresidential buildings is not likely to present a significant threat to human health.

Even if chat metal levels do not trigger OSHA requirements, other OSHA controls would still be utilized to address worker health risks from exposure to fine particulates, which indirectly addresses the issues associated with chat. In particular, demolition of concrete structures is known to produce extremely fine particles of crystalline silica. Breathing crystalline silica dust can lead to silicosis, a commonly known health hazard which has been associated historically with the inhalation of silica-containing dusts. Silicosis is a lung disease which can be progressive and disabling; it can lead to death. OSHA standards for exposure to dust, (29 CFR 1926.55) prohibit employee exposure to any material at concentrations above those specified in the ''Threshold Limit Values of Airborne Contaminants for 1970.'' OSHA has established for crystalline silica dust a Permissible Exposure Level (PEL) which is the maximum amount to which workers may be exposed during an 8-hour work shift. NIOSH has recommended an exposure limit of 0.05 mg/m^3 as a time-weighted average (TWA) for up to a 10-hour workday during a 40-hour workweek. Although the Agency has no reason to believe that chat in concrete would increase the levels of fine particulates, including crystalline silica, we believe the OSHA/NIOSH standards will provide adequate protection to workers from potential exposure to metals found in chat.

As noted earlier, the Agency concludes that dust generated during the demolition of chat concrete buildings or in the demolition of asphalt and Portland cement concrete pavement that contains chat would largely be limited to the immediate project area. The Agency has reached this conclusion based on its review (as noted above) of the Oklahoma, Missouri, and Kansas fugitive dust and particulate matter regulations, which mandate that demolition dusts be controlled within project sites. Therefore, if any risks exist due to exposure to demolition dusts from asphalt or Portland cement concrete that contains chat, they would most likely be limited to demolition workers at the site. The Occupational Safety and Health Administration (OSHA) has established worker health and safety standards specific to building demolition in 29 CFR 1926 Subpart T. These standards require an engineering survey of the building prior to demolition to identify any risks and implementation of project wide dust controls. The standards also require compliance with NIOSH respirable dust standards which essentially require the use of respirators, if standards noted in 29 CFR 1910 are exceeded. Based on the Agency's review of the OSHA standards, we conclude that these regulations provide adequate protection to onsite demolition workers and today's proposal does not include any additional worker health and safety requirements. The Agency is, however, seeking comment on whether reliance on OSHA/NIOSH standards are sufficient and seeks information on possible alternative approaches, if found necessary. The Agency is also seeking comment and information on the adequacy of existing controls for the disposal of demolition debris containing

[13] The American National Standards Institute ANSI A10.6–1983 American National Standard for Demolition Operations Safety Requirements recommends that no worker shall be permitted in any area that can be adversely affected when demolition operations are being performed.

chat or whether the Agency should establish additional criteria.

A more complete discussion of the Agency's evaluation of existing environmental and public health information associated with the use of chat is available in ''Report on Potential Risks Associated with the Use of Chat from Tri-State Mining Area in Transportation Projects.'' This document can be found in the RCRA docket established for today's proposed rulemaking.

B. What Are the Economic Impacts?

This Part summarizes projected cost impacts, economic impacts, and benefits associated with today's proposal. A brief market profile is first discussed, followed by specification of the economic baseline. Costs and economic impacts are next discussed. These estimates are presented on an annualized basis. Finally, this Part presents a qualitative discussion of potential benefits associated with today's proposed action.

1. Chat Market Profile

Chat is a byproduct of mining and milling operations that has been exempted from regulation as a ''hazardous waste'' under RCRA.[14] However, given the varying concentrations of lead (a hazardous substance) present in chat, and the risks posed to human health and the environment, it is subject to CERCLA regulations. Currently, chat in the Tri-State mining area is found in above-ground piles of varying sizes, reflecting the different types of mining operations that occurred in each area. The total quantity of chat in the Tri-State mining area is roughly 100 million tons. A relatively small percentage of this total is currently used annually in road building or other beneficial use projects.

A small, but well-established market for chat in transportation applications currently exists. The preparation and use of chat is dominated by a few small operations that purchase, process, and distribute chat to area highway departments, primarily for use as an aggregate in asphalt. Approximately 95 percent of all current chat use is for aggregate in asphalt. A wide range of different projects comprise the remaining 5 percent.[15] We have no evidence there is any current use of chat in cement or concrete.

The demand for chat as aggregate in transportation uses is price sensitive and is limited by various technical and performance standards. However, consistent demand exists as long as ready-use chat can be provided at prices that are competitive with other sources of aggregate. The key cost drivers for chat include raw material costs, processing and washing, if conducted, and transportation. The current market price for chat, and other forms of aggregate, is approximately five dollars per ton. This estimate excludes transport cost, but includes processing and washing, even though such operations are not included as part of the proposal.

A limited number of small companies act as brokers, processors and distributors (washers and haulers) of the chat in the Tri-State area. Chat haulers and washers buy chat from several owners, each typically owning only a small amount of the total quantity of chat. Chat is both privately and publicly owned, including chat piles located on land controlled by the Quapaw Tribe of Oklahoma.

Historical trends and information from regional chat suppliers suggest that the demand for chat for transportation-related uses is unlikely to change significantly over the next couple of decades. The currently viable market is well defined and transportation costs make chat economically unattractive beyond current market limits. Within the current market, rates of growth for new roads are modest (estimated at less than 2 percent per year) and population densities in areas surrounding the Superfund sites are low. We are not able to determine what, if any, impact the proposed rule may have on chat demand for use in asphalt. Significant chat use in other applications, such as concrete, does not appear to be economically viable at this time.

2. Specification of the Analytical Baseline

Proper baseline specification is an important step to the accurate assessment of incremental costs, benefits, and other economic impacts associated with today's proposal. The baseline essentially describes the world absent the rule. The incremental impacts of today's proposal are evaluated by predicting post-rule responses with respect to the established baseline(s). The baseline, as applied in this analysis, is assumed to be the point at which today's proposal is finalized.

A clear baseline for this proposal is not known. Therefore, for today's action, we have developed our analysis relative to three alternative baseline scenarios to be applied across all Tri-State sites. These are:

Baseline 1: Chat Removal and Disposal in On-Site Subsidence Pits (with continuing use of chat at approximately the same amount for transportation projects, while remediation continues);

Baseline 2: Chat Consolidation, In-Place Containment, and Revegetation (with continuing use of chat at approximately the same amount for transportation projects, while remediation continues); and,

Baseline 3: No Further Action, Except Monitoring of Water Quality (with continuing use of chat at approximately the same amount for transportation projects).

These scenarios are in no way reflective of final Superfund decisions and are used only for economic analyses performed for today's action. Today's action in no way supports or creates federal subsidies for chat use. Furthermore, the Agency wishes to restate its current policy that EPA does not compensate for the removal and disposal of hazardous substances as defined under CERCLA.

3. Cost Impacts

The value of any regulatory action is traditionally measured by the net change in social welfare that it generates. Our economic assessment conducted in support of today's proposal evaluated compliance costs only. Social costs are not assessed due to data limitations and the lack of equilibrium modeling capabilities associated with this industry. The data applied in this analysis were the most recently available at the time of the analysis. Because our data and analytical techniques were limited, the cost impact findings presented here should be considered generalized estimates.

Our cost analysis examined the potential impact of the proposal based on the use of encapsulated chat stored at all four sites in the Tri-State area. Of the chat that is currently used at the four sites, ninety-five percent of it is used in asphalt transportation applications. Our cost analysis, therefore, focused on the use of chat as aggregate in asphalt. Chat may also be used for a variety of non-asphalt transportation products. However, available data appear to indicate that non-asphalt uses of chat from the Tri-State area generally are not economically attractive at this time.

The time frame we assume for chat disposal and/or removal for purposes of this rulemaking ranges from 10 to 20

[14] See 40 CFR 261.4(b)(7).

[15] Current non-transportation uses of chat include: component in non-skid surfaces, sand blasting material, and waste water treatment filters.

years.[16] Annualized costs under all scenarios incorporate a 3 percent interest rate for consistency with relevant Superfund analyses. Finally, all analytical scenarios assume that approximately 20 percent of the chat at each site would remain on-site because it is assumed that this amount may not present an unacceptable threat to human health or the environment. This assumption is solely used for this rule's economic evaluation and is not meant to reflect or signify Agency policy or final Superfund determinations.

Under all baseline scenarios, with no change in assumed market growth, our analysis indicates that annual incremental cost (beyond projected remediation costs) impacts associated with this proposal are approximately $50,000. This estimate incorporates costs associated with certification, recordkeeping and reporting. Sampling and analysis costs are not included. The Agency has decided not to propose environmental testing at this time.

In order to estimate the potential scope of remediation cost savings that may occur should the rule stimulate expanded chat use, we conducted a sensitivity analysis based on a Geographic Information Systems (GIS) analysis. This GIS analysis suggested that current demand for asphalt within 200 miles of the Tar Creek site might accommodate up to a doubling of chat demand (from one million tons per year to about 1.9 million tons per year) over the next ten to twenty years. This sensitivity analysis found that baseline remediation cost savings may be as much as $11.8 million/year and $31.0 million/year, under Baseline Scenarios 1 and 2, respectively (assuming the 20 year clean-up scenario). These figures represent cost savings of 29 percent and 33 percent of the total annual baseline 1 and 2 projected remediation costs.

Overall, our findings indicate that today's proposal is unlikely to result in chat management cost savings without increased demand for chat use in economically viable transportation projects. Additional ''expanded use'' scenarios are examined in the economic support document prepared for this action: *Assessment of Potential Costs, Benefits, and Other Impacts of Chat Use in Transportation Projects*, January 2006. This document is available in the docket established for today's action.

[16] This time frame is established as a generalized estimate for the greatest quantity. The Agency recognizes that selected sites may be addressed in less time (See *Assessment of Potential Costs, Benefits, and Other Impacts of Chat Use in Transportation Projects*, November 2005).

4. Economic Impacts

The potential economic impacts associated with the proposed rulemaking may include moderate effects on local companies resulting from changes in the use of chat. Our analysis indicates that the impact of the proposal on chat use over the next ten to twenty years is unknown. As a result, it is difficult to determine whether the regional or local companies will experience any significant economic impacts.

5. Benefits

Today's proposal is designed to establish standards that would clarify and facilitate the increased safe use of chat in transportation applications carried out in whole or in part with federal funds. The social benefits of this proposed action fall into two categories: reduced costs associated with remediation of Tri-State mining sites and reduced human health and environmental damage in the Tri-State area related to the timely removal of chat. The extent of these benefits is largely driven by the additional quantity of chat that can be used in transportation projects and the extent to which transportation uses result in reduced risks to human health and the environment, as compared to the remediation (baseline) options.

Avoided disposal and remediation costs are dependent upon the extent of the incremental increase in chat use over the assumed remediation period. Our analysis suggests that societal benefits may occur in the form of net cost savings under the expanded market scenario.

Should the rule, as proposed, fail to stimulate any accelerated use of chat in transportation projects above the current annual rate, human health and environmental benefits would be equivalent to those expected under the relevant baseline scenario(s). However, even under the more accelerated transportation use scenarios, the extent of our current knowledge indicates that the remediation of chat piles at the Tri-State sites is likely to result in human health and environmental risk reductions similar to baseline scenarios one or two.

IV. Executive Orders and Laws Addressed in This Action

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 [58 FR 51735 (October 4, 1993], the Agency, in conjunction with the Office of Management and Budget's (OMB's) Office of Information and Regulatory Affairs (OIRA), must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the full requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or 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, it has been determined that this rule is a ''significant regulatory action'' because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations are documented in the public record. The proposed rule is unlikely to result in any significant chat management costs or cost savings. Thus, the $100 million threshold for economic significance, as established under point number one above, is not relevant to this action. In addition, this rule is not expected to 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. Thus, this rule is not considered to be an economically significant action.

We have prepared an economic assessment in support of today's proposal. This document is entitled: *Assessment of Costs, Benefits, and Other Impacts of Chat Use in Transportation Projects*, January 2006. Findings from this document are summarized under section III. B above. Interested persons are encouraged to read and comment on all aspects of this document.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget

(OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2218.01.

The certification, reporting, and record keeping required under this proposal is necessary to ensure safe use of the product. Certification, recordkeeping and reporting requirements under this proposal are not voluntary and are not subject to confidentiality restrictions.

The burden associated with this proposal is projected to affect a limited number of entities. These include: three state governments (Oklahoma, Missouri, Kansas), possibly one Native American tribe (Quapaw Tribe of Oklahoma), and no more than fifty sand and gravel companies located in the states of Oklahoma, Missouri, and Kansas (NAICS 4233202).

The burden on respondents is estimated at 1,000 hours per year, with a total annual cost ranging from $40,000 to $60,000, depending upon labor costs. Although not directly required in the proposal, respondents would also need to read and understand the rule. The burden associated with reviewing the regulation is estimated at 100 hours, with a total annual cost estimated at $5,000. The burden on governmental entities is expected to be minimal (see table below).

SUMMARY OF ESTIMATED BURDEN TO RESPONDENTS AND GOVERNMENT

Activity	Number of hours per project	Estimated cost per hour	Estimated number of affected projects per year	Estimated total annual burden (hours)	Estimated total annual cost
Burden to Respondents:					
Certification, Reporting, Recordkeeping	5	$40–$60	200	1,000	$40,000–$60,000
Burden to Government: Negligible.					

Note: The burden to respondents also associated with reviewing the regulation is estimated at 100 hours, with a total average annual cost estimated at $5,000. This activity is not directly required by the proposal.

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.

The Agency requests comment on the need for this information, the accuracy of the burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, 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. This analysis must be completed unless the agency is able to certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

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

After considering the economic impacts of today's proposal on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This section summarizes whether the proposal establishing criteria for use of chat that is stored in the Tri-state mining area in transportation projects that are carried out in whole or in part with federal funds may adversely impact small entities. The market for both chat and ''virgin'' aggregate in asphalt production is mature and dominated by small businesses. In order to have a significant economic impact on a substantial number of small businesses, the criteria for chat use would have to cause a significant change in the quantity of chat that is used in highway applications. Our analysis indicates that the current market area is not likely to experience any significant change in the demand for chat as a result of the proposal. That is, while many chat processors, distributors, and users of chat are small businesses, significant economic impacts on a substantial number of these entities is not expected.

Therefore, today's rule is not expected to result in a significant impact on a substantial number of small entities. The reader is encouraged to review our regulatory flexibility screening analysis prepared in support of this determination. This analysis is incorporated into the ''Assessment'' document, as referenced above.

D. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million

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

Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because the requirements proposed in today's action only apply to the private sector that uses chat in transportation construction projects funded wholly or in part using federal funds.

E. Executive Order 13132: Federalism

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

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

This rule, as proposed, does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in the Order. The rule focuses on requirements for facilities processing and using chat in transportation projects. This rule, as proposed, does not affect the relationships between Federal and State governments. Thus, Executive Order 13132 does not apply to this rule.

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

Executive Order 13175: Consultation and Coordination with Indian Tribal Governments (65 FR 67249, November 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 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.

Under Executive Order 13175, EPA may not, to the extent practicable and permitted by law, issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless, among other things, the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, and EPA consults with State and local officials early in the process of developing the regulation. Similarly, to the extent practicable and permitted by law, EPA may not issue a regulation that has tribal implications and that preempts tribal law unless EPA, among other things, consults with tribal officials early in the process of developing the regulation.

EPA has concluded that this rule does not have tribal implications in that it does not have substantial direct effects as specified in the Executive Order. In particular, EPA notes that this rule does not impose substantial direct compliance costs or pre-empt tribal law. Some chat piles are located on Indian country lands. Allotted lands of the Quapaw Tribe of Oklahoma (Quapaw Tribe) are estimated to contain about half of the 29 chat piles located within the Picher Mining Field site. The Tribal government may own or operate chat processing facilities, but this is undetermined. The proposed rule, however, is not expected to significantly alter the costs or procedures associated with managing these sites. Nor is the rule expected to significantly change the demand for, and income from, chat use. Furthermore, the removal of chat piles are likely to improve the environment and human health in these areas.

Nevertheless, during the development of this proposal, Agency personnel consulted with representatives of the Quapaw tribe. In addition, a draft of the preamble and rule was provided to the Quapaw Tribe for review and comment; comments were submitted in a letter dated February 9, 2006, a copy of which is in the docket for today's rulemaking. EPA also consulted with tribal government representatives on the Tri-State Natural Resource Damage Partnership during a meeting on October 25, 2005 in Pittsburg, Kansas. At the meeting, Tribal representatives generally supported the proposal. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits any additional comment on this proposed rule from tribal officials.

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

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be ''economically significant'' as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. Today's proposed rule is not subject to the

Executive Order because it is not economically significant as defined under point one of the Order, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

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 rule, as proposed, will not seriously disrupt energy supply, distribution patterns, prices, imports or exports. Furthermore, this rule is not an economically significant action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This proposal does not require the application of technical standards (*e.g.*, materials specification, sampling, analyses). As such, the National Technology Transfer and Advancement Act does not pertain to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (February 11, 1994) requires the Agency to complete an analysis of today's proposal with regard to equity considerations. The Order is designed to address the environmental and human health conditions of minority and low-income populations.

Our analysis indicates that chat piles in the Tri-State mining region are, in some cases, located near low-income populations. In addition, Quapaw allotted lands are located within the Picher Mining Field. Existing data on the human health and ecological impacts associated with chat suggests that these populations may be adversely affected by the presence of the chat piles. The removal of the chat from piles for transportation applications that are considered environmentally protective would likely have a positive impact on these communities. Therefore, we believe that today's proposal should not result in any adverse or disproportional health or safety effects on minority or low-income populations and, in fact, will likely improve environmental protection.

List of Subjects in 40 CFR Part 278

Environmental protection, Chat, Indians—lands, Mine tailings, Reporting and recordkeeping requirements, Waste.

Dated: March 23, 2006.

Stephen L. Johnson,

Administrator.

For the reasons set out in the preamble, in title 40, chapter I of the Code of Federal Regulations, a new part 278 is proposed to be added as follows:

PART 278—CRITERIA FOR THE MANAGEMENT OF GRANULAR MINE TAILINGS (CHAT) IN ASPHALT CONCRETE AND PORTLAND CEMENT CONCRETE IN TRANSPORTATION CONSTRUCTION PROJECTS FUNDED IN WHOLE OR IN PART BY FEDERAL FUNDS

Sec.

278.1 Definitions.
278.2 Applicability.
278.3 Criteria.
278.4 Certification and recordkeeping requirements.

Authority: 42 U.S.C. 6961 *et seq.*

§ 278.1 Definitions.

The following definitions apply in this part:

(a) *Asphalt cement concrete* means pavement consisting of a combination of layers, which include an asphalt surface constructed over an asphalt base and an asphalt subbase. The entire pavement structure is constructed over the subgrade. Pavements, bases, and subbases must be constructed using hot mix asphalt.

(b) *Chat* means waste material that was formed in the course of milling operations employed to recover lead and zinc from metal-bearing ore minerals in the Tri-State mining district of Southwest Missouri, Southeast Kansas and Northeast Oklahoma.

(c) *Encapsulation* means incorporation of chat into hot mix asphalt concrete or Portland cement concrete (PCC).

(d) *Hot mix asphalt* means a hot mixture of asphalt binder and size-graded aggregate, which can be compacted into a uniform dense mass.

(e) *Portland cement concrete (PCC)* means pavements consisting of a PCC slab that is usually supported by a granular (made of compacted aggregate) or stabilized base and a subbase.

(f) *Tri-State Mining District* means the lead-zinc mining areas of Ottawa County, Oklahoma, Cherokee County of southeast Kansas and Jasper and Newton Counties of southwest Missouri.

(g) *Federal or state remediation action* means State or federal actions undertaken pursuant to applicable federal or state environmental laws undertaken with consideration of risk assessments developed in accordance with state and federal laws, regulations, and guidance.

(h) *Transportation construction projects* means transportation construction projects which encapsulate chat in hot mix asphalt concrete or in Portland cement concrete.

§ 278.2 Applicability.

(a) These requirements apply to chat from the Tri-State Mining District used in transportation construction projects carried out in whole or in part using federal funds.

(b) [Reserved]

§ 278.3 Criteria.

(a) Chat must be encapsulated in hot mix asphalt concrete or Portland cement concrete; or

(b) Authorized for use by a State or federal response action undertaken pursuant to applicable federal or state environmental laws.

§ 278.4 Certification and recordkeeping requirements.

(a) *Certification.* For chat used under the jurisdiction of the U.S. Department of Interior, Bureau of Indian Affairs (BIA), the EPA certification below is not applicable. For all other chat, that is not part of demolished asphalt or concrete, the acquirer shall:

(1) Submit a signed, written certification to the environmental regulatory agency in the State where the chat is acquired within 30 days of the date of acquisition. The certification shall contain the following:

(i) Location of origin of the chat;

(ii) Amount of chat acquired; and

(iii) Certification statement: I certify under penalty of law that the chat used

in this transportation project will meet EPA criteria found in § 278.3.

(2) *Transfer.* If the chat is sold or otherwise transferred to another party, the acquirer shall provide a copy of the certification to the new owner of the chat. The new owner shall submit a certification according to paragraph (a)(1) of this section. The new certification supersedes all previous certifications.

(3) *Recordkeeping.* The acquirer of chat, and any other person that receives the chat, will maintain a copy of the certification for three years following transmittal to the State department(s) of the environment.

(b) [Reserved]

[FR Doc. 06–3104 Filed 4–3–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7459]

Proposed Flood Elevation Determinations

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

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Doug Bellomo, P.E., Hazard Identification Section, Mitigation Division, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2903.

SUPPLEMENTARY INFORMATION: FEMA proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

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

Regulatory Flexibility Act. The Mitigation Division Director of the Federal Emergency Management Agency certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified BFEs are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

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

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

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

List of Subjects in 44 CFR Part 67

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

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376, § 67.4

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Efffective	Modified	
Shoshone County, Idaho and Incorporated Areas				
Coeur d'Alene River:	At western Shoshone County boundary approximately 800 feet South of Interstate Highway 90.	None	+2149	Shoshone County Unincorporated Areas.
	At western Shoshone County boundary on the landward side of the levee at community of Cataldo.	*2150	+2155	
	Approximately 15,000 feet upstream from the western Shoshone County boundary.	None	+2164	
South Fork Coeur d'Alene River:	Approximately 1500 feet downstream of Theatre Road	*2221	2225	Shoshone County Unincorporated Areas.
	Just downstream of Elizabeth Park Road Bridge	*2343	+2343	City of Kellogg, City of Smelterville.

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Efffective	Modified	
South Fork Coeur d'Alene River—North Overbank Reach through Kellogg:	At west Brown Avenue west of Utah Street	#3	+2295	Shoshone County Unincorporated Areas, City of Kellogg.
	Just north of Interstate Highway 90 after divergence from South Fork Coeur d'Alene River on Cameron Avenue East.	#2	+2310	
South Fork Coeur d'Alene River—South Overbank North Swale Reach:	At the City of Kellogg western corporate limit	None	+2243	Shoshone County Unincorporated Areas, City of Kellogg.
	At divergence from South Fork Coeur d'Alene River. Just upstream of Interstate Highway 90 Bridge.	None	+2284	
South Fork Coeur d'Alene River—South Overbank Smelterville Reach:	Just South of Interstate Highway 90 bridge approximately 1000 feet upstream of Pine Creek confluence.	None	+2198	Shoshone County Unincorporated Areas.
	At confluence of Government Gulch	None	+2245	City of Kellogg, City of Smelterville.
South Fork Coeur d'Alene River—South Overbank South Kellogg Reach:	Approximately 1000 feet downstream of Hill Street	None	+2284	Shoshone County Unincorporated Areas, City of Kellogg.
	Approximately 150 feet downstream of divergence from South Fork Coeur d'Alene River, at Division Street.	None	+2310	
South Fork Coeur d'Alene River—South Overbank South Swale Reach:	Approximately 1500 feet upstream from western corporated limit of the City of Kellogg..	None	+2251	Shoshone County Unincorporated Areas, City of Kellogg
	At the confluence of South Overbank Southwest Kellogg Reach.	None	+2282	
South Fork Coeur d'Alene River—South Overbank Southwest Kellogg Reach:	At confluence with South Overbank South Swale Reach approximately 200 feet downstream of Bunker Avenue.	None	+2284	Shoshone County Unincorporated Areas, City of Kellogg.
	At divergence from South Fork Coeur d'Alene River	None	+2289	

ADDRESSES:

Unincorporated areas of Shoshone County:

Maps are available for inspection at the Shoshone County Courthouse, 700 Bank Street, Suite 35, Wallace, Idaho 83873.
Send comments to Chairman Jim Vergobbi, Shoshone County, 700 Bank Street, Suite 120, Wallace, Idaho 83873.

City of Kellogg:

Maps are available for inspection at the City Hall, 1007 McKinley Street, Kellogg, Idaho 83837.
Send comments to Mayor Mac Pooler, City of Kellogg, 1007 McKinley Street, Kellogg, Idaho 83837.

City of Smelterville:

Maps are available for inspection at the City Hall, 501 Main Street, Smelterville, Idaho 83868.
Send comments to Mayor Tom Benson, City of Smelterville, P.O. Box 200, Smelterville, Idaho 83868.

De Soto County, Mississippi and Incorporated Areas

Arkabutla Reservoir	Flood pool	None	+245	De Soto County (Uninc. Areas).
Bean Patch Creek	At confluence with Camp Creek	None	+273	De Soto County (Uninc. Areas), City of Southaven.
	At Pleasant Hill Road	*303	+302	
	At College Road	*336	+328	
	200 feet downstream of Getwell Road	None	+372	
Bean Patch Creek Tributary 1.	At confluence with Bean Patch Creek	None	+282	De Soto County (Uninc. Areas).
	2444 feet upstream of Sandy Betts Road	None	+331	
Bean Patch Creek Tributary 2.	At confluence with Bean Patch Creek	None	+296	De Soto County (Uninc. Areas).
	78 feet upstream of Itasca Drive	None	+347	
Bean Patch Creek Tributary 3.	At confluence with Bean Patch Creek	None	+303	De Soto County (Uninc. Areas).
	1467 feet upstream of College Road	None	+337	
Byhalia Creek	At confluence with Pigeon Roost Creek	None	+275	De Soto County (Uninc. Areas).
	2638 feet upstream of Myers Road	None	+298	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Efffective	Modified	
Camp Creek	At confluence with Coldwater River	None	+256	De Soto County (Uninc. Areas) City of Olive Branch.
	At College Road	*298	+299	
	At Goodman Road	*329	+331	
	At Germantown Road	*348	+346	
	At Montrose Drive	None	+361	
	1790 feet upstream of Alexander Road	None	+372	
Camp Creek Tributary 1	At confluence with Camp Creek	None	+273	De Soto County (Uninc. Areas).
	180 feet upstream of Ross Road	None	+317	
Camp Creek Tributary 2	At confluence with Camp Creek	None	+292	De Soto County (Uninc. Areas)
	170 feet upstream of Dunn Lane	None	+348	
Cane Creek Tributary 1	At confluence with Arkabutla Reservoir	None	+245	De Soto County (Uninc. Areas).
	2100 feet upstream of Robertson Gin Road	None	+251	
Cane Creek Tributary 1.1	At confluence with Cane Creek Tributary 1	None	+245	De Soto County (Uninc. Areas).
	4300 feet upstream of confluence with Cane Creek Tributary 1.	None	+245	
Coldwater River	16200 feet downstream of Arkabutla Dam	None	+191	De Soto County (Uninc. Areas).
	3318 feet downstream of Arkabutla Dam	None	+195	
	26735 feet downstream of Holly Springs Road	None	+245	
	2010 feet upstream of confluence with Coldwater River Tributary 8.	None	+301	
Coldwater River Tributary 5	At confluence with Coldwater River	None	+279	De Soto County (Uninc. Areas).
	2390 feet upstream of Bethel Road	None	+299	
Coldwater River Tributary 6	At confluence with Coldwater River	None	+283	De Soto County (Uninc. Areas).
	160 feet downstream of Red Banks Road	None	+308	
Coldwater River Tributary 7	At confluence with Coldwater River	None	+298	De Soto County (Uninc. Areas).
	13233 feet upstream of Center Hill Road	None	+365	
Coldwater River Tributary 7.1.	At confluence with Coldwater River Tributary 7	None	+298	De Soto County (Uninc. Areas).
	2515 feet upstream of Center Hill Road	None	+341	
Coldwater River Tributary 8	At confluence with Coldwater River	None	+300	De Soto County (Uninc. Areas).
	2038 feet upstream of Center Hill Road	None	+365	
Coldwater River Tributary 8.1.	At confluence with Coldwater River Tributary 8	None	+315	De Soto County (Uninc. Areas).
	5004 feet upstream of confluence with Coldwater River Tributary 8.	None	+368	
Cow Pen Creek	At Goodman Road	*261	+261	City of Horn Lake.
	At Nail Road	*275	+274	
Dry Creek	At confluence with Coldwater River	None	+271	De Soto County (Uninc. Areas).
	8348 feet upstream of Byhalia Road	None	+303	
Horn Lake Creek Tributary 1.	790 feet upstream of Goodman Road	None	+264	City of Horn Lake.
	407 feet upstream of Nail Road	None	+292	
Hurricane Creek	1535 feet upstream of Odom Road	None	+265	De Soto County (Uninc. Areas), City of Hernando.
	423 feet upstream of Bridgemore Drive	None	+346	
Hurricane Creek Tributary 2	1022 feet downstream of Horn Lake Road	None	+245	De Soto County (Uninc. Areas), City of Hernando.
	12800 feet upstream of Horn Lake Road	None	+275	
Hurricane Creek Tributary 3.1.	1079 feet downstream of Nesbit Road	None	+262	De Soto County (Uninc. Areas), City of Hernando, City of Horn Lake, City of Southaven De Soto County (Uninc. Areas).
	740 feet downstream of Highway 51	None	+300	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Efffective	Modified	
Hurricane Creek Tributary 3.1.1.	At confluence with Hurricane Creek Tributary 3.1	None	+262	
	600 feet upstream of Starlanding Road	None	+297	
Hurricane Creek Tributary 3.1.2.	At confluence with Hurricane Creek Tributary 3.1	None	+291	De Soto County (Uninc. Areas), City of Southaven.
	255 feet downstream of Highway 51	None	+301	
Hurricane Creek Tributary 4	At confluence with Hurricane Creek	None	+266	De Soto County (Uninc. Areas), City of Hernando.
	850 feet downstream of Harrow Cove	None	+329	
Hurricane Creek Tributary 5	At confluence with Hurricane Creek	None	+268	De Soto County (Uninc. Areas), City of Hernando.
	4236 feet upstream of Pleasant Hill Road	None	+310	
Hurricane Creek Tributary 6	At confluence with Hurricane Creek	None	+273	De Soto County (Uninc. Areas), City of Hernando.
	90 feet downstream of Clubhouse Drive	None	+316	
Hurricane Creek Tributary 7	At confluence with Hurricane Creek	None	+284	De Soto County (Uninc. Areas), City of Southaven.
	423 feet upstream of Starlanding Road	None	+339	
Hurricane Creek Tributary 7.1.	At confluence with Hurricane Creek Tributary 7	None	+294	De Soto County (Uninc. Areas), City of Southaven.
	760 feet upstream of Starlanding Road	None	+354	
Hurricane Creek Tributary 8	At confluence with Hurricane Creek	None	+295	De Soto County (Uninc. Areas).
	940 feet upstream of Getwell Road	None	+324	
Jackson Creek	4620 feet upstream of confluence with Lake Cormorant Bayou.	None	+200	De Soto County (Uninc. Areas).
	712 feet upstream of confluence with Jackson Creek Tributary 1.	None	+201	
Jackson Creek Tributary 1	At confluence with Jackson Creek	None	+201	De Soto County (Uninc. Areas).
	4665 feet upstream of Wilson Mills Road	None	+208	
Johnson Creek	At confluence with Lake Cormorant Bayou	None	+208	De Soto County (Uninc. Areas), City of Horn Lake, Village of Memphis.
	3645 feet upstream of Church Road	None	+249	
Johnson Creek Tributary 1	At confluence with Johnson Creek	None	+208	De Soto County (Uninc. Areas), Village of Memphis.
	1810 feet upstream of Cheatham Road	None	+208	
Johnson Creek Tributary 2	At confluence with Johnson Creek	None	+210	De Soto County (Uninc. Areas), Village of Memphis.
	300 feet upstream of Starlanding Road	None	+227	
Johnson Creek Tributary 3	At confluence with Johnson Creek	None	+212	De Soto County (Uninc. Areas), Village of Memphis.
	1490 feet downstream of Poplar Corner Road	None	+244	
Johnson Creek Tributary 4	At confluence with Johnson Creek	None	+215	De Soto County (Uninc. Areas), Village of Memphis.
	4171 feet upstream of Starlanding Road	None	+231	
Johnson Creek Tributary 5	At confluence with Johnson Creek	None	+226	De Soto County (Uninc. Areas).
	35 feet upstream of Fogg Road	None	+269	
Johnson Creek Tributary 6	At confluence with Johnson Creek	None	+235	De Soto County (Uninc. Areas).
	20 feet upstream of Fogg Road	None	+256	
Lake Cormorant Bayou	At Green River Road	None	+200	De Soto County (Uninc. Areas).
	500 feet downstream of confluence with Johnson Creek.	None	+208	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Efffective	Modified	
Lateral A	At confluence with Horn Lake Creek	None	+243	De Soto County (Uninc. Areas), City of Horn Lake, City of Southaven.
	2506 feet upstream of Goodman Road	None	+276	
Lateral A Tributary 1	At confluence with Lateral A	None	+246	City of Horn Lake
	148 feet downstream of Horn Lake Road	None	+259	
Licks Creek	At confluence with Camp Creek	*305	+306	De Soto County (Uninc. Areas), City of Olive Branch.
	At U.S. Highway 78	*336	+334	
	At Lancaster Drive	None	+358	
	7700 feet upstream of Hacks Cross Road	None	+388	
Mussacuna Creek	4630 feet downstream of Highway 51	None	+280	De Soto County (Uninc. Areas), City of Hernando.
	1480 feet upstream of Highway 51	None	+307	
Nolehoe Creek	At confluence with Camp Creek	*308	+308	City of Olive Branch, City of Southaven.
	At Goodman Road	*348	+348	
Norfolk Bayou	At confluence with Johnson Creek	None	+208	De Soto County (Uninc. Areas).
	175 feet downstream of Highway 161	None	+208	
Pigeon Roost Creek	At confluence with Coldwater River	None	+267	De Soto County (Uninc. Areas)
	1550 feet downstream of Ingrams Mill Road	None	+277	
Red Banks Creek	4330 feet upstream of Red Banks Road	None	+299	De Soto County (Uninc. Areas).
	13140 feet upstream of Red Banks Road	None	+312	
Short Creek	At confluence with Coldwater River	None	+267	De Soto County (Uninc. Areas)
	9228 feet upstream of Byhalia Road	None	+331	
Short Creek Tributary 1	At confluence with Short Creek	None	+271	De Soto County (Uninc. Areas).
	3636 feet upstream of Byhalia Road	None	+297	
Short Fork Creek	At confluence with Coldwater River	None	+255	De Soto County (Uninc. Areas), City of Hernando.
	2953 feet upstream of Jaybird Road	None	+309	
Short Fork Creek Tributary 1.	At confluence with Short Fork Creek	None	+265	De Soto County (Uninc. Areas).
	1731 feet upstream of Byhalia Road	None	+341	
Short Fork Creek Tributary 2.	At confluence with Short Fork Creek	None	+278	De Soto County (Uninc. Areas).
	5387 feet upstream of Brights Road	None	+325	
Short Fork Creek Tributary 3.	At confluence with Short Fork Creek	None	+296	De Soto County (Uninc. Areas).
	2594 feet upstream of confluence with Short Fork Creek.	None	+304	
Turkey Creek	At confluence with Camp Creek	None	+287	De Soto County (Uninc. Areas).
	758 feet upstream of Woolsly Road	None	+351	
Whites Creek	3740 feet upstream of confluence with Lake Cormorant Bayou.	None	+199	De Soto County (Uninc. Areas).
	7410 feet upstream of Wetonga Lane	None	+234	
Whites Creek Tributary 1	At confluence with Whites Creek	None	+224	De Soto County.
	2117 feet upstream of confluence with Whites Creek	None	+233	

ADDRESSES:

Unincorporated Areas of De Soto County:

Maps are available for inspection at 365 Losher Street, Suite 310, Hernando, MS 38632.
Send comments to Mr. Tommy Lewis, President, De Soto County Board of Supervisors, 365 Losher Street, Suite 310, Hernando, MS 38632.

City of Hernando:

Maps are available for inspection at 475 W. Commerce Street, Hernando, MS 38632.
Send comments to the Honorable Chip Johnson, Mayor, City of Hernando, 475 W. Commerce Street, Hernando, MS 38632.

City of Horn Lake:

Maps are available for inspection as 3101 Goodman Road, Horn Lake, MS 38637
Send comments to the Honorable Nat Baker, Mayor, City of Horn Lake, 3101 Goodman Road, Horn Lake, MS 38637.

City of Olive Branch:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	

Maps are available for inspection at 9189 Pigeon Root, Olive Branch, MS 38654.
Send comments to the Honorable Samuel Rikard, Mayor, City of Olive Branch, 9189 Pigeon Root, Olive Branch, MS 38654.

City of Southaven:

Maps are available for inspection as 8710 Northwest Drive, Southaven, MS 38671.
Send comments to the Honorable Greg Davis, Mayor, City of Southaven, 8710 Northwest Drive, Southaven, MS 38671.

Village of Memphis:

Maps are available for inspection at P.O. Box 35, Walls, MS 38630.
Send comments to the Honorable Gene Alday, Mayor, Town of Walls, P.O. Box 35, Walls, MS 38630.

Ozark County, Missouri and Incorporated Areas

Becky Cobb Creek	Approximately 400 feet upstream of the confluence with Lick Creek.	None	+765	Ozark County (Uninc. Areas), City of Gainesville.
	Approximately 2800 feet downstream of County Road 102.	None	+856	
Bennetts Bayou	Approximately 9300 feet downstream of Highway 142	None	+670	Ozark County (Uninc. Areas), Village of Bakersfield.
	Approximately 1400 feet upstream of the confluence with Unnamed Stream in Smith Hollow.	None	+741	
Harrison Creek	Approximately 1850 feet upstream of the confluence with Lick Creek.	None	+749	Ozark County (Uninc. Areas), City of Gainesville.
	Approximately 4750 feet upstream of First Road	None	+800	
Hogard Creek	Approximately 500 feet upstream of the confluence with Lick Creek.	None	+793	Ozark County (Uninc. Areas).
	Approximately 8750 feet upstream of the confluence with Lick Creek.	None	+856	
Lick Creek	Approximately 7500 feet downstream of the confluence with Harrison Creek.	None	+713	Ozark County (Uninc. Areas), City of Gainesville.
	Approximately 5350 feet upstream of the confluence with Hogard Creek.	None	+818	
Turkey Creek	Approximately 1000 feet downstream of County Road 632.	None	+698	Ozark County (Uninc. Areas).
	Approximately 100 feet downstream of Highway 160	None	+806	
Unnamed Stream in Ledbetter Hollow.	Approximately 4850 feet upstream of the confluence with Pond Fork.	None	+698	Ozark County (Uninc. Areas).
	Approximately 700 feet downstream of Highway 95	None	+811	
Unnamed Stream in Plumb Hollow.	Approximately 1350 feet upstream of the confluence with Bennetts Bayou.	None	+714	Ozark County (Uninc. Areas), Village of Bakersfield.
	Approximately 1200 feet upstream of Highway 101	None	+769	
Unnamed Stream in Smith Hollow.	Approximately 500 feet upstream of the confluence with Bennetts Bayou.	None	+740	Ozark County (Uninc. Areas).
	Approximately 2400 feet upstream of the confluence with Bennetts Bayou.	None	+755	

ADDRESSES:

Unincorporated Areas of Ozark County:

Maps are available for inspection at Ozark County Courthouse, Gainesville, MO 65655.
Send comments to the Mr. Dave Morrision, Presiding Commissioner, Ozark County, P.O. Box 247, Gainesville, MO 65655.

City of Gainesville:

Maps are available for inspection at 4th and Harlin, Gainesville, MO 65655.
Send comments to the Honorable Tracey Amyx, Mayor, City of Gainesville, 4th and Harlin, Gainesville, MO 65655.

Village of Bakersfield:

Maps are available for inspection at 112 Watertower, Bakersfield, MO 65609.
Send comments to the Honorable Tony Johnson, Mayor, Village of Bakersfield, 112 Watertower, Bakersfield, MO 65609.

Laramie County, and Incorporated Areas

Allison Draw	At Confluence with Crow Creek	None	+5949	Laramie County (Uninc. Areas).
	At West College Drive	None	+6017	
South Fork Allison Draw	At Confluence with Allison Draw	None	+5993	Laramie County (Uninc. Areas).

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Efffective	Modified	
	At East College Drive	None	+6000	

ADDRESSES:

Unincorporated Areas of Laramie County:

Maps are available for inspection at Laramie County Planning Department, 310 West 19th Street, Suite 400, Cheyenne, WY 82001.
Send comments to Commissioner Diane Humphrey, Chairman, Board of Commissioners, 310 West 19th Street, Suite 300, Cheyenne, WY 82001.

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance.'')

David I. Maurstad,

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

[FR Doc. E6–4817 Filed 4–3–06; 8:45 am]

BILLING CODE 9110–12–P

Notices

Federal Register
Vol. 71, No. 64
Tuesday, April 4, 2006

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—WIC Federal and State Agreement

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. The proposed collection is a revision of a currently approved collection of information relating to the reporting and recordkeeping burden associated with completing and submitting form FNS–339, the WIC Federal and State Agreement.

DATES: Comments on this notice must be received by June 5, 2006.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send comments and requests for copies of this information collection to: Patricia Daniels, Director, Supplemental Food Programs Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

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

FOR FURTHER INFORMATION CONTACT: Patricia Daniels, (703) 305–2746.

SUPPLEMENTARY INFORMATION:

Title: WIC Federal and State Agreement.

OMB Number: 0584–0332.

Expiration Date: 9/30/06.

Type of Request: Revision of a currently approved collection.

Abstract: The proposed information collection relates to the reporting and recordkeeping burden associated with completing and submitting form FNS–339, the WIC Federal and State Agreement. The Agreement is the contract between USDA and Special Supplemental Nutrition Program for Women, Infants and Children (WIC) State agencies which empowers the Department to release funds to the States for the administration of the WIC Program in the jurisdiction of the State in accordance with the provisions of 7 CFR part 246.

The Agreement requires the signature of the agency official and includes a certification/assurance regarding drug-free workplace, a certification regarding lobbying and a disclosure of lobbying activities.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .25 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Respondents: The Chief Health Officer of the State agency.

Estimated Number of Respondents: 107 respondents.

Estimated Number of Responses Per Respondent: One.

Estimated Time Per Response: .25 of hour.

Estimated Total Annual Burden on Respondents: 26.75 hours.

Dated: March 23, 2006.

Roberto Salazar,

Administrator, Food and Nutrition Service.

[FR Doc. E6–4814 Filed 4–3–06; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

T–4–2005

Foreign–Trade Zone 26 Atlanta, GA, Temporary/Interim Manufacturing Authority, Perkins Shibaura Engines LLC, (Compact Diesel Engines), Notice of Approval

On December 8, 2005, the Executive Secretary of the Foreign–Trade Zones (FTZ) Board filed an application submitted by Georgia Foreign–Trade Zone, Inc., grantee of FTZ 26, requesting temporary/interim manufacturing (T/IM) authority within Site 6 of FTZ 26, at the facilities of Perkins Shibaura Engines LLC (Perkins) located in Griffin, Georgia.

The application was processed in accordance with T/IM procedures, as authorized by FTZ Board Order 1347, including notice in the **Federal Register** inviting public comment (70 FR 74289, 12/15/05). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval under T/IM procedures. Pursuant to the authority delegated to the FTZ Board Executive Secretary in Board Order 1347, the application, as amended, was approved, effective February 21, 2006, until February 21, 2008, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Dated: March 28, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–4862 Filed 4–3–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket T–1–2006)

Foreign–Trade Subzone 84C—La Porte, TX, Application for Export–Only Temporary/Interim Manufacturing Authority, E.I. du Pont de Nemours and Company, Inc., (Crop Protection Products)

An application has been submitted to the Executive Secretary of the Foreign–Trade Zones Board (the Board) by E.I. du Pont de Nemours and Company, Inc. (Du Pont), operator of FTZ Subzone

84C, on behalf of the Port of Houston Authority, grantee of FTZ 84, requesting export–only temporary/interim manufacturing (T/IM) authority within Subzone 84C, at Du Pont's facilities located in La Porte, Texas. The application was filed on March 24, 2006.

The Du Pont facility (675 full and part–time employees; annual production capacity of 3500 to 4400 metric tons of the products which are the subject of the application) is located at 12501 Strang Road, La Porte, Texas. Under T/IM procedures, the company has requested authority to manufacture two crop–protection related products (methomyl insectide technical and lannate; these products have U.S. duty rates of 6.5%). The company would source the following input item from abroad for manufacturing the finished products under T/IM authority, as delineated in Du Pont's application: acetalhydeoxide (AAO) U.S. duty rate is 6.5%. T/IM authority could be granted for a period of up to two years.

FTZ procedures would allow Du Pont to avoid payment of U.S. duties on the input listed above because all of the production for which FTZ T/IM authority is sought will be for re–export. Du Pont may also realize a small amount of logistical/paperwork savings under FTZ procedures.

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign–Trade Zones Board, U.S. Department of Commerce, Franklin Court Building - Suite 4100W, 1099 14th St. NW, Washington, D.C. 20005; or

2. Submissions via the U.S. Postal Service: Foreign–Trade Zones Board, U.S. Department of Commerce, FCB - Suite 4100W, 1401 Constitution Ave. NW, Washington, D.C. 20230.

The closing period for their receipt is May 4, 2006.

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above.

Dated: March 28, 2006.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. E6–4865 Filed 4–3–06; 8:45 am]

Billing Code: 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–904]

Initiation of Antidumping Duty Investigation: Certain Activated Carbon From the People's Republic of China

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

EFFECTIVE DATE: April 4, 2006.

FOR FURTHER INFORMATION CONTACT: Catherine Bertrand or Carrie Blozy, 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) 482–3207 or (202) 482–5403, respectively.

SUPPLEMENTARY INFORMATION:

INITIATION OF INVESTIGATION

The Petition

On March 8, 2006, the Department of Commerce (''Department'') received a petition on imports of certain activated carbon from the People's Republic of China (''PRC'') filed in proper form by Calgon Carbon Corporation and Norit Americas Inc. (''Petitioners''). The period of investigation (''POI'') is July 1, 2005, through December 31, 2005.

In accordance with section 732(b) of the Tariff Act of 1930, as amended (''the Act''), Petitioners alleged that imports of certain activated carbon from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States. The Department issued supplemental questions to Petitioners on March 10, 2006, and Petitioners filed their response on March 15, 2006.

Scope of Investigation

The merchandise subject to this investigation is certain activated carbon. Certain activated carbon is a powdered, granular or pelletized carbon product obtained by ''activating'' with heat and steam various materials containing carbon, including but not limited to coal (including bituminous, lignite and anthracite), wood, coconut shells, olive stones, and peat. The thermal and steam treatments remove organic materials and create an internal pore structure in the carbon material. The producer can also use carbon dioxide gas (CO_2) in place of steam in this process. The vast majority of the internal porosity developed during the high temperature steam (or CO_2 gas) activated process is a direct result of oxidation of a portion of the solid carbon atoms in the raw material, converting them into a gaseous form of carbon.

The scope of this investigation covers all forms of activated carbon that are activated by steam or CO_2, regardless of the raw material, grade, mixture, additives, further washing or post–activation chemical treatment (chemical or water washing, chemical impregnation or other treatment), or product form. Unless specifically excluded, the scope of this investigation covers all physical forms of certain activated carbon, including powdered activated carbon (''PAC''), granular activated carbon (''GAC''), and pelletized activated carbon.

Excluded from the scope of the investigation are chemically–activated carbons. The carbon–based raw material used in the chemical activation process is treated with a strong chemical agent, including but not limited to phosphoric acid, zinc chloride sulfuric acid or potassium hydroxide, that dehydrates molecules in the raw material, and results in the formation of water that is removed from the raw material by moderate heat treatment. The activated carbon created by chemical activation has internal porosity developed primarily due to the action of the chemical dehydration agent. Chemically activated carbons are typically used to activate raw materials with a lignocellulosic component such as cellulose, including wood, sawdust, paper mill waste and peat.

To the extent that an imported activated carbon product is a blend of steam and chemically activated carbons, products containing 50 percent or more steam (or CO_2 gas) activated carbons are within this scope, and those containing more than 50 percent chemically activated carbons are outside this scope.

Also excluded from the scope are reactivated carbons. Reactivated carbons are previously used activated carbons that have had adsorbed materials removed from their pore structure after use through the application of heat, steam and/or chemicals.

Also excluded from the scope is activated carbon cloth. Activated carbon cloth is a woven textile fabric made of or containing activated carbon fibers. It is used in masks and filters and clothing of various types where a woven format is required.

Any activated carbon meeting the physical description of subject merchandise provided above that is not expressly excluded from the scope is included within this scope. The

products under investigation are currently classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheading 3802.10.00. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Petitioners had previously filed a petition on activated carbon from the People's Republic of China on January 26, 2006. On March 8, 2006, Petitioners filed a petition on certain activated carbon from the People's Republic of China. This petition changed the scope and domestic like product definition from the January 26, 2006 petition, which was subsequently withdrawn, to exclude chemically activated carbons. In the March 8, 2006, petition on certain activated carbon, Petitioners addressed their determination to limit the scope to only steam activated carbons and submitted information to support their assertion that chemical and steam activated carbons should not be considered within the scope or the domestic like product.

Moreover, as discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this initiation notice. Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230 - Attention: Catherine Bertrand and Carrie Blozy, Room 4003. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed by or on behalf of the domestic industry. In order to determine whether a petition has been filed by or on behalf of the industry, the Department, pursuant to section 732(c)(4)(A) of the Act, determines whether

a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) At least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the ''industry'' as the producers of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (''ITC''), which is responsible for determining whether ''the domestic industry'' has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. *See USEC, Inc. v. United States*, 132 F. Supp. 2d 1, 8 (CIT 2001), citing *Algoma Steel Corp. Ltd. v. United States*, 688 F. Supp. 639, 644 (1988), aff'd 865 F.2d 240 (Fed. Cir. 1989), *cert. denied* 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as ''a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.'' Thus, the reference point from which the domestic like product analysis begins is ''the article subject to an investigation,'' (*i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, Petitioner does not offer a definition of domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain activated carbon constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the *Initiation Checklist*, at Attachment I (Industry Support).

On March 15, 2006, we received an industry support challenge from importers of activated carbon.[1] We also received a letter of opposition to the petition from California Carbon, a U.S. producer of activated carbon, on March 24, 2006. *See Initiation Checklist* at Attachment I (Industry Support). Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support representing at least 25 percent of the total production of the domestic like product; and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. Therefore, the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. *See Initiation Checklist* at Attachment I (Industry Support).

The Department finds that Petitioners filed the petition on behalf of the domestic industry because they are an interested party as defined in sections 771(9)(E) and (F) of the Act and they

[1] We received additional submissions from the importers on March 21, 22, and 24, 2006. Petitioners responded to these submissions on March 22 and March 28, 2006.

have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. *See Initiation Checklist* at Attachment I (Industry Support).

Export Price

Petitioners relied on three U.S. prices for certain activated carbon manufactured in the PRC and offered for sale in the United States. Two prices were for POI sales of PAC and the other was for a sale of GAC. In each case, the U.S. price was the winning bid listed on a publically available bid sheet from a U.S. municipal water authority buying activated carbon. Each bid sheet identifies the price, terms of sale, and supplier of the winning bid. Because each of the bid prices were for delivery to the applicable municipal water authority, Petitioners deducted from the price, the costs associated with exporting and delivering the product, including U.S. inland freight, the U.S. importer/distributor profit margin, ocean freight and insurance charges, U.S. duty, port and wharfage fees, foreign inland freight costs, and foreign brokerage and handling. The Department recalculated one export price to adjust the U.S. inland freight figure used by Petitioners. *See Initiation Checklist*.

Normal Value

Petitioners stated that the PRC is a non–market economy (''NME'') and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is a NME. *See Notice of Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China*, 70 FR 9037 (February 24, 2005), *Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 7475 (February 14, 2005), and *Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China*, 69 FR 70997 (December 8, 2004). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value (''NV'') of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC's NME status and the granting of separate rates to individual exporters.

Petitioners selected India as the surrogate country. Petitioners argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market–economy country that is at a comparable level of economic development to the PRC and is a significant producer and exporter of activated carbon. Based on the information provided by Petitioners, we believe that its use of India as a surrogate country is appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination.

Petitioners provided three dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C). Petitioners calculated normal values based on consumption rates for producing activated carbon experienced by U.S. producers. In accordance with section 773(c)(4) of the Act, Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain factors of production, Petitioners used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, Republic of Korea and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly–available, non–industry specific export subsidies. *See Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review*, 69 FR 61790 (October 21, 2004), and accompanying Issues and Decision Memorandum at Comment 5.

For the surrogate value for coal, Petitioners only used coking coal imports into India from New Zealand. We have recalculated the normal values to use a surrogate value for coking coal that is based on Indian imports of coking coal from all sources, except those specifically excluded above due to NME status or availability of export subsidies. *See Initiation Checklist* for details of the recalculation.

For inputs valued in Indian rupees and not contemporaneous with the POI, Petitioners used information from the wholesale price indices (''WPI'') in India as published by the International Monetary Fund in the *International Financial Statistics* to determine the appropriate adjustments for inflation. In addition, Petitioners made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI, as reported on the Department's Web site.

For the normal value calculations, Petitioners derived the figures for factory overhead, selling, general and administrative expenses (''SG&A''), and profit from the financial ratios of an Indian activated carbon producer, Indo German Carbons Ltd. *See* Petition at page 63 and *Initiation Checklist*.

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of certain activated carbon from the PRC are being, or are likely to be, sold in the United States at less than fair value. Based upon comparisons of export price to the NV, calculated in accordance with section 773(c) of the Act, the estimated recalculated dumping margins for certain activated carbon from the PRC range from 114.33 percent to 333.66 percent.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners contend that the industry's injured condition is illustrated by the decline in customer base, market share, domestic shipments, prices and financial performance. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation. *See Initiation Checklist* at Attachment II (Injury).

Separate Rates and Quantity and Value Questionnaire

The Department recently modified the process by which exporters and producers may obtain separate–rate status in NME investigations. *See* Policy Bulletin 05.1: Separate–Rates Practice and Application of Combination Rates in Antidumping Investigations

involving Non–Market Economy Countries (*Separate Rates and Combination Rates Bulletin*), (April 5, 2005), available on the Department's Web site at *http://ia.ita.doc.gov.* The process now requires the submission of a separate–rate status application. Based on our experience in processing the separate rates applications in the antidumping duty investigations of *Certain Artist Canvas from the People's Republic of China, Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea* and *Ceratin Lined Paper Products from India, Indonesia, and the People's Republic of China*, we have modified the application for this investigation to make it more administrable and easier for applicants to complete. *See Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China*, 70 FR 21996, 21999 (April 28, 2005), *Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea*, 70 FR 35625, 35629 (June 21, 2005), and *Initiation of Antidumping Duty Investigations: Certain Lined Paper Products from India, Indonesia, and the People's Republic of China*, 70 FR 58374, 58379 (October 6, 2005). The specific requirements for submitting the separate–rates application in this investigation are outlined in detail in the application itself, which will be available on the Department's Website at http://ia.ita.doc.gov on the date of publication of this initiation notice in the **Federal Register**. Please refer to this application for all instructions.

NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the petition. In addition, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies who manufacture and export subject merchandise to the United States, as well as to manufacturers who produce the subject merchandise for companies who were engaged in exporting subject merchandise to the United States during the period of investigation. The quantity and value data received from NME exporters is used as the basis to select the mandatory respondents. Although many NME exporters respond to the quantity and value information request, at times some exporters may not have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline.

The Department is now publicizing its requirement that quantity and value responses must be submitted for both the quantity and value questionnaire and the separate–rates application by the respective deadlines in order to receive consideration for separate–rate status. This new procedure will be applied to all future investigations. Appendix I of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the IA Website (http://ia.ita.doc.gov). This quantity and value questionnaire is due no later than 15 calendar days from the date of publication of this notice. Consistent with Department practice, if a deadline falls on a weekend, federal holiday, or any other day when the Department is closed, the Department will accept the response on the next business day. *See Notice of Clarification: Application of ''Next Business Day'' rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, as amended*, 70 FR 24533 (May 10, 2005). The Department will continue to send the quantity and value questionnaire to those exporters identified in the petition and the NME government.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The *Separate Rates and Combination Rates Bulletin*, states:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question *and* produced by a firm that supplied the exporter during the period of investigation.

Separate Rates and Combination Rates Bulletin, at page 6.

Initiation of Antidumping Investigation

Based upon our examination of the petition on certain activated carbon from the PRC, we find that this petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain activated carbon from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of certain activated carbon from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. *See* section 733(a)(2) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

Dated: March 28, 2006.

David M. Spooner.

Assistant Secretaryfor Import Administration.

APPENDIX I

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time

of selection, or 2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the chart provided below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (see scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period July 1, 2005, through December 31, 2005.

Market	Total Quantity	Terms of Sale	Total Value
United States 1. Export Price Sales 2. a. Exporter name b. Address c. Contact d. Phone No. e. Fax No. 3. Constructed Export Price Sales 4. Further Manufactured **Total Sales**			

Total Quantity

- Please report quantity on a kilogram basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales

- Please report all sales on the same terms (*e.g.*, free on board).

Total Value

- All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales

- Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before importation into the United States.
- Please include any sales exported by your company directly to the United States.
- Please include any sales exported by your company to a third–country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales

- Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.
- Please include any sales exported by your company directly to the United States.
- Please include any sales exported by your company to a third–country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please do not include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured

- Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.

[FR Doc. E6–4864 Filed 4–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822]

Corrosion–Resistant Carbon Steel Flat Products from Canada: Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

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

EFFECTIVE DATE: April 4, 2006.

FOR FURTHER INFORMATION CONTACT: Douglas Kirby or Joshua Reitze, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3782 or (202) 482–0666, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 2005, the Department of Commerce (the Department) received timely requests for an administrative review of the antidumping duty order on corrosion–resistant carbon steel flat products from Canada, with respect to Stelco Inc. (Stelco) and Dofasco Inc., Sorevco Inc., and Do Sol Galva Ltd. (collectively Dofasco). On September 28, 2005, the Department published a notice of initiation of this administrative review for the period of August 1, 2004 through July 31, 2005. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 70 FR 56631 (September 28, 2005).

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), the Department shall issue preliminary results in an administrative review of an antidumping duty order within 245 days after the last day of the anniversary month of the date of publication of the order. The Act further provides, however, that the Department may extend that 245-day period to 365 days if it determines it is not practicable to complete the review within the foregoing time period.

In light of the complexity in analyzing issues pertaining to level of trade, it is not practicable for the Department to complete this review by the current deadline of May 3, 2006. Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the preliminary results until no later than August 31, 2006, which is 365 days after the last day of the anniversary month of the date of publication of the order. The final results continue to be due 120 days after the publication of the preliminary results, in accordance with section 351.213 (h) of the Department's regulations.

This notice is issued and published in accordance to sections 751(a)(1) and 777(i)(1) of the Act.

Dated: March 29, 2006.

Stephen J. Claeys,

Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E6–4863 Filed 4–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Implementation of Grants to Manufacturers of Certain Worsted Wool Fabrics Established Under Title IV of the Miscellaneous Trade and Technical Corrections Act of 2004

AGENCY: Department of Commerce, International Trade Administration.

ACTION: Notice Announcing the Availability of Grant Funds.

SUMMARY: This Notice announces the availability of grant funds in calendar year 2006 for manufacturers of certain worsted wool fabrics. The purpose of this notice is to provide the general public with a single source of program and application information related to the worsted wool grant offerings, and it contains the information about the program required to be published in the **Federal Register**.

DATES: Applications by eligible U.S. producers of certain worsted wool fabrics must be received or postmarked by 5 p.m. Eastern Daylight Standard Time on May 4, 2006. Applications received after the closing date and time will not be considered.

ADDRESSES: Applications must be submitted to the Industry Assessment Division, Office of Textiles and Apparel, Room 3001, U.S. Department of Commerce, Washington, DC 20230, (202) 482-4058.

FOR FURTHER INFORMATION CONTACT: Jim Bennett, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION: *Electronic Access:* The full funding opportunity announcement for the worsted wool fabrics program is available through FedGrants at *http://www.grants.gov*. The Catalog of Federal Domestic Assistance (CFDA) Number is 11.113, Special Projects.

Statutory Authority: Section 4002(c)(6) of the Miscellaneous Trade and Technical Corrections Act of 2004 (Pub. L. 108-429, 118 Stat. 2603) (the ''Act'').

Program Description: Section 4002(c)(6)(A) of the Act authorizes the Secretary of Commerce to provide grants to persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000, and 2001, manufacturers of two categories of worsted wool fabrics. The first category are manufacturers of worsted wool fabrics, containing 85 percent or more by weight of wool, with average fiber diameters greater than 18.5 micron (Harmonized Tariff Schedule of the United States (HTS) heading 9902.51.11); the total amount of available funds is $2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.11. The second category are manufacturers of worsted wool fabrics, containing 85 percent or more by weight of wool, with average fiber diameters of 18.5 micron or less (HTS heading 9902.51.12); the total amount of available funds is $2,666,000, to be allocated among such manufacturers on the basis of the percentage of each manufacturers' production of worsted wool fabric included in HTS 9902.51.12.

Funding Availability: The Secretary of Commerce is authorized under section 4002(c)(6)(A) of the Act to provide grants to manufacturers of certain worsted wool fabrics. Funding for the worsted wool fabrics grant program will be provided by the Department of the Treasury from amounts in the Wool Apparel Manufacturers Trust Fund (the ''Trust Fund''). The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.11 shall be $2,666,000 in calendar year 2006. The total amount of grants to manufacturers of worsted wool fabrics described in HTS 9902.51.12 shall also be $2,666,000 in calendar year 2006.

Eligibility Criteria: Eligible applicants for the worsted wool fabric program include persons (including firms, corporations, or other legal entities) who were, during calendar years 1999, 2000 and 2001, manufacturers of worsted wool fabric of the kind described in HTS 9902.51.11 or 9902.51.12. Any manufacturer who becomes a successor-of-interest to a manufacturer of the worsted wool fabrics described in HTS 9902.51.11 or HTS 9902.51.12 during 1999, 2000 or 2001 because of a reorganization or otherwise, shall be eligible to apply for such grants.

Applications to Receive Allocations: An applicant must have produced worsted wool fabric of a kind described in HTS 9902.51.11 or 9902.51.12 in the United States in each of calendar years 1999, 2000 and 2001. Applicants must provide: (1) Company name, address, contact and phone number; (2) Federal tax identification number; (3) the name and address of each plant or location in the United States where worsted wool fabrics of the kind described in HTS 9902.51.11 or HTS 9902.51.12 was woven by the applicant; (4) the quantity, in linear yards, of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.12, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001; and (5) the

value of worsted wool fabric production described in HTS 9902.51.11 or 9902.51.12, as appropriate, woven in the United States in each of calendar years 1999, 2000 and 2001. This data must indicate actual production (not estimates) of worsted wool fabric of the kind described in HTS 9902.51.11 or 9902.51.12.

At the conclusion of the application, the applicant must attest that ''all information contained in the application is complete and correct and no false claims, statements, or representations have been made.'' Applicants should be aware that, generally, pursuant to 31 U.S.C. 3729, persons providing a false or fraudulent claims, and, pursuant to 18 U.S.C. 1001, persons making materially false statements or representations, are subject to civil or criminal penalties, respectively.

Information that is marked ''business confidential'' will be protected from disclosure to the full extent permitted by law.

Other Application Requirements: Complete applications must include the following forms and documents: CD-346, Applicant for Funding Assistance; CD-511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying; SF-424, Application for Federal Assistance; and SF-424B, Assurances—Non-Construction Programs. The CD forms are available via Web site: *http://www.osec.doc.gov/forms/direct.htm*. The SF forms are available via Web site: *http://www.whitehouse.gov/omb/grants/grants_forms.html*.

This document contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The use of Standard Forms 269, 424, 424A, 424B, SF-LLL, and CD-346 has been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348-0039, 0348-0043, 0348-0044, 0348-0040, 0348-0046, and 0605-0001. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

Allocation Procedures: Section 4002(c)(6)(A) of the Act requires that each grant be allocated among eligible applicants on the basis of the percentage of each manufacturers' production of the fabric described in HTS 9902.51.11 or HTS 9902.51.12 for calendar years 1999, 2000, and 2001, compared to the production of such fabric by all manufacturers who qualify for such grants. Following the closing date of the receipt of applications, the Department shall calculate the appropriate allocation of the allotted funds among eligible applicants in accordance with the statutory procedures. Award decisions shall be final and not subject to appeal or protest.

Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, ''Intergovernmental Review of Federal Programs.''

Administrative and National Policy Requirements: Department of Commerce Pre-Award Notifications for Grants and Cooperative Agreements, which are contained in the **Federal Register** Notice of December 30, 2004 (69 FR 78389), are applicable to this solicitation.

It has been determined that this notice is not significant for purposes of E.O. 12866.

Administrative Procedure/Regulatory Flexibility: Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act for rules concerning public property, loans, grants, benefits, and contracts (5 U.S.C. 553(a)(2)). Because notice and opportunity for comment are not required pursuant to 5 USC 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared

Dated: March 30, 2006.

James C. Leonard III,

Deputy Assistant Secretary for Textiles and Apparel.

[FR Doc. E6–4866 Filed 4–3–06; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032906A]

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Applications for scientific research permits.

SUMMARY: Notice is hereby given that NMFS has received two scientific research permit application requests relating to Pacific salmon. The proposed research is intended to increase knowledge of species listed under the Endangered Species Act (ESA) and to help guide management and conservation efforts.

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on May 4, 2006.

ADDRESSES: Written comments on the applications should be sent to the Protected Resources Division, NMFS, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232–1274. Comments may also be sent via fax to 503–230–5441 or by e-mail to *resapps.nwr@NOAA.gov*.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, Portland, OR (ph.: 503–231–2005, Fax: 503–230–5441, e-mail: *Garth.Griffin@noaa.gov*). Permit application instructions are available from the address above.

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened lower Columbia River (LCR); threatened upper Willamette River (UWR).

Chum salmon (*O. keta*): threatened Columbia River (CR).

Steelhead (*O. mykiss*): threatened LCR; threatened UWR.

Coho salmon (*O. kisutch*): threatened LCR.

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 et. seq) and regulations governing listed fish and wildlife permits (50 CFR 222–226). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Applications Received

Permit 1561

The EES Consulting, Inc. (EESC) is asking for a 3-year research permit to

take juvenile LCR Chinook salmon, LCR coho salmon, and LCR steelhead in selected tributaries of the Cowlitz River in Washington. The research is designed to provide information on fish presence, abundance, distribution, and movement within the upper Cowlitz River. The research would benefit listed salmonids by providing baseline information about fish populations in areas affected by the Packwood Lake Hydroelectric Project, and that information, in turn, would be used during the Federal Energy Regulatory Commission's relicensing negotiations. The EESC proposes to observe fish and use backpack electrofishing equipment to capture them. The captured fish would be anesthetized, sampled for tissues and biological information, and released. The EESC does not intend to kill any fish being captured but some may die as an unintentional result of the research activities.

Permit 1562

The Oregon Department of Environmental Quality (ODEQ) is asking for a 5-year research permit to take juvenile LCR Chinook salmon, UWR Chinook salmon, LCR coho salmon, CR chum salmon, LCR steelhead, and UWR steelhead in the Willamette Basin, Oregon. The purpose of the research is to evaluate the overall ecological health of the region's streams by evaluating vertebrate and macroinvertebrate assemblages and comparing them to such assemblages in relatively unimpaired reference streams. The research would benefit listed species by allowing the ODEQ to more effectively assess the condition of habitat streams in the Willamette Basin. The information from the study would be used to guide listed species recovery planning and limiting factor analyses. The ODEQ proposes to capture fish using backpack, boat-, or raft-mounted electrofishing equipment or seines (beach or boat) measure them, check them for external pathology, and release them. The ODEQ does not intend to kill any fish being captured but some may die as an unintentional result of the research activities.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will evaluate the application, associated documents, and comments submitted to determine whether the application meets the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: March 30, 2006.

Angela Somma,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–4843 Filed 4–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032906D]

Environmental Impact Statement Regarding the Application for a Permit for Incidental Take of Protected Resources in Inshore Fisheries Managed by the State of Hawaii

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cancellation of intent to prepare an Environmental Impact Statement (EIS).

SUMMARY: The National Marine Fisheries Service (NMFS) announces the cancellation of its intent to prepare an EIS to assess the potential impacts on the human environment of sea turtle and monk seal interactions with fishing activities in Hawaii State waters associated with an application for an individual Incidental Take Permit (ITP) submitted March 21, 2002, and subsequently revised and resubmitted in May 2005 by the State of Hawaii Department of Land and Natural Resources.

FOR FURTHER INFORMATION CONTACT: Jayne LeFors, NMFS, Pacific Islands Region; telephone: (808) 944–2277; fax: (808) 944–2142; e-mail: *jayne.lefors@noaa.gov*.

SUPPLEMENTARY INFORMATION: NMFS provided public notice through an earlier **Federal Register** notice of availability (67 FR 16367, April 5, 2002) of a State of Hawaii application for an individual ITP for listed sea turtles in inshore marine fisheries in the Hawaiian Islands managed by the State of Hawaii. NMFS is responsible for analyzing these permit applications and authorizing those which meet legal requirements under the Endangered Species Act (ESA). On May 9, 2002, NMFS published a notice of intent to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) in connection with agency action on the ITP application. On September 22, 2003 (68 FR 55023), NMFS published a notice of intent to hold public scoping meetings on the EIS. However, September 19, 2005, the State of Hawaii informed NMFS that they wished to withdraw and revise their application for an ITP. At that time the state expressed concerns that management measures identified in the ITP for monk seals needed further community input and agency consultation prior to issuance of a final ITP . NMFS will continue to work with the state as they revise their application. The timeline for completion of the revised application is uncertain and elements of the conservation plan may change. NMFS will publish an updated notice on the appropriate NEPA analysis once a revised application is received.

As federal action (i.e., issuance of an ITP) is no longer proposed for the application received March 21, 2002, and amended in May 2005, an EIS is not needed and the notice of intent to prepare an EIS is cancelled.

Dated: March 29, 2006.

Jim Lecky,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E6–4842 Filed 4–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032906G]

North Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public meeting.

SUMMARY: The North Pacific Fishery Management Council (Council) Charter Halibut Stakeholder Committee will meet in Anchorage, AK.

DATES: The meeting will be held on April 18–20, 2006, 8:30 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Anchorage Hilton Hotel, 500 West 3rd Avenue, Aspen/Spruce Room, Anchorage, AK 99501.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Jane DiCosimo, Council staff, telephone: (907) 271–2809.

SUPPLEMENTARY INFORMATION: The Charter Halibut Stakeholder Committee will convene for its third meeting to continue development of two

alternatives to allocate halibut between the charter and commercial sectors. One alternative would be a percentage allocation to the charter sector. Elements to be considered include, but are not limited to: (1) A percentage based allocation that would float up and down with halibut abundance; (2) Subdivision of Area 2C and 3A into smaller geographic sub-districts; (3) Management measures that will be used to enforce the allocation, including: (a) the current suite of measures to reduce harvests under the Guideline Harvest Level (GHL) (i.e., one trip per vessel per day, no harvest by skipper and crew, and annual limit of 5 or 6 fish per person (for Area 2C only); (b) Limits on the number of lines fished to the number of clients; (c) Other annual bag limits; (d) Limits on days fished (either total number of days or by excluding specific days of the week); (e) Reduced daily limits including size limitations for the second fish caught; (f) Subtraction of any allocation overage from the following year's allocation; (g) Federal limited entry program with delayed transferability; (h) Mechanisms which, if the charter harvest continues to grow, would allow for an orderly and compensated allocation shift from the longline sector to the charter sector, including the use of a charter stamp or other funding mechanisms to generate funds to buy commercial quota shares to convert commercial allocation to the charter sector and to pay for management of the charter fishery.

A second alternative would be an Individual Fishing Quota (IFQ) program, including, but not be limited to: (1) Elements of the previously proposed (2001) charter IFQ program; (2) A modified IFQ program, including, but not be limited to, including recent participants who were not included in the 2001 plan. Such approaches might include a ''leveling'' plan, other effort based mechanisms to update 1998 and 1999 history, new history approaches, an effort based transferable seat program, or other options; (3) Subdivision of Area 2C and 3A into smaller geographic sub-districts; and (4) Other elements to be identified by the committee.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at (907) 271–2809 at least 7 working days prior to the meeting date.

Dated: March 30, 2006

Tracey L. Thompson,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E6–4802 Filed 4–3–06; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2006–0020]

Grant of Interim Extension of the Term of U.S. Patent No. 4,585,770; ZILMAX® (Zilpaterol Hydrochloride)

AGENCY: United States Patent and Trademark Office, DOC.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued certificates under 35 U.S.C. 156(d)(5) for three one-year interim extensions of the term of U.S. Patent No. 4,585,770.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Patent Ext., P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755, or by e-mail to *Mary.Till@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On March 26, 2003, patent owner, Hoechst Roussel Vet S.A., timely filed an application under 35 U.S.C. 156(d)(5) for an interim extension of the term of U.S. Patent No. 4,585,770. On March 31, 2004, patent owner, Hoechst Roussel Vet S.A., timely filed a second application under 35 U.S.C. 156(d)(5) for a second interim extension of the term of U.S. Patent No. 4,585,770. On March 29, 2005, patent owner, Hoechst Roussel Vet S.A., timely filed a third application under 35 U.S.C. 156(d)(5) for a third interim extension of the term of U.S. Patent No. 4,585,770. The patent claims the active ingredient, zilpaterol hydrochloride, in the animal drug product Zilmax®. The application indicates that an Investigational New Animal Drug Application for the animal drug product, Zilmax® (zilpaterol hydrochloride), has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for one year as required by 35 U.S.C. 156(d)(5)(B). Since it is apparent that the regulatory review period has continued beyond the original expiration date of the patent (October 12, 2003), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,585,770, is granted for a period of one year from the original expiration date of the patent, *i.e.*, until October 12, 2004; a second interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,585,770, is granted for an additional period of one year from the extended expiration date of the patent, *i.e.*, until October 12, 2005; and a third interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,585,770, is granted for an additional period of one year from the extended expiration date of the patent, *i.e.*, until October 12, 2006.

Dated: March 29, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E6–4831 Filed 4–3–06; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. PTO–P–2006–0021]

Grant of Interim Extension of the Term of U.S. Patent No. 4,585,597; ANTHÉLIOS ® SP Topical Cream (Mexoryl ® SX (Ecamsule))

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a third one-year interim extension of the term of U.S. Patent No. 4,585,597.

FOR FURTHER INFORMATION CONTACT: Mary C. Till by telephone at (571) 272–7755; by mail marked to her attention and addressed to the Commissioner for Patents, Mail Stop Patent Ext., P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7755, or by e-mail to *Mary.Till@uspto.gov*.

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On May 17, 2005, patent owner L'Oreal S.A., timely filed an application under 35 U.S.C. 156(d)(5) for a third subsequent interim extension of the term of U.S. Patent No. 4,585,597. The patent claims the active ingredient Mexoryl® SX (ecamsule), in the human drug product ANTHELIOS® SP Topical Cream (HELIOBLOCK® SX Cream), a method of use of the active ingredient, and a method of manufacturing the active ingredient. The application indicates, and the Food and Drug Administration has confirmed, that a New Drug Application for the human drug product Mexoryl® SX (ecamsule) has been filed and is currently undergoing regulatory review before the Food and Drug Administration for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156, and that the patent should be extended for an additional year as required by 35 U.S.C. 156(d)(5)(B). Since it is apparent that the regulatory review period has continued beyond the extended expiration date of the patent (June 16, 2005), interim extension of the patent term under 35 U.S.C. 156(d)(5) is appropriate.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,585,597 is granted for a period of one year from the expiration date of the patent, i.e., until June 16, 2006.

Dated: March 29, 2006.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. E6–4832 Filed 4–3–06; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

Request for Comments Concerning Proposed Extension of Approval of a Collection of Information—Electrically Operated Toys and Children's Articles

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Consumer Product Safety Commission requests comments on a proposed extension of approval of a collection of information from manufacturers and importers of certain electrically operated toys and children's articles. The collection of information consists of testing and recordkeeping requirements in regulations entitled ''Requirements for Electrically Operated Toys or Other Electrically Operated Articles Intended for Use by Children,'' codified at 16 CFR part 1505.

The Commission will consider all comments received in response to this notice before requesting an extension of this collection of information from the Office of Management and Budget.

DATES: The Office of the Secretary must receive written comments not later than June 5, 2006.

ADDRESSES: Written comments should be captioned ''Electrically Operated Toys'' and sent by e-mail to *cpsc-os@cpsc.gov.* Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127, or by mail to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, MD 20814.

FOR FURTHER INFORMATION CONTACT: For information about the proposed extension of the collection of information, or to obtain a copy of 16 CFR part 1505, call or write Linda L. Glatz, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington DC 20207; telephone (301) 504–7671.

SUPPLEMENTARY INFORMATION: In 1973, the Commission issued safety requirements for electrically operated toys and children's articles to protect children from unreasonable risks of injury from electric shock, electrical burns, and thermal burns. These regulations are codified at 16 CFR part 1505 and were issued under the authority of sections 2 and 3 of the Federal Hazardous Substances Act (15 U.S.C. 1261, 1262).

A. Requirements for Electrically Operated Toys

These regulations are applicable to toys, games, and other articles intended for use by children that are powered by electrical current from a 120 volt circuit. Video games and articles designed primarily for use by adults that may be incidentally used by children are not subject to these regulations.

The regulations prescribe design, construction, performance, and labeling requirements for electrically operated toys and children's articles. The regulations also require manufacturers and importers of those products to develop and maintain a quality assurance program. Additionally, section 1505.4(a)(3) of the regulations requires those firms to maintain records for three years containing information about: (1) Material and production specifications; (2) the quality assurance program used; (3) results of all tests and inspections conducted; and (4) sales and distribution of electrically operated toys and children's articles.

The Office of Management and Budget (OMB) approved the collection of information requirements in the regulations under control number 3041–0035. OMB's most recent extension of approval expires on June 30, 2006. The Commission now proposes to request an extension of approval without change for the information collection requirements in the regulations.

The safety need for this collection of information remains. Specifically, if a manufacturer or importer distributes products that violate the requirements of the regulations, the records required by section 1505.4(a)(3) can be used by the firm and the Commission (i) to identify specific lots or production lines of products which fail to comply with applicable requirements, and (ii) to

notify distributors and retailers in the event the products are subject to recall.

B. Estimated Burden

The Commission staff estimates that about 40 firms are subject to the testing and recordkeeping requirements of the regulations. Each one may have an average of ten products each year for which testing and recordkeeping would be required. The Commission staff estimates that the tests required by the regulations can be performed on one product in 16 hours and that recordkeeping and maintenance can be performed for one product in four hours. Thus, the total annual burden imposed by the regulations on all manufacturers and importers is about 8,000 hours. Using the rate of $42.84 per hour as the average total compensation (Bureau of Labor Statistics, September 2005), the estimated annualized cost is $343,000.

C. Request for Comments

The Commission solicits written comments from all interested persons about the proposed collection of information. The Commission specifically solicits information relevant to the following topics:

—Whether the collection of information described above is necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collection of information is accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: March 29, 2006.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. E6–4798 Filed 4–3–06; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

[DOD–2006–OS–57]

National Reconnaissance Office; Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office.

ACTION: Notice to add systems of records.

SUMMARY: The National Reconnaissance Office is proposing to add a system of records to its inventory of record system subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 4, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the FOIA/Privacy Official, National Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Rosenbaum at (703) 227–9128.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 23, 2006, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 28, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

QNRO–25

SYSTEM NAME:

Financial Management Systems.

SYSTEM LOCATION:

Office of Business Plans and Operations, National Reconnaissance Office (NRO), 14675 Lee Road, Chantilly, VA 20151–175.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government civilian employees, military personnel, and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, social security number (SSN), vendor code, company, parent organization, home address, and home telephone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

50 U.S.C. 401 *et seq.*; 5 U.S.C. 301 Departmental Regulations; E.O. 9397 (SSN); E.O. 12958, as amended.

PURPOSE(S):

The purpose of this system is to record all NRO financial transactions pertaining to procurements, travel, financial data used to manage independent contractors for IRS Form 1099 reporting purposes; and preparation of the NRO annual financial statement audit.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the NRO as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routines Uses'' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated information system, maintained in computers and computer output products.

RETRIEVABILITY

Individual's name, company, home address, social security number or vendor code.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to these records is controlled; those needing access must apply for an account. Access is role based. Separation of duties exists to ensure only those who should be privy to this information based on their job duties have access.

RETENTION AND DISPOSAL:

Records are treated as permanent pending a determination by the National Archives and Records Agency of authority for disposition of the records.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Business Plans and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National

Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Execute on (date). (Signature).

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include full name and any aliases or nicknames, address, Social Security Number, current citizenship status, and date and place of birth, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration in accordance with 28 U.S.C. 1746, in the following format:

If executed outside the United States: I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature).

If executed within the United States, its territories, possessions, or commonwealths: I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature).

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3A and NRO Instruction 110–5A; 32 CFR part 326; or may be obtained from the Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the individual and through documentation.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–3202 Filed 4–3–06; 8:45 am]

BILLING CODE 8001–06–M

DEPARTMENT OF DEFENSE

[DOD–2006–OS–0058]

National Reconnaissance Office; Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office.

ACTION: Notice to alter a system of records.

SUMMARY: The National Reconnaissance Office is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 4, 2006 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the FOIA/Privacy Official, National Reconnaissance Office, Information Access and Release, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Theresa Rosenbaum at (703) 227–9128.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 23, 2006, to the House Committee on Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 28, 2006.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

QNRO–01

SYSTEM NAME:

Health and Fitness Evaluation Records (August 22, 2000, 65 FR 50969).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with: ''Fitness units within the National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with: ''Name, Social Security Number, gender, employer, employee number, work telephone number, date of birth, parent organization; permission slips to participate in testing; letters from commanding officers indicating certain individuals need to participate in certain programs; and health history to include such items as weight, height, body fat, measurements, blood pressure and cholesterol levels, orthopedic problems, and exercise restrictions, participations' program goals from which the health staff design individual fitness programs, a physician's referral when it has been required for participation in the program.''

* * * * *

PURPOSE(S):

Delete entry and replace with: ''The purpose of this system is to provide fitness assessments and design wellness programs for participants. Each participant is given a paper copy of the assessment and program goals''.

* * * * *

QNRO–1

SYSTEM NAME:

Health and Fitness Evaluation Records.

SYSTEM LOCATION:

Fitness units within the National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

National Reconnaissance Office (NRO) civilian, military, and contractor personnel who have chosen to participate in a wellness and fitness program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name, Social Security Number, gender, employer, employee number, work telephone number, date of birth, parent organization; permission slips to participate in testing; letters from commanding officers indicating certain individuals need to participate in certain programs; and health history to include such items as weight, height, body fat, measurements, blood pressure and cholesterol levels, orthopedic problems, and exercise restrictions, participants' program goals from which the health staff design individual fitness programs, a physician's referral when it has been required for participation in the program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, as amended, 50 U.S.C. 401 *et seq.*; 5 U.S.C. 301, Departmental Regulations; E.O. 12333; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of this system is to provide fitness assessments and design wellness programs for participants. Each participant is given a paper copy of the assessment and program goals.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD ''Blanket Routines Uses'' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Name, Social Security Number, and parent organization.

SAFEGUARDS:

Records are stored in a secure, gated facility, guard, badge, and password access protected. Access to and use of these records are limited to fitness staff whose official duties require such access. Records are stored on a stand-alone computer; paper files are stored in a locked filing cabinet. Office access is restricted to a limited number of personnel.

RETENTION AND DISPOSAL:

Records are destroyed six years after date of the last entry. Electronic records are deleted; paper records are shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Environmental Safety Health and Fitness Division, Management Services and Operations, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)''.

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)''.

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715. Request should include the individual's full name, address, Social Security Number, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: ''I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)''.

If executed within the United States, its territories, possessions, or commonwealths: ''I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)''.

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the NRO Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information is supplied by the participants; the ESFH staff, and occasionally the participant's physician.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 06–3203 Filed 4–03–06; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF EDUCATION

A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education

AGENCY: A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, U.S. Department of Education.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of an upcoming open meeting of A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, (Commission). The notice also describes the functions of the Commission. Notice of this meeting is required by section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: Thursday, May 18, 2006, and Friday, May 19, 2006.

TIME: May 18, 2006: 1 p.m. to 6 p.m.; May 19, 2006: 8:30 a.m. to 1 p.m.

ADDRESSES: The Commission will meet in Washington, DC, at The Watergate Hotel, 2650 Virginia Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Cheryl Oldham, Executive Director, A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education, 400 Maryland Avenue, SW., Washington, DC 20202–3510; telephone: (202) 401–0429.

SUPPLEMENTARY INFORMATION: The Commission is established by the Secretary of Education to begin a national dialogue about the future of higher education in this country. The

purpose of this Commission is to consider how best to improve our system of higher education to ensure that our graduates are well prepared to meet our future workforce needs and are able to participate fully in the changing economy. The Commission shall consider federal, state, local and institutional roles in higher education and analyze whether the current goals of higher education are appropriate and achievable. The Commission will also focus on the increasing tuition costs and the perception of many families, particularly low-income families, that higher education is inaccessible.

The agenda for this meeting will include a discussion between commission members regarding preliminary findings, possible recommendations and a proposed format for the final report. A written report to the Secretary is due by August 2006.

Individuals who will need accommodations for a disability in order to attend the meeting (*e.g.*, interpreting services, assistive listening devices, or materials in alternative format) should notify Kristen Vetri at (202) 401–0429 no later than May 8, 2006. We will attempt to meet requests for accommodations after this date but cannot guarantee their availability. The meeting site is accessible to individuals with disabilities.

Individuals interested in attending the meeting must register in advance because of limited space issues. Please contact Kristen Vetri at (202) 401–0429 or by e-mail at *Kristen.Vetri@ed.gov*.

Opportunities for public comment are available through the Commission's Web site at *http://www.ed.gov/about/bdscomm/list/hiedfuture/index.html.* Records are kept of all Commission proceedings and are available for public inspection at the staff office for the Commission from the hours of 9 a.m. to 5 p.m.

Dated: March 27, 2006.

Margaret Spellings,

Secretary, U.S. Department of Education.

[FR Doc. 06–3185 Filed 4–3–06; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

March 28, 2006.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER05–1319–003.

Applicants: Pacific Gas & Electric Company.

Description: Pacific Gas and Electric Co. submits Substitute First Revised Sheet 102 to its Wholesale Distribution Tariff, Small Generator Interconnection Procedures, in accordance with FERC's Order issued 10/11/05.

Filed Date: 03/21/2006.

Accession Number: 20060324–0031.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 11, 2006.

Docket Numbers: ER06–532–001.

Applicants: Midwest Independent Transmission System Operator, Inc. FirstEnergy Service Company.

Description: Midwest Independent Transmission System Operator Inc & FirstEnergy Service Co, on behalf of American Transmission Systems Incorporated submit a revised tariff sheet in compliance with FERC's 3/16/06 Order.

Filed Date: 03/21/2006.

Accession Number: 20060324–0049.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 11, 2006.

Docket Numbers: ER06–765–000.

Applicants: PJM Interconnection, L.L.C.

Description: PJM Interconnection, LLC submits an unexecuted interconnection service agreement among PJM, H-P Energy Resources, LLC, and Monongahela Power Co.

Filed Date: 03/21/2006.

Accession Number: 20060324–0025.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 11, 2006.

Docket Numbers: ER06–766–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed interconnection agreement with City Utilities of Springfield, MO and Empire Electric District Co.

Filed Date: 03/21/2006.

Accession Number: 20060324–0026.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 11, 2006.

Docket Numbers: ER06–767–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits unexecuted network integration transmission service agreement with Oklahoma Municipal Power Authority etc.

Filed Date: 03/21/2006.

Accession Number: 20060324–0027.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 11, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4794 Filed 4–3–06; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filings

March 20, 2006.

Take notice that the Commission received the following electric rate filings.

Docket Numbers: ER06–499–001.

Applicants: PJM Interconnection L.L.C.

Description: PJM Interconnection, LLC submits an amendment to its 1/18/06 filing of revisions to the PJM Open Access Transmission Tariff.

Filed Date: 3/14/2006.

Accession Number: 20060317–0284.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–542–001.

Applicants: Wisconsin Electric Power Company.

Description: Wisconsin Electric Power Co amends its 1/25/06 filing to reflect subsequent change in the Commission's regulations.

Filed Date: 3/14/2006.

Accession Number: 20060317–0285.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–700–001.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator Corp submits clarifications and corrections to their March 2006 Credit Policy Amendments.

Filed Date: 3/14/2006.

Accession Number: 20060317–0273.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–726–000.

Applicants: Madison Windpower, LLC.

Description: Madison Windpower LLC petitions the Commission for order accepting market-based rate schedule for filing and granting waivers and blanket approvals.

Filed Date: 3/14/2006.

Accession Number: 20060317–0274.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–727–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool Inc submits an unexecuted service agreement for Point-to-Point Transmission Service with Calpine Energy Services LP, effective 2/15/06.

Filed Date: 3/14/2006.

Accession Number: 20060317–0275.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–728–000.

Applicants: Mirant Potrero LLC.

Description: Mirant Potrero LLC submits revisions to its must Must-Run Service Agreement with the California Independent System Operator Corp.

Filed Date: 3/14/2006.

Accession Number: 20060317–0276.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–729–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits revisions to its Open Access Transmission Tariff.

Filed Date: 3/14/2006.

Accession Number: 20060317–0277.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Docket Numbers: ER06–730–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Midwest Independent Transmission System Operator Inc submits proposed revisions to its Open Access Transmission and Energy Markets Tariff, FERC Electric Tariff, Third Revised Volume.

Filed Date: 3/14/2006.

Accession Number: 20060317–0278.

Comment Date: 5 p.m. Eastern Time on Tuesday, April 4, 2006.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E6–4801 Filed 4–3–06; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ORD–2005–0530; FRL–8052–2]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Reference or Equivalent Method Determination; EPA ICR No. 0559.09 OMB Control No. 2080.0005

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is being revised in response to proposed revisions to the National Ambient Air Quality Standards (NAAQS) for particulate matter. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 5, 2006.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–ORD–2005–0530, by one of the following methods:

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

• E-mail: Office of Environmental Information (OEI) Docket, *oei.dochet@epa.gov*.

• Fax: 202–566–1749.

• Mail: EPA–HQ–ORD–2005–0530, Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Please include a total of 2 copies.''

• Hand Delivery: Environmental Protection Agency, EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–ORD–2005–0530. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Robert W. Vanderpool, U.S. Environmental Protection Agency, Human Exposure and Atmospheric Sciences Division, Process Modeling Research Branch, Mail Drop D205–03, Research Triangle Park, NC 27711; telephone number: 919–541–7877; facsimile number: 919–541–1153; e-mail: *Vanderpool.Robert@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–ORD–2005–0530, which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the Office of Environmental Information Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the Office of Environmental Information Docket is 202–566–1742.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information Is EPA Particularly Interested In?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

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

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

Affected entities: Entities potentially affected by this action are primarily manufacturers and vendors of ambient air quality monitoring instruments that are used by state and local air quality monitoring agencies in their federally required air surveillance monitoring networks, and agents acting for such instrument manufacturers or vendors. Other entities potentially affected may include state or local air monitoring agencies, other users of ambient air quality monitoring instruments, or any other applicant for a reference or equivalent method determination.

Title: Application for Reference and Equivalent Method Determination (OMB Control No. 2080–0005; EPA ICR 0559.09.

ICR numbers: EPA ICR No. 0559.08; OMB Control No. 2080–0005.

ICR status: This ICR is currently scheduled to expire on January 2008. Revisions to the ICR are being made in response to proposed revisions to the NAAQS for particulate matter. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or

form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: To determine compliance with the NAAQS, State air monitoring agencies are required to use, in their air quality monitoring networks, air monitoring methods that have been formally designated by the EPA as either reference or equivalent methods under EPA regulations at 40 CFR part 53. A manufacturer or seller of an air monitoring method (*e.g.* an air monitoring sampler or analyzer) that seeks to obtain such EPA designation of one of its products must carry out prescribed tests of the method. The test results and other information must then be submitted to the EPA in the form of an application for a reference or equivalent method determination in accordance with 40 CFR part 53. The EPA uses this information, under the provisions of part 53, to determine whether the particular method should be designated as either a reference or equivalent method. After a method is designated, the applicant must also maintain records of the names and mailing addresses of all ultimate purchasers of all analyzers or samplers sold as designated methods under the method designation. If the method designated is a method for fine particulate matter ($PM_{2.5}$) and coarse particulate matter ($PM_{10-2.5}$), the applicant must also submit a checklist signed by an ISO-certified auditor to indicate that the samplers or analyzers sold as part of the designated method are manufactured in an ISO 9001-registered facility. Also, an applicant must submit a minor application to seek approval for any proposed modifications to previously designated methods.

A response to this collection of information is voluntary, but it is required to obtain the benefit of EPA designation under 40 CFR part 53. Submission of some information that is claimed by the applicant to be confidential business information may be necessary to make a reference or equivalent method determination. The confidentiality of any submitted information identified as confidential business information by the applicant will be protected in full accordance with 40 CFR 53.15 and all applicable provisions of 40 CFR part 2.

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 number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comment to:

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

(ii) evaluate the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection information on those who are to respond, including through the use of appropriate automated technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average approximately 7,492 hours during the next three years. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR provides a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated total number of potential respondents: 22.

Frequency of response: Annual.

Estimated total average number of responses for each respondent: 1.

Estimated total annual burden hours: 7,492.

Estimated total annual costs: $650,494. This includes an estimated burden cost of $517,831 and an estimated cost of $132,668 for capital investment or maintenance and operational costs

Are There Changes in the Estimates From the Last Approval?

There is an increase of 2,774 hours in the total estimated respondent burden compared with that identified in the ICR currently approved by OMB. This increase reflects EPA's estimate that an average of 1.33 additional applications for reference or equivalent method determinations, and an average of 1.67 additional minor applications for approval of modifications, will be received annually following promulgation of the proposed regulation changes. It is estimated that there will be a corresponding increase in total respondent costs of $219,112 for these additional applications and an increase in $4,415 for these additional minor modifications.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Dated: February 23, 2006.

Jewel F. Morris,

Acting Director, National Exposure Research Laboratory.

[FR Doc. E6–4859 Filed 4–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8053–7]

Announcement of a Supplement to the Delegation of the Title V Permitting Program, Consistent With 40 CFR Part 71, to the Navajo Nation Environmental Protection Agency and the Suspension of Part 71 Fee Collection by USEPA for the Four Corners Steam Electric Station and the Navajo Generating Station

AGENCY: Environmental Protection Agency.

ACTION: Informational notice.

SUMMARY: The purpose of this notice is to announce that on March 21, 2006, the United States Environmental Protection Agency (USEPA) granted the Navajo Nation Environmental Protection Agency's (NNEPA) request to supplement its full delegation of authority to administer the Clean Air

Act's (the Act) Federal Title V operating permits program to include the Four Corners Steam Electric Station and the Navajo Generating Station (the Power Plants). Under this supplemental delegation, NNEPA will issue and implement Title V operating permits pursuant to 40 CFR part 71 for the Power Plants, which are located within the formal boundaries of the Navajo Nation reservation, and will otherwise administer the program for these sources. The terms and conditions of the supplemental delegation are specified in a Supplemental Delegation of Authority Agreement (Agreement) between the USEPA Region IX and NNEPA, signed and dated on March 21, 2006. Region IX is also simultaneously suspending its collection of part 71 fees, pursuant to 40 CFR 71.9(c)(2)(ii), for the Power Plants.

DATES: The effective date for the Agreement between USEPA and NNEPA, and USEPA's suspension of its part 71 fee collection for the Power Plants is March 21, 2006.

ADDRESSES: Copies of the letter requesting supplemental delegation of authority to administer the Federal operating permits program for the Power Plants and the Agreement between USEPA and NNEPA are available for public inspection at USEPA's Region IX Office, 75 Hawthorne Street, San Francisco, CA 94105 and at the Navajo Nation Environmental Protection Agency Air Quality Control Program Office, Rt. 12 North/Bldg #F004–051, Fort Defiance, AZ 86504. Effective March 21, 2006, all notifications, requests, applications, reports and other correspondence required under 40 CFR part 71 for the Power Plants shall be submitted to NNEPA's Air Quality Control Program Office at the following address: Navajo Nation Air Quality Control Program Office, P.O. Box 529 Fort Defiance, AZ 86504, Attn: Charlene Nelson. Sources will also remain obligated to submit copies of such documents to USEPA as set forth in the terms and conditions of their part 71 permits and consistent with Section VII(2) of the Agreement.

FOR FURTHER INFORMATION CONTACT: Emmanuelle Rapicavoli, Permits Office (AIR–3), 75 Hawthorne Street, San Francisco, CA 94110, Telephone: 415–972–3969, e-mail: *rapicavoli.emmanuelle@epa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of this notice is to announce that on March 21, 2006, USEPA granted NNEPA's request to supplement its existing full delegation of authority to administer the part 71 Federal operating permits program to include the Power Plants.

The Act and its implementing regulations under 40 CFR part 71 authorize USEPA to delegate authority to administer the part 71 program to any eligible Tribe that submits a demonstration of adequate regulatory procedures and authority for administration of the part 71 operating permits program.

In order to be considered an ''eligible tribe,'' the NNEPA submitted, in August 2005, an application for a determination, under the provisions of the Tribal Authority Rule (TAR), 40 CFR part 49, that it is eligible to be treated in the same manner as a state for the purpose of receiving delegation of authority to administer the Federal part 71 operating permit program for the Power Plants. Region IX reviewed NNEPA's application and determined that it met the four criteria for eligibility, identified in 40 CFR 49.6, for the Power Plants, and was thus eligible for entering into a supplemental delegation agreement with USEPA Region IX to administer the part 71 program for the Power Plants. USEPA Region IX's eligibility determination was signed on March 21, 2006.

On October 15, 2004, USEPA Region IX and the NNEPA entered into a delegation of authority agreement (October 2004 Delegation Agreement) to allow NNEPA to administer the Federal part 71 operating permits program on behalf of USEPA for all part 71 sources except for the Power Plants within a Delegated Program Area specified in that agreement. The October 2004 Delegation Agreement excluded the Power Plants because the Navajo Nation and the participants of the Power Plants disagree as to the Nation's jurisdiction to regulate the Power Plants under a delegated Part 71 Program based on the existence of certain provisions contained in leases and grants of rights-of-way (the ''Covenants'' and ''Grants'') as between the Navajo Nation and the two facilities.

In light of this disagreement, on May 18, 2005, NNEPA entered into a voluntary compliance agreement (VCA) with the participants of the Power Plants, which provides that the parties will not assert or challenge any effect of the Covenants and Grants on the authority of NNEPA to administer a delegated part 71 program on behalf of USEPA with respect to the Plants or on the applicability to the Plants of the requirements of the Navajo Nation laws that have been expressly incorporated into a part 71 permit administered by the Navajo Nation EPA, without prejudice to their rights to assert or challenge the Covenants or Grants after expiration or termination of the VCA. Therefore, for so long as the VCA remains in effect, the VCA resolves the dispute between the Navajo Nation and the Power Plants as to impact of the Covenants or Grants on NNEPA's ability to regulate the Power Plants pursuant to the delegation of the administration of the part 71 Program.

In August 2005, NNEPA submitted a request to the USEPA Region IX, pursuant to 40 CFR 71.10, to supplement the October 2004 Delegation Agreement by delegating authority to NNEPA to administer the Part 71 Program with respect to the Power Plants. As part of its request, NNEPA submitted a legal opinion from its attorney general stating that the Navajo Nation Air Pollution Prevention and Control Act, the Navajo Nation Air Quality Control Program Operating Permit Regulations and the VCA provide it adequate authority to carry out all aspects of the delegated program for the Power Plants. NNEPA also provided all necessary documentation to demonstrate that it has adequate authority and adequate resources to administer the part 71 Federal permitting program for the Power Plants.

Pursuant to 40 CFR 71.10(b), USEPA hereby notifies the public that effective March 21, 2006, it has granted NNEPA's request and is fully delegating the authority to administer the federal operating permits program for the Power Plants as set forth under 40 CFR part 71 and in the Agreement. The terms and conditions for the supplemental delegation are specified in the Agreement between USEPA Region IX and NNEPA signed and dated on March 21, 2006.

If, at any time, USEPA determines that NNEPA is not adequately administering or cannot adequately administer the requirements of part 71 or fulfill the terms of the Agreement, this supplemental delegation may be revoked, in whole or in part, pursuant to 40 CFR 71.10(c), after appropriate consultation with NNEPA. The Agreement also provides that the supplemental delegation will automatically terminate with respect to either Power Plant for which the VCA has terminated or expired. USEPA will notify the public through a **Federal Register** notice of a partial or full termination of this Agreement.

Under the supplemental delegation, USEPA retains its authority to (1) object to the issuance of any part 71 permit for the Power Plants, (2) act upon petitions submitted by the public regarding the Power Plants, and (3) collect fees from the owners or operators of the Power Plants if it is demonstrated that NNEPA

is not adequately administering the part 71 program with respect to the Power Plants, in accordance with the Agreement, 40 CFR part 71, and/or the Act. Because USEPA is retaining its authority to act upon petitions submitted pursuant to 40 CFR 71.10(h) and 71.11(n), any such petitions must be submitted to USEPA Region IX following the procedures set forth in those regulations.

USEPA also notifies the public, pursuant to 40 CFR 71.9(c)(2)(ii), that effective March 21, 2006, it has suspended collection of its part 71 permit fees for the Power Plants. In delegating the administration of the part 71 program, USEPA has determined that NNEPA can collect fees under tribal law sufficient to fund the delegated part 71 program for the Power Plants and carry out the duties specified in the Agreement.

Dated: March 21, 2006.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. E6–4845 Filed 4–3–06; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8053–6]

Notice of Availability of Revisions to Proposed NPDES General Permits for Small Municipal Separate Storm Sewer Systems (MS4s) in New Mexico, Indian Country Lands in New Mexico and Indian Country Lands in Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA Region 6 is announcing the availability of a supplemental fact sheet describing proposed revisions to, and is reopening the comment period for, previously proposed National Pollutant Discharge Elimination System (NPDES) general permits for storm water discharges from small municipal separate storm sewer systems (MS4s) located in the State of New Mexico (NMR040000), Indian Country Lands in New Mexico (NMR04000I), and Indian Country Lands in Oklahoma (OKR04000I). These permits were previously publically noticed on September 9, 2003 (68 FR 53166) and a 45 day public comment period on all parts of the permits was provided at that time. The public comment period is being reopened for the limited purpose of accepting public comments on changes which have been made to the draft permits primarily as a method to address a decision by the United States Court of Appeals for the Ninth Circuit, which remanded certain portions of the Phase II NPDES storm water regulations related to issuance of general permits for small MS4s. The Region is accepting comments only on today's proposed changes to the draft permits. Following the close of the comment period, the Director will make a final permit decision based on comments received during both the initial comment period and the reopened comment period.

DATES: Comments on today's revisions to these draft permits must be submitted by May 4, 2006. Comments must be received or postmarked by midnight on the last day of the comment period. EPA is not required to consider late comments.

ADDRESSES: Comments on today's revisions to the draft general permits should be sent to Docket No. 6WQ–03–SW01, Attn: Ms. Diane Smith, EPA Region 6, Water Quality Protection Division (6WQ–CA), 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202–2733. Comments may also be submitted in electronic format (Wordperfect 9, MS Word 2000, or ASCII Text formats only, avoiding use of special characters) to: the above address or via e-mail to *smith.diane@epa.gov*. No facsimiles (faxes) will be accepted. Copies of information in the record are available upon request from the contacts below. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permits may be obtained from Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–2145. The supplemental fact sheet describing the modifications being noticed today, along with the originally proposed general permit and fact sheet documents, are available at *http://www.epa.gov/earth1r6/6wq/npdes/sw/ms4/.*

SUPPLEMENTARY INFORMATION: The originally proposed general permits and the modifications being proposed today cover storm water discharges from municipal separate storm sewer systems (MS4s) meeting the definition of a ''small municipal separate storm sewer system'' at 40 CFR 122.26(b)(16) and designated under 40 CFR 122.32(a)(1) or 40 CFR 122.32(a)(2). An MS4 consists of a system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains) that collects storm water; is owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA; and discharges to waters of the United States. A small MS4 typically serves a population of less than 100,000. Only those small MS4s located in a Census-defined Urbanized Area or having been designated by the Director are required to apply for permits (see 40 CFR 122.32). Maps of Urbanized Areas and lists of cities and counties within them are available online at *http://cfpub.epa.gov/npdes/stormwater/urbanmaps.cfm.*

Subsequent to EPA Region 6's proposal of the general permits for small MS4s on September 9, 2003, the U.S. Court of Appeals for the Ninth Circuit denied EPA's petition for rehearing in litigation over EPA's storm water Phase II regulations. *Environmental Defense Center, et al.* v. *EPA,* No. 70014 & consolidated cases (9th Cir., Sept. 15, 2003). Plaintiffs in that litigation challenged the Phase II NPDES storm water regulations issued by EPA pursuant to Clean Water Act (CWA) section 402(p)(6). Among other things, the Phase II regulations require NPDES permits for storm water discharges from certain MS4s for which NPDES permits were not required under CWA section 402(p)(2) and the Phase I NPDES storm water regulations. The regulations also require the newly regulated MS4s to develop, implement, and enforce a storm water management program containing, amongst other things, best management practices (BMPs) identified by the discharger. The regulations authorize the use of general permits and require that these BMPs (as well as measurable goals associated with these BMPs) be identified in the Notice of Intent (NOI) filed by the MS4 in seeking authorization under a general permit. Relying on the ''traditional'' general permit model, the Agency did not require NOIs to be reviewed by the Agency, made available to the public for review and comment, or to be subject to public hearings. The Ninth Circuit held that EPA's failure to address these issues in establishing NOI requirements violated various provisions of CWA section 402, and remanded the Phase II regulations on three grounds related to

the use of NPDES permits to authorize discharges from small MS4s: (1) Public availability of Notices of Intent (NOIs), (2) opportunity for public hearing, and (3) Permitting Authority review of NOIs.

On April 16, 2004, EPA's Office of Wastewater Management issued guidance to NPDES Permitting Authorities entitled ''Implementing the Partial Remand of the Stormwater Phase II Regulations Regarding Notices of Intent & NPDES General Permitting for Phase II MS4s'' (available at *http://www.epa.gov/npdes/pubs/hanlonphase2apr14signed.pdf*). This document provides guidance to permitting authorities on addressing the Court's partial remand when issuing general permits for small MS4s. Today's revisions to the originally proposed general permits are in response to the partial remand to the Phase II regulations and issues raised in the Court's decision and are consistent with EPA's Office of Wastewater Management Guidance.

The public comment period on the proposed general permits is being reopened, in accordance with procedures at 40 CFR 124.14, for the limited purpose of accepting public comments on today's proposed changes to the draft permits. EPA's public comment and public hearing procedures may be found at 40 CFR 124.10 and 124.12 (48 FR 142664, April 1, 1983, as amended at 49 FR 38051, September 26, 1984). Following the end of the supplemental comment period, the Director will make a final permit decision and notice will be published in the **Federal Register**.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: March 24, 2006.

Miguel I. Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. E6–4844 Filed 4–3–06; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 06–05]

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[No. 2006–12]

Joint Report: Differences in Accounting and Capital Standards Among the Federal Banking Agencies; Report to Congressional Committees

AGENCIES: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice.

SUMMARY: The OCC, the Board, the FDIC, and the OTS (the Agencies) have prepared this report pursuant to section 37(c) of the Federal Deposit Insurance Act. Section 37(c) requires the Agencies to jointly submit an annual report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate describing differences between the capital and accounting standards used by the Agencies. The report must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: *OCC:* Nancy Hunt, Risk Expert (202–874–4923), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: John F. Connolly, Senior Supervisory Financial Analyst (202–452–3621), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, D.C. 20551.

FDIC: Robert F. Storch, Chief Accountant (202–898–8906), Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Michael D. Solomon, Senior Program Manager for Capital Policy (202–906–5654), Supervision Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The text of the report follows:

Report to the Committee on Financial Services of the United States House of Representatives and to the Committee on Banking, Housing, and Urban Affairs of the United States Senate Regarding Differences in Accounting and Capital Standards Among the Federal Banking Agencies

Introduction

The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (''the Federal banking agencies'' or ''the agencies'') must jointly submit an annual report to the Committee on Financial Services of the U.S. House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the U.S. Senate describing differences between the accounting and capital standards used by the agencies. The report must be published in the **Federal Register**.

This report, which covers differences existing as of December 31, 2005, is the fourth joint annual report on differences in accounting and capital standards to be submitted pursuant to section 37(c) of the Federal Deposit Insurance Act (12 U.S.C. 1831n(c)), as amended. Prior to the agencies' first joint annual report, section 37(c) required a separate report from each agency.

Since the agencies filed their first reports on accounting and capital differences in 1990, the agencies have acted in concert to harmonize their accounting and capital standards and eliminate as many differences as possible. Section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4803) also directs the agencies to work jointly to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The results of these efforts must be ''consistent with the principles of safety and soundness, statutory law and policy, and the public interest.'' In recent years, the agencies have revised their capital standards to address changes in credit and certain other risk exposures within the banking system and to align the amount of capital institutions are required to hold more closely with the credit risks and certain other risks to which they are exposed. These revisions have been made in a uniform manner whenever possible and practicable to minimize interagency differences.

While the differences in capital standards have diminished over time, a few differences remain. Some of the remaining capital differences are statutorily mandated. Others were significant historically but now no longer affect in a measurable way, either individually or in the aggregate, institutions supervised by the Federal banking agencies. In this regard, the OTS plans to eliminate two such de minimis differences during 2006 that have been fully discussed in previous joint annual reports ((i) covered assets and (ii) pledged deposits, nonwithdrawable accounts, and certain certificates), and these differences have been excluded from this annual report.

In addition to the specific differences in capital standards noted below, the agencies may have differences in how they apply certain aspects of their rules. These differences usually arise as a result of case-specific inquiries that have only been presented to one agency. Agency staffs seek to minimize these occurrences by coordinating responses to the fullest extent reasonably practicable.

The Federal banking agencies have substantially similar capital adequacy standards. These standards employ a common regulatory framework that establishes minimum leverage and risk-based capital ratios for all banking organizations (banks, bank holding companies, and savings associations). The agencies view the leverage and risk-based capital requirements as minimum standards, and most institutions are expected to operate with capital levels well above the minimums, particularly those institutions that are expanding or experiencing unusual or high levels of risk.

The OCC, the FRB, and the FDIC, under the auspices of the Federal Financial Institutions Examination Council, have developed uniform Reports of Condition and Income (Call Reports) for all insured commercial banks and state-chartered savings banks. The OTS requires each OTS-supervised savings association to file the Thrift Financial Report (TFR). The reporting standards for recognition and measurement in the Call Reports and the TFR are consistent with generally accepted accounting principles (GAAP). Thus, there are no significant differences in regulatory accounting standards for regulatory reports filed with the Federal banking agencies. Only one minor difference remains between the accounting standards of the OTS and those of the other federal banking agencies, and that difference relates to push-down accounting, as more fully explained below.

Differences in Capital Standards Among the Federal Banking Agencies

Financial Subsidiaries

The Gramm-Leach-Bliley Act (GLBA) establishes the framework for financial subsidiaries of banks.[1] GLBA amends the National Bank Act to permit national banks to conduct certain expanded financial activities through financial subsidiaries. Section 121(a) of the GLBA (12 U.S.C. 24a) imposes a number of conditions and requirements upon national banks that have financial subsidiaries, including specifying the treatment that applies for regulatory capital purposes. The statute requires that a national bank deduct from assets and tangible equity the aggregate amount of its equity investments in financial subsidiaries. The statute further requires that the financial subsidiary's assets and liabilities not be consolidated with those of the parent national bank for applicable capital purposes.

State member banks may have financial subsidiaries subject to all of the same restrictions that apply to national banks.[2] State nonmember banks may also have financial subsidiaries, but they are subject only to a subset of the statutory requirements that apply to national banks and state member banks.[3] Finally, national banks, state member banks, and state nonmember banks may not establish or acquire a financial subsidiary or commence a new activity in a financial subsidiary if the bank, or any of its insured depository institution affiliates, has received a less than satisfactory rating as of its most recent examination under the Community Reinvestment Act.[4]

The OCC, the FDIC, and the FRB adopted final rules implementing their respective provisions of Section 121 of GLBA for national banks in March 2000, for state nonmember banks in January 2001, and for state member banks in August 2001. GLBA did not provide new authority to OTS-supervised savings associations to own, hold, or operate financial subsidiaries, as defined.

Subordinate Organizations Other Than Financial Subsidiaries

Banks supervised by the OCC, the FRB, and the FDIC generally consolidate all significant majority-owned subsidiaries other than financial subsidiaries for regulatory capital purposes. This practice assures that capital requirements are related to the aggregate credit (and, where applicable, market) risks to which the banking organization is exposed. For subsidiaries other than financial subsidiaries that are not consolidated on a line-for-line basis for financial reporting purposes, joint ventures, and associated companies, the parent banking organization's investment in each such subordinate organization is, for risk-based capital purposes, deducted from capital or assigned to the 100 percent risk-weight category, depending upon the circumstances. The FRB's and the FDIC's rules also permit the banking organization to consolidate the investment on a pro rata basis in appropriate circumstances. These options for handling unconsolidated subsidiaries, joint ventures, and associated companies for purposes of determining the capital adequacy of the parent banking organization provide the agencies with the flexibility necessary to ensure that institutions maintain capital levels that are commensurate with the actual risks involved.

Under the OTS's capital regulations, a statutorily mandated distinction is drawn between subsidiaries, which generally are majority-owned, that are engaged in activities that are permissible for national banks and those that are engaged in activities ''impermissible'' for national banks. Where subsidiaries engage in activities

[1] A national bank that has a financial subsidiary must satisfy a number of statutory requirements in addition to the capital deduction and deconsolidation requirements described in the text. The bank (and each of its depository institution affiliates) must be well capitalized and well managed. Asset size restrictions apply to the aggregate amount of assets of all of the bank's financial subsidiaries. Certain debt rating requirements apply, depending on the size of the national bank. The national bank is required to maintain policies and procedures to protect the bank from financial and operational risks presented by the financial subsidiary. It is also required to have policies and procedures to preserve the corporate separateness of the financial subsidiary and the bank's limited liability. Finally, transactions between the bank and its financial subsidiary generally must comply with the Federal Reserve Act's (FRA) restrictions on affiliate transactions and the financial subsidiary is considered an affiliate of the bank for purposes of the anti-tying provisions of the Bank Holding Company Act. *See* 12 U.S.C. 5136a.

[2] *See* 12 U.S.C. 335 (state member banks subject to the ''same conditions and limitations'' that apply to national banks that hold financial subsidiaries).

[3] The applicable statutory requirements for state nonmember banks are as follows. The bank (and each of its insured depository institution affiliates) must be well capitalized. The bank must comply with the capital deduction and deconsolidation requirements. It must also satisfy the requirements for policies and procedures to protect the bank from financial and operational risks and to preserve corporate separateness and limited liability for the bank. Further, transactions between the bank and a subsidiary that would be classified as a financial subsidiary generally are subject to the affiliate transactions restrictions of the FRA. *See* 12 U.S.C. 1831w.

[4] *See* 12 U.S.C. 1841(*l*)(2).

that are impermissible for national banks, the OTS requires the deduction of the parent's investment in these subsidiaries from the parent's assets and capital. If a subsidiary's activities are permissible for a national bank, that subsidiary's assets are generally consolidated with those of the parent on a line-for-line basis. If a subordinate organization, other than a subsidiary, engages in impermissible activities, the OTS will generally deduct investments in and loans to that organization.[5] If such a subordinate organization engages solely in permissible activities, the OTS may, depending upon the nature and risk of the activity, either assign investments in and loans to that organization to the 100 percent risk-weight category or require full deduction of the investments and loans.

Collateralized Transactions

The FRB and the OCC assign a zero percent risk weight to claims collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government, U.S. Government agencies, or the central governments of other countries that are members of the Organization for Economic Cooperation and Development (OECD). The OCC and the FRB rules require the collateral to be marked to market daily and a positive margin of collateral protection to be maintained daily. The FRB requires qualifying claims to be fully collateralized, while the OCC rule permits partial collateralization.

The FDIC and the OTS assign a zero percent risk weight to claims on qualifying securities firms that are collateralized by cash on deposit in the institution or by securities issued or guaranteed by the U.S. Government, U.S. Government agencies, or other OECD central governments. The FDIC and the OTS accord a 20 percent risk weight to such claims on other parties.

Noncumulative Perpetual Preferred Stock

Under the Federal banking agencies' capital standards, noncumulative perpetual preferred stock is a component of Tier 1 capital. The capital standards of the OCC, the FRB, and the FDIC require noncumulative perpetual preferred stock to give the issuer the option to waive the payment of dividends and to provide that waived dividends neither accumulate to future periods nor represent a contingent claim on the issuer.

As a result of these requirements, if a bank supervised by the OCC, the FRB, or the FDIC issues perpetual preferred stock and is required to pay dividends in a form other than cash, e.g., stock, when cash dividends are not or cannot be paid, the bank does not have the option to waive or eliminate dividends, and the stock would not qualify as noncumulative. If an OTS-supervised savings association issues perpetual preferred stock that requires the payment of dividends in the form of stock when cash dividends are not paid, the stock may, subject to supervisory approval, qualify as noncumulative.

Equity Securities of Government-Sponsored Enterprises

The FRB, the FDIC, and the OTS apply a 100 percent risk weight to equity securities of government-sponsored enterprises (GSEs), other than the 20 percent risk weighting of Federal Home Loan Bank stock held by banking organizations as a condition of membership. The OCC applies a 20 percent risk weight to all GSE equity securities.

Limitation on Subordinated Debt and Limited-Life Preferred Stock

The OCC, the FRB, and the FDIC limit the amount of subordinated debt and intermediate-term preferred stock that may be treated as part of Tier 2 capital to 50 percent of Tier 1 capital. The OTS does not prescribe such a restriction. The OTS does, however, limit the amount of Tier 2 capital to 100 percent of Tier 1 capital, as do the other agencies.

In addition, for banking organizations supervised by the OCC, the FRB, and the FDIC, at the beginning of each of the last five years of the life of a subordinated debt or limited-life preferred stock instrument, the amount that is eligible for inclusion in Tier 2 capital is reduced by 20 percent of the original amount of that instrument (net of redemptions). The OTS provides thrifts the option of using either the discounting approach used by the other federal banking agencies, or an approach which, during the last seven years of the instrument's life, allows for the full inclusion of all such instruments, provided that the aggregate amount of such instruments maturing in any one year does not exceed 20 percent of the thrift's total capital.

Tangible Capital Requirement

Savings associations supervised by the OTS, by statute, must satisfy a 1.5 percent minimum tangible capital requirement. Other subsequent statutory and regulatory changes, however, imposed higher capital standards rendering it unlikely, if not impossible, for the 1.5 percent tangible capital requirement to function as a meaningful regulatory trigger. This statutory tangible capital requirement does not apply to institutions supervised by the OCC, the FRB, or the FDIC.

Market Risk Rules

In 1996, the OCC, the FRB, and the FDIC adopted rules requiring banks and bank holding companies with significant exposure to market risk to measure and maintain capital to support that risk. The OTS did not adopt a market risk rule because no OTS-supervised savings association engaged in the threshold level of trading activity addressed by the other agencies' rules. As the nature of many savings associations' activities has changed since 1996, market risk has become an increasingly more significant risk factor to consider in the capital management process. Accordingly, the OTS plans to shortly propose a market risk rule substantially similar to those of the other banking agencies.

Differences in Accounting Standards Among the Federal Banking Agencies

Push-Down Accounting

Push-down accounting is the establishment of a new accounting basis for a depository institution in its separate financial statements as a result of the institution becoming substantially wholly owned. Under push-down accounting, when a depository institution is acquired in a purchase, yet retains its separate corporate existence, the assets and liabilities of the acquired institution are restated to their fair values as of the acquisition date. These values, including any goodwill, are reflected in the separate financial statements of the acquired institution, as well as in any consolidated financial statements of the institution's parent.

The OCC, the FRB, and the FDIC require the use of push-down accounting for regulatory reporting purposes when an institution's voting stock becomes at least 95 percent owned by an investor or a group of investors acting collaboratively. This approach is generally consistent with accounting interpretations issued by the staff of the Securities and Exchange Commission. The OTS requires the use of push-down accounting when an institution's voting stock becomes at least 90 percent owned by an investor or investor group.

[5] *See* 12 CFR 559.2 for the OTS's definition of subordinate organization.

Dated: March 16, 2006.

John C. Dugan,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System, March 28, 2006.

Jennifer J. Johnson,

Secretary of the Board.

Dated at Washington, DC, this 29th day of March, 2006.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Dated: February 24, 2006.

By the Office of Thrift Supervision.

John M. Reich,

Director.

[FR Doc. 06–3179 Filed 4–3–06; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:30 a.m., Monday, April 10, 2006

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR FURTHER INFORMATION CONTACT: Michelle Smith, Director, or Dave Skidmore, Assistant to the Board, Office of Board Members at 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, March 31, 2006.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 06–3276 Filed 3–31–06; 2:03 pm]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Comment Request

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Notice.

SUMMARY: The FTC is considering conducting a study to analyze the use and likely short- and long-run competitive effects of authorized generic drugs in the prescription drug marketplace. Before investigating these issues, the FTC is soliciting public comments on its proposed information requests to firms in the prescription drug industry. These comments will be considered before the FTC submits a request for Office of Management and Budget (''OMB'') review under the Paperwork Reduction Act (''PRA''), 44 U.S.C. 3501–3520.

DATES: Comments must be received on or before June 5, 2006.

ADDRESSES: Interested parties are invited to submit written comments. Comments should refer to ''Authorized Generic Drug Study: FTC Project No. P062105'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission/Office of the Secretary, Room H–135 (Annex J), 600 Pennsylvania Avenue, NW., Washington, DC 20580. Because paper mail in the Washington area and at the Commission is subject to delay, please consider submitting your comments in electronic form, as prescribed below. However, if the comment contains any material for which confidential treatment is requested, it must be filed in paper form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible. Alternatively, comments may be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following e-mail box: *paperworkcomment@ftc.gov.*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments will be considered by the Commission and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy at *http://www.ftc.gov/ftc/privacy.htm.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be addressed to Michael S. Wroblewski, Assistant General Counsel, Policy Studies, 600 Pennsylvania Avenue, NW., Washington, DC 20580; telephone (202) 326–2155.

SUPPLEMENTARY INFORMATION: In the United States, the Food and Drug Administration (''FDA'') must approve the marketing of any pharmaceutical drug, whether brand-name or generic. The Hatch-Waxman Act establishes the regulatory framework under which the FDA may approve a generic drug to be marketed. Typically, a brand-name drug obtains FDA approval through a New Drug Application (''NDA''), and a generic drug manufacturer obtains FDA approval through an Abbreviated New Drug Application (''ANDA'') in which it may be allowed to rely on the clinical data first submitted by the brand-name drug manufacturer.

To encourage generic entry as soon as is warranted, the Hatch-Waxman Act allows generic drug manufacturers, in certain circumstances, to market a generic drug prior to the expiration of claimed patent protection for the corresponding brand-name drug. To be permitted to do so, a generic drug manufacturer must first submit a ''paragraph IV'' ANDA in which it certifies that (a) its generic drug will not infringe patents listed in the FDA's ''Orange Book'' (''Orange Book patents'') as claiming the relevant brand-name drug product, and/or (b) the relevant Orange Book patents are invalid. If the paragraph IV ANDA leads to litigation, then 30 months after the litigation was filed (or after final decision in the litigation, if earlier), the FDA may authorize the marketing of the generic drug under the ANDA application.

At that point, the first-filed paragraph IV ANDA applicant becomes entitled to a 180-day marketing exclusivity period,

during which the FDA cannot approve any other, later-filed paragraph IV ANDA for a generic drug corresponding to the same brand-name drug product.[2] This protects the first FDA-approved paragraph IV ANDA applicant from competition with other generic ANDA applicants during this time.

The 180-day marketing exclusivity period does not preclude competition from NDA-approved ''authorized generics,'' however.[3] An authorized generic is chemically identical to a particular brand-name drug, which the brand-name manufacturer authorizes to be marketed in a generic version under the NDA-approval that the FDA granted for the brand-name drug. The brand-name manufacturer either sells the authorized generic itself through a subsidiary or licenses a generic firm to sell the authorized generic. The trade dress typically differs for the brand-name drug and its authorized generic equivalent, but the drug product is exactly the same.

In recent years and with increasing frequency, brand-name drug manufacturers have begun to market authorized generic drugs at precisely the same time that a paragraph IV generic is beginning its period of 180-day marketing exclusivity. The likely effects of this practice on generic competition have been subject to some debate. In the short run, the entry of an authorized generic drug may benefit consumers by creating additional competition that lowers generic prices further than if only the paragraph IV generic were marketed. Many generic manufacturers assert, however, that in the long run, consumers will be harmed because an expectation of competition from authorized generics will significantly decrease the incentives of generic manufacturers to pursue entry prior to patent expiration. For a generic manufacturer, the additional competition from an authorized generic may result in significantly less profit during the period of 180-day exclusivity than if the generic manufacturer had no authorized-generic competition during that time.

Currently, there is no publicly available, comprehensive economic study that assesses the likely short- and long-run effects of entry by authorized generics on generic competition.[4] Given the importance of generic drugs in lowering health care costs, Senators Grassley, Leahy, and Rockefeller have requested that the Commission conduct a study of ''the short term and long term effects on competition of the practice of ''authorized'' generics.'' [5] In addition, Representative Waxman, one of the co-authors of the Hatch-Waxman Act, has requested that the FTC study ''the impact of so-called ''authorized generics'' on competition in the prescription drug marketplace.'' [6]

The Commission proposes to undertake such a study, as described in this notice, to examine both the likely short-term competitive effects of authorized generic drug entry and, to the extent possible, the likely long-term impact of entry by authorized generic drugs on competition by generic manufacturers.[7] Among other things, the proposed study will examine actual wholesale prices (including rebates, discounts, etc.) for brand-name and generic drugs, both with and without competition from authorized generics; business reasons (including profitability assessments) that support authorized generic entry; factors (including product development and litigation costs) relevant to the decisions of generic firms about whether and under what circumstances to seek entry prior to patent expiration; and licensing agreements with authorized generics. These data will enable the proposed study to make new contributions to the economic literature on the effects of generic drug entry on prescription drug prices and, in particular, the role of the 180-day period of exclusivity in generic competition prior to patent expiration.

To obtain the relevant data, the Commission proposes to send special orders pursuant to Section 6(b) of the FTC Act, 15 U.S.C. 46(b), to brand-drug companies with products that have first faced generic competition since January 1, 1999; [8] generic drug companies that have marketed authorized generic drugs since January 1, 1999 (''authorized generic companies''); and generic drug companies that have filed an ANDA containing paragraph III and IV certifications since January 1, 1999 (''independent generic companies''). The Commission has entered into an agreement with the FDA to obtain information to identify the brand-drug companies and independent generic companies that meet these criteria. Information received from the brand-name companies in response to the special orders will permit the Commission to issue subsequent special orders to authorized generic companies. Based on a preliminary analysis, approximately 80 brand-name drug manufacturers, 10 authorized generic drug companies, and 100 independent generic companies meet these criteria.

Under the PRA, Federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c). As required by the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB grant clearance for this survey.

The FTC invites comment on the following: (1) Whether the proposed collections of information are necessary for the proper performance of the functions of the FTC, including whether the information will have practical utility; (2) the accuracy of the FTC's estimate of the burden of the proposed collections of information; (3) ways to limit the number of companies included in the study without undermining the validity and reliability of the study results (*e.g.*, reduce the number of drug products studied by only including those products in an oral solid form, eliminate those generic companies that

[2] The 2003 Medicare Prescription Drug Improvement and Modernization Act of 2003 (Pub. L. 108–173) revised the precise conditions under which the FDA can approve a later-filed ANDA. In general, the exclusivity period lasts until 180 days after (1) the first commercial marketing of the first applicant's generic drug, or (2) a decision of an appellate court holding the brand-name company's patent(s) invalid or not infringed.

[3] *Teva Pharm. Indus.* v. *FDA,* 410 F.3d 51 (DC Cir. 2005).

[4] A recent paper by Ernst R. Berndt, *et al.*, funded by Johnson & Johnson, discusses the issues involved, but relies solely on data for three drug products as the bases for its conclusions that authorized generics benefit consumers and are unlikely to harm competition. An October 2005 paper by David Reiffen, *et al.*, studies the magnitude of the effect of authorized generic entry on generic price, but does not measure this effect directly and uses data from the late 1980s and early 1990s. The proposed study would include a more robust and up-to-date analysis of the competitive effects of authorized generics based on actual company data.

[5] *See* Letter to Chairman Deborah Platt Majoras, from Senators Grassley, Leahy, and Rockefeller (May 9, 2005).

[6] *See* Letter to Chairman Deborah Platt Majoras from Representative Henry A. Waxman (Sept. 13, 2005).

[7] In its 2002 study of how generic drug competition prior to patent expiration has developed, the Commission found that the Hatch-Waxman framework had promoted entry by low-cost generic drugs prior to patent expiration. Federal Trade Commission, *Generic Drug Entry Prior to Patent Expiration: An FTC Study* (July 2002), *available at http://www.ftc.gov/os/2002/07/genericdrugstudy.pdf* (''Generic Drug Study'').

[8] We have chosen 1999 as the start of the study period because in 1998, the FDA changed its regulations governing eligibility for the 180-day exclusivity period in response to the decision in *Mova* v. *Shalala,* 140 F.3d 1060 (DC Cir. 1998). Since then, the FDA has granted the 180-day exclusivity to substantially more generic applicants than it had previously. *Generic Drug Study* at 57. This proposed study, therefore, will be based on this altered regulatory landscape.

have filed only one ANDA during the study period, reduce the study time period, etc.); (4) ways to enhance the quality, utility, and clarity of the information to be collected; and (5) ways to minimize the burden of collecting the information on those who are to respond, including through the use of collection techniques or other form of information technology, *e.g.*, permitting electronic submissions of responses. All comments should be filed as prescribed in the **ADDRESSES** section above, and must be received on or before June 5, 2006.

A. Description of the Collection of Information and Proposed Use

The FTC proposes to send information requests to approximately 80 brand-name drug manufacturers, 10 authorized generic drug companies, and 100 independent generic companies. As described above, the brand-name companies to which the information requests would be sent include those companies with products that have first faced generic drug competition since January 1, 1999 or that have received notice of the filing of an ANDA, as defined by 21 U.S.C. 355(j)(IV), as to one or more of their products since January 1, 1999. The FTC also proposes to send special orders to generic drug companies that have marketed authorized generic drugs since January 1, 1999. In addition, the FTC proposes to send special orders to generic drug companies that filed an ANDA since January 1, 1999.

In addition to routine questions about the name, address, organization chart(s), and incorporation date of the responding company and its subsidiaries, and the name, business address, and official capacity of the official supervising the company's response, the FTC will ask the three different company types to provide answers to the following questions for a list of specific drug products that the FTC will provide:

Brand-Name Companies

1. For each identified drug product, submit any documents, including studies, surveys, analyses, and reports (both internal and external), that are dated after January 1, 1998 and were prepared or received by or for any senior vice president (or equivalent position) with product line responsibility for the specified drug product or any officer(s) or director(s) of the company (or, in the case of unincorporated entities, individuals exercising similar functions) that evaluated, considered, analyzed, or discussed how to respond (including through pricing changes) to (a) future or current generic competition, (b) the expiration of the patent(s) claiming the identified drug product or its use, (c) whether to license or otherwise market the identified drug product as an authorized generic drug product, and/or (d) whether to refrain from marketing an authorized generic, including but not limited to, agreements to do so. This request includes documents that discuss future generic entry for either specified products or responses to generic entry in general. For each such document, indicate (if not contained in the document itself) the date of preparation and the name and title of each individual who prepared the document, and group the documents by identified drug product. If the company licensed or otherwise authorized the marketing of the identified drug product as an authorized generic, provide the license agreement with the authorized generic company and the supplemental application the company filed with the FDA pursuant to 21 U.S.C. 356a(b) that had the effect of allowing the company to license or otherwise market the identified drug product as an authorized generic.

2. For each identified drug product, provide the following information:

a. A detailed description of the product, including its brand name or identification number, its common name, and its biological or chemical class; its application status at the FDA for each of its indication(s) or end use(s), and intended indication(s) or end use(s), including the date the New Drug Application was filed and approved, and the date the product was first marketed in the United States, as both a brand-name drug and, if applicable, an authorized generic;

b. A detailed description of every SKU of the product as both a brand-name drug and, if applicable, an authorized generic, including product form, dosage strength, bottle or box size, route of administration, and the date first marketed in the United States;

c. The identification number of each SKU of each product;

d. A list of all patents listed in the Orange Book for each drug product whether owned, licensed, or controlled by the company, including patent or patent application number, title, priority date, inventor, date filed, date issued, date of patent expiration, status, and a copy of all relevant claims.

3. For each SKU listed in response to Specification 2c above, state for every month from a full calendar year preceding generic entry to the present, for sales in the United States (*e.g.*, if generic entry occurred in July 2002, the company is to provide the following information for every month beginning January 1, 2001):

a. The company's total sales, net of discounts, rebates, promotions, returns and chargebacks, to all customers in units, total prescriptions, and dollars;

b. The company's total sales, net of discounts, rebates, promotions, returns and chargebacks, to hospitals, clinics and long-term care facilities, including but not limited to independent cancer care centers and pain centers, in units, total prescriptions, and dollars; [9]

c. The company's standard or actual cost of goods sold in dollars, reported by material cost, labor cost, manufacturing cost, distribution cost, API cost, overhead cost, other cost, and variances;

d. The company's prices, including: (1) List price; (2) average wholesale price; (3) wholesale acquisition cost; (4) price to Medicare; (5) price to Medicaid; (6) the maximum allowable cost; and (7) average manufacturer price (''AMP'') as defined by, and reported to, the Centers for Medicare and Medicaid Services.

Authorized Generic Company Questions [If a Brand Drug Company uses a subsidiary, division, or affiliated company to distribute the authorized generic drug, the ''company'' referred to in these questions is that subsidiary, division, or affiliated company.]:

1. For each identified drug product that is licensed to, or otherwise marketed by, the company:

a. Provide any documents, including studies, surveys, analyses, and reports (both internal and external), that are dated after January 1, 1998 and were prepared or received by or for any senior vice president (or equivalent position) with product line responsibility for the specified drug product or any officer(s) or director(s) of the company (or, in the case of unincorporated entities, individuals exercising similar functions) that evaluated, considered, analyzed, or discussed whether or how to proceed with generic entry, including discussion related to whether to file an ANDA containing a paragraph III or IV certification (regardless of whether the company filed such ANDA), whether or when to launch commercial marketing, and the impact that entry by an authorized generic drug would have on generic entry by an ANDA drug product. This request includes documents that discuss future generic entry for either specified products or responses to generic entry in general. For each such

[9] Prescription drugs distributed through hospitals, clinics and long-term care facilities may have different pricing structures than those distributed through retail and mail-order pharmacies.

document, indicate (if not contained in the document itself) the date of preparation and the name and title of each individual who prepared each such document;

b. Provide a copy of the license agreement, or other marketing authorization, with the brand-name company.

2. For each identified drug product that is licensed to, or otherwise marketed by, the company, provide the following information:

a. A detailed description of every SKU of the product, including product form, dosage strength, bottle or box size, route of administration, and the date first sold in the United States;

b. The identification number of each SKU of each product.

3. For each SKU of each relevant product listed in response to Specification 2b above, state for every month from the date of first commercial marketing to the present, for sales in the United States:

a. The company's total sales, net of discounts, rebates, promotions, returns and chargebacks, to all customers in units, total prescriptions, and dollars;

b. The company's total sales, net of discounts, rebates, promotions, returns and chargebacks, to hospitals, clinics and long-term care facilities, including but not limited to independent cancer care centers and pain centers, in units, total prescriptions, and dollars;

c. The company's standard or actual cost of goods sold in dollars, reported by material cost, labor cost, manufacturing cost, distribution cost, API cost, overhead cost, other cost, and variances;

d. The company's prices, in each relevant area, including: (1) List price; (2) average wholesale price; (3) wholesale acquisition cost; (4) price to Medicare; (5) price to Medicaid; (6) the maximum allowable cost; and (7) average manufacturer price (''AMP'') as defined by, and reported to, the Centers for Medicare and Medicaid Services.

Independent Generic Company Questions

1. For each identified product, and for any other brand drug product for which the company has evaluated, considered, analyzed, or discussed whether or how to proceed with generic entry, submit the following:

a. Any documents, including studies, surveys, analyses, and reports (both internal and external), that are dated after January 1, 1998 and were prepared or received by or for any senior vice president (or equivalent position) with product line responsibility for the specified drug product or any officer(s) or director(s) of the company (or, in the case of unincorporated entities, individuals exercising similar functions) that evaluated, considered, analyzed, or discussed whether or how to proceed with generic entry, including discussion related to (a) whether to file an ANDA containing a paragraph III or IV certification (regardless of whether the company filed such ANDA), (b) whether or when to launch commercial marketing, and/or (c) the impact that entry by an authorized generic drug would have on generic entry by the company's ANDA drug product. This request includes documents that discuss future generic entry for either specified products or responses to generic entry in general. For each such document, indicate (if not contained in the document itself) the date of preparation and the name and title of each individual who prepared each such document. Submit a copy of the ANDA application for each identified drug product;

b. Any documents sufficient to show the identified product's development costs, costs to file ANDA, and patent-related litigation costs.

2. For each identified product, state the following:

a. A detailed description of the product, including its brand name or identification number, its common name, and its therapeutic class; its application status at the FDA for each of its indication(s) or end use(s), and intended indication(s) or end use(s), including the date the application was filed and approved, and the date the product was first sold in the United States;

b. A detailed description of every SKU of the product, including product form, dosage strength, bottle or box size, route of administration, and the date first sold in the relevant area;

c. The identification number of each SKU of each product.

3. For each SKU listed in response to Specification 2c, state for every month from the date of first commercial marketing to the present, for sales in the United States:

a. The company's total sales, net of discounts, rebates, promotions, returns and chargebacks, to all customers in units, total prescriptions, and dollars;

b. The company's total sales, net of discounts, rebates, promotions, returns and chargebacks, to hospitals, clinics and long-term care facilities, including but not limited to independent cancer care centers and pain centers, in units, total prescriptions, and dollars;

c. The company's standard or actual cost of goods sold in dollars, reported by material cost, labor cost, manufacturing cost, distribution cost, API cost, overhead cost, other cost, and variances;

d. The company's prices, in each relevant area, including: (1) List price; (2) average wholesale price; (3) wholesale acquisition cost; (4) price to Medicare; (5) price to Medicaid; (6) the maximum allowable cost; and (7) average manufacturer price (''AMP'') as defined by, and reported to, the Centers for Medicare and Medicaid Services.

For All Three Company Types

The FTC will request IMS Health (IMS) data if the company obtains such information in the regular course of business, as follows:

If the company obtains IMS Health (IMS) data in the regular course of business, provide for each identified drug product, for every month from January 1999 (or date of first commercial marketing, where applicable) to the present for sales in the United States:

a. IMS Retail Perspective data, or the equivalent thereof, by product form, by strength, and by diagnosis, for total sales in dollars and units, by customer channel, including, but not limited to independent pharmacies, chain pharmacies, mass merchandisers, proprietary stores, and food stores with pharmacies;

b. IMS Provider Perspective data, or the equivalent thereof, by product form, by strength, and by diagnosis, for total sales in dollars and units, by customer channel, including, but not limited to, non-federal hospitals, federal facilities, mail order, and long-term care facilities, clinics, and closed wall HMOs;

c. IMS National Prescription Audit data, or the equivalent thereof, by product form, by strength, and by diagnosis, for newly dispensed prescriptions, refill dispensed prescriptions, total dispensed prescriptions, total units, and total dollar sales;

d. IMS Retail Method of Payment Report, or the equivalent thereof, by product form, by strength, and by diagnosis, for total sales in dollars and units, by customer channel, including, but not limited to, private managed care, and public managed care;

e. IMS Integrated Promotional Services Total Promotion Report, by product form, for total dollars spent for: (1) Detailing; (2) physician and pharmacist marketing; (3) medical and other journal advertising; and (4) any other promotional spending, including, but not limited to, direct consumer advertising;

f. Any other IMS data, or the equivalent thereof, used in the ordinary course of business;

g. All supporting definitions and materials for any IMS data provided.

The FTC will obtain the information sought by interrogatories and document requests under Section 6(b) of the FTC Act, 15 U.S.C. 46(b). The FTC will use available information technology (*e.g.*, electronic submission of financial information) to ease the collection of the requested information.

It should be noted that subsequent to this notice, any destruction, removal, mutilation, alteration, or falsification of documentary evidence that may be responsive to this information collection within the possession or control of a person, partnership or corporation subject to the FTC Act may be subject to criminal prosecution. 15 U.S.C. 50; *see also* 18 U.S.C. 1505.

The information presented in the study will not identify company-specific data. *See* 15 U.S.C. 57b–2(d)(1)(B). Rather, the Commission anticipates using primarily aggregated totals, on a level sufficient to protect individual companies' confidential information, to provide a factual summary of the effect of authorized generic entry since 1999. Section 6(f) of the FTC Act, 15 U.S.C. 46(f), bars the Commission from publicly disclosing trade secrets or confidential commercial or financial information it receives from persons pursuant to, among other methods, special orders authorized by Section 6(b) of the FTC Act. Such information also would be exempt from disclosure under the Freedom of Information Act. 5 U.S.C. 552(b)(4). Moreover, under Section 21(c) of the FTC Act, 15 U.S.C. 57b–2(c), a submitter who designates a submission as confidential is entitled to 10 days' advance notice of any anticipated public disclosure by the Commission, assuming that the Commission has determined that the information does not, in fact, constitute 6(f) material. Although materials covered under one or more of these various sections are protected by stringent confidentiality constraints, the FTC Act and the Commission's rules authorize disclosure in limited circumstances (*e.g.*, official requests by Congress, requests from other agencies for law enforcement purposes, administrative or judicial proceedings). Even in those limited contexts, however, the Commission's rules may afford the submitter advance notice to seek a protective order. *See* 15 U.S.C. 57b–2(c); 16 CFR 4.9–4.11.

B. Estimated Burden Hours

The FTC proposes to use three different sets of questions for the three drug company types: Brand-name companies, authorized generic companies, and independent generic companies. The drug products that the FTC will study will be identified for each company. Although the questions vary, the FTC does not anticipate this will have a significant effect on the effort required to respond to them.

The FTC has estimated three average response times depending upon the number of drug products for which the company is required to provide a response: Companies with one to five drug products, companies with six to 10 drug products, and companies with more than 10 drug products. The FTC anticipates that the majority of burden hours will be primarily to search, retrieve, and copy relevant documents necessary to answer question number 1 for each of the company types, and that the hours necessary to obtain the financial information will not vary depending upon the number of drug products. The total estimated burden to answer the questions and to produce documents based on the number of drug products identified for each company is based on the following:

Task	1–5 Drug products	6–10 Drug products	>10 Drug products
Organize document and information retrieval	12 hours	24 hours	48 hours
Identify requested documents	12	36	80
Retrieve and copy requested documents	40	60	120
Identify requested financial information	40	50	60
Obtain financial information	12	16	20
Prepare response	24	40	80
Total	140 hours	226 hours	408 hours.

Based on preliminary information, the FTC anticipates that it will seek information about 1 to 5 drug products from approximately 130 companies, for 6 to 10 drug products from 20 companies, and for greater than 10 drug products from 40 companies. Thus, the cumulative hours burden to produce documents and prepare the response sought will be approximately 39,040 hours (140 hours x 130 companies + 226 x 20 companies + 408 hours x 40 companies).

C. Estimated Cost Burden

It is not possible to calculate with precision the labor costs associated with answering the questions and producing the documents requested, as responses will entail participation by management and/or support staff at various compensation levels among many different companies. Individuals among some or all of those labor categories may be involved in the information collection process. Nonetheless, the FTC has assumed that mid-management personnel and outside legal counsel will handle most of the tasks involved in gathering and producing the responsive information, and has applied an average hourly wage of $250/hour for their labor. Thus, the labor costs per company should range between $35,000 (140 hours × $250/hour) and $102,000 (408 hours × $250/hour).

The FTC estimates that the capital or other non-labor costs associated with the information requests will be minimal. Although the information requests may require that respondent retain copies of the information provided to the Commission, industry members should already have in place the means to store information of the volume requested.

By direction of the Commission, Commissioner Harbour recused.

Donald S. Clark,

Secretary.

[FR Doc. 06–3212 Filed 4–3–06; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers

or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—03/06/2006			
20060678	The Weinstein Company Holdings LLC ..	Genius Products, Inc	Genius Products, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/07/2006			
20060655	J.R. Hyde, III	GTx, Inc	GTx, Inc.
20060684	Merck & Co., Inc	Neuromed Technologies, Inc	Neuromed Technologies, Inc.
20060711	Marubeni Corporation	Pioneer Natural Resources Company	Pioneer Natural Resources USA, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/08/2006			
20060656	JANA Offshore Partners, Ltd	The Houston Exploration Company	The Houston Exploration Company.
20060700	Business Objects S.A	Firstlogic, Inc	Firstlogic, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/08/2006			
20060677	Tandberg Television ASA	SkyStream Networks Inc	SkyStream Networks Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/13/2006			
20060667	Whitney V, L.P	Thomas Fahey	Universal Holdings, Inc.
20060671	Commerzbank Aktiengesellschaft	Eurohypo Aktiengesellschaft	Eurohypo Aktiengesellschaft.
20060714	Cemex, S.A. de C.V	General Electric Company	Full Service Leasing Corp. General Electric Capital Corporation. SGE (New York) Associates II.
20060720	Terumo Corporation	MicroVention, Inc	MicroVention, Inc.
20060722	ALLTEL Corporation	Southern Illinois Cellular Corp	Southern Illinois Cellular Corp.
20060723	TriGenesys, Inc	Human Genome Sciences, Inc.	Human Genome Sciences, Inc.
20060726	Borland Software Corporation	Segue Software, Inc	Segue Software, Inc.
20060735	David D. Smith	Kenneth A. Hall	Center Ford, Inc. Hall Auto World, Inc. Jefferson Imports, Inc. KAH Imports, Inc. Peninsula Imports, Inc. State Line Imports, Inc. Tidewater Imports, Inc.
20060742	Carlyle Partners IV, L.P	John Maneely Company	John Maneely Company.
20060746	ArcLight Energy Partners Fund II, L.P	ArcLight Energy Partners Fund II, L.P	Magnum Coal Company.
20060749	Hub International Limited	The Royal Bank of Scotland Group plc ..	Brewer & Lord LLC. Citizens Clair Insurance Agency, LLC. The Feitelberg Company LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—03/14/2006			
20060666	Angiotech Pharmaceuticals, Inc	RounTable Healthcare Partners, L.P	American Medical Instruments Holdings, Inc.
20060682	Cal Dive International, Inc	Remington Oil and Gas Corporation	Remington Oil and Gas Corporation.
20060727	Great River Energy	United Power Association	United Power Association.
20060732	Black Box Corporation	Tom T. Gores	NextiraOne California, L.P. NextiraOne Federal, LLC. NextiraOne, LLC. NextiraOne New York, LLC.
20060733	PNM Resources, Inc	Sempra Energy	Twin Oaks Power III, LP. Twin Oaks Power, LP
20060743	CDX Acquisition Company LLC	Monty H. Rial Revocable Trust	CDX Holdings, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—03/15/2006			
20060736	CK Life Sciences Int'l., (Holdings) Inc	Vitaquest International Holdings LLC	Vitaquest International Holdings LLC.
20060750	AEA Investors Small Business Fund LP	William E. O'Connor	P.P.C. Industries.
TRANSACTIONS GRANTED EARLY TERMINATION—03/16/2006			
20060707	Moog Inc	M. Michael Parsee and Afsaneh Astani ..	Curlin Healthcare Products, Inc. Curlin Medical, LLC.

Trans No.	Acquiring	Acquired	Entities
			Curlin Technology, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—03/17/2006			
20060710	Lucent Technologies Inc	Riverstone Networks, Inc	Riverstone Networks, Inc.
20060715	Arysta LifeScience Corporation	BASF AG	Micro Flo Company LLC.
20060738	FMR Corp	Wolohan Lumber Co	Wolohan Lumber Co.
20060744	TreeHouse Foods, Inc	Del Monte Corporation	Del Monte Corporation.
20060752	General Electric Company	The Goldman Sachs Group, Inc	East Cost Power LLC.
20060756	Lubar Equity Fund, LLC	David G. Nelson	Rockland Industrial Products, LLC.
20060761	Green Equity Investors IV, L.P	The Sports Authority, Inc	The Sports Authority, Inc.
20060763	TA IX L.P	William D. Oates	Global 360, Inc.
20060764	Kikkoman Corporation	Country Life, LLC	Country Life, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—03/20/2006			
20060675	LGB ENV LLC	Duratek, Inc	Duratek, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/21/2006			
20060610	Onex Partners LP	BAE Systems PLC	BAE Systems (Operations) Limited.
20060689	Edward G. Burr	Waste Management, Inc	USA Waste of California, Inc. Waste Management of California, Inc. Western Waste Industries.
20060729	General Electric Company	John Gerngross and Susan Gerngross ..	Condor Engineering.
20060730	FANUC LTD	John Gerngross and Susan Gerngross ..	Condor Engineering.
20060741	Ball Corporation	Alcan Inc	Alcan Inc.
20060773	KIPB Group Holdings, LLC	Packaging Dynamics Corporation	Packaging Dynamics Corporation.
20060779	Compass Group PLC	Levy Restaurant Limited Partnership	Levy Restaurant Limited Partnership.
TRANSACTIONS GRANTED EARLY TERMINATION—03/22/2006			
20060716	Telelogic AB	I–Logic Inc	I–Logic Inc.
20060786	Advantage Sales and Marketing Holdings, LLC.	Allied Capital Corporation	Advantage Sales & Marketing Inc.
20060800	Fujitsu Limited	Rapidigm, Inc	Rapidigm, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/23/2006			
20060681	Viisage Technology, Inc	Identix Incorporated	Identix Incorporated.
20060696	Cadence Pharmaceuticals, Inc	Bristol-Myers Squibb Company	Bristol-Myers Squibb Company.
20060737	Mohawk Industries, Inc	Propex Fabrics Holdings, Inc	Propex Fabrics Holdings Inc.
20060782	Humana, Inc	CHA Service Company	CHA HMC, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—03/24/2006			
20060691	Constellation Energy Group, Inc	FPL Group, Inc	FPL Group, Inc.
20060757	InterMedia Partners VII, L.P	Thomas Nelson, Inc	Thomas Nelson, Inc.
20060772	ARAMARK Corporation	SeamlessWeb Professional Solutions, Inc.	SeamlessWeb Professional Solutions, Inc.
20060795	American Capital Strategies, Ltd	Trey D. Cook	Innova Holdings, Inc.
20060796	Merrill Lynch & Co., Inc	The PNC Financial Services Group, Inc	BlackRock, Inc.
20060797	The PNC Financial Services Group, Inc	Merrill Lynch & Co., Inc	MLIM.
20060805	Retirement Residences REIT	Brandywine Senior Care, Inc	Bey Lea Nursing Home, Inc. Laurelton Nursing Home, Inc. Linwood Nursing Home LLC. MeadowView East Geriatric. Meadowview Geriatrics, Inc. Neptune Nursing Home L.L.C. Premier Therapy Services L.L.C. Somerset Nursing Home L.L.C.
20060806	Gryphon Partners II, L.P	The Huron Fund LP	Delta Educational Systems, Inc.
20060809	The Home Depot, Inc	W. Grant Williams, III	Home Decorators Collection, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580. (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 06–3213 Filed 4–3–06; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

AHRQ Quality Indicators Workgroup on Inpatient and Patient Safety Composite Measures

AGENCY: Agency for Healthcare Research and Quality (AHRQ), DHHS.

ACTION: Notice of request for nominations.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) is seeking nominations for members of an AHRQ-convened Quality Indicators Workgroup on Composite Measures for the Inpatient Quality Indicators (IQIs) and the Patient Safety Indicators (PSIs) as part of a general workgroup on composite measures. The AHRQ QI Composite Measures General Workgroup and subsequent IQI and PSI sub-workgroups are being formed as part of a structured approach for developing composite measures from the IQI and PSI software tools for public reporting of quality of hospital care at the national and state level. The purpose of this project is to obtain input from interested organizations and individuals on the development of composite quality measures based on hospital discharge data, specifically using the IQI and PSI measures. The Workgroups will evaluate appropriate technical and methodological approaches currently available and will discuss and suggest strategies as to what composite measure methodology would best fit QI user needs. As part of this effort and using the AHRQ PSIs and IQIs, the Workgroup members will be addressing several key issues for the development of composite measures, including but not limited to:

- Identifying and defining the quality concept that each composite is intended to measure;
- Suggesting and considering the individual quality indicators that should be included in the composite;
- The manner of weighting with which individual quality indicators could or should be combined;
- Evaluation of using condition-specific quality of care composites (e.g., for cardiovascular disease, or diabetes) or population-specific composites (e.g., pediatrics, women, or geriatrics) or domain specific composites (e.g., surgical, or infections); and
- Discussion of the methodological considerations which are appropriate or important when combining quality indicators and the considerations when composites are used for publicly reporting data.

For additional information about the AHRQ Quality Indicators, please visit the AHRQ Quality Indicators Web site at *http://www.qualityindicators.ahrq.gov*.

Specifically, the AHRQ QI Composite Measures General Workgroup will consist of up to 15 individuals who have expertise in one or more of the following areas: Statistical methods, hospital quality improvement and patient safety, health services research, and administrative data. To the extent possible, this Workgroup will represent a variety of stakeholder perspectives, specifically including—(1) Consumers, (2) healthcare purchasers, (3) quality improvement organizations, (4) researchers, (5) healthcare professionals, (6) state-based organizations, and (7) Federal health care provider organizations. The Workgroup will be further divided into two sub-workgroups to focus on the IQIs and the PSIs separately. Each sub-workgroup will have a series of conference calls to share perspectives, discuss the technical and policy issues surrounding composite measures for each module and will then summarize their discussions for presentation to the AHRQ QI Composite Measures General Workgroup. The AHRQ QI Composite Measures General Workgroup will provide responses to the sub-workgroups' findings. AHRQ will then develop a summary of the discussion in a technical report. This report will be made available for public comment.

DATES: Please submit nominations on or before May 4, 2006. Self-nominations are welcome. Third-party nominations must indicate that the individual has been contacted and is willing to serve on one of the workgroups. Notification of selected candidates will be contacted by AHRQ no later than May 15, 2006.

ADDRESSES: Nominations can be sent in the form of a letter or e-mail, preferably as an electronic file with an e-mail attachment and should specifically address the submission criteria as noted below. Electronic submissions are strongly encouraged. Responses should be submitted to: AHRQ Quality Indicators Initiative, Agency for Healthcare Research and Quality, Center for Delivery, Organization and Markets, 540 Gaither Road, Room 5121, Rockville, MD 20850. E-mail: *project officer@qualityindicators.ahrq.gov.*

Submission Criteria

To be considered for membership on the AHRQ QI Workgroups, please send the following information for each nominee:

1. A brief nomination letter highlighting experience/knowledge relevant in the development and use of composite performance measures and familiarity with the AHRQ QIs and health care administrative data. (See selection criteria below.) Please include full contact information of nominee: Name, title, organization, mailing address, telephone and fax numbers, and e-mail address).
2. Curriculum vita (with citations to any pertinent publications).

Nominee Selection Criteria

Nominees should have technical expertise in health care quality measurement development, and a familiarity with statistical methods and risk adjustment strategies in the area of composite measure development.

More specifically, each candidate will be evaluated using the following criteria:

- Peer-reviewed publications relevant to the development of composite measures; performance measures and reporting;
- Expertise in statistical methods relevant to the development of composite measures;
- Knowledge of recent composite methodologies published in the literature;
- Experience with development of measures based on administrative data and its uses;
- Expertise in hospital quality improvement and patient safety;
- Familiarity with the AHRQ Quality Indicators and their application;
- Experience with application of performance measures for public reporting; and,
- Availability to provide written comments and conference calls between late April and early August.

Time Commitment

In an effort to provide for expert input and for recommendations to develop a composite measure methodology, we are initiating a review process that will require participation in approximately four to five conference calls with some

pre- and post-evaluation time (approximately 10 hours). Results from this process will influence the development of composite measures for the AHRQ Quality indicators. Beginning in late April/early May through early August, selected nominees will be asked to participate in the following activities:

IQI/PSI Sub-Workgroup Activities

1. Provide evaluative comments on current methodology for composite indicators (2.0 hours) and participate in subsequent General Workgroup call (1.0 hour);
2. Participate in one Sub-Workgroup conference call to discuss suggested changes to the current composite indicator methodology (1.5 hours);
3. Provide evaluative comments on AHRQ's new draft or revised methodology (1.5 hour);
4. Participate in second Subgroup call to respond to each others' comments and questions or provide additional clarifications regarding draft methodology (1.5 hours); and
5. Participate in second General workgroup call. Provide suggestions for summary document for public comment (2.0 hours).

The Workgroup will conduct business by telephone, e-mail, or other electronic means as needed.

FOR FURTHER INFORMATION CONTACT: Mamatha Pancholi, Center for Delivery, Organization, and Markets, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850; Phone: (301) 427–1470; Fax: (301) 427–1430; E-mail: *mamatha.pancholi@ahrq.hhs.gov*; or

Marybeth Farquhar, Center for Delivery, Organization, and Markets, Agency for Healthcare Research and Quality, 540 Gaither Road, Rockville, MD 20850; Phone: (301) 427–1317; Fax: (301) 427–1430; E-mail: *marybeth.farquhar@ahrq.hhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The AHRQ Quality Indicators (AHRQ QIs) are a unique set of measures of health care quality that make use of readily available hospital inpatient administrative data. The QIs have been used for various purposes. Some of these include tracking, hospital self-assessment, reporting of hospital-specific quality or pay for performance. The AHRQ QIs are provider- and area-level quality indicators and currently consist of four modules: The Prevention Quality Indicators (PQI), the Inpatient Quality Indicators, the Patient Safety Indicators (PSI) and the Pediatric Quality Indicators (PedsQIs). In response to feedback from the AHRQ QI user community, AHRQ is committed to developing composite measures in an effort to provide an overall view of quality that is complete, useful and easily understandable to consumers and others within the health care field.

Dated: March 29, 2006.

Carolyn M. Clancy,

Director.

[FR Doc. 06–3207 Filed 4–3–06; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–06–06BC]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–5960 and send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

National Survey of the Mining Population-New-National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Surveillance of occupational injuries, illnesses, and exposures has been an integral part of the work of the National Institute for Occupational Safety and Health (NIOSH) since its creation by the Occupational Safety and Health Act in 1970. To improve its surveillance capability related to occupational risks in mining, NIOSH is planning to conduct a national survey of mines and mine employees. No national surveys have specifically targeted the mining labor force since the 1986 Mining Industry Population Survey (MIPS). The mining industry has experienced many changes in the last 20 years; consequently, the MIPS data are no longer representative of the current mining industry labor force.

NIOSH conducted a pilot study for the proposed national survey in the fall of 2004 (OMB No. 0920–0633, Exp. Date 3/31/2005). The pilot study was designed to emulate the main study design in order to evaluate the effectiveness of the recruitment materials, questionnaire, and survey procedures in acquiring complete, high quality data from a sample of 45 mining operations. Objective data collected in the pilot study included overall response rates and individual item response rates. Subjective data were collected using telephone logs, and participant and non-participant debriefing interviews. Data captured in the pilot study were used to guide improvements to maximize the performance of the various components of the full-scale study.

The proposed national survey will be based upon a probability sample of mining operations and their employees. The survey will be conducted in the five major mining sectors (coal, metal, nonmetal, stone, and sand and gravel). The major objectives of the survey will be to: (1) Obtain denominator data so that mine accident, injury, and illness reports can be evaluated in relation to the population at risk; (2) understand the demographic and occupational characteristics of the mining industry workforce; (3) estimate the number and occupational characteristics of independent contractor employees used by mining operations; and (4) obtain mine level information on selected variables. The sampled mining operations will provide all survey data; individual mine operator and independent contractor employees will not be directly surveyed. As a result of this study, surveillance researchers and government agencies will be able to identify groups of miners with a disproportionately high risk of injury or

illness. By capturing demographic (*e.g.*, age, gender, race/ethnicity, education level) and occupational (*e.g.*, job title, work location, work experience) characteristics of the mining workforce, these data will be a significant resource for the customization of interventions such as safety training programs.

The target population of mines for this survey will be limited to mines in current operation and producing the commodity for which they were sampled. Separate sampling frames, stratified by underground and surface work location (with the exception of sand and gravel mines), and employment size will be developed for each major mining sector. Approximately 722 coal mines, 212 metal mines, 327 nonmetal mines, 572 stone mines, and 439 sand and gravel mines will be sampled for the study. It is expected that this will yield 1,648 responding eligible mines, reporting data for approximately 24,452 employees. A survey packet will be mailed to each sampled mine. The mining operation will not be asked to report the names or any other identifying information for their employees. The survey respondent will have the option of completing either the survey questionnaire booklet or an Internet Web-based survey questionnaire.

The ultimate goal of the study is to provide surveillance data that will help to minimize and prevent work-related injuries and illnesses that harm miners and reduce productivity. NIOSH will use the information to calculate injury rates and customize safety and health interventions for various mining occupations. Once the study is completed, NIOSH will send a copy of the final report to each sampled mining operation. NIOSH expects to complete data collection no later than the Spring of 2007. There is no cost to respondents other than their time.

ESTIMATED ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Responding Eligible Mining Operations	1,648	1	2	3,296

Dated: March 29, 2006.

Betsey Dunaway,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E6–4826 Filed 4–3–06; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers For Medicare & Medicaid Services

Privacy Act of 1974; CMS Computer Match No. 2006–02, HHS Computer Match No. 0602

AGENCY: Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS).

ACTION: Notice of Computer Matching Program.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, this notice establishes a computer matching agreement between CMS and the Department of Defense (DoD). We have provided background information about the proposed matching program in the **SUPPLEMENTARY INFORMATION** section below. The Privacy Act requires that CMS provide an opportunity for interested persons to comment on the proposed matching program. We may defer implementation of this matching program if we receive comments that persuade us to defer implementation. See **DATES** section below for comment period.

DATES: CMS filed a report of the Computer Matching Program (CMP) with the Chair of the House Committee on Government Reform and Oversight, the Chair of the Senate Committee on Homeland Security and Governmental Affairs, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on March 28, 2006. We will not disclose any information under a matching agreement until 40 days after filing a report to OMB and Congress or 30 days after publication, whichever is later.

ADDRESSES: The public should address comments to: Walter Stone, CMS Privacy Officer, Division of Privacy Compliance Data Development (DPCDD), Enterprise Databases Group (EDG), Office of Information Services (OIS), CMS, Mail stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Comments received will be available for review at this location, by appointment, during regular business hours, Monday through Friday from 9 a.m.–3 p.m., eastern daylight time.

FOR FURTHER INFORMATION CONTACT: Cheryl Sample, Senior Privacy Specialist, DPCDD, EDG, OIS, CMS, Mail stop N2–04–27, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. The telephone number is (410) 786–7185, or facsimile (410) 786–5636.

SUPPLEMENTARY INFORMATION:

I. Description of the Matching Program

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503), amended the Privacy Act (5 U.S.C. 552a) by describing the manner in which computer matching involving Federal agencies could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, state, or local government records. It requires Federal agencies involved in computer matching programs to:

1. Negotiate written agreements with the other agencies participating in the matching programs;

2. Obtain the Data Integrity Board approval of the match agreements;

3. Furnish detailed reports about matching programs to Congress and OMB;

4. Notify applicants and beneficiaries that the records are subject to matching; and,

5. Verify match findings before reducing, suspending, terminating, or denying an individual's benefits or payments.

B. CMS Computer Matches Subject to the Privacy Act

CMS has taken action to ensure that all CMPs that this Agency participates in comply with the requirements of the Privacy Act of 1974, as amended.

Dated: February 15, 2006.

Lori G. Davis,

Acting Chief Operating Officer, Centers for Medicare & Medicaid Services.

CMS Computer Match No. 2006–02
HHS Computer Match No. 0602

NAME:

''Disclosure of Enrollment and Eligibility Information for Military Health System Beneficiaries Who are Medicare Eligible.''

SECURITY CLASSIFICATION:

Level Three Privacy Act Sensitive.

PARTICIPATING AGENCIES:

The Centers for Medicare & Medicaid Services (CMS); and Department of Defense (DoD), Manpower Data Center (DMDC), Defense Enrollment and Eligibility Reporting System Office (DEERS), and the Office of the Assistant Secretary of Defense (Health Affairs)/ TRICARE Management Activity (TMA).

AUTHORITY FOR CONDUCTING MATCHING PROGRAM:

This CMA is executed to comply with the Privacy Act of 1974 (Title 5 United States Code (U.S.C.) 552a), as amended, (as amended by Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988), the Office of Management and Budget (OMB) Circular A–130, titled ''Management of Federal Information Resources'' at 61 **Federal Register** (FR) 6435 (February 20, 1996), and OMB guidelines pertaining to computer matching at 54 FR 25818 (June 19, 1989).

Prior to 1991, CHAMPUS entitlement terminated when any individual became eligible for Medicare Part A on a non-premium basis. The National Defense Authorization Act(s) (NDAA) for Fiscal Years (FY) 1992 and 1993 (Pub. L. 102–190) section 704, provide for reinstatement of CHAMPUS as second payer for beneficiaries entitled to Medicare on the basis of disability/End Stage Renal Disease (ESRD) only if they also enroll in Part B.

This agreement implements the information matching provisions of the NDAA, FY 2001 (Pub. L. 106–398) Sections 711 and 712; the NDAA, FY 1993 (Pub. L. 102–484) Section 705; and the NDAA, FY 1992 (Pub. L. 102–190) Sections 704 and 713.

Section 732 of the FY 1996 NDAA (Pub. L. 104–106), directed the administering Secretaries to develop a mechanism for notifying beneficiaries of their ineligibility for CHAMPUS when loss of eligibility is due to disability status.

PURPOSE (S) OF THE MATCHING PROGRAM:

The purpose of this agreement is to establish the conditions, safeguards and procedures under which CMS will disclose Medicare enrollment information to the DoD, DMDC, DEERS, and Health Affairs/TMA. The disclosure by CMS will provide TMA with the information necessary to determine if Military Health System (MHS) beneficiaries (other than dependents of active duty personnel), who are Medicare eligible, are eligible to receive continued military health care benefits. This disclosure will provide TMA with the information necessary to meet the Congressional mandate outlined in legislative provisions in the NDAA listed above.

Current law requires TMA to discontinue military health care benefits to MHS beneficiaries who are Medicare eligible and under the age of 65 when they become eligible for Medicare Part A because of disability/ESRD unless they are enrolled in Medicare Part B. Current law also requires TMA to provide health care and medical benefits to MHS beneficiaries who are Medicare eligible (commonly referred to as the dual eligible population) over the age of 65 who are enrolled in the supplementary medical insurance program under Part B of the Medicare program. This CMA will combine both groups of the MHS beneficiary population described above into one single database to more effectively carry out this matching program. In order for TMA to meet the requirements of current law, CMS agrees to disclose certain Part A and Part B enrollment data on this dual eligible population, which will be used to determine a beneficiary's eligibility for care under CHAMPUS/TRICARE. DEERS will receive the results of the computer match and provide the information to TMA for use in its matching program.

This computer matching agreement supersedes all existing data exchange agreements between CMS and DMDC applicable to the exchange of personal data for purposes of disclosing enrollment and eligibility information for MHS beneficiaries who are Medicare eligible.

CATEGORIES OF RECORDS AND INDIVIDUALS COVERED BY THE MATCH:

DEERS will furnish CMS with an electronic file on a monthly basis extracted from the DEERS' systems of records containing social security numbers (SSN) for all MHS beneficiaries who may also be eligible for Medicare benefits. CMS will match the DEERS finder file against its ''Medicare Beneficiary Database'' system of records (System No. 09–70–0536), and will validate the identification of the beneficiary and provide the Health Insurance Claim Number that matches against the SSN and date of birth provided by DEERS, and also provide the Medicare Part A entitlement status and Part B enrollment status of the beneficiary. CMS's data will help TMA to determine a beneficiary's eligibility for continued care under TRICARE. DEERS will receive the results of the computer match and provide the information provided to TMA for use in its program.

DESCRIPTION OF RECORDS TO BE USED IN THE MATCHING PROGRAM:

DoD will use the SOR identified as S322.50, entitled ''Defense Eligibility Records,'' at 69 **Federal Register** (FR) 33376 (June 15, 2004), as amended by 69 FR 67118 (November 16, 2004). SSNs of DoD beneficiaries will be released to CMS pursuant to the routine use set forth in the system notice, which provides that data may be released to HHS ''for support of the DEERS enrollment process and to identify individuals not entitled to health care.''

Identification and Medicare status of DoD eligible beneficiaries will be provided to TMA to implement the statutory program. Therefore, eligibility information may also be maintained in the SOR identified as DHA 07, entitled ''Military Health Information System (MHIS),'' at 70 FR 44574 (August 3, 2005).

The release of the data for CMS is covered under both the ''Medicare Beneficiary Database,'' System No. 09–70–0536 published in the **Federal Register** at 71 FR 11420 (March 7, 2006). Matched data will be released to DEERS pursuant to the routine use number 2 as set forth in the system notice.

INCLUSIVE DATES OF THE MATCH:

The Matching Program shall become effective no sooner than 40 days after the report of the Matching Program is sent to OMB and Congress, or 30 days after publication in the **Federal Register**, which ever is later. The matching program will continue for 18 months from the effective date and may be renewed for an additional 12 month period as long as the statutory language for the match exists and other conditions are met.

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DEPARTMENT OF HOMELAND SECURITY

Environmental Planning Program

AGENCY: Department of Homeland Security.

ACTION: Notice of final directive.

SUMMARY: The purpose of this Notice is to inform the public that the Department of Homeland Security (DHS or the Department) is issuing its final policy and procedures for implementing the National Environmental Policy Act of 1969 (NEPA) and related executive orders and requirements. This Notice also responds to the comments received on the draft Management Directive (draft Directive), published on June 14, 2004.

DATES: This Directive will be effective on April 19, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. David Reese, Office of Safety and Environment, Department of Homeland Security, 202.692.4224.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

CATEX—Categorical Exclusion
CEQ—Council on Environmental Quality
CFR—Code of Federal Regulations
DHS—Department of Homeland Security
Department—Department of Homeland Security
EA—Environmental Assessment
E.O.—Executive Order
FEMA—Federal Emergency Management Agency
FLETC—Federal Law Enforcement Training Centers
FONSI—Finding of No Significant Impact
FSE—Full Scale Exercise
FR—Federal Register
NEPA—National Environmental Policy Act
ODP—Office of Domestic Preparedness
ROD—Record of Decision
U.S.C.—United States Code
USCG—United States Coast Guard

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Background

DHS has the mission to lead the unified national effort to secure the United States of America. It has the responsibility to prevent and deter terrorist attacks and protect against and respond to threats and hazards to the Nation. As a part of this mission, the Department ensures safe and secure borders, facilitates lawful immigrants and visitors, and promotes the free flow of commerce among nations.

This Directive establishes policy and procedures to ensure the integration of environmental considerations into the unique mission of the Department. It outlines roles and responsibilities for compliance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 et seq., and other laws and requirements for stewardship of the environment. This Directive also establishes a framework for the detailed, balanced, and systematic consideration of environmental stewardship in the planning and execution of DHS activities.

NEPA is the basic charter and foundation for stewardship of environmental resources by the agencies of the Federal government within the United States. It establishes policy, sets goals, and provides a tool for carrying out national environmental policy. NEPA requires agencies to use all practical means within their authority to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans. 42 U.S.C. 4331.

This Directive includes processes for preparing Environmental Assessments (EA), Findings of No Significant Impact (FONSI), and Environmental Impact Statements (EIS). It also includes procedures for DHS to establish new or revised Categorical Exclusions (CATEX). DHS will use this Directive in conjunction with NEPA, the Council on Environmental Quality (CEQ) regulations at 40 CFR parts 1500–1508, and other pertinent environmental laws, regulations, and Executive Orders (E.O.).

The Department published a draft Directive and a request for comments in the **Federal Register** on June 14, 2004. 69 FR 33043; *see also* 69 FR 42760 (Jul. 16, 2004) reopening comment period. The draft Directive proposed DHS policy for meeting the requirements under NEPA, including a proposed list of categories of DHS actions excluded from further consideration under NEPA, known as categorical exclusions.

More than 7,500 letters and e-mails were received during the comment period. The vast majority of those comments consisted of identical letters and e-mails, where only the name and address differed. The Department received fewer than 100 unique comments. The Department has posted all unique comments and an example of each identical form comment on the DHS public web site, listed below. These comments are categorized and discussed below. This final Directive incorporates clarifications and limitations added in consideration of the public comments.

A copy of this publication, the draft Directive, all unique comments received during the comment period, examples of form comments, and a summary of the administrative record are available at *http://www.dhs.gov/dhspublic/display?theme=13&content=5278.*

Scope and Applicability

This Directive applies to all of DHS, including its components. Components may supplement this Directive, provided that any supplements are consistent with the Directive. This Directive shall prevail in case of any inconsistencies between this directive and supplementary procedures. Currently, FEMA has NEPA regulations, 44 CFR Part 10, and the U.S. Coast Guard has a Commandant's Instruction Manual on NEPA, 16475.1 series. These components will amend their procedures to conform to this Directive.

General Comments and Responses

The draft Directive contained proposed policy and procedures for DHS to comply with NEPA and ensure the integration of environmental considerations into mission planning and project decision making. It also proposed the means for DHS to follow the letter and spirit of NEPA and comply fully with CEQ regulations. Both the draft and final Directive encompass requirements in addition to NEPA and establish the DHS Environmental Planning Program. The final Directive contains a detailed set of policy and procedural requirements to implement NEPA and the environmental planning function in a reliable, timely, and cost-effective manner.

Following is a discussion of the comments. Comments of a general nature are addressed first, followed by comments on specific sections of the Directive. Since there were many comments on specific proposed CATEXs, these comments and responses have been placed into a separate grouping and are addressed one-by-one in the last section of comments and responses.

1. *Categorical Exclusions: Too Many and Too Broad.* About 70 commenters noted that the Department's draft

Directive had an exceptionally large number of components responsible for a vast array of activities and operations under its purview. It was generally argued that many of these activities have a clear potential for significant adverse environmental impacts. These comments indicated a concern that the draft ignored what some commenters defined as an accepted practice that the use of Categorical Exclusions be limited primarily to routine administrative actions. Some comments stated that the draft attempted to create a number of overly broad and vague Categorical Exclusions for activities with the potential for significant adverse environmental effects. Other comments noted that, while federal agencies are accorded a degree of deference in creating their Categorical Exclusions, they must still provide a sound and factually supported basis for finding that certain agency actions will not individually or cumulatively have a significant impact on the environment. Some commenters also generally argued that some proposed Categorical Exclusions go far beyond what is authorized by CEQ regulations and relevant case law.

In response to these comments, DHS recognizes that the creation of a Cabinet-level Department from numerous agencies and elements of other agencies is certainly an historic and complex event. In addition, DHS was mandated by the Homeland Security Act to functionally integrate its activities to establish consistent business processes throughout the Department. Numerous functional areas such as financial management, procurement, human resources management, and asset management, either have or are actively completing the establishment of common rules and operating procedures throughout DHS. From an environmental planning perspective, this meant establishing a common set of policy, guidance, and implementing procedures for use by all DHS components.

To respond to this challenge, DHS used a very lengthy and complex series of deliberations to create and support the CATEXs included in this NEPA Directive. The Council on Environmental Quality's Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act contemplates that CATEXs will serve as a tool for agencies to conserve time and effort by defining categories of actions that do not individually or cumulatively have a significant effect on the human environment and are therefore exempt from the requirement to prepare further analysis in an environmental assessment or an environmental impact statement. 40 CFR 1500.4(p). This Directive and the NEPA directives of most agencies include a list of CATEXs that extend beyond routine administrative actions. The Department empanelled a group of federal employees from its components with sufficient expertise and experience to identify such categories of actions most relevant to DHS, hereinafter referred to as the Panel. That Panel critically analyzed the actions within the categories that they identified to ensure that only actions with no potential for individual or cumulative significant impact would be included in the list of CATEXs. The Panel also took pains to ensure that the actions were sufficiently limited to actions for which the Department maintained a demonstrated history of successful performance with no significant effect on the human environment. The CATEXs were developed on the basis of an administrative record from the components that comprise the Department and the experiences of the Panel members.

2. *Alleged Conflict between NEPA Scoping Requirements and Consultation Requirements under Section 106 of the National Historic Preservation Act.* One set of comments stated that the scoping provisions that require involvement of other federal agencies, non-federal interests, and the general public in defining the scope of potential environmental impacts from a proposed activity do not adequately fulfill requirements to consult with federally-recognized Indian Tribes and Native Hawaiian organizations under Section 106 of the National Historic Preservation Act when the proposal may impact a historic property and could become a source of conflict.

DHS disagrees. These comments refer to an issue that was not referenced, expanded, or limited by the draft Directive. Neither the CEQ regulations that implement NEPA nor the draft Directive prescribe a standard scoping process. Furthermore, the Advisory Council on Historic Preservation's regulations for implementing Section 106 of the National Historic Preservation Act, at 36 CFR part 800, provide for coordinating Section 106 reviews with the NEPA process or using the NEPA process to fulfill the requirements of Section 106. More specifically, 36 CFR 800.2(c)(2), requires consultation with federally recognized Indian Tribes and Native Hawaiian organizations in fulfilling Section 106 review requirements.

The Department's Directive defines the need to coordinate with federally-recognized Indian Tribes and Native Hawaiian organizations during the NEPA process in Section 6. That policy is further reinforced in Sections 1 and 2 of Appendix A, which states that the Department's policy is to seek out and coordinate with other federal departments and agencies, tribal, state, and local governments, non-governmental organizations, and the general public early in the environmental planning process. Furthermore, Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments'' dated November 9, 2000, directs all federal departments to, among other things, ''strengthen the United States government-to-government relationships with Indian tribes and establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications * * *'' Each component in DHS provides the framework by which they consult and coordinate with tribes concerning their specific program areas, including any environmental planning activities that may involve tribes.

3. *General Administrative and Editorial Changes.* Names and titles of offices and positions have been changed to reflect the current organizational structure, program responsibilities, and nomenclature within DHS. The abbreviation used for the term ''Categorical Exclusion'' has been changed from ''CE,'' the term used in the draft, to ''CATEX'' to avoid confusion with other commonly abbreviated terms used in DHS. Other changes have been made in coordination with CEQ to clarify language to ensure that this Directive would conform to CEQ regulations. Redundancies have been eliminated. Grammatical changes, structural changes, and clarifications have been made that are not intended to change any of the draft's meaning or intent.

Section By Section Comments, Responses, and Other Changes

1. *Management Directive, Section 6.F.* There were no comments on this specific section. However, language in this section has been changed to clarify that no actions will be taken that limit alternatives considered for any proposed action for which an EA or EIS process is being conducted. These changes would not change the obligation for DHS to ensure that the Record of Decision (ROD) and the FONSI are public documents and will reflect the final decision.

2. *Appendix A, Section 2.6., Public Involvement.* There were no comments

on this section; however, the opening paragraph was modified to more clearly express DHS policy on public involvement in environmental planning.

3. *Appendix A, Section 2.6.A, Public Involvement.* There were no comments on this section; however, consideration of some comments on Appendix A, Section 4.0 resulted in changes here. The extent of public comment and involvement in the EA and FONSI process is defined in 40 CFR 1501.4(b) which states, ''The agency shall involve environmental agencies, applicants, and the public, to the extent practicable, in preparing assessments required by section 1508.9(a)(1)'' (where the referenced section refers to environmental assessments). Neither NEPA nor CEQ regulations prescribe a set period of public comment required in the EA and FONSI process—apart from the FONSI publication required in the special situations described in 40 CFR 1501.4(e)(2)—leaving it up to the agencies themselves to define the degree of public involvement deemed practicable under the circumstances. Appendix A, Section 2.6.A has been revised, in consultation with CEQ, to clarify that public involvement is required in the environmental impact evaluation process that would be documented in an environmental assessment under NEPA. Other changes have been made to clarify the relationship of this section to other sections in the Directive.

4. *Appendix A, Section 3.2. paragraph B.* There were no comments on this section; however, several commenters expressed a general concern over the potential for CATEXs to be applied to smaller repetitive actions in a manner that could avoid a more in-depth review under NEPA of the potential for significant cumulative environmental impacts. The wording of this section has been modified to more clearly state that the CATEXs are not intended to be used in this repetitive manner.

5. *Appendix A, Section 3.2. paragraph C.* Commenters objected to the treatment of ''extraordinary circumstances'' in connection with Categorical Exclusions. Categorical Exclusions are categories of actions that can be shown to have no potential for significant impact on the human environment under normal circumstances and would require no further analysis under NEPA. However, in recognition of the variety of situations where DHS may take action, DHS had proposed a series of extraordinary circumstances where an otherwise categorically excludable action may have potential for significant adverse impact to the human environment and would require further analysis under NEPA. Commenters claimed that the draft Directive erroneously used a significance test when legal precedent has established that a CATEX may not be used if there is the potential for ''any adverse effect.''

DHS disagrees. Upon further review of the language in this Directive, including consultation with the Council on Environmental Quality, DHS believes that the manner in which it will apply ''extraordinary circumstances'' in this Directive is in conformance with appropriate precedent. CEQ regulations specify that a CATEX may be used if there is no significant effect on the human environment, with exceptions to provide for those situations when there are ''extraordinary circumstances.'' 40 CFR 1508.4. Section 3.2 of the Directive clearly defines that there are to be three ''tests'' by which the application of any CATEX to a particular action are viewed on a case-by-case basis. Sub-section (C) within section 3.2 defines one of those tests as that of ensuring that no ''extraordinary circumstances'' exist. That particular test requires that, in a matter that might otherwise be subject to a particular CATEX, ''* * * [n]o extraordinary circumstances with potentially significant impacts relating to the proposed action exist * * *'' Therefore, if potentially significant impacts related to the proposed action exist, the CATEX may not be applied. The consideration of this and the other ''tests'' contemplated by Section 3.2 ensure that, where ''* * * the proposed action does not meet these conditions or a statute does not exempt it or an emergency provision does not apply, an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) must be prepared before the action may proceed.''

The concern addressed by the comments in this area suggests that the language in the Directive that states, ''* * * [s]pecific actions that might otherwise be categorically excluded, but are associated with one or more extraordinary circumstances, should be carefully evaluated to determine whether a CATEX is appropriate * * *'' would allow the application of a CATEX to a particular action with foreseeable significant impact on the environment even where not exempted by a statute or emergency provision. The wording of this section has been revised to ensure that DHS will evaluate whether extraordinary circumstances may exist and have a record of the consideration of those extraordinary circumstances. Likewise, the language of Section 3.3.B has been modified to clarify this intent.

Subparagraph (4) in this section has been revised from a lengthy list of possible natural resources and other geographic designations to simply require that procedures for applying categorical exclusions take into account the potential to effect an environmentally sensitive area. The effect of this change is to lengthen the list of concerns that must be considered under this subparagraph. Consideration of the extraordinary circumstances contained in Subparagraph (4) was previously limited to only those subjects listed. The term ''environmentally sensitive area'' has been defined in the Glossary to be more comprehensive in its inclusion of various types of natural resources and geographic areas of special interest in an environmental impact evaluation process. The effect of this change is to ensure that a broader range of subjects will be addressed when Subparagraph (4) is used in consideration of extraordinary circumstances.

A new subparagraph (11) has been added in consideration of public comments and to conform to CEQ regulations to ensure that CATEXs are not used in situations where a proposed DHS action is related to other actions with individually insignificant, but cumulatively significant, impacts.

6. *Appendix A, Section 3.3.B, Record of Environmental Consideration.* There were no specific comments on this section. This section has been revised to clarify the purpose and use of a Record of Environmental Consideration and to conform to the changes in Appendix A, Section 3.2.C, Extraordinary Circumstances.

7. *Appendix A, Section 4.0, Environmental Assessments.* Commenters urged DHS to adopt a policy that would favor seeking public comment on both Environmental Assessments and Environmental Impact Statements, especially where issues are likely to be controversial.

Consideration of this recommendation resulted in several changes to Appendix A, section 2.6.A, as described earlier. Appendix A, section 4.0, has also been revised to more clearly reflect a policy of involving the public in EAs and to more clearly provide direction on the appropriate public involvement process. A new section 4.1 has been added to clearly describe the purpose of an environmental assessment and the former section 4.1 was renumbered to section 4.2, with some edits and clarifying language. The text that provided direction on alternatives, the internal review process within DHS, the FONSI, and the public involvement requirements has been moved to a new

section 4.3, Considerations in Preparation of an EA or a Programmatic EA.

8. *Appendix A, Section 4.3., Considerations in Preparation of an EA or a Programmatic EA.* This is a new section of the Directive. Consideration of comments urging DHS to adopt a policy that would favor seeking public comment on Environmental Assessments resulted in the consolidation of information from several parts of the Directive into this new section and the addition of some clarifying language. The language in paragraphs A, E, and F now clearly emphasizes the policy to encourage public involvement in the preparation of an EA. This section now clearly describes its relationship to the public involvement factors listed in section 2.6, and provides options to achieve the public involvement policy. The legal importance of the FONSI and any mitigation measures that may be in the FONSI have been clarified. The responsibility of the agency to implement mitigation measures contained in a FONSI has also been more clearly stated.

The sections following 4.3 have been renumbered to 4.4, 4.5, and 4.6, with appropriate editorial and language clarifications, to reflect the addition of the two new sections 4.1 and 4.3.

9. *Appendix A, Section 6.2, Classified or Protected Information.* Many comments stated that the draft Directive asserted unqualified authority to keep potentially large amounts of information on the environmental impacts of DHS operations secret and out of public view in contravention of the disclosure requirements of NEPA and CEQ regulations. The commenters argued that DHS should limit the Directive's nondisclosure provisions strictly to information that unambiguously qualifies for withholding pursuant to a Freedom of Information Act (FOIA) exemption. They further contended that to do otherwise would violate the provisions of NEPA and CEQ regulations governing the disclosure and nondisclosure of information. The comments also conveyed concern that certain provisions of the draft Directive, as well as new categories of information endorsed in the draft Directive, such as Critical Infrastructure Information (CII) and Sensitive Security Information (SSI), will be used to withhold information about the environmental impacts of DHS operations from the public. Some comments argued specifically that the manner in which CII and SSI were applied in the draft Directive exceeded the statutory mandate. In general, these comments claimed that the draft Directive was seeking to unacceptably restrict currently available types of information relevant to the health, safety, and well-being of the public in violation of the spirit and letter of NEPA.

The Department carefully reviewed the comments received regarding public disclosure of information in environmental impact assessments and other documents prepared under NEPA and determined that the intention of the initial formulation of policy required clarification. DHS intends to comply with all applicable statutes and regulations aimed at securing the homeland and making environmental documents publicly available. The Department has many responsibilities, including the protection of certain information under statutes such as the Homeland Security Act, 6 U.S.C. 101, the Aviation Transportation Security Act, 49 U.S.C. 114, and the Maritime Transportation Security Act, 46 U.S.C. 701. The Department also has responsibilities under FOIA, 5 U.S.C. 552, to make information available to the public.

DHS will appropriately share information that was relied upon to formulate decisions that have environmental implications. DHS recognizes that there may be instances where we cannot disclose all information that supports environmental determinations because the information is otherwise protected from disclosure under the mandates that the Department must follow. For example, classified information may not be released pursuant to FOIA. *See* 5 U.S.C. 552(b)(1). Likewise, SSI and Protected CII are exempted from disclosure under FOIA, pursuant to 5 U.S.C. 552(b)(3). *See* 49 U.S.C. 114(s), 49 CFR part 1520, 6 U.S.C. 133(a), 6 CFR part 29. Other information will be available to the public in accordance with FOIA. Section 6.2 has been revised to clarify that FOIA will be followed in public disclosure of environmental impact assessments and other documents prepared under NEPA.

Specific Comments on Categorical Exclusions and Responses

Categorical Exclusion A4. CATEX A4 governs certain administrative and regulatory activities. This CATEX has been revised, in consultation with CEQ, in order to avoid the potential for confusion in its application and to ensure that it is not applied to the development of documents that may recommend activities with potential to significantly impact the quality of the human environment. Specifically, the Department has limited the types of actions contemplated by this CATEX to ensure that if activities under this CATEX result in proposals for further action, this CATEX may only apply if those proposals are already contemplated by another DHS CATEX. Upon further review, it was found that this CATEX could be interpreted in a manner to include the development of documents containing proposals with potential to significantly impact the quality of the human environment. In particular the development of documents, such as those cited in the examples, could be interpreted broadly to include documents such as reports on levels of business activity or plans for physical infrastructure development that may have greater potential to significantly impact the quality of the human environment. The Department intends that the change will clarify the narrow focus of this CATEX by expressly excluding from its contemplation the development of any proposals for actions where the actions themselves would not be covered by a CATEX.

Categorical Exclusion A6.[1] This CATEX was the subject of comments concerning: (1) The references to waste disposal and (2) public information regarding the use of chemicals and low level radio nuclides for analytical testing and research. Commenters expressed concern that the analysis of impacts from waste disposal for permitted landfills may have been done in the past, but that may not account for new waste. Commenters also stated that using the existing categorical exclusions from the Federal Emergency Management Agency and the United States Coast Guard as a basis for this Categorical Exclusion was not appropriate, since those CATEXs were limited to procurement and storage of such materials and not to disposal. Commenters also expressed concern that the public should not be limited in its ability to access information regarding the use of chemicals and low level radio nuclides for analytical testing and research. One comment, for example, wanted DHS to demonstrate or document how ''* * * Chemicals and low level radio nuclides for analytical testing and research * * *'' are being used safely.

To address the concern that the analysis of impacts from waste disposal for permitted landfills may have been done in the past, but that may not account for new waste, DHS included

[1] The proposed categorical exclusion A5 in the draft Directive was deleted in this final version. All subsequent categorical exclusions in the A section were renumbered, beginning with the current categorical exclusion A5, to reflect this deletion.

language in example (g) that limits this CATEX to apply to only activities of waste disposal in established, permitted landfills and authorized facilities; thereby, emphasizing that the Department is held to all of the same requirements that are applicable to commercial and other federal generators of non-hazardous waste.

To address the concern that existing CATEXs from the Federal Emergency Management Agency and the United States Coast Guard were not appropriate to use as a basis for this CATEX, the following explanation is provided. During the development of these CATEX, the Panel found that various components of the Department, procure non-hazardous goods and services and store, recycle, and dispose of non-hazardous goods during the normal course of their activities in a manner like that of FEMA and the United States Coast Guard. Activities of a similar nature, scope, and intensity were found to be common throughout the Department in both administrative and operational activities. The vast majority of procurements, in conformance with procurement priorities, were found to consist of commercially available goods and services. A more limited number of procurements were for goods that were provided by commercial sources specifically for military (which could include the U.S. Coast Guard) or law enforcement purposes. Unique procurements were extremely infrequent and mostly adaptations of commercially available goods and services. It was also noted that other agencies have CATEX for similar activities that are sufficiently descriptive such that it could be determined that they included a much broader range of activities and encompassed activities of generally greater scope and intensity than any in DHS. In addition, all federal agencies, with very few limitations, must meet the same requirements to protect the environment. For example, the volume of goods and services procured and wastes disposed by other agencies dwarf those of DHS and are performed under the same regulatory policies with no significant impacts to the quality of the human environment.

To address the concern that the public should not be limited in its ability to access information regarding the use of chemicals and low level radio nuclides for analytical testing and research, DHS modified Example (e) within this CATEX to further define ''analytical testing and research'' by clarifying that the intent for including examples of those types of non-hazardous materials would be ''for laboratory use'' and would thus be subject to the detailed requirements for the handling of such materials in established laboratories and similar facilities. Changes to Section 6 of the Directive, described elsewhere in this Notice, will also address this concern. *Categorical Exclusion A7.*[2] When A7 was published in the draft Directive, it was the subject of comments concerning the availability of public information generally. The Department considered the comments regarding public information and these concerns are addressed in the Department's response to comments on section 6 of the Directive.

Upon consideration of the scope of this CATEX, two other changes were made. A new limitation was added to state that ''If any of these commitments result in proposals for further action, those proposals must be covered by an appropriate CATEX'' to ensure that, if surveys or other actions contemplated under these CATEX result in recommendations for further action, those further actions will be appropriately evaluated under NEPA. Example (c) was modified and limited by removing the phrase ''Site characterization studies and environmental monitoring, including siting, construction, operation, and dismantling or closing of characterization and monitoring devices * * *'' from the descriptive examples to ensure that this CATEX was limited to audits, surveys, and data collection of a minimally intrusive nature. These additions and changes will better address the studies and other administrative activities contemplated by this CATEX. *Categorical Exclusion B2.* CATEX B2 was the subject of comments concerning the danger to the environment raised by access to observation posts. The chief concern expressed was regarding the risk that establishment of and access to observation posts might pose to the endangered Sonoran Pronghorn antelope. Specifically, one representative comment stated that ''* * * a well-established record overwhelmingly demonstrates that construction, use of, and access to such observation posts is clearly not appropriate for the [categorical exclusion].''

The Department considered the comments and concluded that this CATEX does not encompass the development of new access roads or observation posts. To emphasize the Department's concern in this area, the Panel specifically limited the CATEX to, ''* * * existing roads or established jeep trails.'' In order to further stress the intent of the Department that this CATEX not be extended to areas where there is potential for significant impacts on the quality of the human environment, the language of this CATEX was modified to expressly limit the use of jeep trails to those established by a governmental authority which would have shared or primary responsibility for regulating the roads or trails.

In addition, section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that must be reviewed when applying this CATEX to a specific program or activity within DHS. These conditions and extraordinary circumstances were developed because, while the vast majority of DHS activities in this category do not have potential for significant impacts to the environment, activity proponents (Proponents) within DHS need to be alert for rare and unique conditions that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. The Directive now contains language that clearly and explicitly prevents the use of the CATEX where there is ''A potentially significant effect on species or habitats protected by the Endangered Species Act, Marine Mammal Protection Act, Migratory Bird Treaty Act, or Magnuson-Stevens Fishery Conservation and Management Act.''

Categorical Exclusion B4. This CATEX was the subject of comments regarding the reference to training on specialized equipment. Specifically, the comments stated that it should be limited to those activities that do not disturb the surface in any way and have no potential to disturb the environment. The Department considered the comments regarding the reference to training, noting that there existed redundant coverage of training with CATEX G1. The references to training activities and training activity examples have been deleted from this CATEX. Responses to comments on CATEX G1 further address the concern regarding the reference to training on specialized equipment.

Categorical Exclusion B5. This CATEX was changed from the text published for public comment to clarify

[2] The proposed categorical exclusion A5 in the draft Directive was deleted in this final version. All subsequent categorical exclusions in the A section were subsequently renumbered to reflect this deletion.

that the phrase ''* * * Support for community participation projects * * *'' was intended to mean support for and participation in community projects. The Department is inherently dependent upon community involvement in providing the homeland security services required of it. The public is the key customer, beneficiary, and stakeholder for the products and services that the Department provides. It is essential that the Department engage in civic and community events that both serve the public and common good, as well as provide the Department with access to and credibility with its private sector customers. This change clarifies the nature of events and actions contemplated by this CATEX that may be undertaken for such purposes.

This CATEX was also changed to limit the nature of activities contemplated by adding the phrase ''* * * that do not involve significant physical alteration of the environment * * *''. Although this aspect of this CATEX was not the subject of any public comments, it was determined that this limitation would serve to focus the activities undertaken by the Department and its components within this CATEX on those clearly lacking the potential to significantly impact the quality of the human environment.

Categorical Exclusion B6. Although not the subject of any public comments, this CATEX for the approval of recreational or public activities or events at a location typically used for that type and scope of that activity was specifically limited to ensure that the activities contemplated under this CATEX would not involve significant physical alteration of the environment. This was done to emphasize that this CATEX is not to be applied if there is potential for significant environmental impact.

Categorical Exclusion B8. CATEX B8 was the subject of comments regarding NEPA review of security equipment. Specifically, the comments generally stated that there are many security devices including x-rays and detection devices that include the use of dangerous chemical, biological, and radiological substances. The comments expressed the concern that the evaluation and disposal of these devices could pose an environmental risk.

Security equipment used within the department must meet the appropriate requirements of the Nuclear Regulatory Commission (NRC), the Food and Drug Administration (FDA), or the Federal Communications Commission (FCC). In addition, most of the security equipment consists of commercially available products that are also in use by private industry and other government agencies.

Some of the security equipment contains trace amounts of chemical or radiological substances or produce X-rays as part of the screening process. These chemical and radiological substances and X-rays are encapsulated, shielded, and secured within the interior of the equipment. All of the Department's security systems must meet federal requirements for allowable levels of radiation emissions. There are no biological substances in the security equipment. In addition, all components within the Department that use these types of equipment perform periodic radiation surveys or wipe tests of all X-ray producing equipment or equipment that contains a small radioactive source to ensure compliance with 21 CFR 1020.40, Cabinet X-ray Systems, and NRC licensing requirements. The systems are also surveyed and inspected whenever they are relocated or maintenance is performed on the X-ray components and shielding.

Disposal of security equipment is consistent with Federal Property Management Regulations found at 41 CFR 101 and 102. Furthermore, DHS is also required to minimize disposal through maximum reutilization and specialized sales, and will ensure that maximum attainable recycling and recovery are achieved in accordance with the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992, and participation in the Department of Energy's Homeland Defense Equipment Reutilization (HDER) Program.

DHS has an agreement with DOE to refurbish, calibrate, and issue radiological detection equipment to local jurisdictions that request to participate in the HDER Program. No radioactive test sources are issued to local jurisdictions with this equipment, thereby limiting the potential for any radiological contamination. If DOE determines that equipment is not fit to refurbish, DOE is responsible for the equipment's disposition.

This CATEX was changed to further demonstrate that the Department must contemplate applicable requirements to protect the environment when determining whether the removal or disposal of security equipment to screen for or detect dangerous or illegal individuals or materials would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion B9. CATEX B9 was the subject of comments regarding the temporary use of barriers and jersey walls. Specifically, comments sought clarification of the term ''temporary.'' ''Temporary,'' as contemplated in this CATEX, means that the barrier is easily installed with no need to disturb soils or the surrounding areas, and that it can be easily removed or moved to another area. Additional comments indicated that ''temporary'' should be limited to a term of time, with a time period of a week or less. Comments on CATEX B9 also included concerns regarding: (1) The inclusion of diver/swimmer devices that could harm marine species and habitat, (2) the evaluation of blast/shock impact resistant systems in manners that could pose a risk to migratory birds, endangered species, and air quality, and (3) the reference to remote video surveillance systems that could cause significant surface disturbance.

The Department does not deem ''temporary'' regarding the use of barriers, fences, and jersey walls to mean one week or less. The term temporary is used by the Department to refer to structures that are not permanent and that, depending upon mission concerns, are eventually removed. The Department views the reference to the temporary use of barriers, fences, and jersey walls as sufficiently narrow in that only barriers, fences, and jersey walls on or adjacent to existing facilities are included in B9. A barrier, fence or jersey wall attached to, or set adjacent to, an existing facility will not normally have an adverse effect on the natural environment since the construction and location of the barrier will normally take place on land that has already been disturbed or built upon; consequently, the text has been clarified by adding ''or on land that has already been disturbed or built upon''. In addition, this CATEX has been modified to emphasize that removal and disposal must be in compliance with applicable requirements to protect the environment.

In response to the concern that activities and examples under this CATEX may adversely impact the environment, the Department notes that section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are

established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

This CATEX was changed to further demonstrate that the Department must contemplate applicable requirements to protect the environment when determining whether the removal or disposal of physical security devices or controls to enhance the physical security of existing critical assets would have the potential to significantly impact the quality of the human environment.

Finally, the phrase, ''* * * for land based and waterfront facilities,'' was added to qualify, ''* * * blast/shock impact-resistant systems,'' within the list of devices and controls to limit and clarify the intent of the CATEX.

Categorical Exclusion B11.[3] This CATEX was the subject of comments regarding the impact of routine monitoring patrols. Specifically, the comment indicated concern that routine monitoring patrols can have an impact on the environment depending on the intensity and number of persons involved in the patrols. The comment argued that this concern is particularly important in the case of patrols occurring in sensitive areas such as wilderness areas that may be habitat to endangered species.

The Department considered the concerns associated with this comment and noted that due to their generally more remote and undeveloped state, protected wilderness areas, national wildlife refuges, national forests, national monuments, marine sanctuaries, or critical habitat for marine mammals or endangered species tend to attract illegal entrants, smugglers, and potential terrorists who are seeking to avoid detection. The volume and frequency of this illegal activity in these environmentally sensitive areas results in harm to the natural resources that these areas have been set aside to protect. The patrols contemplated by this CATEX could serve as a deterrent to individuals who might otherwise harm sensitive natural resources. In any case, this CATEX could not be used for patrol activities that may be associated with extraordinary circumstances.

DHS considered the concern that routine monitoring patrols under this CATEX may have a significant effect on the environment, in particular wilderness areas and critical habitat for endangered species. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that activity proponents need to be alert for rare and unique conditions associated with routine monitoring patrols that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of the DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion D1. This CATEX was the subject of comments regarding the term, ''minor renovations and additions.'' Specifically, the comment expressed the concern that activities taking place outside of a building may have impacts on sensitive coastal resources that may be adjacent to a project. The comment expressed the desire that the categorical exclusion be limited to projects that are not located near such resources.

DHS considered this concern regarding the potential for sensitive coastal resources adjacent to a project. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA; more specifically, subparagraph (4) of section 3.2 states that DHS Proponents need to be alert for a potentially significant effect on an environmentally sensitive area. An environmentally sensitive area is defined in the Glossary to include coastal zones and other important natural resources that may be present in coastal areas. This evaluation would include not only the immediate effect of the Department's decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

This CATEX was changed in that the example, ''* * *extending an existing roadway in a developed area a short distance,'' was deleted to ensure that its application would not extend to DHS activities that would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion D3. This CATEX was the subject of comments regarding: (1) pest control activities, and (2) the impact of repair and maintenance activities on sensitive coastal areas. The comment focusing on pest control activities expressed concern that there exists the need for restrictions on pest control activities to avoid the potential for a significant impact on endangered species, groundwater, and public health.

DHS considered the concern with pest control activities and notes that the reference to pest control was only an example of the type of activity envisioned by the CATEX. In providing examples, the Department does not seek to extend the CATEX to actions including extraordinary circumstances that may result in the activity having significant environmental effects. However, in response to these comments, the wording of this CATEX was narrowed to clarify its application to Department-managed properties. Pest control activities that may be conducted at Department-managed properties would be incidental to the management of the facility for mission requirements. DHS does not have a natural resources management mission that may require the general eradication of pests. Typical pest control activities would consist of but not necessarily be limited to those actions necessary to meet health requirements in and around cafeterias and residential facilities, actions to maintain the integrity of structures, or the Department's participation as one of many other property managers in larger pest control programs run by other Federal or state agencies.

DHS also considered the comment concerning the impact of repair and maintenance activities on sensitive coastal areas. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA; more specifically, subparagraph (4) of section 3.2 states that DHS Proponents need to be alert for a potentially significant effect on an environmentally sensitive area. An environmentally sensitive area is

[3] The proposed categorical exclusion B10 in the draft Directive was deleted in this final version. All subsequent categorical exclusions in the B section were renumbered, beginning with the current categorical exclusion B10, to reflect this deletion.

defined in the Glossary to include coastal zones and other important natural resources that may be present in coastal areas. This evaluation would include not only the immediate effect of the Department's decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion D5. This CATEX was the subject of comments regarding dredging. Specifically, several comments suggested that dredging activities can have a significant effect on marine and riparian habitats, effecting endangered species, critical habitat, water flow, flooding, waste management, and a host of other environmental concerns. Additionally, some commenters suggested limiting this categorical exclusion to the United States Coast Guard.

The Department notes that its components do not generally have independent authority to conduct maintenance dredging without complying with the many laws and requirements established to protect the environment. This exclusion from further environmental analysis under NEPA is adequately limited by the need to secure applicable permits and any required approval for a disposal site. In the process of securing these permits, agencies such as the Army Corps of Engineers and the Environmental Protection Agency, as well as various state agencies, would perform independent environmental reviews of proposed DHS maintenance dredging activities. It is also noted that the U.S. Coast Guard maintenance dredging operations, which are the greatest in scope and intensity of any of these types of activities within DHS, have been conducted for many years without significant impact to the human environment.

DHS considered this concern regarding the potential for dredging activities to have a significant effect on various environmental resources. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. More specifically, these conditions and extraordinary circumstances include consideration of the potential for significant effects on marine and riparian habitats, endangered species, critical habitat, water flow, flooding, waste management, and various other environmental concerns. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion E1. CATEX E1 was the subject of a comment regarding facilities that cross tidal, coastal, or navigable waters. Specifically, the comment suggested that the activities contemplated by this categorical exclusion are not of concern in upland areas; however, if any of the facilities cross tidal, coastal, or navigable waters there is the potential for environmental impacts.

The Department considered this comment and notes that its elements do not have independent authority to conduct activities without complying with the many laws and requirements established to protect the environment. This exclusion from further environmental analysis under NEPA is adequately limited by the need to secure applicable permits and any required approvals from the appropriate federal, state, and local regulatory agencies.

However, section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. More specifically, Appendix A, section 3.2, subparagraph (4) states that DHS Proponents need to be alert for a potentially significant effect on an environmentally sensitive area. An environmentally sensitive area is defined in the Glossary to include coastal zones, tidal, coastal, or navigable waters, and other important natural resources that may be present in coastal areas. An evaluation of these extraordinary circumstances would include not only the immediate effect of the Department's decision, but also the potential environmental effects that may indirectly result from implementing that decision and the cumulative effects of the decision on the quality of the human environment.

Categorical Exclusion E2. CATEX E2 was the subject of comments expressing concern regarding the precise definition of, ''developed area'' or ''previously disturbed site'' which appear in paragraph (b), and the potential for this categorical exclusion serving as a loophole permitting an infinite amount of construction.

The Department considered the comment regarding the definitions of ''developed area'' or ''previously disturbed site.'' The comment specifically addressed wetland resources, stating that it was reasonable to believe that wetlands capable of restoration might be considered ''disturbed areas.'' The comment explains by way of example that any such disturbance of a wetland in a particular state that was not related to restoration would possibly be inconsistent with the enforceable policies of the federally-approved Coastal Management Program within that state. In response to that concern, the Department modified the text by replacing the phrase, ''* * * local planning and zoning standards,'' with the phrase, ''* * * Federal, State, tribal, and local planning and zoning standards and consistent with federally approved state coastal management programs'' as a condition precedent to any action taken under this CATEX.

The Department also considered the concern that this CATEX might be read to permit an infinite amount of construction as long as it could be artfully tailored to meet or to allegedly meet the specified criterion. In response, the Department makes reference to section 3.2 in Appendix A of the Directive which contains a list of conditions and extraordinary circumstances that must be reviewed in the application of this CATEX to a specific program or activity within the Department. These conditions and extraordinary circumstances were developed in recognition that, while the vast majority of the Department activities in this category do not have potential for significant impacts to the environment, activity Proponents within the Department need to be alert for rare and unique conditions that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of the Department's decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment.

Categorical Exclusion E4. CATEX E4 was the subject of comments expressing concern regarding the destruction or disruption of adjacent habitat during demolition activities. The Department considered the comment regarding potentially significant impacts on

habitat areas adjacent to demolition activities. The comment specifically expressed a concern that the categorical exclusion needs to make provisions to prevent the destruction or disruption of adjacent habitat during demolition activities. The comment asserts that while activities may be otherwise in compliance with regulations compliance does not ensure that projects will cease when they have a significant effect on the environment.

In response to the concern that activities under this CATEX may adversely impact adjacent habitat or may otherwise have a significant effect on the environment, the Department notes that section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that activity Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of the DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion E5. CATEX E5 was the subject of comments expressing concern regarding actions that might cause imbalance to a stable ecosystem. The comment specifically addressed the concern that natural resource management activities might actually imbalance natural ecological functions and cause further environmental problems. The comment stated that restoration often causes short-term adverse effects in order to gain long-term beneficial effects and asserts that NEPA analysis is necessary to balance these competing effects in different timeframes.

In response to these comments, the Department modified the text published for public comment by replacing the phrase, ''* * * to enhance native flora and fauna,'' with the phrase, ''* * * to aid in the maintenance or restoration of native flora and fauna,'' and added the limiting term, ''* * * and control of non-indigenous species'' as a natural resource management activity category within this CATEX. The Department also clarified the scope of this CATEX by adding the limiting term, ''* * * on Department managed property,'' to clarify that this CATEX is limited to property under the control of the Department. DHS made these changes to clarify that DHS is not a large land managing agency and the scope of activities contemplated would not encompass large scale land management activities, but would be limited to those properties where DHS had direct management responsibilities.

In response to the concern that activities under this CATEX, such as restoration, may cause short-term adverse effects in order to gain long-term beneficial effects, procedures in the Directive require consideration of extraordinary circumstances when this CATEX would be applied to a specific action. Section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that activity proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. This evaluation would include not only the immediate effect of the DHS decision, but also the potential environmental effects that may indirectly result from implementing the decision and the cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion E6. The Department received numerous comments to this CATEX asserting that the proposed categorical exclusion should be clearly limited to roads that would not cause new surface disturbance. The comments noted that road construction can have significant impact on the environment by increasing erosion, contaminated runoff, and fragmenting wildlife habitat. The comments suggest that the reference to ''previously disturbed areas'' needs clarification.

In response to the comments, this CATEX was significantly revised and narrowed in scope. The comments submitted for this categorical exclusion noted that the important criterion to determine the potential for significant environmental impact was not the extent of prior disturbance, but rather the degree of environmental sensitivity. The Department recognizes that new road construction is highly controversial, and accordingly modified this CATEX by limiting the term ''* * * construction or reconstruction,'' to read, ''* * * reconstruction.''

Furthermore, Section 3.2 in Appendix A of the Directive, contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. In particular, the extraordinary circumstances would require the need to be alert for a potentially significant effect on an environmentally sensitive area in the application of this CATEX. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion E7. The Department received a general comment regarding this and several other CATEXs that essentially asserted that the Department maintained a relaxed threshold for what constitutes information that has no significant effect on the human environment. The comment referenced this categorical exclusion concerning construction of trails as an example of that relaxed threshold.

In response to these comments, the Department first makes reference to the specific limitation in the CATEX which limits its application to construction of trails in non-environmentally sensitive areas where run-off, erosion, and sedimentation during construction are capable of mitigation through implementation of Best Management Practices. Furthermore, the Department references Section 3.2 in Appendix A of the Directive, containing a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion E9. CATEX E9 was deleted as redundant in that all of its contemplated activities were included in other proposed, and now finalized, CATEXs. Wells for drinking water, sampling wells, and watering landscaping are included in E2 or E3. Septic systems are not built independent from other facilities and

are therefore included in the activities described in E2, D3, or D4. Field instruments, such as stream-gauging stations, flow-measuring devices, telemetry systems, geo-technical monitoring tools, geophysical exploration tools, water-level recording devices, well logging systems, water sampling systems, and ambient air monitoring equipment are included in E3.

Categorical Exclusion F1. This CATEX was clarified to more accurately define its intent. It is more accurate to limit the actions contemplated to those applicable to hazardous materials and the relevant requirements and to provide a separate CATEX for actions related to the handling and disposal of hazardous waste. In order to ensure that this CATEX was sufficiently limited in that fashion without expanding or modifying its intended scope, the CATEX published for notice and comment as F1 has been limited by defining it as ''Categorical exclusion F1: Routine procurement, transportation, distribution, use, and storage of hazardous materials that comply with all applicable requirements, such as Occupational Safety and Health Act (OSHA) and National Fire Protection Association (NFPA) requirements.

The Department received a comment on CATEX F1 that was related primarily to hazardous waste disposal as opposed to hazardous materials usage. That comment will be addressed in CATEX F2.

Categorical Exclusion F2. The Department received a comment on the CATEX originally published as F1, asserting that no standard exists by which to measure the routine use of hazardous materials/waste. Specifically, the comment stated that absent a deeper explanation of the activities being excluded, this categorical exclusion could easily become a rubber stamp to nearly all agency activities with hazardous waste. The comment expressed the additional concern that a categorical exclusion for these activities could mask the cumulative effects of routine hazardous waste use at agency facilities.

DHS considered this comment and separated hazardous waste handling and disposal into CATEX F2 with specific limitations to assure compliance with appropriate hazardous waste handling and disposal requirements.

In response to the concern over cumulative effects, section 3.2 in Appendix A of the Directive contains a list of conditions and extraordinary circumstances that were developed in recognition that Proponents need to be alert for rare and unique conditions in the application of this CATEX that may require more extensive evaluation of the potential for environmental impacts under NEPA. In particular, this evaluation would include not only the immediate effect of the Department's decision, but also the potential environmental effects that may indirectly result from implementing the decision and the potential cumulative effects of the decision on the quality of the human environment. These extraordinary circumstances are established as criteria to ensure that this CATEX would not be applied to any activity that would have the potential to significantly impact the quality of the human environment.

Categorical Exclusion F3. The Department received a comment asserting that the former categorical exclusion F3 should be deleted because it excludes detection and scanning devices that, in sufficient numbers or with sufficient radiological effects, could pose a significant threat to the environment and public health. The Department also received a comment asserting that the former categorical exclusion F2 was too broad since it does not provide for an exception for devices with a significant amount of hazardous or radiological risk and/or waste, nor does it set a limit for the cumulative use of such devices.

The Department considered these comments and realized that clarification was required. In addition, further review found that the former CATEX F2 and F3 language referencing the use of instruments that contain hazardous, radioactive, and radiological materials and the examples provided was somewhat redundant. Consequently, the CATEX that was originally published as CATEX F2 has been combined with the CATEX that was originally published as CATEX F3 and additional limiting language has been added to ensure that DHS activities contemplated by this CATEX meet all manufacturer specifications, as well as comply with all requirements to protect the environment. It is important to note that DHS meets all safety parameters for radiological devices as provided within the NRC license for those devices. In addition, DHS takes extra precautions with these devices, when installed, to ensure that these devices are separated by distance from each other, the operator, and the owners of the property being examined in conformance with the NRC license and to avoid potential for threats to the environment and public health. Furthermore, DHS does not accumulate these types of equipment in central storage, maintenance, or distribution facilities. No evidence of cumulative effects has been demonstrated from DHS uses of these types of equipment.

Categorical Exclusion G1. Commenters agree with the language proposed that limited the application of this CATEX to training exercises using live chemical, biological, and radiological agents to designated facilities, but contend that this does not go far enough. Regardless of the facility, they believe the use of live agents cannot be said to inherently have no potential for significant environmental impacts. At a minimum, such activities should require a review of extraordinary circumstances and the preparation of a Record of Environmental Consideration.

DHS, in consultation with the Council on Environmental Quality, considered the comments regarding the potential effects of training activities with live agents. The language of this CATEX has been modified to clarify that it does not apply to training that involves use of live chemical, biological, or radiological agents except when the training is conducted at a location designed and constructed to contain such materials. Construction and operation of these types of facilities remains subject to review under NEPA.

Categorical Exclusion G2. One commenter believed that references to ''conducting'' national, state, local, or international training exercises should be deleted. While design and development for readiness exercises may not significantly impact the environment, actually conducting them may and the current language of ''projects'' or ''activities * * * to * * * conduct * * *'' could be interpreted as including the actual operation of the exercise. The commenter stated that the existing Federal Aviation Administration CATEX allowing for planning grants does not support an exemption for conducting readiness activities, nor does the Army CATEX for emergency or disaster assistance provide for the proposed CATEX. The commenter also stated that perhaps the intent was not to cover the actual exercises themselves; rather, the documents providing for them; however, this is not what the language provides.

DHS considered the comments regarding the potential for significant environmental impact from the conduct of national, state, local, or international training exercises and offers the following additional explanation in response. Disaster contingency planning and training exercises have been conducted by a variety of federal agencies for many years with no significant environmental impact. The

Office of Domestic Preparedness (ODP), formerly in the Department of Justice and now merged into DHS, has conducted terrorist attack response exercises since 1997. The Federal Emergency Management Agency (FEMA), which was merged into DHS Emergency Preparedness and Response Directorate, has also conducted these types of training exercises for many years to train for response to natural disasters. No evidence of significant environmental impact has been demonstrated from the conduct of these exercises by ODP or FEMA.

DHS provides direct support, technical assistance, and funding to plan, conduct, and evaluate training exercises based on natural disasters, accidents, and chemical, biological, radiological, nuclear, or explosive terrorism. Exercises take place in communities around the nation and involve members from several response disciplines. Realistic training scenarios that involve local, state, and federal agencies are necessary to simulate actual conditions and hone the skills first responders will need in the event of a disaster, whether from terrorist attack or other natural or manmade causes. Full-scale exercises (FSEs) are the largest and most complex of these training activities and are purposefully planned with the participation of the other relevant governments and response organizations to provide as realistic a scenario as possible without making unacceptable demands on available emergency response resources or unacceptable impacts on the communities or the environments where they occur. In particular, FSE activities contemplated in the development of this CATEX are normally conducted in venues such as sports stadia, fairgrounds, ports, or other sites where large-scale activities normally take place.

Pursuant to the language of the proposed CATEX, training exercises are required to be conducted ''* * * in accordance with existing facility or land use designations.'' This means that the entire exercise, including airborne emissions, waterborne effluents, outdoor noise, and solid and bulk waste disposal practices, must comply with existing applicable federal, state and local laws and regulations. The CATEX on its face does not apply to ''* * * exercises that involve the use of chemical, biological, radiological, nuclear, or explosive agents/devices * * *'' that potentially could have an adverse environmental impact.

Categorical Exclusion H2. The former CATEX published as H2 for ''Issuance of grants for the conduct of security-related research and development or the implementation of security plans or other measures at existing facilities'' has been deleted, since it was found to be redundant with the laboratory operations in B1 and the physical security activities in B9. The former CATEX H3 for ''Issuance of planning documents and advisory circulars on planning for security measures which are not intended for direct implementation or are issued as administrative and technical guidance'' was found to include activities that were redundant with the activities described in CATEX A3.

Categorical Exclusion I1. The commenter suggested edits to ensure that the use of a portable or relocatable facility does not impact sensitive resources that may be near the facility. DHS accepted this comment and made the recommended changes, as well as other grammatical changes.

Categorical Exclusions J2 and J3 (published in the draft Directive as categorical exclusions B13 and B14, respectively). Comments stated that Categorical Exclusion B13 created an incentive for logging by allowing commercial thinning of forests. Comments expressed concern that there were no stated requirements for agencies to cite a purpose for their logging activities such as to remove trees threatening essential DHS facilities or blocking construction of the same. Comments expressed concern that Categorical Exclusion B13 opened up the ability of an agency to allow multiple, 70-acre areas to be cumulatively cut in environmentally sensitive habitat. Comments requested explanation of how many projects will be covered under Categorical Exclusion B13, how many acres will be affected, how many board feet will be harvested, and what type of trees will be affected. Comments also expressed concern that Categorical Exclusion B13 may be used in a manner that would not consider impacts to cultural heritage areas. Comments stated that, while Categorical Exclusion B13 may be appropriate for certain agencies within DHS, such as the Federal Law Enforcement Training Center, it should not be a Department-wide categorical exclusion.

Regarding Categorical Exclusion B14, comments expressed concern that it lacked requirements for agencies to provide a purpose for the salvage of dead or dying trees, such as a requirement to remove dead trees threatening essential DHS facilities or blocking construction of the same. The comments also expressed concern that Categorical Exclusion B14 would provide DHS with the opportunity to allow multiple, 250-acre areas to be cumulatively harvested in environmentally sensitive habitat. Comments also expressed concern over consideration of impacts to cultural heritage areas. Comments requested some explanation of how many projects will be covered under Categorical Exclusion B14, how many acres will be affected, how many board feet will be harvested, or what type of trees will be affected.

DHS considered these comments and noted several similarities regarding the potential for environmental impact from the activities contemplated in these CATEXs. Upon review of the comments and the administrative record, DHS determined that Department-wide Categorical Exclusions for these activities were not necessary. Therefore, both of these CATEXs have been limited in application to the Federal Law Enforcement Training Center (FLETC).

Activities conducted under these CATEX would be performed for operational, safety, or natural resources management purposes on FLETC property. Examples of the situations where these CATEXs may be used include, but would not be limited to, situations where trees that are damaged by storms or disease or may be dead or dying would threaten the operation of FLETC facilities, situations where forest management is needed to encourage the return of native forest species or to promote forest health, or where control of fuel load is needed to protect residential or commercial property immediately adjacent to FLETC property. In all cases, FLETC property managers would be expected to employ forest management practices as defined by the Society of American Foresters.

In addition, a commercial timber harvest program would not conform to the mission of DHS and DHS does not manage sufficient land area to sustain such a program. Consequently, there are no existing programs in DHS to encourage any type of commercial forest use nor are any expected to be established.

Categorical Exclusion K1. The commenters expressed concerns about the use of this CATEX in sensitive habitats. They stated that limited monitoring conducted by wildlife and land management agencies suggests that there are systematic and on-going environmental abuses and degradation caused by the Border Patrol during road dragging activities. Specifically, these one-lane roads, according to the commenters, quickly become two and three lanes in addition to the off-road driving on the shoulder done to read foot prints in the sand. The commenters

stated that much of the dragging takes place in important habitat for several endangered species. In addition, the commenter asserted that since ''trails'' are by definition limited to foot traffic, road dragging should not be permitted on trails.

DHS considered these comments regarding the potential for environmental impact from the activities contemplated in this CATEX. In response to this comment, Customs and Border Protection believes that it will provide adequate protection for the environment by limiting this CATEX to road dragging that will not expand the width, length, or footprint of the road or trail. Drag roads are roads and soft shoulders that are purposefully made to be wide and are groomed daily for evidence of the foot traffic from illegal entrants or smugglers. Many of these roads have been actively maintained in this fashion since the predecessor to the current Office of the Border Patrol was established in 1936. This CATEX covers previously groomed and maintained roads and trails and does not cover the creation of new drag roads; minor edits have clarified that the purpose is for maintaining rather than creating roads and trails. New drag roads would go through the same environmental review that any new road development would require. Care is taken by the Border Patrol agents to minimize impact to wildlife assets in the normal course of their duties to defend the border areas of the Nation.

Michael Chertoff,

Secretary of Homeland Security.

Management Directive 5100.1, Environmental Planning Program

1. Purpose

A. This Directive establishes policy and procedures to ensure the integration of environmental considerations into Department of Homeland Security (DHS or the Department) mission planning and project decision making. Environmental stewardship, homeland security, and economic prosperity are compatible and complementary. This Directive establishes a framework for the balanced and systematic consideration of these factors in the planning and execution of DHS activities.

B. This Directive establishes procedures that DHS will use to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4335) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508). NEPA is the basic charter and foundation for stewardship of environmental resources in the United States. It establishes policy, sets goals, and provides a tool for carrying out federal environmental policy. NEPA requires federal agencies to use all practicable means within their authority and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

C. This Directive provides the means for DHS to follow the letter and spirit of NEPA and comply fully with CEQ regulations. This Directive adopts and supplements CEQ regulations, and is to be used in conjunction with them. This Directive encompasses other requirements and establishes the DHS Environmental Planning Program.

2. Scope

A. Substantive or procedural requirements in this Directive apply to DHS components as described herein and are to be used in program planning and project development. This Directive applies to any discretionary DHS action with the potential to affect the quality of the environment of the United States, its territories, or its possessions. It also addresses those DHS actions having effects outside the United States, its territories, or its possessions under Executive Order 12114, Environmental Effects Abroad of Major Federal Actions. More specifically, this Directive applies to:

1. DHS mission and operations planning
2. Promulgation of regulations
3. Acquisitions and procurements
4. Asset management
5. Research and development
6. Grants programs

B. This Directive supplements CEQ regulation for implementing NEPA. In the case of any apparent discrepancies between these procedures and the mandatory provisions of CEQ regulations, CEQ regulations will govern.

3. Authorities

This Directive is governed by numerous Public Laws, Regulations, and Executive Orders, including, but not limited to:

A. Clean Air Act (16 U.S.C. 470 *et seq.*)
B. Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*)
C. Endangered Species Act (16 U.S.C. 1531 *et seq.*)
D. Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. 4321–4335)
E. Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*)
F. Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*)
G. Migratory Bird Treaty Act (16 U.S.C. 703–712)
H. National Environmental Policy Act (42 U.S.C. 4321 *et seq.*)
I. National Historic Preservation Act (16 U.S.C. 470 *et seq.*)
J. National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*)
K. Title 40 of the Code of Federal Regulations Parts 1500–1508
L. Executive Order 11514, Protection and Enhancement of Environmental Quality, dated March 5, 1970, as amended by Executive Order 11991, dated May 24, 1977.
M. Executive Order 11988, Floodplain Management, dated May 24, 1977.
N. Executive Order 11990, Protection of Wetlands, dated May 24, 1977.
O. Executive Order 12114, Environmental Effects Abroad of Major Federal Actions, dated January 4, 1979.
P. Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, dated February 11, 1994.
Q. Executive Order 13101, Greening the Government through Waste Prevention, Recycling, and Federal Acquisition, dated September 14, 1998.
R. Executive Order 13123, Greening the Government through Efficient Energy Management, dated June 3, 1999.
S. Executive Order 13148, Greening the Government through Leadership in Environmental Management, dated April 21, 2000.
T. Executive Order 13149, Greening the Government through Federal Fleet and Transportation Efficiency, dated April 21, 2000.

4. Definitions

A. All definitions of words and phrases in 40 CFR Part 1508 apply to this Directive.

B. A glossary of words and phrases as used in this Directive is included in Appendix A.

5. Responsibilities

Responsibility for oversight of DHS NEPA activities, unless otherwise delegated, is as follows:

A. The *Secretary of DHS (Secretary)* recognizes the long term value of incorporating environmental stewardship into the planning and development of all DHS missions and activities and exercises the ultimate responsibility in the Department to fulfill environmental planning

requirements. To this end, the Secretary delegates specific authority for environmental planning to the heads of the Directorates, service chiefs, and other direct reports. The Secretary delegates to the Under Secretary for Management, as the Departmental Environmental Executive, the authority to establish an Environmental Planning Program and to ensure that environmental planning requirements are functionally integrated into DHS missions. The following objectives are to be used in guiding environmental planning activities in DHS:

1. Timely and effective support
2. Sustainable capability
3. Consistency with national security, fiscal responsibility, and other considerations of national policy
4. Full compliance with all appropriate environmental laws, Executive Orders, regulations, and other requirements, such as environmental management systems (EMS).

B. The DHS *Department Environmental Executive (DEE)* is the Under Secretary for Management and has authority to fulfill the Secretary's objectives by ensuring that the Department fully integrates environmental planning requirements into all DHS missions and activities. The DEE recognizes that environmental planning is an important and necessary part of good management practice in the Department. To this end, the DEE has delegated specific authority for environmental planning to the Chief of Administrative Services, the Director of the Office of Safety and Environmental Programs, and to other DHS officials as set forth in this Directive. In exercising the authority delegated from the Secretary, the DEE will:

1. Ensure that Under Secretaries and Designated DHS Officials incorporate environmental planning and stewardship requirements into their mission requirements to fulfill the Secretary's objectives, the requirements of NEPA, CEQ Regulations, this Directive, applicable Executive Orders, and other environmental planning requirements.

2. Support budget requests to meet the requirements of this Directive.

3. Consult, as needed, with Under Secretaries and Designated DHS Officials to ensure that they complete appropriate environmental planning for highly sensitive programs or actions that may require the attention of either the Deputy Secretary or the Secretary.

4. Delegate requests for environmental planning-related information received at the Departmental level to the Chief, Administrative Services for action.

C. The *Chief of Administrative Services (CAS)* has authority to support the DEE in efforts to promote good management practice by ensuring that environmental planning requirements are functionally integrated into all of DHS missions and activities. To this end, the CAS has delegated authority to establish a reliable and cost effective environmental planning program to the Director, Office of Safety and Environmental Programs. In exercising this authority, the CAS will:

1. Advise the DEE, as needed, on all environmental planning matters in the Department.

2. Establish, as needed, appropriate Department-wide policy, guidance, or training to enable the effective performance of environmental planning throughout DHS.

3. Recommend, as requested by the DEE, appropriate action on budget requests for environmental planning resources from Under Secretaries and Designated DHS Officials.

4. Consult with Under Secretaries and Designated DHS Officials to ensure that their policies and procedures incorporate the requirements of this Directive.

5. Direct, as needed, the performance of environmental planning activities within DHS components with particular emphasis on highly sensitive programs or actions that may require the attention of the senior executive levels of the Department.

6. Coordinate requests for environmental planning related information received at the Departmental level among appropriate DHS components or assign the request to the appropriate components for resolution.

7. Approve new or revised administrative procedures proposed by DHS components, including the delegation of authority to sign environmental documents pursuant to the recommendations of the Director, Office of Safety and Environmental Programs. Coast Guard, Federal Emergency Management Agency, and Customs and Border Protection, are delegated this authority when this directive goes into effect.

8. Revoke, as appropriate, delegations of authority to a DHS Under Secretary or Designated Official.

D. The *Director, Office of Safety and Environmental Programs (DOSEP)* is designated by the Secretary as DHS Environmental Planning Program Manager and is responsible for establishing and directing the Department's environmental planning program, and ensuring its functional integration into DHS missions. The DOSEP will support the CAS with advice and assistance in carrying out the responsibilities of that office as set forth in the above paragraph. Such advice and assistance will:

1. Advise the CAS, as needed, on all environmental planning matters in the Department.

2. Develop, as needed, policy, guidance, or training to enable the reliable, timely, and cost effective performance of environmental planning throughout the Department to fulfill the Secretary's objectives and other requirements of this Directive.

3. Evaluate for CAS, as requested, budget requests for environmental planning resources.

4. Direct, as needed, the performance of environmental planning activities within DHS components, with particular emphasis on headquarters level programs or actions and those that have the interest of the CAS.

5. Coordinate and respond to requests for environmental planning related information received at the Departmental level among appropriate DHS components or assign the request to the appropriate Directorate for resolution.

6. Review environmental documents, public notices, and other related external communications that require a Departmental-level approval prior to release by the Proponent. This includes all draft, final, and supplemental Environmental Impact Statements (EIS) originating in the Department prior to filing with EPA, unless otherwise delegated.

7. Evaluate new or substantively revised supplemental procedures from DHS components for conformance with this Directive. DHS components' supplemental procedures will only be recommended to CAS for approval after they are evaluated by DOSEP, meet all necessary CEQ and public review requirements, and incorporate all appropriate comments and revisions.

8. Evaluate new or revised DHS component procedures for environmental planning requirements promulgated under laws other than NEPA to ensure appropriate consistency with existing policies or procedures and potential for department-wide applicability.

9. Evaluate requests for delegation of authority from an Under Secretary or a designated DHS Official to sign environmental documents. Such delegation shall only be recommended for approval if the requestor has both approved supplementary procedures and adequate staff resources to fulfill the Secretary's objectives and the requirements of this Directive. The

adequacy of staff resources will involve an evaluation of knowledge and experience in fulfilling environmental planning requirements and preparing NEPA analyses and documentation sufficient to meet the Secretary's objectives. Requests for delegation of authority and supplementary procedures may be evaluated concurrently.

10. Recommend revocation of a delegation of authority from an Under Secretary or a designated DHS Official for inappropriate procedures or inadequate staff resources to ensure full compliance with this Directive or other environmental planning requirements.

11. Assist DHS components, as needed, in reviewing and assessing the environmental impacts of proposed DHS actions covered by Executive Order (E.O.) 12114.

12. Review and comment on EISs and NEPA analyses originating from agencies outside of DHS relating to:

(a) Actions with national policy implications relating to DHS missions;

(b) Legislation, regulations, and program proposals having a potential national impact on a DHS mission, and,

(c) Actions with the potential to encroach upon DHS missions.

13. Coordinate requests from non-Departmental agencies regarding cooperating agency status within DHS, as appropriate.

14. Act as the principal point of contact for DHS on environmental issues brought before CEQ, the Office of Management and Budget, the Advisory Council on Historic Preservation, U.S. Environmental Protection Agency headquarters, and other federal agency headquarters. This includes requests for alternative arrangements to comply with NEPA and CEQ regulations.

15. Perform other functions as are specified in this Directive or as are appropriate under NEPA, CEQ regulations, applicable Executive Orders, other requirements concerning environmental matters.

E. The *Office of General Counsel* will:

1. Provide legal sufficiency review, when appropriate, for use of categorical exclusions, draft, final, and supplemental Environmental Assessments (EAs), Findings of No Significant Impact (FONSIs), Environmental Impact Statements (EISs), and Records of Decision (RODs).

2. Advise Proponents (as defined in Appendix A, Glossary) in consultation with the Environmental Planning Program Manager (EPPM), whether a component's proposed action is subject to the procedural requirements of NEPA.

3. Advise Proponents on compliance with NEPA, CEQ Regulations, applicable Executive Orders, and other environmental planning requirements.

4. Assist in establishing or revising Departmental or component's NEPA procedures, including appropriate categorical exclusions (CATEX).

F. All *Under Secretaries, Designated DHS Officials,* and *Heads of Components* will:

1. Fully integrate the requirements of this Directive into planning for all applicable programs, activities, and operations. Ensure that the planning, development, and execution of all their missions and activities conform to the policy and procedures in this Directive.

2. Ensure that DHS Proponents take the lead in environmental planning efforts and maintain an understanding of the potential environmental impacts of their programs and projects.

3. Plan, program, and budget for the requirements of this Directive.

4. Support outreach processes for environmental planning.

5. Coordinate with other DHS components on environmental issues that affect them.

6. Prepare and circulate environmental documents for the consideration of others when an action or policy area in question falls under their jurisdiction as required by 40 CFR Part 1506.9.

7. Request the assistance of DOSEP in preparing the environmental analysis for any actions covered by E.O. 12114, unless otherwise delegated.

8. Propose to the CAS, for review and approval, new or revised supplemental procedures for the implementation of this Directive. All supplemental procedures will be consistent with the National Environmental Policy Act, this Directive and the CEQ regulations.

(a) Proposals to establish, substantively revise, or delete CATEXs are subject to DOSEP review, CEQ review, public comment, and publication of a final version in the **Federal Register** before they can be used.

(b) For those Under Secretaries and Designated DHS Officials with delegated authority to sign environmental documents, preparation of handbooks and other technical guidance regarding NEPA implementation do not need CAS and CEQ approval.

9. Propose to the CAS any new or revised procedures for environmental planning requirements promulgated pursuant to laws other than NEPA to confirm appropriate consistency with existing department-wide policies or procedures and to evaluate potential applicability to other DHS components. Any new or revised procedures must be consistent with existing department-wide policies or procedures.

10. Send all environmental documents and procedures via their respective organizational hierarchy to the DOSEP for review, prior to release to the public, unless otherwise delegated.

11. Components not listed in paragraph 5.C.7 may request from the CAS a delegation of authority to sign environmental documents. The request should include documentation demonstrating that the component has adequate staff resources with knowledge and experience in preparing NEPA analyses and documentation sufficient to ensure full compliance.

12. Ensure that all external communications on environmental planning requirements that are controversial, highly visible, classified, sensitive or related to matters with potential for Department-wide implications are coordinated with the DOSEP and provide DOSEP with a copy of all related formal communications.

13. Respond to requests for copies of environmental documents, reports or other information related to the implementation of NEPA.

14. Designate an appropriate Environmental Planning Program Manager (EPPM) and alternate in their respective components as a single point of contact for coordination with DOSEP on relevant environmental planning matters.

G. *Environmental Planning Program Managers (EPPMs)* will:

1. Act as a single point of contact for DOSEP on all environmental planning matters.

2. Inform key officials within their respective components of current developments in environmental policy and programs.

3. Coordinate environmental planning strategies for matters within their respective component's purview.

4. Act to further their respective components compliance with the requirements of NEPA, CEQ regulations, this Directive, applicable Executive Orders, and other environmental requirements.

5. Identify discretionary activities within their respective components and ensure that the requirements of this Directive are fully integrated into those activities.

6. Work with Proponents in their respective components, as needed, to fulfill the requirements of this Directive and other environmental planning requirements. Consultation with Proponents will, at a minimum, involve the following objectives:

(a) Ensure that appropriate environmental planning, including the analyses and documentation required by NEPA, is completed before the Proponent makes a decision that has adverse environmental effects or limits the choices of alternatives to satisfy an objective, fix a problem, or address a weakness.

(b) Plan, program, and budget to meet the requirements of this Directive.

(c) Support the execution of the requirements of this Directive.

(d) Ensure that their respective DHS Proponents are cognizant of the potential environmental impacts of their programs and projects.

(e) Monitor the preparation and review of environmental planning efforts to ensure compliance with all applicable scheduling, scoping, consultation, circulation, and public involvement requirements.

(f) Advocate and develop, as appropriate, agreements with federal, tribal, and state regulatory and/or resource agencies concerning NEPA and other environmental planning requirements.

(g) Coordinate with other DHS components on environmental issues that affect them.

(h) Coordinate with DOSEP in preparing the environmental analysis for any actions covered by E.O. 12114.

7. Propose changes in this Directive or their supplementary procedures through the appropriate lines of authority to DOSEP.

8. Support outreach processes for environmental planning.

9. In consultation with the DOSEP, define appropriate environmental training requirements for personnel within their respective components.

10. Coordinate with DOSEP on environmental issues to be brought before CEQ, the Office of Management and Budget, the Advisory Council on Historic Preservation, U.S. Environmental Protection Agency headquarters, and other federal agency headquarters.

11. Coordinate requests from non-Departmental agencies regarding cooperating agency status with DOSEP.

H. *Program or Project Proponents* will (in consultation with their respective EPPM):

1. Ensure that appropriate environmental planning, including the analyses and/or documentation required by NEPA is completed before a decision is made that limits the choices of alternatives to satisfy an objective, fix a problem, address a weakness, or develop a program.

2. Ensure that the program or project has adequate funding and resources to complete appropriate environmental analysis and documentation.

3. Ensure the quality of the analysis and the documentation produced in the environmental planning process.

4. Perform the appropriate outreach and communication with federal, state, tribal, local, and public interests.

5. Ensure that the project budget has sufficient resources to meet all mitigation commitments.

6. Seek technical assistance from the DOSEP, as needed, through the appropriate lines of authority to ensure compliance with NEPA.

6. Policy

A. Stewardship of the air, land, water, and cultural resources is compatible with and complementary to the planning and execution of the DHS mission. Environmental planning processes provide a systematic means of evaluating and fulfilling this aspect of DHS responsibility. DHS recognizes that when environmental stewardship responsibilities are not managed effectively, there may be social, financial, and administrative costs, as well as lost opportunities and potential for lower quality mission outcomes. To effectively meet its environmental stewardship responsibilities, DHS will integrate environmental planning requirements into homeland security operational planning, program development, and management methodologies consistent with homeland security requirements, fiscal policies, and other considerations of national policy.

B. DHS Proponents will have the lead role in the environmental planning process. DHS Proponents will be cognizant of the impacts of their decisions on cultural resources, soils, forests, rangelands, water and air quality, fish, and wildlife, and other natural resources in the context of terrestrial and aquatic ecosystems. DHS Proponents will employ all practical means consistent with other considerations of national policy to minimize or avoid adverse environmental consequences and attain the goals and objectives stated in NEPA.

C. DHS Proponents will provide for adequate staff, funding, and time to integrate environmental planning into DHS missions and to perform appropriate NEPA analysis (in conformance with 40 CFR 1507.2) for programs, plans, policies, projects, regulations, orders, legislation or applications for permits, grants, or licenses. Should mitigation be necessary to reduce the environmental effects of a DHS proposed action, the Proponent will be responsible for providing the costs of mitigation or ensuring that the applicant provides for mitigation.

D. DHS Proponents will integrate the NEPA process with other DHS planning and project decision making activities and other environmental review requirements sufficiently early to:

1. Ensure that mission planning, program development, and project decision making reflect the Secretary's objectives and the policies in this Directive.

2. Ensure that no action moves forward for funding or approval without the systematic and interdisciplinary examination of likely environmental consequences according to the policy and procedures in this Directive.

3. Balance environmental concerns with mission requirements, technical requirements, and costs in the decision making processes to ensure long-term sustainability of DHS operations.

4. Allow for appropriate communication, cooperation, and collaboration between DHS, other government entities, the public, and non-governmental entities as an integral part of the NEPA process.

E. DHS Proponents will emphasize quality analysis of the potential for environmental effects among alternative courses of action to meet mission needs and the development of strategies to minimize those effects. Documentation required under NEPA will present the evaluation of environmental effects and the development of the minimization strategies. The depth of analysis and volume of documentation will be proportionate to the nature and scope of the action, and to the complexity and level of anticipated effects on important environmental resources. Documentation is necessary to present results of the analysis, but the objective is quality analysis to support DHS decisions, not the production of documents.

F. DHS Proponent, in consultation with the EPPM and the Office of General Counsel, will determine the level of NEPA analysis required for the proposed action. DHS Proponents will complete their NEPA analysis and review for each DHS proposed action before making a final decision on whether to proceed with the proposed action. No action or portion of an action that is the subject of an EA or EIS process will be taken that limits reasonable alternatives, involves a conflict of resource use, or has an adverse environmental effect until the ROD or FONSI has been made public. No actions or portions of an action covered by a CATEX that requires a Record of Environmental Consideration

(REC) will be taken until the REC is completed.

G. Laws other than NEPA that require DHS to obtain or confirm the approval of other federal, tribal, state, or local government agencies before taking actions that are subject to NEPA, will be integrated into the NEPA process at the earliest possible stage and to the fullest extent possible. However, compliance with other environmental laws does not relieve the Proponent from completing an environmental planning process, including appropriate compliance with NEPA. In addition, compliance with NEPA does not relieve the Proponent from complying with other environmental requirements.

7. Procedures

A. Appendix A contains specific procedures for the application of environmental planning requirements to DHS consistent with the Secretary's objectives and the policies in this Directive. Appendix A also provides a glossary.

B. A DHS component with delegation of authority under Section 5.C.7 may also propose supplemental procedures for CAS approval. Supplemental procedures specific to a DHS component will be effective upon approval by CAS.

C. All supplemental procedures must be fully consistent with this Directive.

D. DHS components may not use the CATEX expressly limited to another DHS component or CATEX from any other federal agency.

E. The CAS may revoke all or part of a component's delegation and any supplemental procedures. No component will be given approval to implement its own supplemental procedures, unless they also have received complete delegation authority.

F. Components may prepare handbooks or other technical guidance for their personnel on how to apply these procedures to their programs.

G. Any questions or concerns regarding this Directive should be addressed to the Director, Office of Safety and Environment.

Appendix A, Timely and Effective Environmental Planning in the Department of Homeland Security

Introduction

This Appendix provides guidance for timely and effective environmental planning and includes supplementary instructions for implementing the NEPA process in DHS. The numbers in parentheses signify the relevant citation in CEQ Regulations. DHS and its components will use NEPA as a strategic planning tool, not as a documentation exercise. DHS is committed to using all of the tools at its disposal to ensure timely and effective environmental planning and implementation of the NEPA process.

1.0 General Policies and Provisions

Timely and effective environmental planning involves a systematic process to identify and evaluate the potential for significant environmental effects from a proposed DHS action. Proponents of programs and activities within DHS have a major role in this process and are responsible for implementing the policies and provisions set out in this section. This process and the guidance in this Directive are designed to focus effort on those types of actions with the most potential for significant environmental effects. The process involves three levels of evaluation effort as shown in Figure 1: Categorical exclusion, environmental assessment, and environmental impact statement. These levels reflect the increasing potential for significant environmental effects. It is expected that the majority of proposed DHS actions will be able to be evaluated through CATEX or environmental assessments. Fewer DHS actions are likely to require an EIS, which is prepared for those proposals with the potential to significantly impact natural resources and the human environment.

1.1 Up-Front Planning Activities

A. Continually assess environmental planning in DHS to improve its effectiveness in supporting and enabling departmental missions.

B. Adapt environmental planning goals and requirements to complement DHS mission requirements.

C. Fully integrate NEPA and other environmental planning goals and requirements into program planning and decision-making processes and formal direction, as appropriate, at all levels of the DHS organization.

D. Ensure that environmental planning staffs are located within the DHS organization where they can function as effective members of interdisciplinary planning and project teams.

E. Enable effective environmental planning through appropriate training, education, and interagency support relationships.

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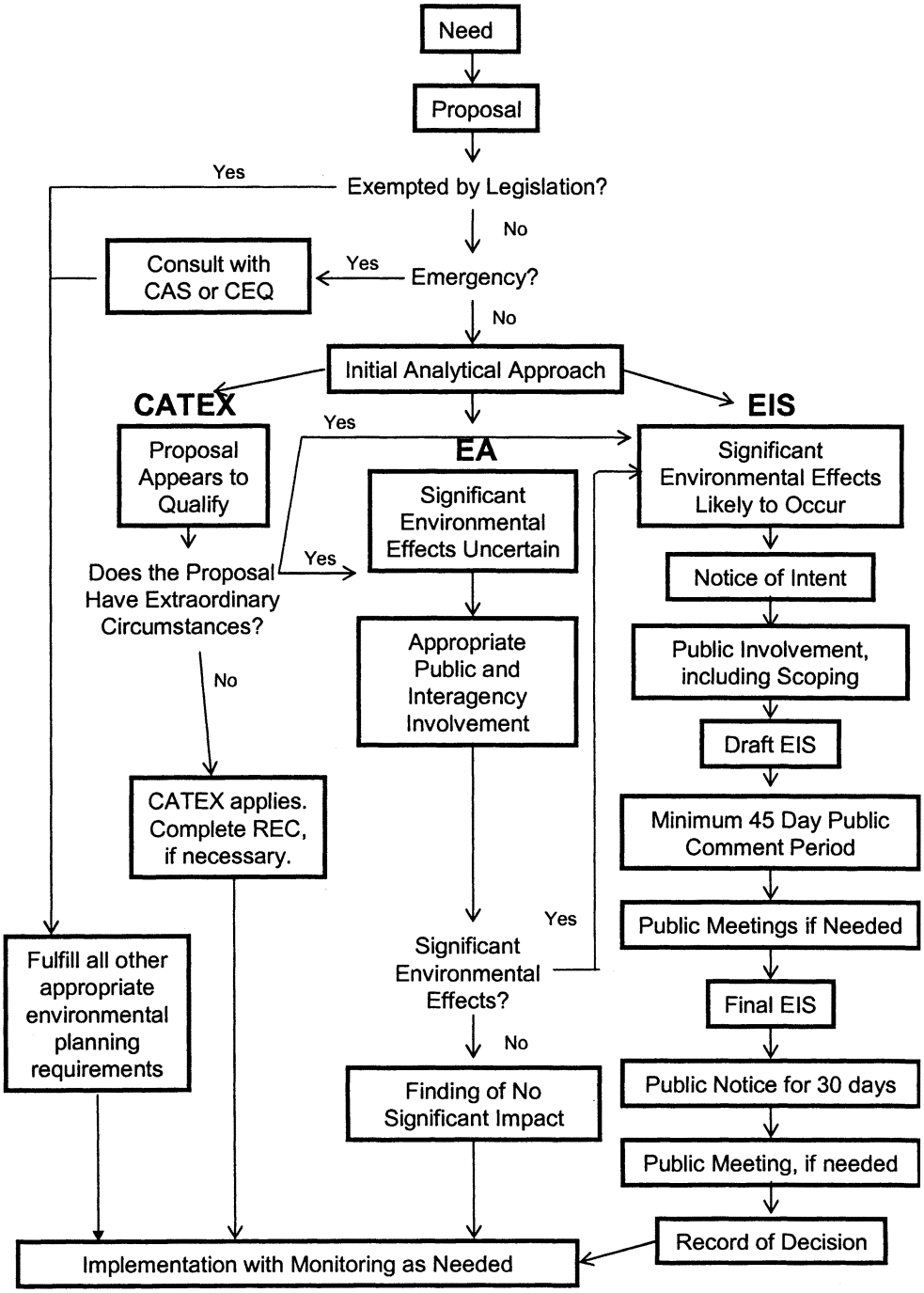
Figure 1: The Environmental Planning Process Under NEPA



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1.2 Ongoing Administration

A. Ensure that appropriate environmental planning, including the analyses and documentation required by NEPA, is completed before the Proponent makes a decision that limits the choice of alternatives to satisfy an objective, fix a problem, or address a weakness.

B. Integrate environmental and planning reviews concurrently, rather than sequentially, with the NEPA process.

C. Use public involvement processes to limit the analysis of issues to those that are important to the decision making at hand.

D. Share information with and coordinate with other federal, tribal, state, and local agencies early in the planning process and integrate planning responsibilities with other agencies and governments.

E. Take into account the views of the surrounding community and other interested members of the public during its planning and decision making process.

F. Offer cooperating agency status, where appropriate, to other federal, tribal, state, and local agencies that have

jurisdiction by law or special expertise, which means statutory responsibility, agency mission or related program experience, with respect to environmental issues.

G. Ensure the scientific integrity of all environmental impact analyses, mitigation requirements, and monitoring requirements.

H. Make maximum use of programmatic analyses and tiering of environmental planning efforts to provide relevant environmental information at the appropriate program and project decision levels, eliminate repetitive analyses and discussion, ensure proper consideration of cumulative effects, and focus on issues that are important to the decision being made.

I. In accordance with 40 CFR 1506.3, consider adopting relevant existing environmental impact analyses, or any pertinent parts thereof, whether prepared by DHS or another agency. Adopted environmental impact analyses of others may be revised or supplemented as needed to serve DHS purposes.

J. Incorporate material by reference to reduce unnecessary paperwork without impeding public review. The referenced material must be reasonably available for public review within the time allowed for comment.

K. Update the list of CATEX to ensure that DHS environmental planning resources remain focused on those activities with the most potential for significant effects.

1.3 Follow Through—Monitoring and Mitigation (40 CFR 1505.3)

A. Practical mitigation measures (i.e., those that can be reasonably accomplished within the scope of a proposed alternative, to include offsite mitigation) should be identified to address the impacts of the proposed action and alternatives. Any mitigation measures selected by the Proponent will be clearly outlined in the FONSI or ROD and will be included in the proposed budget for the project or made a part of the approved application from external entities.

B. Use best management practices and existing environmental management systems, to implement a project and monitor the predicted environmental effects. Using adaptive management techniques, adapt the implementation of a project as new information becomes available.

C. Budget for mitigation. The Proponent will ensure funding to implement mitigation commitments or ensure that external applicants provide for mitigation funding in their proposal prior to approval by DHS.

D. Implement mitigation. Ensure that all mitigation commitments in the ROD or FONSI are implemented.

E. Monitor Results. Monitoring of the expected environmental effects from DHS projects, including appropriate indicators of effectiveness, is an integral part of any mitigation system. The Proponent is responsible for ensuring monitoring during mitigation, where necessary, to ensure that the final decision justified in the ROD or FONSI is implemented. For external applicants, the Proponent is responsible for ensuring that the applicant provides for monitoring. The Proponent is responsible for responding to inquiries from the public or other agencies regarding the status of mitigation measures adopted in the NEPA process.

1.4 Dispute Resolution

A. *The DHS Dispute Resolution Process.* During the environmental planning process, a DHS Proponent and another federal agency may not agree on significant issues or aspects of the process. DHS policy is to seek to resolve these disputes at the lowest organizational level possible. However, there are occasions when disputes cannot be resolved at this level. Figure 2 provides a diagram of the full dispute resolution process within DHS. Alternative Dispute Resolution, using the Institute for Environmental Conflict Resolution (a federal agency based in Tucson, Arizona) or another mediation service, is an option that may be used at any stage of this dispute resolution process for more significant disputes.

When significant disputes arise, it is important to maintain a record of the positions and interests of all of the disputing parties, as well as the eventual resolution of the dispute. The Proponent will provide the other federal agency with written notification, using certified mail or a comparable method, detailing the nature of the disagreement. The Proponent will attempt to resolve the dispute within 30 working days of notification.

If dispute negotiations fail, the Proponent must notify the other federal agency in writing that an agreement is unlikely and provide a copy to the headquarters of the respective DHS component (where the component does not have a separate headquarters, then the notification must go to the Proponent's program office within their respective Assistant Secretary's staff). From the date of that letter, the headquarters of the DHS component will initiate 30 additional working days of negotiations.

If after 30 working days, the headquarters of the DHS component has not resolved the issue, it will be forwarded to the DEE. The DEE may appoint a negotiating team and/or seek Council on Environmental Quality (CEQ) support in resolving the issue.

B. *The CEQ Referral Process (40 CFR Part 1504).* The CEQ referral process is available when an agency is of the opinion that there are unacceptable environmental effects associated with another agency's proposed actions. Upon receipt of information that another federal agency intends to refer a DHS matter to CEQ, the DHS lead component will immediately notify and consult with the DOSEP to notify the DEE and determine how to proceed. In those instances where a DHS component is of the opinion that another agency's proposed action that is being analyzed in an EIS will result in unacceptable environmental effects, the component should elevate the matter to the DOSEP and DEE at the earliest possible time to determine how to proceed in accordance with 40 CFR part 1504.

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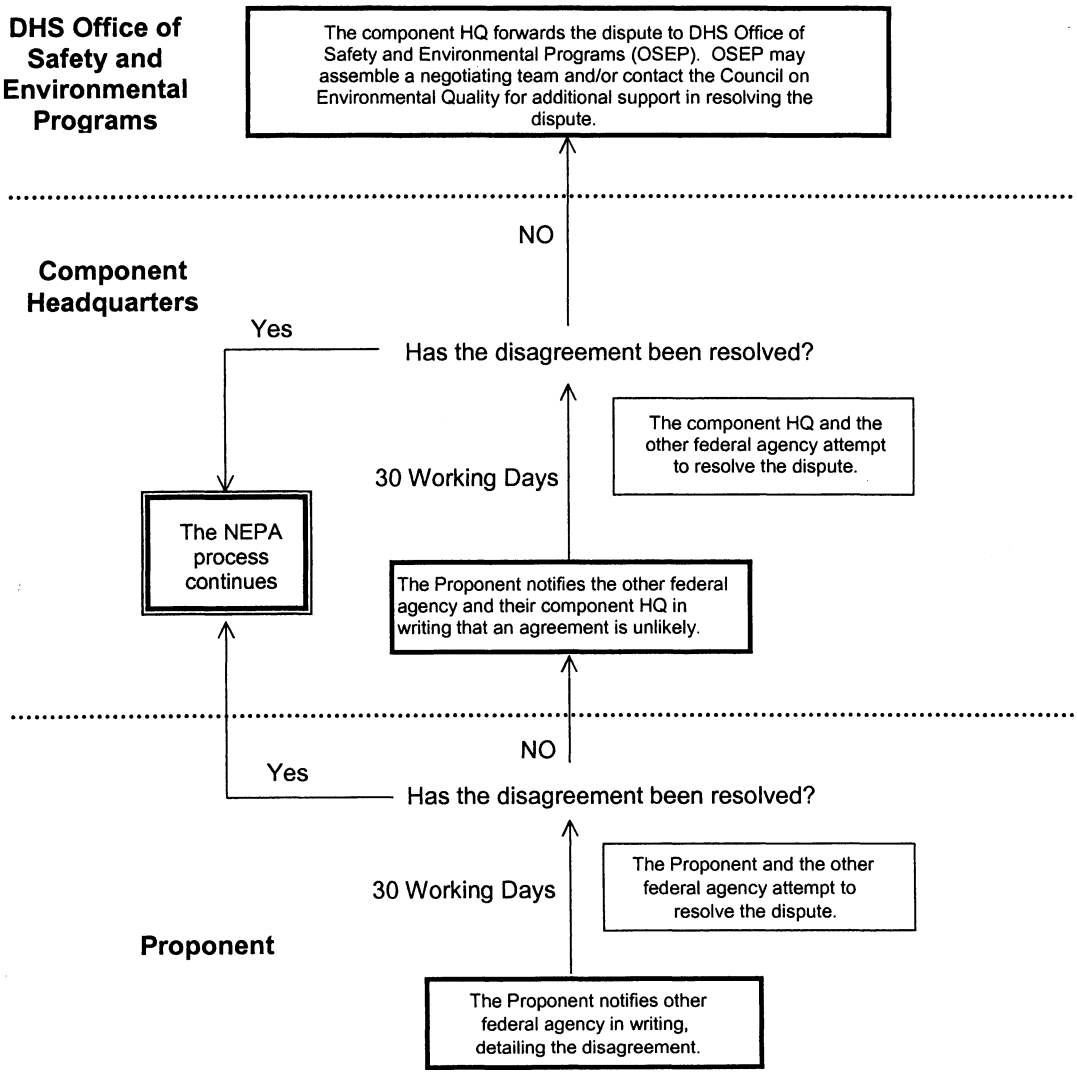
Figure 2: Dispute Resolution Flowchart



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2.0 Intergovernmental Collaboration and Public Involvement

2.1 Purpose

Open communication, consistent with other federal requirements, is DHS policy. The purpose of this policy is to build trust between DHS and the communities it serves. Other organizations and citizens play an important role in protection of resources and their communities. Collaboration with other federal, tribal, state, and local agencies, as well as non-governmental organizations (NGOs) and the general public is an effective means to identify important issues to be considered in the environmental planning process. In many cases, these parties have expertise not available in DHS or they may have authorities and obligations to protect specific resources or to approve or fund all or a part of the proposal. Knowing these issues early in the environmental planning process enables a focused effort on issues that are of most interest to the public and importance to the relevant DHS decision.

Collaboration, through meaningful and regular dialogue with those outside of DHS, can serve to avoid conflicts and facilitate resolution when conflicts occur. Awareness and consideration of the needs and requirements of other organizations and the general public,

consistent with mission requirements, will enhance the effectiveness of DHS missions.

2.2 Coordination With Other Government Agencies, Tribes, States, and the General Public

DHS policy is to seek out and coordinate with other federal departments and agencies, tribal, state, and local governments, non-governmental organizations, and the general public early in all appropriate aspects of environmental planning, especially in an environmental impact analysis process. In many cases, these organizations have expertise not available in DHS or they may have authorities and obligations to protect specific resources.

A. When DHS is the lead agency for an environmental planning effort, it is responsible for the scope of the NEPA analysis and the use of processes to coordinate with other government agencies, tribes, states, and the general public to assist in defining that scope.

B. When another agency has expertise to analyze the potential environmental effect of a DHS proposal, the Proponent will coordinate with it early to ensure high quality and complete analysis.

C. DHS will coordinate draft environmental impact analyses with appropriate federal, tribal, and state governments, as well as other interested parties.

D. Among the various Federal agencies that can be involved in an environmental planning effort, EPA has a special role. Section 309 of the Clean Air Act provides the EPA Administrator with authority to, among other things, review and comment in writing on the environmental impact of any matter relating to the environment contained in any authorized federal projects for construction and any major federal agency action for which NEPA applies. At a minimum, DHS Proponents must ensure that their EISs are appropriately coordinated with the EPA.

E. Proponents will make special effort to coordinate with affected tribes. In particular, Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' directs all federal departments to, among other things, ''strengthen the United States government-to-government relationships with Indian tribes and establish regular and meaningful consultation and collaboration with tribal officials in the development of Federal policies that have tribal implications * * *''

F. Obtaining the views of the surrounding community and other interested parties during planning and decision making processes helps proponents to focus the analysis to issues that are important to the public or the decision making at hand and set the boundaries of the environmental evaluation. Public involvement is a process that starts early and continues throughout the planning and early stages of conducting a NEPA analysis.

G. Scoping (40 CFR 1501.7) is a term for the process of coordination with other government agencies, tribes, states, and the general public that is required for EISs. DHS strongly encourages the use of a process like scoping for EAs.

2.3 Lead Agencies (40 CFR 1501.5)

The lead agency in an environmental planning process has the responsibility to define the scope and substance of the environmental planning effort.

A. DHS will be the lead agency when a proposed action is clearly within the province of DHS authority. Likewise, an Under Secretary or designated DHS Official will seek to form a joint-lead relationship, when another agency has initiated an action within the province of DHS authority or has a significant responsibility regarding the action.

B. Unless otherwise delegated, the CAS will designate a component within DHS to be the lead agency when more than one component could be involved. As necessary, the CAS will represent the Department in consultations with CEQ or other federal entities in the resolution of lead-agency determinations.

C. To eliminate duplication with state and local procedures, a non-federal agency may be designated as a joint lead agency when a component has a duty to comply with state or local requirements that are comparable to the NEPA requirements.

2.4 Cooperating Agencies (40 CFR 1501.6 and 1508.5)

DHS components are encouraged to use the cooperating agency process. Other federal, tribal, or state agencies may share a role in the environmental planning associated with programs or projects in DHS missions. These agencies often have specialized expertise or authority in environmental planning requirements that can benefit DHS mission planning. Where another federal, tribal, or state government agency has jurisdiction by law or special expertise with respect to environmental issues, the DHS Proponent should encourage the agency to be a cooperating agency pursuant to 40 CFR 1501.6 and 1508.5.

Any federal agency with jurisdiction by law must be a cooperating agency, if requested by the lead agency. Any federal agency with special expertise with respect to environmental issues in an environmental impact analysis may also be a cooperating agency, by agreement. Any tribal, state, or local government entity with jurisdiction by law or special expertise on any environmental issue may also be a cooperating agency, by agreement.

CAS, as needed, will coordinate requests from non-Departmental agencies in determining cooperating agency status within DHS.

2.5 Public Involvement (40 CFR 1506.6)

Open communication with the American public in the environmental planning process, consistent with other federal requirements, is DHS policy. Public involvement in the environmental planning process helps produce better decisions. Other public organizations, NGOs, and citizens play an important role in the protection of resources. DHS encourages early and open public involvement in environmental planning processes.

A. *Environmental Assessments.* The Proponent will involve other agencies, applicants, and the public in the environmental impact evaluation process leading to the preparation of an EA, to the extent practicable (to the extent that it can be done). The Proponent has discretion under 40 CFR 1501.4 (b) and 1506.6(a) regarding the type and level of public involvement and the length of any public comment period in EA preparation. Section 4.3 describes the public involvement policy for an EA in greater detail. The following factors are to be weighed in determining the nature of the public involvement effort and the length of the public comment period in EA preparation.

(1) Magnitude of the proposed project/action and impacts.

(2) Extent of anticipated public interest, based on experience with similar proposals.

(3) Urgency of the proposal.

(4) National security classification.

(5) The presence of minority or economically-disadvantaged populations that may be impacted.

(6) Nature of the environmental impact evaluation; for example a determination of conformity with a state air quality implementation plan may require public review. The guidance under the following section for EISs (section 2.6.B) should also be considered when preparing an environmental assessment.

B. *Environmental Impact Statements.* CEQ regulations mandate specific

public-involvement steps in the EIS. Component's will:

(1) *Provide for appropriate public involvement.* Public involvement must begin early in the proposal development stage, and during preparation of an EIS. The involvement of other federal agencies and state, local, and tribal governments with jurisdiction or special expertise with respect to environmental issues, as well as the general public, is an integral part of impact analysis, and provides information and conclusions for incorporation into an EIS. Information obtained from public involvement efforts can help to focus environmental analysis effort on the impacts with the most potential for significance. A public meeting may be appropriate. The need for a formal public hearing should be determined in accordance with the criteria set forth in 40 CFR Part 1506.6(c).

(2) *Provide public notice of NEPA-related hearings, public meetings, and the availability of environmental documents.* The notice should be provided by effective and efficient means most likely to inform those persons and agencies that may be interested or affected, including minority populations and low-income populations. Special effort should be made to identify and perform outreach to affected minority populations and low-income populations. Public notices for NEPA activities involving proposals that are controversial, likely to receive Congressional or high-level executive branch attention, likely to gain nationwide attention, have DHS wide effects, or involve classified or sensitive issues should be cleared with the Departmental Environmental Executive (DEE) prior to publication.

(3) *Tailor the methods to reach the audience of concern.* Make every effort to make materials available and accessible to affected or interested populations. Special outreach efforts may be needed to reach affected tribes and minority populations and low-income populations. Translation may be required to reach limited-English speakers. Additionally, components are encouraged to use electronic means to provide access to and distribution of environmental planning information and NEPA documents.

2.6 Review of Other Agencies' Analyses and Documents

A. DHS components should review and comment on other agencies' environmental analyses and documents when the proposed action may impact DHS missions, operations, or facilities.

B. Comments should be confined to matters within the jurisdiction or expertise of the Department; such as security, immigration, or enforcement.

C. If a DHS component intends to issue formal adverse comments on a non-DHS agency's analysis or document, the matter should be coordinated with DOSEP prior to issuing the comments.

3.0 Categorical Exclusions (40 CFR 1507.3(b)(2)(ii))

3.1 Purpose

A. CEQ regulations (40 CFR 1508.4) provide for federal agencies to establish categories of actions that based on experience do not individually or cumulatively have a significant impact on the human environment and, therefore, do not require an Environmental Assessment (EA) or Environmental Impact Statement (EIS). These CATEXs allow DHS components to avoid unnecessary efforts and paperwork and concentrate their resources on those proposed actions having real potential for environmental concerns.

B. Components may otherwise decide to prepare environmental assessments for the reasons stated in CEQ regulations (1508.9) even though it is not required to do so.

C. All requests to establish, substantively revise or delete CATEXs (together with justification) will be forwarded through the component to the DOSEP for approval. Upon DOSEP approval, proposals to delete, modify, or establish new CATEXs will be subject to both CEQ review and public comment before they will be available for use.

3.2 Conditions and Extraordinary Circumstances (40 CFR 1508.4)

For an action to be categorically excluded, DHS components, working with the EPPM, must satisfy each of the three conditions described below. If the proposed action does not meet these conditions, is not exempted by a statute or subject to emergency provisions for alternative compliance with NEPA, an EA or an EIS must be prepared before the action may proceed. Where it may not be clear whether a proposed action will meet these conditions, the Proponent must ensure that the administrative record reflects consideration of these conditions. Certain CATEX require documentation of the consideration of these conditions in the form of a Record of Environmental Consideration. A component should not use a CATEX for an action with significant impacts, regardless of whether the impacts are beneficial or adverse.

A. *Clearly Fits the Category.* The entire action clearly fits within one or more of the categories of excludable actions listed in Section 3.3.

B. *Is Not a Piece of a Larger Action.* It is not appropriate to segment an action or connected actions by division into smaller parts in order to avoid a more extensive evaluation of the potential for significant environmental impacts under NEPA. One form of segmentation occurs when the scope of the action has been divided solely for the purposes of using several CATEX or the repetitive use of a single CATEX. For purposes of NEPA, actions must be considered in the same review if the actions are connected, for example: where one action triggers or forces another; where one action depends on another (*e.g.,* when one action is an interdependent part of a larger action, or where one action will not proceed unless another action is taken).

C. *No Extraordinary Circumstances Exist.* It is not appropriate to categorically exclude an action when there are extraordinary circumstances present that would create the potential for a normally excluded action to have a significant environmental effect. In those cases where a specific action that might otherwise be categorically excluded is associated with one or more extraordinary circumstances, a Record of Environmental Consideration (REC), as described in paragraph 3.3.B, will be prepared to document the determination that the proposed action is appropriately categorically excluded or requires further analysis through an EA or EIS process. A determination of whether an action that is normally excluded requires additional analysis because of extraordinary circumstances must focus on the action's potential effects and consider the environmental significance of those effects in terms of both context (whether local, state, regional, tribal, national, or international) and intensity. This determination is made by considering whether the specific action is likely to involve one or more of the following circumstances:

(1) A potentially significant effect on public health or safety.

(2) A potentially significant effect on species or habitats protected by the Endangered Species Act, Marine Mammal Protection Act, the Migratory Bird Treaty Act, or Magnuson-Stevens Fishery Conservation and Management Act.

(3) A potentially significant effect on a district, site, highway, structure, or object that is listed in or eligible for listing in the National Register of Historic Places, affects a historic or cultural resource or traditional and sacred sites, or the loss or destruction of

a significant scientific, cultural, or historical resource.

(4) A potentially significant effect on an environmentally sensitive area.

(5) A potential or threatened violation of a federal, state, or local law or administrative determination imposed for the protection of the environment. Some examples of administrative determinations to consider are a local noise control ordinance; the requirement to conform to an applicable State Implementation Plan (SIP); and federal, state, or local requirements for the control of hazardous or toxic substances.

(6) An effect on the quality of the human environment that is likely to be highly controversial in terms of scientific validity, likely to be highly uncertain, or likely to involve unique or unknown environmental risks.

(7) Employment of new technology or unproven technology that is likely to involve unique or unknown environmental risks, where the effect on the human environment is likely to be highly uncertain, or where the effect on the human environment is likely to be highly controversial in terms of scientific validity.

(8) Extent to which a precedent is established for future actions with significant effects.

(9) Significantly greater scope or size than normally experienced for a particular category of action.

(10) Potential for significant degradation of already existing poor environmental conditions. Also, initiation of a potentially significant environmental degrading influence, activity, or effect in areas not already significantly modified from their natural condition.

(11) Whether the action is related to other actions with individually insignificant, but cumulatively significant impacts.

3.3 List of Categorically Excludable Actions

A. Table 1 provides a list of Categorical Exclusions, i.e., those activities which normally require no further NEPA analysis in an EA or an EIS. When relying on Table 1, Proponents, in consultation with their EPPM, should be alert for the presence of the extraordinary circumstances listed in Section 3.2. DHS CATEXs are divided into the following functional groupings of activities conducted by DHS components in fulfilling the Department's mission:

(1) Administrative and Regulatory Activities

(2) Operational Activities

(3) Real Estate Management Activities

(4) Repair and Maintenance Activities

(5) Construction, Installation, and Demolition Activities

(6) Hazardous/Radioactive Materials Management and Operations

(7) Training and Exercises

(8) Categorical Exclusions for specific DHS components

B. *Record of Environmental Consideration (REC).* When there are extraordinary circumstances associated with a specific proposal that is a part of class of actions that is otherwise categorically excluded, a REC must be prepared. A REC is a means of documenting the consideration of the conditions listed in Section 3.2 and the determination that the specific action contemplated is either appropriately categorically excluded or should be analyzed through an EA or an EIS process. Certain CATEX, identified by an asterisk, include classes of actions that have a higher possibility of involving extraordinary circumstances. A REC will be prepared whenever a CATEX that is identified by an asterisk is used. The DOSEP will sign all RECs unless signature authority has been delegated to the component. The REC will normally not exceed two pages.

TABLE 1.—CATEGORICAL EXCLUSIONS

CATEX#	
Administrative and Regulatory Activities. These CATEX have the additional requirement to be conducted in conformance with Executive Orders on Greening the Government, E.O.s 13101, 13123, 13148, 13149, and 13150.	
A1	Personnel, fiscal, management, and administrative activities, such as recruiting, processing, paying, recordkeeping, resource management, budgeting, personnel actions, and travel.
A2	Reductions, realignments, or relocation of personnel that do not result in exceeding the infrastructure capacity or changing the use of space. An example of a substantial change in use of the supporting infrastructure would be an increase in vehicular traffic beyond the capacity of the supporting road network to accommodate such an increase.
A3	Promulgation of rules, issuance of rulings or interpretations, and the development and publication of policies, orders, directives, notices, procedures, manuals, advisory circulars, and other guidance documents of the following nature: (a) Those of a strictly administrative or procedural nature; (b) Those that implement, without substantive change, statutory or regulatory requirements; (c) Those that implement, without substantive change, procedures, manuals, and other guidance documents; (d) Those that interpret or amend an existing regulation without changing its environmental effect; (e) Technical guidance on safety and security matters; or, (f) Guidance for the preparation of security plans.
A4	Information gathering, data analysis and processing, information dissemination, review, interpretation, and development of documents. If any of these activities result in proposals for further action, those proposals must be covered by an appropriate CATEX. Examples include but are not limited to: (a) Document mailings, publication and distribution, training and information programs, historical and cultural demonstrations, and public affairs actions. (b) Studies, reports, proposals, analyses, literature reviews; computer modeling; and non-intrusive intelligence gathering activities.
A5	Awarding of contracts for technical support services, ongoing management and operation of government facilities, and professional services that do not involve unresolved conflicts concerning alternative uses of available resources.

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
A6	Procurement of non-hazardous goods and services, and storage, recycling, and disposal of non-hazardous materials and wastes, that complies with applicable requirements and is in support of routine administrative, operational, or maintenance activities. Storage activities must occur on previously disturbed land or in existing facilities. Examples include but are not limited to: (a) Office supplies, (b) Equipment, (c) Mobile assets, (d) Utility services, (e) Chemicals and low level radio nuclides for laboratory use, (f) Deployable emergency response supplies and equipment, and (g) Waste disposal and contracts for waste disposal in established permitted landfills and facilities.
A7	The commitment of resources, personnel, and funding to conduct audits, surveys, and data collection of a minimally intrusive nature. If any of these commitments result in proposals for further action, those proposals must be covered by an appropriate CATEX. Examples include, but are not limited to: (a) Activities designed to support the improvement or upgrade management of natural resources, such as surveys for threatened and endangered species, wildlife and wildlife habitat, historic properties, and archeological sites; wetland delineations; timber stand examination; minimal water, air, waste, material and soil sampling; audits, photography, and interpretation. (b) Minimally-intrusive geological, geophysical, and geo- technical activities, including mapping and engineering surveys. (c) Conducting Facility Audits, Environmental Site Assessments and Environmental Baseline Surveys, and (d) Vulnerability, risk, and structural integrity assessments of infrastructure.
	Operational Activities
B1	Research, development, testing, and evaluation activities, or laboratory operations conducted within existing enclosed facilities consistent with previously established safety levels and in compliance with applicable Federal, tribal, state, and local requirements to protect the environment when it will result in no, or *de minimus* change in the use of the facility. If the operation will substantially increase the extent of potential environmental impacts or is controversial, an EA (and possibly an EIS) is required.
B2	Transportation of personnel, detainees, equipment, and evidentiary materials in wheeled vehicles over existing roads or jeep trails established by federal, tribal, state, or local governments, including access to permanent and temporary observation posts.
B3	Proposed activities and operations to be conducted in an existing structure that would be compatible with and similar in scope to its ongoing functional uses and would be consistent with previously established safety levels and in compliance with applicable Federal, tribal, state, or local requirements to protect the environment.
B4	Provision of on-site technical assistance to non-DHS organizations to prepare plans, studies, or evaluations. Examples include, but are not limited to: (a) General technical assistance to assist with development and enhancement of Weapons of Mass Destruction (WMD) response plans, exercise scenario development and evaluation, facilitation of working groups, etc. (b) State strategy technical assistance to assist states in completing needs and threat assessments and in developing their domestic preparedness strategy.
B5	Support for or participation in community projects that do not involve significant physical alteration of the environment. Examples include, but are not limited to: (a) Earth Day activities, (b) Adopting schools, (c) Cleanup of rivers and parkways, and (d) Repair and alteration of housing.
B6	Approval of recreational or public activities or events at a location typically used for that type and scope (size and intensity) of activity that would not involve significant physical alteration of the environment. Examples include, but are not limited to: (a) Picnics, (b) Encampments, and (c) Interpretive programs for historic and cultural resources, such as programs in conjunction with state and tribal Historic Preservation Officers, or with local historic preservation or re-enactment groups.
B7	Initial assignment or realignment of mobile assets, including vehicles, vessels and aircraft, to existing operational facilities that have the capacity to accommodate such assets or where supporting infrastructure changes will be minor in nature to perform as new homeports or for repair and overhaul.
B8*	Acquisition, installation, maintenance, operation, or evaluation of security equipment to screen for or detect dangerous or illegal individuals or materials at existing facilities and the eventual removal and disposal of that equipment in compliance with applicable requirements to protect the environment. Examples of the equipment include, but are not limited to: (a) Low-level x-ray devices, (b) Cameras and biometric devices, (c) Passive inspection devices, (d) Detection or security systems for explosive, biological, or chemical substances, and (e) Access controls, screening devices, and traffic management systems.

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
B9*	Acquisition, installation, operation, or evaluation of physical security devices, or controls to enhance the physical security of existing critical assets and the eventual removal and disposal of that equipment in compliance with applicable requirements to protect the environment. Examples include, but are not limited to: (a) Motion detection systems, (b) Use of temporary barriers, fences, and jersey walls on or adjacent to existing facilities or on land that has already been disturbed or built upon, (c) Impact resistant doors and gates, (d) X-ray units, (e) Remote video surveillance systems, (f) Diver/swimmer detection systems, except sonar, (g) Blast/shock impact-resistant systems for land based and waterfront facilities, (h) Column and surface wraps, and (i) Breakage/shatter-resistant glass.
B10	Identifications, inspections, surveys, or sampling, testing, seizures, quarantines, removals, sanitization, and monitoring of imported products that cause little or no physical alteration of the environment. This CATEX would primarily encompass a variety of daily activities performed at the borders and ports of entry by various elements of the Customs and Border Protection and Transportation Security Administration.
B11	Routine monitoring and surveillance activities that support law enforcement or homeland security and defense operations, such as patrols, investigations, and intelligence gathering, but not including any construction activities (construction activities are addressed in Subsection F of these CATEX). This CATEX would primarily encompass a variety of daily activities performed by the components of U.S. Coast Guard, Immigration and Customs Enforcement, Customs and Border Protection, Transportation Security Administration, and the U.S. Secret Service.
Real Estate Activities	
C1	Acquisition of an interest in real property that is not within or adjacent to environmentally sensitive areas, including interests less than a fee simple, by purchase, lease, assignment, easement, condemnation, or donation, which does not result in a change in the functional use of the property.
C2	Lease extensions, renewals, or succeeding leases where there is no change in the facility's use and all environmental operating permits have been acquired and are current.
C3	Reassignment of real property, including related personal property within the Department (*e.g.*, from one Departmental element to another) that does not result in a change in the functional use of the property.
C4	Transfer of administrative control over real property, including related personal property, between another federal agency and the Department that does not result in a change in the functional use of the property.
C5	Determination that real property is excess to the needs of the Department and, in the case of acquired real property, the subsequent reporting of such determination to the General Services Administration or, in the case of lands withdrawn or otherwise reserved from the public domain, the subsequent filing of a notice of intent to relinquish with the Bureau of Land Management, Department of Interior.
Repair and Maintenance Activities	
D1	Minor renovations and additions to buildings, roads, airfields, grounds, equipment, and other facilities that do not result in a change in the functional use of the real property (e.g. realigning interior spaces of an existing building, adding a small storage shed to an existing building, retrofitting for energy conservation, or installing a small antenna on an already existing antenna tower that does not cause the total height to exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement for the installation).
D2	Routine upgrade, repair, maintenance, or replacement of equipment and vehicles, such as aircraft, vessels, or airfield equipment that does not result in a change in the functional use of the property.
D3	Repair and maintenance of Department-managed buildings, roads, airfields, grounds, equipment, and other facilities which do not result in a change in functional use or an impact on a historically significant element or setting (e.g. replacing a roof, painting a building, resurfacing a road or runway, pest control activities, restoration of trails and firebreaks, culvert maintenance, grounds maintenance, existing security systems, and maintenance of waterfront facilities that does not require individual regulatory permits).
D4*	Reconstruction and/or repair by replacement of existing utilities or surveillance systems in an existing right-of-way or easement, upon agreement with the owner of the relevant property interest.
D5*	Maintenance dredging activities within waterways, floodplains, and wetlands where no new depths are required, applicable permits are secured, and associated debris disposal is done at an approved disposal site. This CATEX encompasses activities required for the maintenance of waterfront facilities managed primarily within the U.S. Coast Guard and Customs and Border Protection.
D6	Maintenance of aquatic and riparian habitat in streams and ponds, using native materials or best natural resource management practices. Examples include, but are not limited to: (a) Installing or repairing gabions with stone from a nearby source, (b) Adding brush for fish habitat, (c) Stabilizing stream banks through bioengineering techniques, and (d) Removing and controlling exotic vegetation, not including the use of herbicides or non-native biological controls. This CATEX would primarily involve property management activities at larger properties within the Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
	Construction, Installation, and Demolition Activities
E1	Construction, installation, operation, maintenance, and removal of utility and communication systems (such as mobile antennas, data processing cable, and similar electronic equipment) that use existing rights-of-way, easements, utility distribution systems, and/or facilities. This is limited to activities with towers where the resulting total height does not exceed 200 feet and where the FCC would not require an environmental assessment or environmental impact statement for the acquisition, installation, operation or maintenance.
E2*	New construction upon or improvement of land where all of the following conditions are met: (a) The structure and proposed use are compatible with applicable Federal, tribal, state, and local planning and zoning standards and consistent with federally-approved state coastal management programs, (b) The site is in a developed area and/or a previously-disturbed site, (c) The proposed use will not substantially increase the number of motor vehicles at the facility or in the area, (d) The site and scale of construction or improvement are consistent with those of existing, adjacent, or nearby buildings, and, (e) The construction or improvement will not result in uses that exceed existing support infrastructure capacities (roads, sewer, water, parking, etc.).
E3*	Acquisition, installation, operation, and maintenance of equipment, devices, and/or controls necessary to mitigate effects of the Department's missions on health and the environment, including the execution of appropriate real estate agreements. Examples include but are not limited to: (a) Pollution prevention and pollution control equipment required to meet applicable Federal, tribal, state, or local requirements, (b) Noise abatement measures, including construction of noise barriers, installation of noise control materials, or planting native trees and/or native vegetation for use as a noise abatement measure, and, (c) Devices to protect human or animal life, such as raptor electrocution prevention devices, fencing to restrict wildlife movement on to airfields, fencing and grating to prevent accidental entry to hazardous or restricted areas, and rescue beacons to protect human life.
E4*	Removal or demolition, along with subsequent disposal of debris to permitted or authorized off-site locations, of non-historic buildings, structures, other improvements, and/or equipment in compliance with applicable environmental and safety requirements.
E5	Natural resource management activities on Department-managed property to aid in the maintenance or restoration of native flora and fauna, including site preparation, landscaping, and control of non-indigenous species. This CATEX would encompass property management activities primarily at properties within the U.S. Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E6	Reconstruction of roads on Departmental facilities, where runoff, erosion, and sedimentation issues are mitigated through implementation of best management practices. This CATEX would encompass property management activities primarily at properties within the U.S. Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E7	Construction of physical fitness and training trails for non-motorized use on Department facilities in areas that are not environmentally sensitive, where run-off, erosion, and sedimentation are mitigated through implementation of best management practices. This CATEX would encompass property management activities primarily at properties within the U.S. Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
E8*	Construction of aquatic and riparian habitat in streams and ponds on Department-managed land, using native materials or best natural resource management practices. Examples include, but are not limited to: (a) Installing or repairing gabions with stone from a nearby source, (b) Adding brush for fish habitat, (c) Stabilizing stream banks through bioengineering techniques, and, (d) Removing and controlling exotic vegetation, not including the use of herbicides or non-native biological controls. This CATEX would encompass property management activities primarily at properties within the U.S. Coast Guard, Science and Technology Directorate, and the Federal Law Enforcement Training Centers.
	Hazardous/Radioactive Materials Management and Operations
F1	Routine procurement, transportation, distribution, use, and storage of hazardous materials that comply with all applicable requirements, such as Occupational Safety and Health Act (OSHA) and National Fire Protection Association (NFPA).
F2	Reuse, recycling, and disposal of solid, medical, radiological, and hazardous waste generated incidental to Department activities that comply with applicable requirements such as Resource Conservation and Recovery Act (RCRA), Occupational Safety and Health Act (OSHA), and state hazardous waste management practices. Examples include but are not limited to: (a) Appropriate treatment and disposal of medical waste conducted in accordance with all federal, state, local and tribal laws and regulations, (b) Temporary storage and disposal solid waste, conducted in accordance with all federal, state, local and tribal laws and regulations, (c) Disposal of radiological waste through manufacturer return and recycling programs, and (d) Hazardous waste minimization activities.

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
F3	Use (that may include the processes of installation, maintenance, non-destructive testing, and calibration), transport, and storage of hand-held, mobile or stationary instruments, containing sealed radiological and radioactive materials, to screen for or detect dangerous or illegal individuals or materials in compliance with commercial manufacturers specifications, as well as applicable Federal requirements to protect the human environment. Examples of such instruments include but are not limited to: (a) Gauging devices, tracers, and other analytical instruments, (b) Instruments used in industrial radiography, (c) Systems used in medical and veterinary practices; and (d) Nuclear Regulatory Commission (NRC) approved, sealed, small source radiation devices for scanning vehicles and packages where radiation exposure to employees or the public does not exceed 0.1 rem per year and where systems are maintained within the NRC license parameters at existing facilities.
Training and Exercises	
G1	Training of homeland security personnel, including international, tribal, state, and local agency representatives using existing facilities where the training occurs in accordance with applicable permits and other requirements for the protection of the environment. This exclusion does not apply to training that involves the use of live chemical, biological, or radiological agents except when conducted at a location designed and constructed to contain the materials used for that training. Examples include but are not limited to: (a) Administrative or classroom training, (b) Tactical training, including but not limited to training in explosives and incendiary devices, arson investigation and firefighting, and emergency preparedness and response, (c) Vehicle and small boat operation training, (d) Small arms and less-than-lethal weapons training, (e) Security specialties and terrorist response training, (f) Crowd control training, including gas range training, (g) Enforcement response, self-defense, and interdiction techniques training, and (h) Techniques for use in fingerprinting and drug analysis.
G2	Projects, grants, cooperative agreements, contracts, or activities to design, develop, and conduct national, state, local, or international exercises to test the readiness of the nation to prevent or respond to a terrorist attack or a natural or manmade disaster and where conducted in accordance with existing facility or land use designations. This exclusion does not apply to exercises that involve the use of chemical, biological, radiological, nuclear, or explosive agents/devices (other than small devices such as practice grenades/flash bang devices used to simulate an attack during exercise play).
Unique Categorical Exclusions for the Transportation Security Administration	
H1	Approval or disapproval of security plans required under legislative or regulatory mandates unless such plans would have a significant effect on the environment.
H2	Issuance or revocation of certificates or other approvals, including but not limited to: (a) Airmen certificates, (b) Security procedures at general aviation airports, and (c) Airport security plans.
Unique Categorical Exclusion for the U.S. Visit Program	
I1*	A portable or relocatable facility or structure used to collect traveler data at or adjacent to an existing port of entry where the placement or use of the facility does not significantly disturb land, air, or water resources and does not individually or cumulatively have a significant environmental effect. The building footprint of the facility must be less than 5,000 square feet and the facility or structure must not foreclose future land use alternatives.
Unique Categorical Exclusions for the Federal Law Enforcement Training Center	
J1*	Prescribed burning, wildlife habitat improvement thinning, and brush removal for southern yellow pine at the FLETC facility in Glynco, Georgia. No more than 200 acres will be treated in any single year. These activities may include up to 0.5 mile of low-standard, temporary road construction to support these operations.
J2	Harvest of live trees on Federal Law Enforcement Training Center facilities not to exceed 70 acres, requiring no more than 1/2 mile of temporary road construction. Do not use this category for even-aged regeneration harvest or vegetation type conversion. The proposed action may include incidental removal of trees for landings, skid trails, and road clearing. Examples include but are not limited to: (a) Removal of individual trees for saw logs, specialty products, or fuel wood, and (b) Commercial thinning of overstocked stands to achieve the desired stocking level to increase health and vigor.
J3	Salvage of dead and/or dying trees on Federal Law Enforcement Training Center facilities not to exceed 250 acres, requiring no more than 1/2 mile of temporary road construction. The proposed action may include incidental removal of live or dead trees for landings, skid trails, and road clearing. Examples include but are not limited to: (a) Harvest of a portion of a stand damaged by a wind or ice event and construction of a short temporary road to access the damaged trees, (b) Harvest of fire damaged trees, and (c) Harvest of insect or disease damaged trees.

TABLE 1.—CATEGORICAL EXCLUSIONS—Continued

CATEX#	
Unique Categorical Exclusions for Customs and Border Protection	
K1	Road dragging of existing roads and trails established by Federal, tribal, state, or local governments to maintain a clearly delineated right-of-way, to provide evidence of foot traffic and that will not expand the width, length, or footprint of the road or trail.
K2	Repair and maintenance of existing border fences that do not involve expansion in width or length of the project, and will not encroach on adjacent habitat.

*Denotes classes of actions that have a higher possibility of involving extraordinary circumstances. A REC will be prepared whenever a CATEX that is identified by an asterisk is used.

4.0 Environmental Assessments

4.1 Purpose

An EA is a brief analysis that is prepared pursuant to NEPA to assist the Proponent in decision making by determining whether an EIS must be prepared. The environmental impact evaluation process summarized in an EA will conclude in either a finding of no significant impact (FONSI) or a Notice of Intent to prepare an EIS.

4.2 When To Use

A. For any proposed action by a component that does not qualify for a CATEX or involves extraordinary circumstances that preclude use of the CATEX, or does not clearly require an EIS, the Proponent will prepare an EA unless it is otherwise clear that an EIS is needed.

B. If changes in the scope of a proposed component's action could significantly affect the quality of the human environment, an EA shall be prepared as soon as possible to determine the significance of the effects unless it is otherwise clear that an EIS is needed.

C. An EA need not be prepared if a Proponent has decided to prepare an EIS on a proposed action.

D. An EA may be prepared on any action at any time a Proponent determines that an EA would assist DHS planning and decision making.

4.3 Considerations in Preparation of an EA or a Programmatic EA

A. CEQ regulations and DHS policy require public involvement in the environmental impact evaluation process leading to the preparation of an EA. The degree of public involvement is to be determined by evaluating the factors in Appendix A, Section 2.5. In addition, Appendix A, Section 2.2 strongly encourages the use of a process like scoping to fulfill public involvement requirements during the preparation of an EA. Subparagraphs 4.3.E and F of this Directive describe other procedures to obtain public involvement in the preparation of an EA.

B. The EA should include alternatives to the proposed action.

C. Unless signature authority has been specifically delegated to a relevant DHS component, EAs and the associated environmental documents should be reviewed and approved by the CAS.

D. An EA may result in a FONSI when one of two situations exists: a FONSI may conclude the process when either (1) the evaluation of environmental effects of the proposed action finds no potential for significant impact to the quality of the human environment or (2) the component can commit to including measures in the proposed action that mitigate the potential for significant impact until it is no longer significant. If a Proponent uses mitigation measures in such a manner, the FONSI must identify these mitigating measures, and they must be accomplished as the project is implemented. If any of these identified mitigation measures do not occur, so that significant adverse environmental effects could reasonably be expected to result, the Proponent must stop the action and prepare an EIS.

E. When a process like scoping is not used to involve the public early in the preparation of an EA, the Proponent, in consultation with the EPPM, will determine how to make any EA and proposed FONSI available to the public before making a decision or taking an action. This determination should be made after evaluation of the factors in Appendix A, Section 2.5. When it is determined that an EA and proposed FONSI will be made available for public review and comment pursuant to this subparagraph, a minimum period of thirty (30) days will normally be provided for comment.

F. There are certain situations, described in 40 CFR 1501.4(e) (2), when a public review period is required for a draft FONSI. DHS will publish the EA with any draft FONSI that is published for public review pursuant to this subparagraph. Following the procedure in this subparagraph does not preclude the option to also use a process like scoping to obtain public involvement early in the process of preparing an EA.

G. The EA process concludes with either a public notice of the availability of the approved EA and signed FONSI or a decision to proceed to prepare an EIS and the publication of a Notice of Intent in the **Federal Register**.

4.4 Actions Normally Requiring an EA or a Programmatic EA (40 CFR 1501.3, 1508.9)

A. Projects for which environmental assessments will be the minimum level of analysis include, but are not limited to:

(1) Proposed construction, land use, activity, or operation that has the potential to significantly affect environmentally sensitive areas.

(2) Dredging projects that do not meet the criteria of the U.S. Army Corps of Engineers Nationwide Permit Program.

(3) New or revised regulations, Directives, or policy guidance that is not categorically excluded.

(4) Proposal of new, low-altitude aircraft routes wherein over flights have the potential to significantly affect persons, endangered species, or property.

(5) Permanent closure or limitation of access to any area that was previously open to public use (e.g., roads and recreational areas) where there is a potential for significant environmental impacts.

(6) New law enforcement field operations for which the impacts are unknown, or for which the potential for significant environmental degradation or controversy is likely.

B. A Programmatic EA may be prepared on a broad federal action, such as a program or plan for which only very general environmental information is known, and the anticipated environmental impacts are minor. A site or activity-specific EA or supplemental EA, may be tiered to the Programmatic EA and the environmental analysis discussed in the broader statement be incorporated by reference in the site-specific EA. In some cases the

Programmatic EA may be specific enough or contain sufficient information to require no or very little tiered analysis.

4.5 Decision Document: Finding of No Significant Impact (FONSI) (40 CFR 1508.13)

If the EA supports the conclusion that the action has no significant impact on the environment, the Proponent will prepare a separate Finding of No Significant Impact (FONSI) that will accompany the EA. The action described in the FONSI will be the one that DHS or its component intends to implement. It is also known as the ''proposed action'' under NEPA.

A. The FONSI must either be attached to the EA or incorporate the EA by reference and consist of the following:

(1) The name of the proposed action,

(2) A summary of the facts and conclusions that led to the FONSI,

(3) Any mitigation commitments (including funding and/or monitoring) essential to render the impacts of the proposed action not significant, beyond those mitigations that are an integral part of the proposed action,

(4) A statement that the action will not have a significant impact on the human environment, and,

(5) The date of issuance and signature of the components official approving the document.

4.6 Supplemental EAs

A. The Proponent will prepare a supplemental EA if there are substantial changes to the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns.

B. The Proponent may supplement a draft or final EA at any time to further the analysis.

C. The Proponent will prepare, circulate, and file a supplement to an EA in the same manner as any other EA. The Proponent will provide public involvement in Supplemental EAs like that for other EAs. The Proponent has discretion regarding the type and level of public involvement in Supplemental EAs. Factors to be weighed include those listed in Section 2.6 A.

D. The supplemental EA process concludes with either a public notice of the availability of the approved EA and signed FONSI or a decision to proceed to prepare an EIS and the publication of a Notice of Intent in the **Federal Register**.

5.0 Environmental Impact Statements (EISs) (40 CFR 1502)

5.1 Purpose

An EIS analyzes the environmental impacts of a proposed action and all reasonable alternatives. It displays them in a report for review by the decision maker. The EIS provides an opportunity to work collaboratively with other federal, state, and tribal authorities. The EIS provides an opportunity for the public to understand the impacts and to influence the decision. An EIS is a more detailed analysis than an EA and is prepared for actions that appear to be major federal actions significantly affecting the quality of the human environment. It includes (1) a purpose and need statement (2) a reasonable range of alternative means to meet that purpose and need (3) a description of the affected environment (4) a description of the environmental effects of each of the alternatives and (5) a list of persons primarily responsible for a particular analysis (including their expertise, experience, and professional discipline). The EIS must identify the preferred alternative or alternatives (if one or more exist) in the draft EIS.

5.2 When To Use

An EIS is prepared when a DHS component proposes an action that does not qualify for a CATEX or EA, and that could constitute a major federal action significantly affecting the quality of the human environment.

5.3 Actions Normally Requiring an EIS (40 CFR 1501.4), a Programmatic EIS, or a Legislative EIS (40 CFR 1506.8)

A. Actions normally requiring EISs include, but are not limited to:

(1) Actions where the effects of a project or operation on the human environment are likely to be highly controversial,

(2) Proposed major construction or construction of facilities that would have a significant effect on wetlands, coastal zones, or other environmentally sensitive areas,

(3) Major federal actions having a significant environmental effect on the global commons, such as the oceans or Antarctica, as described in E.O. 12114,

(4) Change in area, scope, type, and/or tempo of operations that may result in significant environmental effects, and

(5) Where an action is required by statute or treaty to develop an EIS.

B. A Programmatic EIS (PEIS) may be prepared on a broad federal action, such as a program or plan, for which only very general environmental information is known. A site-specific EIS or EA may then be tiered to the PEIS and the environmental analysis discussed in the broader statement be incorporated by reference in the site-specific analysis.

C. A Legislative EIS will be prepared and circulated for any legislative proposal for which DHS or its components are primarily responsible and which involves significant environmental impacts.

5.4 Preparation and Filing (40 CFR 1506.9)

The Proponent is responsible for initiation, preparation, and approval of EISs. Preparation at this level is intended to ensure that the NEPA process will be incorporated into the activity planning process and that the EIS will accompany the proposal through existing review processes.

5.5 Combining Documents (40 CFR 1506.4)

Draft and final EISs should refer to the underlying studies, reports, and other documents considered in conjunction with the preparation. The components should indicate how such documents could be obtained. If possible, the supporting documents should be posted on a DHS Web site along with the EIS. With the exception of standard reference documents, such as congressional materials, the Proponent should maintain a file of the respective documents, which may be consulted by interested persons. If especially significant documents are attached to the EIS, care should be taken to ensure that the statement remains an essentially self-contained instrument easily understood without the need for undue cross-reference.

5.6 Supplemental EISs (40 CFR 1502.9)

A. The Proponent will prepare a supplemental EIS if there are substantial changes to the proposal that are relevant to environmental concerns or significant new circumstances or information relevant to environmental concerns discussed in 40 CFR 1502.9(c)(1). In those cases where an action is not completed within a budget cycle (typically two years) from the year of execution of the ROD, the Proponent will review the EIS when proceeding with the action to determine whether a supplement is needed.

B. The Proponent may supplement a draft or final EIS or ROD at any time to further the analysis. The Proponent shall introduce any such supplement into its formal administrative record if such a record exists.

C. Any component's decision to prepare a supplemental EIS will be coordinated with the DEE unless such

decision has been delegated to the respective EPPM.

D. The Proponent will prepare, circulate, and file a supplement to a draft or final EIS in the same manner as any other draft or final EIS, except that scoping is optional for an SEIS. A separate ROD is required for the supplement prior to any action being taken even if one had been prepared for the final EIS that is being supplemented. In special circumstances, it may be possible to negotiate alternative procedures for the SEIS with CEQ. The DEE will lead any discussions of alternative procedures with CEQ, unless delegated to the respective EPPM.

E. The public notice methods should be chosen to reach persons who may be interested in or affected by the proposal.

5.7 Proposals for Legislation (40 CFR 1506.8)

The Proponent, in consultation with the DEE, is responsible for ensuring compliance with NEPA in legislative proposals. The DEE will maintain close coordination with the Office of the General Counsel whenever legislation is proposed that requires NEPA compliance.

5.8 Decision Document: Record of Decision (ROD) (40 CFR 1505.2)

If the component decides to take action on a proposal covered by an EIS, a ROD will be prepared. The components will publish the ROD in the appropriate manner to make it available to the public and to reach the range of interested parties involved. The components will also post the ROD on the component's Web site, if one exists.

5.9 Review of Other Agencies' EISs

A. If any DHS component receives a request for EIS comment directly from another agency, and the DHS component wants to provide comments on the EIS, the DHS component will notify the DOSEP about the request. DOSEP will check if other DHS components have been requested to comment on the same EIS.

(1) If no other DHS component has received a request for comment, DOSEP will inform the requested component to provide comments. However, comments on another agency's EIS will not be posted on a public docket without DEE approval.

(2) If another DHS component has received a request for comment, DOSEP will either:

(a) Coordinate the response between DHS components, or

(b) Direct one of DHS components to serve as the lead commenting component.

(3) The lead commenting component will provide a copy of formal comments on non-DHS agency EISs to DOSEP.

B. Any pertinent DHS projects that are environmentally or functionally related to the action proposed in the EIS should be identified so that interrelationships can be discussed in the final statement. In such cases, DHS components should consider serving as a joint lead agency or cooperating agency.

C. Several types of EIS proposals from non-DHS agencies should be referred by DHS components directly to DOSEP for comment, including:

(1) Actions with national policy implications relating to the DHS mission,

(2) Actions with national security, immigration, or law enforcement implications, and

(3) Legislation, regulations, and program proposals having national impact on DHS's mission.

6.0 Special Circumstances

6.1 Emergencies (40 CFR 1506.11)

In addition to natural disasters and technological hazards, Americans face threats posed by hostile governments and extremist groups. These threats to national security include acts of terrorism and war, and require DHS action to defend and protect public health and safety as expeditiously as possible. Consequently, there may not be adequate time to perform the appropriate NEPA analyses and documentation. In the event of any such emergency, whether from natural or man-made causes, DHS will not delay an emergency action necessary for national defense, security, or preservation of human life or property in order to comply with this Directive or CEQ regulations. Examples of emergencies that may require immediate DHS action include responses to hurricanes, earthquakes, imminent threat of terrorist activity, or the release or imminent release of hazardous, biological, or radiological substances.

A. The DHS senior official responsible for responding to an emergency will consider the probable environmental consequences of the proposed DHS actions and will minimize environmental damage to the maximum degree practical, consistent with protecting human life, property, and national security. At the earliest practical time, the DHS senior official responding to the emergency (in coordination with the appropriate EPPM, where authority has been delegated under section 5.C) shall ensure that DOSEP is advised on actions taken in response to the emergency that may have environmental impacts.

B. If the DHS senior official responding to the emergency and the DOSEP (or the appropriate EPPM, where authority has been delegated under section 5.C) jointly conclude that the emergency response actions would qualify for a CATEX and give rise to no extraordinary circumstances that would preclude the use of a CATEX as defined in this Directive or CEQ regulations, then no further analysis or documentation is required to comply with NEPA prior to proceeding with DHS actions.

C. In situations where the DHS senior official responding to the emergency and the DOSEP (or the appropriate EPPM, where authority has been delegated under section section 5.C) jointly conclude that the DHS emergency response actions would not qualify for a CATEX, the DHS senior official will, at a minimum, document consideration of the potential environmental effects in an environmental assessment for the DHS response action. If the environmental impact evaluation process concludes that no significant environmental effects will occur, a FONSI will be prepared and published. In the event the EA cannot be concluded prior to the initiation of DHS response actions, the DHS senior official, DOSEP, and the appropriate EPPM will develop alternative arrangements to meet the requirements of this Directive and CEQ regulations pertaining to environmental assessments. To the maximum extent practical, these alternative arrangements will ensure public notification and involvement and focus on minimizing the adverse environmental consequences of DHS response action and the emergency. The DOSEP, in coordination with the appropriate EPPM, will inform CEQ of these arrangements at the earliest opportunity.

D. If, at any time, including during the preparation of an EA as described in paragraph C above, the DHS senior official responding to the emergency and the DOSEP (or the appropriate EPPM, where authority has been delegated under section section 5.C) jointly conclude that the emergency action appears to be a major federal action significantly affecting the quality of the human environment, the DOSEP, in coordination with the appropriate EPPM, will immediately notify the Council on Environmental Quality regarding the emergency and will seek alternative arrangements to comply with NEPA in accordance with 40 CFR 1506.11.

E. The alternative arrangements developed under Subsection C or D apply only to actions necessary to control the immediate effects of the emergency to prevent further harm to life or property. Other actions remain subject to NEPA review as set forth herein. Factors to address when crafting alternative arrangements include: nature and scope of the emergency; actions necessary to control the immediate impacts of the emergency; potential adverse effects of the proposed action; components of the NEPA process that can be followed and provide value to the decision making (such as coordination with regulatory agencies and the public), duration of the emergency; and potential mitigation measures.

F. A public affairs contingency plan should be developed to ensure open communication among the media, the public, and DHS to the extent practical in the event of an emergency to cover the requirements of NEPA and other related topics.

6.2 Classified or Protected Information (40 CFR 1507.3(c))

A. DHS will take care to make information in NEPA analysis and documents available to the public in conformance with its responsibilities under the Council on Environmental Quality regulations at 40 CFR 1506.6(f). In accordance with CEQ regulations, DHS will not disclose classified, sensitive security information, or other information that DHS otherwise would not disclose pursuant to the Freedom of Information Act (FOIA) (5 U.S.C. 552).

B. The existence of classified or protected information does not relieve DHS of the requirement to assess and document the environmental effects of a proposed action.

C. To the fullest extent possible, DHS will segregate any such classified or protected information into an appendix sent to appropriate reviewers and decision makers, and allow public review of the remainder of the NEPA analysis. If exempted material cannot be segregated, or if segregation would leave essentially meaningless material, the DHS component will withhold the entire NEPA analysis from the public; however, the DHS component will prepare the NEPA analysis in accordance with CEQ Regulations and this Directive, and use it in the DHS decision making process. The protected NEPA analysis may be shared with appropriately cleared officials in CEQ, EPA, and within DHS. In such cases, other appropriate security and environmental officials will ensure that the consideration of environmental effects will be consistent with the letter and intent of NEPA. With regard to an EIS requiring a security clearance for review, a team of cleared personnel will review the classified or protected material for compliance with applicable Federal, tribal, state, and local environmental compliance requirements. This team will include internal environmental professionals and external resource professionals with appropriate clearances.

6.3 Procedures for Applicants (40 CFR 1501.2, 1506.5)

A. DHS components with the role of processing applications for permits, grants, awards, licenses, approvals, or other major federal actions become the Proponent for environmental planning purposes. These Proponents must consider the environmental effects of their action in accordance with this Directive, where applicable. The requirements of this Directive may be approached in a programmatic manner (e.g. one NEPA evaluation and document for an entire category of grants) or may be approached on a single application basis. In either case, DHS components must be alert to identify circumstances that may be associated with any single application that would have the potential for significant environmental impacts.

B. For major categories of DHS actions involving a large number of applicants, the appropriate DHS component will prepare and make available generic guidance describing the recommended level and scope of environmental information that applicants should provide and identify studies or other information required for later federal action.

C. DHS Proponent shall begin the NEPA review as soon as possible after receiving an application. The Proponent must conduct an independent and objective evaluation of the applicant's materials and complete the NEPA process (including evaluation of any EA that may be prepared by the applicant) before rendering a decision on the application. DHS Proponents must consider the NEPA analysis in reaching a decision.

D. In all cases, DHS program Proponent shall ensure that its application submittal and approval process provides for appropriate time and resources to meet the requirements of this Directive. Each DHS program Proponent must ensure, for each separate approval authority, that the responsibility for meeting the requirements of this Directive is appropriately allocated between the applicant and DHS for each program of applications and, potentially, for each individual applicant. At a minimum, the application submittal and approval process must incorporate the following provisions:

(1) Consultation with DHS Proponent as early as possible in the application development process to obtain guidance with respect to the appropriate level and scope of any studies or environmental information that the program Proponent may require to be submitted as part of the application. This includes the identification of the need for DHS Proponents to consult with federal, tribal, state, and local governments and with private entities and organizations potentially affected by or interested in the proposed action in accordance with 40 CFR 1501.2(d)(2).

(2) Anticipation of issues that may lead to either or both (i) a significant environmental impact; or (ii) a concern with evaluating the level of significance. This may include identification of information gaps that may hinder an appropriate evaluation of significance.

(3) Performance of studies that DHS Proponent deems necessary and appropriate to determine the potential for environmental impacts of the proposed action.

(4) Identification and evaluation of appropriate options to resolve potentially significant environmental impacts. This may include development of appropriate actions to mitigate significant impacts.

(5) Consultation, as appropriate, with Federal, tribal, state, and local governments and with private entities and organizations potentially affected by or interested in the proposed action as needed during the NEPA process for scoping and other public involvement activities. This would include consultation with minority populations and low-income populations in accordance with E.O. 12898.

(6) Notification to DHS Proponent as early as possible of other actions required to coordinate and complete the federal environmental review and to eliminate duplication with state and local procedures. (40 CFR 1506.2)

(7) Notification to DHS Proponent if the applicant changes the scope of the proposed action.

(8) Notification to DHS Proponent if the applicant plans to take an action that is within the Proponent's jurisdiction that may have a significant environmental impact or limit the choice of alternatives. If DHS Proponent determines that the action would have a significant environmental impact or limit the choice of reasonable alternatives, the Proponent will promptly notify the applicant that the

permit, license, etc. will be withheld until the objectives and procedures of NEPA are achieved.

(9) Completion of appropriate NEPA documentation.

E. Final DHS approval of a grant, license, permit or other formal request from an applicant may be conditioned by provisions for appropriate mitigation of potentially significant environmental impacts. DHS Proponents will ensure that all mitigation committed to as part of the ROD or FONSI is incorporated as conditions in whatever formal approval, contract, or legal document is issued. DHS Proponents will also ensure that appropriate monitoring of the implementation and success of the mitigation is also a condition of the formal documentation. The mitigation shall become a line item in the Proponent's budget or other funding document, if appropriate, or included in the legal documents implementing the action, *e.g.*, contracts, leases, or grants.

Glossary

All terminology and definitions contained in 40 CFR Parts 1500–1508 are incorporated into this Directive. The following definitions are provided for other terms and phrases used.

Component: Any of the DHS organizational elements, including agencies, bureaus, services, directorates, etc.

Council on Environmental Quality (CEQ): NEPA created in the Executive Office of the President a Council on Environmental Quality. The Council is appointed by the President with the advice and consent of the Senate. The President designates the Chairman. The Council, among other things, appraises programs and activities of the federal Government in light of the policy set forth in Title I of NEPA and formulates and recommends national policies to promote improvement of the quality of the environment.

Designated DHS Official: Senior DHS officials as designated by the Secretary, Deputy Secretary, or Under Secretaries.

Environmental Baseline Survey: A generic term that refers to procedures to investigate a real property asset to determine the presence or absence of natural or man made conditions that would require consideration under various environmental laws and regulations. An environmental baseline survey may or may not be encompassed within an environmental impact evaluation.

Environmental Impact Evaluation: A generic term that includes the processes that result in either an Environmental Assessment (EA) or an Environmental Impact Statement (EIS). Environmental impact evaluation is often a major portion, if not the whole portion, of an environmental planning process.

Environmental Planning Process: The effort required to systematically address the environmental stewardship requirements in public policy during program and project planning, development, and design; and prior to execution. This process may consist wholly or in part of an environmental impact evaluation. The environmental planning process may extend into execution, deployment, or operational phases when the need to control potential for adverse environmental impacts requires mitigation and monitoring.

Environmental Site Assessment: A form of environmental baseline survey that typically focuses on determining the potential for soil or water contamination due to historical activities on or adjacent to defined parcels of real property. An environmental site assessment is often conducted in a manner to conform to standards established by ASTM International (formerly the American Society for Testing and Materials).

Environmentally Sensitive Areas: These include, but are not limited to: (1) Proposed or designated critical habitat for threatened or endangered species; (2) properties listed or eligible for listing on the National Register of Historic Places; and (3) areas having special designation or recognition such as prime or unique agricultural lands, coastal zones, designated wilderness or wilderness study areas, wild and scenic rivers, 100 year floodplains, wetlands, sole source aquifers, Marine Sanctuaries, National Wildlife Refuges, National Parks, National Monuments, essential fish habitat, etc.

Facility Audit: A procedure to assess ongoing compliance with environmental requirements at operating facilities.

National Environmental Policy Act (NEPA): Public Law 91–190, as amended, declares a national policy which will encourage productive and enjoyable harmony between man and his environment; establishes a Council on Environmental Quality in the Executive Office of the President; and requires that every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement (EIS) by the responsible official.

Office of the General Counsel: This phrase refers to the Office of the General Counsel as a component, as defined in the DHS Delegations of Authority.

Proponent: The identified project or program manager and may reside at any level of the organization of a component. Normally this person resides in the operational line of authority. The Proponent has the immediate authority to decide a course of action or has the authority to recommend course of action, from among options, to the next higher organization level (*e.g.* district to region) for approval. The Proponent would also normally have authority to establish the total estimate of resource requirements for the proposed action or, in the execution phase, have the authority to direct the use of resources. While the Proponent is not normally expected to personally execute and document the environmental planning process, he or she has the lead role and is responsible for initiating the effort and retains responsibility (with support from the EPPM) for the content and quality of the process and documentation.

Record of Environmental Consideration (REC): A REC is an internal DHS administrative document for recording the results of a review of a specific proposal that may be included in a category of actions described in a Categorical Exclusion. The purpose, use, and content of the REC are explained in Appendix A, Section 3.3.B.

[FR Doc. 06–3078 Filed 4–3–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1631–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1631–DR), dated March 16, 2006, and related determinations.

DATES: *Effective Date:* March 16, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 16, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms, tornadoes, and flooding during the period of March 11–13, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and assistance for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program, Hazard Mitigation in the designated areas, and any other forms of assistance under the Stafford Act you may deem appropriate, subject to completion of Preliminary Damage Assessments (PDAs).

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and the Other Needs Assistance will be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, Department of Homeland Security, under Executive Order 12148, as amended, Thomas J. Costello, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Christian, Hickory, Johnson, Monroe, Perry, Pettis, Randolph, Ste. Genevieve, and Saline Counties for Individual Assistance.

Bates, Christian, Howard, Jefferson, Monroe, Montgomery, and Washington Counties for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–4816 Filed 4–3–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1631–DR]

Missouri; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Missouri (FEMA–1631–DR), dated March 16, 2006, and related determinations.

DATES: *Effective Date:* March 24, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Missouri is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 16, 2006:

The counties of Benton, Boone, Carroll, Cass, Cedar, Cooper, Greene, Henry, Iron, Lawrence, Lincoln, Mississippi, Morgan, New Madrid, Newton, Phelps, Putnam, Scott, St. Clair, Taney, Vernon, Webster, and Wright for Individual Assistance.

The counties of Bates, Howard, Jefferson, and Montgomery for Individual Assistance (already designated for debris removal and emergency protective measures [Categories A and B] under the Public Assistance program.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–4818 Filed 4–3–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1632–DR]

Oregon; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Oregon (FEMA–1632–DR), dated March 20, 2006, and related determinations.

DATES: *Effective Date:* March 20, 2006.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 20, 2006, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Oregon resulting from severe storms, flooding, landslides, and mudslides from December 18, 2005, through and including January 21, 2006, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Oregon.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75

percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program will also be limited to 75 percent of the total eligible costs. Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Acting Director, Department of Homeland Security, under Executive Order 12148, as amended, Lee Champagne, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Oregon to have been affected adversely by this declared major disaster:

Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Douglas, Gilliam, Jackson, Jefferson, Josephine, Lincoln, Linn, Polk, Sherman, Tillamook, and Wheeler Counties and the Confederated Tribes of the Warm Springs Reservation.

All counties within the State of Oregon are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Acting Director, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E6–4819 Filed 4–3–06; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-day notice of information collection under review: Notice to Student or Exchange Visitor; Form I–515A. OMB Control No. 1615–0083.

The Department of Homeland Security, U.S. Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until June 5, 2006.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Department of Homeland Security (DHS), USCIS, Director, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, 3rd floor, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202–272–8352 or via e-mail at *rfs.regs@dhs.gov.* When submitting comments by e-mail please make sure to add OMB Control Number 1615–0083 in the subject box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

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

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

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

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) Type of Information Collection: Extension of existing information collection.

(2) Title of the Form/Collection: Notice to Student or Exchange Visitor.

(3) Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection: Form I–515A. U.S. Immigration and Customs Enforcement.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: *Primary:* Individuals and households. This form is used by DHS to allow an F, M, or J alien who is without documentation for entry into the United States, to enter temporarily for a 30-day period. To extend the authorized duration of the visit, the F, M, and J alien must obtain the required documents and submit them to the Student and Exchange Visitor Program (SEVP) office within the 30-day period.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 8,300 responses at .166 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1,378 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please visit the USCIS Web site at: *http://uscis.gov/graphics/formsfee/forms/pra/index.htm.*

If additional information is required contact: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, 3rd Floor, Washington, DC 20529, (202) 272–8377.

Dated: March 29, 2006.

Richard A. Sloan,

Director, Regulatory Management Division, U.S. Citizenship and Immigration Services.

[FR Doc. E6–4803 Filed 4–3–06; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of Proposed Appointment of Cloyce V. Choney to the Indian Gaming Commission

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Indian Gaming Regulatory Act provides for a three-person National Indian Gaming Commission. One member, the chairman, is appointed by the President with the advice and consent of the Senate. Two associate members are appointed by the Secretary of the Interior. Before appointing members, the Secretary is required to provide the public notice of a proposed appointment and allow a comment period. Notice is hereby given of the proposed reappointment of Cloyce V. Choney as an associate member of the National Indian Gaming Commission for a term of three years.

DATES: Comments must be received before or on May 4, 2006.

ADDRESSES: Comments should be submitted to the Director, Office of Executive Secretariat, United States

Department of the Interior, 1849 C Street, NW., Mail Stop 7229, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Robin Friedman, Acting Assistant Solicitor, Division of General Law, Branch of General Legal Services, United States Department of the Interior, 1849 C Street, NW., Mail Stop 7315, Washington, DC 20240; telephone 202–208–5216.

SUPPLEMENTARY INFORMATION: The Indian Gaming Regulatory Act, 25 U.S.C. 2701 *et seq.* establishes the National Indian Gaming Commission (Commission), composed of three full time members. 25 U.S.C. 2704(b). Commission members serve for a term of three years. 25 U.S.C. 2704(b)(2)(4)(A). The Chairman is appointed by the President with the advice and consent of the Senate. 25 U.S.C. 2704(b)(1)(A). The two associate members are appointed by the Secretary of the Interior. 25 U.S.C. 2704(b)(1)(B). Before appointing an associate member to the Commission, the Secretary is required to ''publish in the **Federal Register** the name and other information the Secretary deems pertinent regarding a nominee for membership on the commission and * * * allow a period of not less than thirty days for receipt of public comments.'' 25 U.S.C. 2704(b)(2)(B).

Notice is hereby given of the proposed reappointment of Cloyce V. Choney as an associate member of the Commission for a term of three years. Mr. Choney is currently an associate member of the Commission, having been appointed by the Secretary to a first term in 2002. Mr. Choney is well qualified to continue to serve as a member of the Commission. In addition to his service on the Commission for the past three years, from 1976 to 2001, Mr. Choney served as a Special Agent for the Federal Bureau of Investigation. During this time he handled a variety of cases involving civil rights, fraud, organized and white collar crime, and bank robbery investigation. He also served as Chair of the Native American/Alaska People Advisory Committee and was awarded several Federal Bureau of Investigation commendations, including the Director's Award for Excellence in the Chief Executive Officer for Indian Territory Investigations. In that capacity, Mr. Choney was responsible for business development, reporting, and supervision of day-to-day activities related to the company's function of the pre-employment background investigations. Between 1969 and 1975, Mr. Choney served in the United States Army, where he earned the rank of Captain. Mr. Choney has been a member of the National Native American Law Enforcement Association, and he served as its president from 1996–1997.

Mr. Choney is a member of the Comanche Nation of Oklahoma. He is also a member of the Kiowa Black Leggings Society and the Comanche War Scouts. He received a Bachelor of Science in Military Science from Oklahoma State University in 1968.

Mr. Choney does not have any financial interests that would make him ineligible to serve on the Commission under 25 U.S.C. 2704(b)(5)(B) or (C).

Any person wishing to submit comments on this proposed reappointment of Cloyce V. Choney may submit written comments to the address listed above. Comments must be received by May 4, 2006.

Dated: March 29, 2006.

David L. Bernhardt,

Deputy Solicitor.

[FR Doc. 06–3211 Filed 4–3–06; 8:45 am]

BILLING CODE 4310–17–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by May 4, 2006.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: August S. Haugen, Springfield, OR, PRT–114675.

The applicant requests a permit to import the sport-hunted trophy of one male scimitar-horned oryx (*Oryx dammah*) culled from a captive herd in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Linda M. Straw, Sacramento, CA, PRT–116481.

The applicant requests a permit to import the sport-hunted trophy of one male scimitar-horned oryx (*Oryx dammah*) culled from a captive herd in the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR part 17) and marine mammals (50 CFR part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Applicant: Hubbs-Sea World Research Institute, San Diego, CA, PRT–054026.

The applicant requests an amendment to the permit to use captive-held manatees (*Trichechus manatus latirostris*) to measure the animals' sonar acoustic reflectivity for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a three-year period.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal

Commission and the Committee of Scientific Advisors for their review.

Applicant: Francis H. Azur, Coraopolia, PA, PRT–120039.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

Applicant: Christopher F. Azur, Nevillewood, PA, PRT–120037.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Western Hudson Bay polar bear population in Canada for personal, noncommercial use.

Dated: March 10, 2006.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. E6–4800 Filed 4–3–06; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–910–1310PP–ARAC]

Notice of Public Meeting, Alaska Resource Advisory Council

AGENCY: Bureau of Land Management, Alaska State Office, 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) Alaska Resource Advisory Council will meet as indicated below.

DATES: The meeting will be held April 27–28, 2006, at the Juneau Federal Building, 709 W. 9th in Juneau, Alaska. On April 27 the meeting starts at 10:30 a.m. and a public comment period begins at 1 p.m. On April 28 the meeting begins at 8:15 a.m.

FOR FURTHER INFORMATION CONTACT: Danielle Allen, Alaska State Office, 222 W. 7th Avenue #13, Anchorage, AK 99513. Telephone (907) 271–3335 or e-mail *Danielle_Allen@ak.blm.gov.*

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 Alaska. At this meeting, topics planned for discussion include:

- South National Petroleum Reserve-Alaska.
- 17 (b) easements.
- Mineral Assessment program.
- Other topics the Council may raise.

All meetings are open to the public. The public may present written comments to the Council. Each formal Council meeting will also have time allotted 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, transportation, or other reasonable accommodations, should contact BLM.

Julia Dougan,

Acting State Director.

[FR Doc. E6–4824 Filed 4–3–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1410–FQ; A–029820]

Public Land Order No. 7660; Partial Revocation of Public Land Order No. 1973; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Public Land Order insofar as it affects 0.88 acre of public land withdrawn for administrative purposes for use by the Forest Service, Department of Agriculture, at Juneau, Alaska. The land is no longer needed for the purpose for which it was withdrawn. This action also allows the conveyance of the land to the State of Alaska, if such land is otherwise available. Any land described herein that is not conveyed to the State will be subject to Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

DATES: *Effective Date:* April 4, 2006.

ADDRESSES: Alaska State Office, Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska, 99513–7599.

FOR FURTHER INFORMATION CONTACT: Robbie J. Havens, Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue #13, Anchorage, Alaska, 99513–7599, 907–271–5477.

SUPPLEMENTARY INFORMATION: The partial revocation of Public Land Order No. 1973 will allow the land to be conveyed to the State of Alaska, who will convey the parcel to the City and Borough of Juneau as a municipal entitlement.

Order

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (2000), and by Section 17(d)(1) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1616(d)(1) (2000), it is ordered as follows:

1. Public Land Order No. 1973 (24 FR 7253, September 9, 1959), which withdrew public land for administrative purposes, is hereby revoked insofar as it affects the following described land:

Copper River Meridian

U.S. Survey No. 3566, Lot 3, located within T. 41 S., R. 67 E.

The area described contains 0.88 acre.

2. The State of Alaska application for selection made under Section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (2000), and under Section 906(e) of the Alaska National Interest Lands Conservation Act, 43 U.S.C. 1635(e) (2000), becomes effective without further action by the State upon publication of this public land order in the **Federal Register**, if such land is otherwise available. Lands selected by, but not conveyed to, the State will be subject to Public Land Order No. 5186, as amended, and any other withdrawal or segregation of record.

Dated: March 16, 2006.

Mark Limbaugh,

Assistant Secretary of the Interior.

[FR Doc. E6–4834 Filed 4–3–06; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice of Availability of the Proposed Notice of Sale for Outer Continental Shelf (OCS) Oil and Gas Lease Sale 200 in the Western Gulf of Mexico (GOM)

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of the proposed Notice of Sale for proposed Sale 200.

SUMMARY: The MMS announces the availability of the proposed Notice of Sale for proposed Sale 200 in the Western GOM OCS. This Notice is published pursuant to 30 CFR 256.29(c) as a matter of information to the public. With regard to oil and gas leasing on the OCS, the Secretary of the Interior, pursuant to section 19 of the OCS Lands Act, provides the affected States the opportunity to review the proposed

Notice. The proposed Notice sets forth the proposed terms and conditions of the sale, including minimum bids, royalty rates, and rentals.

DATES: Comments on the size, timing, or location of proposed Sale 200 are due from the affected States within 60 days following their receipt of the proposed Notice. The final Notice of Sale will be published in the **Federal Register** at least 30 days prior to the date of bid opening. Bid opening is currently scheduled for August 16, 2006.

SUPPLEMENTARY INFORMATION: The proposed Notice of Sale for Sale 200 and a ''Proposed Sale Notice Package'' containing information essential to potential bidders may be obtained from the Public Information Unit, Gulf of Mexico Region, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394. Telephone: (504) 736–2519.

Dated: March 27, 2006.

R.M. ''Johnnie'' Burton,

Director, Minerals Management Service.

[FR Doc. E6–4812 Filed 4–3–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Gulf of Mexico, Outer Continental Shelf, Western Planning Area, Oil and Gas Lease Sale 200 (2006) Environmental Assessment

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of availability of an environmental assessment.

SUMMARY: The Minerals Management Service (MMS) is issuing this notice to advise the public, pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, that MMS has prepared an environmental assessment (EA) for proposed Outer Continental Shelf (OCS) oil and gas Lease Sale 200 in the Western Gulf of Mexico (GOM) (Lease Sale 200) scheduled for August 2006. Proposed Lease Sale 200 is the fifth Western Planning Area (WPA) lease sale scheduled in the Outer Continental Shelf Oil and Gas Leasing Program: 2002–2007 (5-Year Program, OCS EIS/EA MMS 2002–006). The preparation of this EA is an important step in the decisionmaking process for Lease Sale 200. The proposal for Lease Sale 200 (the offering of all available unleased acreage in the WPA) and its alternatives (the proposed action excluding the unleased blocks near biologically sensitive topographic features and no action) were identified by the MMS Director in January 2002 following the Call for Information and Nominations/Notice of Intent to Prepare an Environmental Impact Statement (EIS) and were analyzed in the Gulf of Mexico OCS Oil and Gas Lease Sales: 2003–2007; Central Planning Area Sales 185, 190, 194, 198, and 201; Western Planning Area Sales 187, 192, 196, and 200—Final Environmental Impact Statement; Volumes I and II (Multisale EIS, OCS EIS/EA MMS 2002–052). The Multisale EIS analyzed the effects of a typical WPA lease sale by presenting a set of ranges for resource estimates, projected exploration and development activities, and impact-producing factors for any of the proposed WPA lease sales. The level of activities projected for proposed Lease Sale 200 falls within these ranges. In this EA, which tiers from the Multisale EIS and incorporates that document by reference, MMS reexamined the potential environmental effects of the proposed action and its alternatives based on any new information regarding potential impacts and issues that were not available at the time the Multisale EIS was prepared. No new significant impacts were identified for proposed Lease Sale 200 that were not already assessed in the Multisale EIS. As a result, MMS determined that a supplemental EIS is not required and prepared a Finding of No New Significant Impact (FONNSI).

FOR FURTHER INFORMATION CONTACT: Mr. Dennis Chew, Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, MS 5410, New Orleans, Louisiana 70123–2394. You may also contact Mr. Chew by telephone at (504) 736–2793.

SUPPLEMENTARY INFORMATION: In November 2002, MMS prepared a Multisale EIS that addressed nine proposed Federal actions that offer for lease areas on the GOM OCS that may contain economically recoverable oil and gas resources. Federal regulations allow for several related or similar proposals to be analyzed in one EIS (40 CFR 1502.4). Since each proposed lease sale and its projected activities are very similar each year for each planning area, a single EIS was prepared for the nine Central Planning Area (CPA) and WPA lease sales scheduled in the 5-Year Program. Under the 5-Year Program, five annual areawide lease sales are scheduled for the CPA (Lease Sales 185, 190, 194, 198, and 201) and five annual areawide lease sales are scheduled for the WPA (Lease Sales 184, 187, 192, 196, and 200). Lease Sale 184 was not addressed in the Multisale EIS; a separate EA was prepared for that proposal. The Multisale EIS addressed CPA Lease Sales 185, 190, 194, 198, and 201 scheduled for 2003, 2004, 2005, 2006, and 2007, respectively, and WPA Lease Sales 187, 192, 196, and 200 scheduled for 2003, 2004, 2005, and 2006, respectively. Although the Multisale EIS addresses nine proposed lease sales, at the completion of the EIS process, decisions were made only for proposed CPA Lease Sale 185 and proposed WPA Lease Sale 187. In the year prior to each subsequent proposed lease sale, an additional NEPA review (an EA) has been conducted to address any new information relevant to that proposed action. After completion of the EA, MMS determines whether to prepare a FONNSI or a Supplemental EIS. The MMS then prepares and sends Consistency Determinations (CD's) to the affected States to determine whether the proposed lease sale is consistent with their federally-approved State coastal zone management programs. Finally, MMS will solicit comments via the Proposed Notice of Sale (PNOS) from the governors of the affected States on the size, timing, and location of the proposed lease sale. The tentative schedule for the prelease decision process for Lease Sale 200 is as follows: CD's sent to affected States, March 2006; PNOS sent to governors of the affected States, March 2006; Final Notice of Sale published in the **Federal Register**, July 2006; and Lease Sale 200, August 2006. To obtain single copies of the Multisale EIS, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view the Multisale EIS or check the list of libraries that have copies of the Multisale EIS on the MMS Web site at *http://www.gomr.mms.gov*.

Public Comments: Interested parties are requested to send comments on this EA/FONNSI within 30 days of this Notice's publication. Comments may be submitted in one of the following three ways:

1. Comments may be submitted using MMS's Public Connect on-line commenting system at *http://ocsconnect.mms.gov*. This is the preferred method for commenting. From the Public Connect ''Welcome'' screen, search for ''WPA Lease Sale 200 EA'' or select it from the ''Projects Open for Comment'' menu.

2. Written comments may be enclosed in an envelope labeled ''Comments on WPA Lease Sale 200 EA'' and mailed (or hand carried) to the Regional Supervisor, Leasing and Environment

(MS 5410), Minerals Management Service, Gulf of Mexico OCS Region, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123–2394.

3. Comments may be sent to the MMS e-mail address: *environment@mms.gov*.

All comments received will be considered in the decisionmaking process for Lease Sale 200.

EA Availability: To obtain a copy of this EA, you may contact the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office (MS 5034), 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana 70123–2394 (1–800–200–GULF). You may also view this EA on the MMS Web site at *http://www.gomr.mms.gov*.

Dated: March 14, 2006.

Chris C. Oynes,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. E6–4813 Filed 4–3–06; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 18, 2006. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 19, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

CALIFORNIA

Sonoma County

Temelec, 220 and 221 Temelec Circle, Sonoma, 06000312

COLORADO

Denver County

Iliff Hall, 2201 S. University Blvd., Denver, 06000314

DELAWARE

New Castle County

Bellvue Range Rear Light Station (Light Stations of the United States MPS), Christina River N side, 0.3 mi. W of Delaware R, 50 ft. S of Cherry Island, Wilmington, 06000313

FLORIDA

St. Johns County

Record Building, 154 Cordova St., St. Augustine, 06000315

IOWA

Woodbury County

Municipal Auditorium, 500 Gordon Dr., Sioux City, 06000316

LOUISIANA

Orleans Parish

Hearn, Lafcadio, House, 1565–67 Cleveland Ave., New Orleans, 06000324

St. Bernard Parish

Kenilworth Plantation House (Louisiana's French Creole Architecture MPS), 2931 Bayou Rd., St. Bernard, 06000317

St. Tammany Parish

Camp Salmen House (Louisiana's French Creole Architecture MPS), 35122 Camp Salmen Rd., Slidell, 06000323

MARYLAND

Baltimore County

Jackson, Lillie Carroll, House, 1320 Eutaw Place, Baltimore (Independence City), 06000319

MISSOURI

St. Francois County

Presbyterian Orphanage of Missouri, 412 W. Liberty St., Farmington, 06000322

OHIO

Stark County

St. Paul's Reformed Church, 9669 Erie Ave., SW., Navarre, 06000318

VIRGINIA

Rockingham County

Breneman—Turner Mill, 5036 Turners Mill Ln., Harrisonburg, 06000325

WISCONSIN

Rock County

Bostick Avenue Historic District, 404–436 Bostwick Ave. and 1118 and 1128 Grace St., Janesville, 06000321

In the interest of preservation the comment period for the following resource has been shortened to 3 days:

VIRGINIA

Albemarle County

Holt, Charles B., House, 1010 Preston Ave., Charlottesville, 06000320

A request for removal has been made for the following resources:

IOWA

Washington County

Washington County Hospital, S. 4th Ave. And Clara Barton, Washington, 77000565

SOUTH DAKOTA

Davison County

Holy Family Church, School and Rectory, Kimball and Davison Sts., E. 2nd and E. 3rd Aves., Mitchell, 76001729

[FR Doc. E6–4849 Filed 4–3–06; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before March 25, 2006. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St., NW, 8th floor, Washington DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by April 19, 2006.

John W. Roberts,

Acting Chief, National Register/National Historic Landmarks Program.

ARIZONA

Maricopa County

Glendale High School Auditorium, 6216 W. Myrtle Ave., Glendale, 06000326

CALIFORNIA

Santa Clara County

Hotel Montgomery, 211 SW First St., San Jose, 06000328

COLORADO

Alamosa County

Mt. Pleasant School, (Rural School Buildings in Colorado MPS) Jct. of Cty Rd. 3 S and Rd. 103 S, Alamosa, 06000327

Denver County

Clayton, George W., Trust and College, 3801 Martin Luther King Blvd., Denver, 06000329

MISSOURI

Greene County

Springfield Public Square Historic District, (Springfield, Missouri MPS AD) 149, 138, 137, 134, 127, 132, 124, and 122 Park Central Sq., 219, 221, South Ave., Springfield, 06000331

St. Louis County

Burkhardt Historic District (Boundary Increase), 16626–16660 (Even numbered properties only) Chesterfield Airport Rd., Chesterfield, 06000330

Warren County

Fortmann, Herman H., Building, 207 Depot St., Marthasville, 06000332

MONTANA

Yellowstone County

Billings Townsite Historic District (Boundary Increase), 2600 (2528), 2604–2606, 2608, 2610–2614, and 2624 Montana Ave., Billings, 06000333

NEW YORK

Orange County

Bodine Farmhouse, 50 Wallkill Rd., Walden, 06000334

Westchester County

Catt, Carrie Chapman, House, 20 Ryder Rd., Briarcliff Manor, 06000336

Nelson Avenue—Fort Hill Historic District, Roughtly along Nelson Ave., John St., Diven St., Constant St., Orchard St., Pauling St., and Decatur Ave., Peekskill, 06000335

NORTH CAROLINA

Chowan County

Jones, Cullen and Elizabeth, House, 2732 Rocky Hock Rd., Edenton, 06000340

Franklin County

Rose Hill, W side of U.S. 401 S, 0.25 mi. N of NC 1110, Louisburg, 06000339

Wake County

Maiden Lane Historic District, 2–20 Maiden Ln., Raleigh, 06000338

TENNESSEE

Hawkins County

Moore Family Farm, 483 VFW Rd., Bulls Gap, 06000343

Williamson County

Harlinsdale Farm, (Historic Family Farms in Middle Tennessee MPS) 239 Franklin Rd., Franklin, 06000344

VIRGINIA

Arlington County

Westover Historic District, (Garden Apartments, Apartment Houses and Apartment Complexes in Arlington County, Virginia MPS) Bounded by McKinley Rd., N. Washington Blvd., N. 16th St., N. Jefferson St., N. 11th St. and N. Fairfax Dr., Arlington, 06000345

Caroline County

Auburn, 320 N. Main St., Bowling Green, 06000342

Fairfax County

Tower House, 9066 Tower House Place, Alexandria, 06000341

Frederick County

Fort Collier, One mile N of Winchester on VA 11, Winchester, 06000356

Giles County

Shannon Cemetery, Jct. of VA 42 and 100, Pearisburg, 06000350

King George County

Bunche, Ralph, High School, 10139 James Madison Hwy., King George, 06000353

Loudoun County

Paeonian Springs Historic District, Area inc. parts of Berry Bramble Ln., Catoctin Ridge St., Charles Town Pike, Highland Circle, and Simpson Circle, Paeonian Springs, 06000352

Nelson County

Edgewood, 3008 Warminster Rd., Wingina, 06000354

Mitchell's Brick House Tavern, 5365 Thomas Nelson Hwy., Arrington, 06000355

Richmond Independent City

Fraternal Order of Eagles Building, 220 E. Marshall St., Richmond (Independent City), 06000346

Hebrew Cemetery, 400 Hospital St., Richmond (Independent City), 06000348

Lock Lane Apartments, 12–58 West Lock Ln., 11–19 and 27–57 East Lock Ln., and 4701 Grove Ave., Richmond (Independent City), 06000347

Richmond and Chesapeake Bay Railway Car Barn, 1620 Brook Rd., Richmond (Independent City), 06000349

Rockbridge County

Glasgow Historic District (Boundary Increase), 900 Blks of Fizlee St. and Rockbridge Rd., Glasgow, 06000351

Salem Independent City

Preston House (Boundary Increase and Decrease), 1936 W. Main St., Salem (Independent City), 06000357

A request for a move has been made for the following resource:

ARKANSAS

Jefferson County

Boone-Murphy House 714 W. 4th Ave., Pine Bluff, 79000442

A request for removal have been made for the following resources:

ARIZONA

Maricopa County

Green, Mary and Moses, House (Tempe MRA), W of Carver St., Tempe, 85000406

Miller Block (Tempe MRA) 417–422 Mill Ave., Tempe, 84000727

Miranda, Jesus, Homestead (Tempe MRA), 1992 E. University, Tempe, 84000729

Peterson Building, 409–413 S. Mill Ave, Tempe, 80000766

Rohrig School (Tempe MRA), 2328 E. University Dr., Tempe, 84000175

Tempe Cotton Exchange Cotton Gin Seed Storage Building (Tempe MRA), 215 W. 7th St., Tempe, 84000744

West End Hotel (Phoenix Commercial MRA), 701 W. Washington, Phoenix, 85002897

To assist in the preservation of the following resource the 15-day comment period has been waived:

KENTUCKY

Jefferson County

Stephen Foster Elementary School, 4020 Garland Ave., Louisville, 06000337

[FR Doc. E6–4851 Filed 4–3–06; 8:45 am]

BILLING CODE 4312–51–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–510]

In the Matter of Systems for Detecting and Removing Viruses or Worms, Components Thereof, and Products Containing Same; Consolidated Enforcement and Advisory Opinion Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') terminating the above-captioned proceeding. The Commission has also determined to rescind the limited exclusion and cease and desist orders previously issued in the underlying investigation and to vacate a summary ID previously issued in the proceeding.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server

(*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: This investigation was instituted by the Commission on June 3, 2004, based on a complaint filed by Trend Micro Inc. (''Trend Micro'') of Cupertino, California under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337. 69 FR 32044–45 (June 8, 2004). The complaint alleged violations of section 337 in the importation into the United States, the sale for importation into the United States, or the sale within the United States after importation of certain systems for detecting and removing computer viruses or worms, components thereof, and products containing same by reason of infringement of claims 1–22 of U.S. Patent No. 5,623,600 (''the '600 patent''). The notice of investigation named Fortinet, Inc., of Sunnyvale, California (''Fortinet'') as the sole respondent.

On May 9, 2005, the ALJ issued his final ID in this investigation finding a violation of section 337 based on his findings that claims 4, 7, 8, and 11–15 of the '600 patent are not invalid or unenforceable, and are infringed by respondent's products. On July 8, 2005, the Commission issued notice that it had determined not to review the ALJ's final ID on violation, thereby finding a violation of section 337. 70 FR 40731 (July 14, 2005). The Commission also requested briefing on the issues of remedy, the public interest, and bonding. *Id.* Submissions on the issues of remedy, the public interest, and bonding were filed by all parties. On August 8, 2005, the Commission terminated the investigation, and issued a limited exclusion order and a cease and desist order covering respondent's systems for detecting and removing computer viruses or worms, components thereof, and products containing same that infringe claims 4, 7, 8, and 11–15 of the '600 patent.

On September 13, 2005, complainant Trend Micro filed a complaint for enforcement of the Commission's remedial orders. On October 7, 2005, the Commission determined to institute a formal enforcement proceeding to determine whether Fortinet was in violation of the Commission's cease and desist order issued in the investigation and what, if any, enforcement measures were appropriate. 70 FR 76076 (December 22, 2005).

On October 26, 2005, Fortinet filed a request for an advisory opinion under Commission rule 210.79, 19 CFR 210.79, that would declare that Fortinet's anti-virus ''FortiGate'' products incorporating Fortinet's newly redesigned anti-virus software does not infringe claims 4, 7, 8, and 11–15 of the '600 patent and, therefore, is not covered by the Commission's cease and desist and limited exclusion orders, issued on August 8, 2005. On December 16, 2005, the Commission determined to institute an advisory opinion proceeding to determine whether Fortinet's redesigned anti-virus software infringes the asserted claims of the '600 patent.

On January 11, 2006, the presiding ALJ consolidated the enforcement proceeding and advisory opinion proceeding.

On December 16, 2005, Trend Micro moved for summary determination that Fortinet had violated sections III(B), III(D), and III(E) of the cease and desist order. On January 12, 2006, the ALJ issued an ID (Order No. 26) granting Trend Micro's motion for summary determination that Fortinet violated section III(B) of the cease and desist order. On February 9, 2006, the Commission determined not to review Order No. 26.

On December 21, 2005, Fortinet filed a request for an additional advisory opinion concerning the so-called Clearswift license, which it later withdrew on February 15, 2006.

On January 27, 2006, Trend Micro and Fortinet entered into a settlement agreement that resolves their dispute before the Commission. On February 14, 2006, Trend Micro and Fortinet filed a joint motion to terminate the consolidated proceedings on the basis of the settlement agreement. The joint motion included a petition to rescind the limited exclusion and cease and desist orders issued in the investigation, and a petition to vacate Order No. 26. On February 27, 2006, the Commission investigative attorney filed a response in support of the joint motion to terminate and in support of the joint petitions to rescind the limited exclusion and cease and desist orders and to vacate Order No. 26.

On February 28, 2006, the ALJ issued an ID (Order No. 31) granting the joint motion to terminate the consolidated enforcement and advisory opinion proceedings based on the settlement agreement. The ALJ also recommended that the Commission rescind the limited exclusion order and cease and desist order issued in the investigation and vacate Order No. 26. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID granting the parties' joint motion to terminate the consolidated enforcement and advisory opinion proceeding. Additionally, the Commission has determined that the parties' settlement agreement satisfies the requirement of section 337(k) and Commission rule 210.76(a)(1), 19 CFR 210.76(a)(1), for changed conditions of fact or law and has therefore issued an order rescinding the limited exclusion order and cease and desist order previously issued by the Commission in the underlying investigation. Finally, in view of specific terms in the settlement agreement, the Commission has determined to vacate Order No. 26.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.42 and 210.76 of the Commission's Rules of Practice and Procedure (19 CFR 210.42 and 210.76).

Issued: March 29, 2006.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 06–3215 Filed 4–3–06; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Revision of a Currently Approved Collection; Comments Requested

ACTION: 30-day notice of information collection under review: COPS Extension Request Form.

The Department of Justice (DOJ) Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The revision of a currently approved information collection is published to obtain comments from the public and affected agencies.

The purpose of this notice is to allow for 30 days for public comment until May 4, 2006. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Rebekah Dorr, Department of Justice Office of Community Oriented Policing Services, 1100 Vermont Avenue, NW., Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* COPS Extension Request Form.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* None. U.S. Department of Justice Office of Community Oriented Policing Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies that are recipients of COPS grants which are expiring within 90 days of the date of the form.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that approximately 2,700 respondents annually will complete the form within 30 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 1,350 burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Department Clearance Officer, United States Department of Justice, Justice Management Division, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 21, 2006.

Brenda E. Dyer,

Department Clearance Officer, , Department of Justice.

[FR Doc. 06–2904 Filed 4–3–06; 8:45 am]

BILLING CODE 4410–AT–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: Proposed Collection; Comments Requested

AGENCY: 30-day notice of information collection under review: Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR–27).

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 22, page 5692 on February 2, 2006, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 4, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments also may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the agency's functions, including whether the information will have practical utility;
—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Revision of a currently approved collection.

(2) *Title of the Form/Collection:* Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: EOIR–27. Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Attorneys or qualified representatives notifying the Board of Immigration Appeals (Board) that they are representing an alien in immigration proceedings. Other: None. Abstract: This information collection is necessary to allow an attorney or qualified representative to notify the Board that he or she is representing an alien before the Board.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 33,980 respondents will complete the form annually with an average of six minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 3,398 total burden hours associated with this collection annually.

If additional information is required, contact: Robert B. Briggs, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 17, 2006.

Robert B. Briggs,

Clearance Officer, United States Department of Justice.

[FR Doc. 06–2805 Filed 4–3–06; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Immigration Practitioner Complaint Form.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71 Number 22, page 5691, dated February 2, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for pubic comment until May 4, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may also be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following points.

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Immigration Practitioner Complaint Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–44, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals who wish to file a complaint against an immigration practitioner authorized to appear before the Board of Immigration Appeals and the immigration courts. Other: None. Abstract: The information on this form will be used to determine whether or not, assuming the truth of the factual allegations, the Office of General Counsel of the Executive Office for Immigration Review should conduct a preliminary disciplinary inquiry, request additional information from the responding complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 500 respondents will complete the form annually with an average of thirty minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1000 total burden hours associated with this collection annually.

If additional information is required, contact: Robert B. Briggs, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 20, 2006.

Robert B. Briggs,

Clearance Officer, United States Department of Justice.

[FR Doc. 06–2806 Filed 4–3–06; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case.

The Department of Justice (DOJ), Executive Office for Immigration Review (EOIR) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 71, Number 22, page 5692–5693 on February 2, 2006, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until May 4, 2006. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may also be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to

respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Notice of Appeal from a Decision of an Adjudicating Official in a Practitioner Disciplinary Case.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–45, Executive Office for Immigration Review, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: A party who appeals a practitioner disciplinary decision by the adjudicating official to the Board of Immigration Appeals (Board). Other: None. Abstract: Once the adjudicating official issues a practitioner disciplinary decision, either party or both parties may appeal the decision to the Board for *de novo* review of the record, pursuant to 8 CFR 1003.106(c).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 50 respondents will complete the form annually with an average of one hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 50 total burden hours associated with this collection annually.

If additional information is required, contact: Robert B. Briggs, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 20, 2006.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 06–2832 Filed 4–3–06; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 29, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13,44 U.S.C. Chapter 35). A copy of this ICR, with supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Ira Mills on 202–693–4122 (this is not a toll-free number) or E-Mail: *Mills.Ira@dol.gov* or by accessing this link: *http://www.doleta.gov/OMBControlNumber.cfm.*

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Type of Review: New Collection.

Title: Alternative Trade Adjustment Assistance Activities Report (ATAAAR).

OMB Number: 1205–0NEW.

Frequency: Quarterly.

Affected Public: State, Local, or Tribal Government.

Type of Response: Recordkeeping and Reporting.

Number of Respondents: 50.

Annual Responses: 200.

Average Response time: 50 minutes.

Total Annual Burden Hours: 166.

Total Annualized Capital/Startup Costs: $120,250.

Total Annual Costs (operating/maintaining systems or purchasing services): $120,250.

Description: The Division of Trade Adjustment Assistance (DTAA) needs key workload data on ATAA to measure program activities and to allocate program and administrative funds to the State Agencies administering the Trade programs for the Secretary. States will provide this information on the ATAAAR.

Ira L. Mills,

Departmental Clearance Officer/Team Leader.

[FR Doc. E6–4835 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review: Comment Request

March 29, 2006.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by contacting Darrin King on 202–693–4129 (this is not a toll-free number) or e-mail: *king.darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employee Benefits Security Administration (EBSA), Office of Management and Budget, Room 10235, Washington, DC 20503, 202–395–7316 (this is not a toll-free number), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employee Benefits Security Administration.

Type of Review: Extension of currently approved collection.

Title: Definition of Plan Assets—Participant Contributions.

OMB Number: 1210–0100.

Frequency: On occasion.

Type of Response: Reporting and Third party disclosure.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Number of Respondents: 1.

Number of Annual Responses: 251.

Estimated Time Per Respondent: Ranges from 1 hour clerical time to prepare a notice for the Secretary of Labor to 4 hours of an attorney's time prepare the notice to plan participants and the certification for the Secretary of Labor.

Total Burden Hours: 1.

Total Annualized capital/startup costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $1,007.

Description: The Department of Labor's (the Department's) regulation at 29 CFR 2510.3–102 states that monies that a participant pays to, or has withheld by, an employer for contribution to an employee benefit plan become ''plan assets'' for purposes of Title I of Employee Retirement Income Security Act (ERISA) and the related prohibited transaction provisions of the Internal Revenue Code as of the earliest date on which such monies can be reasonably segregated from the employer's general assets. With respect to employee pension benefit plans, the regulation further sets a maximum time limit for such contributions: the 15th business day following the end of the month in which the participant contribution amounts are received or withheld by the employer. Under ERISA, ''plan assets'' cannot be held by the employer as part of its general assets, but must be contributed to the employee benefit plan to which they belong and, with few exceptions, held in trust.

The regulation includes a procedure through which an employer receiving or withholding participant contributions for an employee pension benefit plan may obtain a 10-business-day extension of the 15-day maximum time period if certain requirements, including information collection requirements, are met. The regulation requires, among other things, that the employer provide written notice to plan participants, within 5 business days after the end of the extension period and the employer's transfer of the contributions to the plan, that the employer elected to take the extension for that month. The notice must explain why the employer could not transfer the participant contributions within the maximum time period, state that the participant contributions in question have in fact been transmitted to the plan, and provide the date on which this was done. The employer must also provide a copy of the participant notice to the Secretary, along with a certification that the notice was distributed to participants and that the other requirements under the extension procedure were met, within 5 business days after the end of the extension period.

The information collections imposed under the regulation include third-party disclosures and disclosures to the government. The information collection is intended to protect participants by ensuring that they and the Department are aware of an employer's failure to meet the regulatory time limits for transferring participant contributions to the employee pension benefit plan they are intended to fund. The Department and the affected participants can then take appropriate action to protect the plan assets. Requiring employers to make the disclosures also ensures that they follow the protective requirements that are part of the extension procedure.

Ira L Mills,

Departmental Clearance Officer.

[FR Doc. E6–4852 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of March 2006.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222, and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,713; A.T. Cross Company, Lincoln, RI: December 25, 2005

TA–W–58,731; Hospital Specialty Company, Div. of the Tranzonic Companies, Tempe, AZ: January 25, 2005

TA–W–58,721; Federal Mogul, Boyertown, PA: January 25, 2005

TA–W–58,736; Honeywell Chemicals, Claymont, DE: January 24, 2005

TA–W–58,799; Commonwealth Aluminum Concast, Inc., Carson Plant, Prime Personnel, Human Personnel, Voit, Long Beach, CA: February 3, 2005

TA–W–58,668; Lear Corporation, Design Group within the LearTech Group, Southfield, MI: January 18, 2005

TA–W–58,668A; Lear Corporation, Design Group within the LearTech Group, Troy, MI: January 18, 2005

TA–W–58,668B; Lear Corporation, Design Group within the LearTech Group, Dearborn, MI: January 18, 2005

TA–W–58,668C; Lear Corporation, Design Group within the LearTech Group, Rochester Hills, MI: January 18, 2005

TA–W–58,837; ATEK Manufacturing, Command Labor & Doherty Staffing, Brainerd, MN: February 13, 2005

TA–W–58,732; Jesco Athletic Company, James E. Short Div., Williamsport, PA: January 26, 2005

The following certifications have been issued. The requirements of (a)(2)(B) (shift in production) of Section 222, and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,763; Spartech Polycom, Donora Plant #2,Washington, PA: January 31, 2005

TA–W–58,794; Kyocera Wireless Corp., Boulder, CO: February 6, 2005

TA–W–58,860; St. John Companies, Inc. (The), Volt Temporaries and Apple One, Valencia, CA: February 15, 2005

TA–W–58,889; Visteon Climate Control Systems, Independent Aftermarket Div., West Seneca, NY: February 17, 2005

TA–W–58,853; Pressed Steel Tank Co., Inc., Milwaukee, WI: February 15, 2005

The following certification has been issued.

The requirement of supplier to a trade certified firm, and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–58,699; Winzen Film, Inc., Super Sack Bag, Inc., Manufacturing Div. Qualified, Sulphur Springs, TX: January 13, 2005

TA–W–58,717; GKN Sinter Metals, Industrial Products Group Division, Owosso, MI: January 16, 2005

TA–W–58,886; Hampson Corporation, MK Staffing, North Ridgeville, OH: February 14, 2005

The following certification has been issued. The requirement of downstream producer to a trade certified firm and Section 246(a)(3)(A)(ii), and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

None

The investigation revealed that criteria (a)(2)(A)(I.B.)(Sales or production, or both, did not decline) and (a) (2) (B) (II.B) (shift in production to a foreign country) have not been met.

TA–W–58,716; IBM Corp., Workers at Dana Corp., Danville, KY.

TA–W–58,770; Thomasville Furniture Ind., Plant #5, Conover, NC.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–58,820; Flexible Flyer Acquisition Wheel Goods Corp., West Point, MS.

The investigation revealed that criteria (a)(2)(A)(I.C.) (Increased imports and (a)(2)(B)(II.C) (has shifted production to a foreign country) have not been met.

None

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–58,839; Dan River, Inc., Calhoun Falls, SC.

TA–W–58,857; Core Source, Brooklyn Park, MN.

TA–W–58,903; Bunker Hill Commercial Warehouse, Paterson, NJ.

TA–W–58,904; Block Corporation, Amory, MS.

TA–W–58,904A; Block Corp., Block Sportswear Division, Amory, MS.

TA–W–58,904B; Block Corp., American Trouser Division, Columbus, MS.

The investigation revealed that criteria (2) has not been met. The workers firm (or subdivision) is not a supplier or downstream producer to trade-affected companies.

TA–W–58,772; PGP Corporation, Voss Lantz Division, Detroit, MI.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of

Section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)3)ii) have not been met for the reasons specified.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–58,855; Crown, Cork, and Seal USA, Inc, Crown Holdings, Inc., Abilene, TX.

TA–W–58,716; IBM Corp., Workers at Dana Corp., Danville, KY.

TA–W–58,770; Thomasville Furniture Ind., Plant #5, Conover, NC.

TA–W–58,820; Flexible Flyer Acquisition Wheel Goods Corp., West Point, MS.

TA–W–58,839; Dan River, Inc., Calhoun Falls, SC.

TA–W–58,857; Core Source, Brooklyn Park, MN.

TA–W–58,903; Bunker Hill Commercial Warehouse, Paterson, NJ.

TA–W–58,904; Block Corporation, Amory, MS.

TA–W–58,904A; Block Corp., Block Sportswear Division, Amory, MS.

TA–W–58,904B; Block Corp., American Trouser Division, Columbus, MS.

TA–W–58,772; PGP Corporation, Voss Lantz Division, Detroit, MI.

The Department as determined that criterion (1) of Section 246 has not been met. Workers at the firm are 50 years of age or older.

None

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–58,763; Spartech Polycom, Donora Plant #2, Washington, PA

The Department as determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None

I hereby certify that the aforementioned determinations were issued during the month of March 2006. Copies of These determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 23, 2006.

Richard Church,

Acting Director, Division of Trade Adjustment Assistance.

[FR Doc. E6–4858 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–56,674]

CTS Corporation, CTS Communications Components, Inc., Including On-Site Leased Workers of Excel and Spherion; Albuquerque, New Mexico; Notice of Revised Determination on Remand

In an Order issued on February 7, 2006, the United States Court of International Trade (USCIT) granted the motion filed by the Department of Labor (Department) for voluntary remand in *Former Employees of CTS Communication Components, Inc.* v. *United States Secretary of Labor*, Court No. 05–00372.

On April 15, 2005, the Department issued a negative determination regarding workers eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) for workers and former workers of CTS Corporation, CTS Communications Components, Inc., Including On-Site Leased Workers of Excel and Spherion, Albuquerque, New Mexico, (CTS). Workers produce ceramic blocks/filters and sensors and are not separately identifiable by product line. The Department's Notice of determination was published in the **Federal Register** on May 16, 2005 (70 FR 25859).

The determination was based on the findings that the subject company neither imported ceramic blocks/filters or sensors in 2003, 2004, or during the period of January through February 2005, nor shifted production of ceramic blocks/filters or sensors abroad during the relevant period, and that the subject company's major declining customers did not increase imports of ceramic blocks/filters or sensors during the relevant period.

On June 7, 2005, the Department dismissed a request for administrative reconsideration based upon a lack of substantial new information. In the request for reconsideration, the petitioner alleged that production shifted to China and that the customer are unknowingly importing ceramic blocks/filters and/or sensors from China. The dismissal stated that while production did shift to China, as alleged, neither the subject company nor its customers had increased imports of ceramic blocks/filters or sensors. The Department's Notice of Dismissal of Application for Reconsideration was issued on June 8, 2005 and published in the **Federal Register** on June 20, 2005 (70 FR 35455).

By letter dated May 7, 2005, the Plaintiffs applied to the USCIT for judicial review. On February 7, 2006, the USCIT granted the Department's request for voluntary remand and directed the Department to conduct further investigation regarding the workers' eligibility to apply for TAA and ATAA.

During the remand investigation, the Department contacted the subject company to ascertain what products were produced at the subject facility during the relevant period and whether the subject company or its customers had imported those articles during the relevant period.

A careful review of the newly-obtained information has revealed that the subject company had produced ceramic filters and ceramic sensors during 2003, 2004, and 2005 and that the workers were not separately identifiable by product line. The new information also revealed that some production of ceramic sensors shifted to China and that finished ceramic sensors manufactured in China were shipped to customers in the United States.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts generated through the remand investigation, I determine that increased imports of ceramic sensors like or directly competitive with those produced by the subject firm contributed importantly to the total or partial separation of a significant number of workers at the subject facility. In accordance with the provisions of the Act, I make the following certification:

''All workers of CTS Corporation, CTS Communications Components, Inc., Including On-Site Leased Workers of Excel and Spherion, Albuquerque, New Mexico, who became totally or partially separated from employment on or after February 28, 2004, through two years from the issuance of this revised determination, are eligible to apply for Trade Adjustment Assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 22nd day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4847 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,288; TA–W–58,288A]

Eastalco Aluminum Company, a Subsidiary of Alcoa; Frederick, Maryland; Eastalco Aluminum Company, a Subsidiary of Alcoa, Pier Facility; Baltimore, Maryland; Notice of Revised Determination of Alternative Trade Adjustment Assistance on Reconsideration

By letter dated March 20, 2006, representatives of the United Workers, Local 7886, and the company officials requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The certification for Trade Adjustment Assistance (TAA) was signed on February 2, 2006. The Notice of determination was published in the **Federal Register** on February 22, 2006 (71 FR 9160).

The initial investigation determined that subject worker group possess skills that are easily transferable.

New information provided by the company officials show that the workers possess skills that are not easily transferable.

At least five percent of the workforce at the subject from is at least fifty years of age. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Eastalco Aluminum Company, A Subsidiary of Alcoa, Frederick, Maryland (TA–W–58,288) and Eastalco Aluminum Company, A Subsidiary of Alcoa, Pier Facility, Baltimore, Maryland (TA–W–58,288A) who became totally or partially separated from employment on or after November 7, 2004 through February 2, 2008, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 23rd day of March 2006.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4855 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,691A]

Falcon Products, Inc., Currently Known as Commercial Furniture Group, Inc.; Shelby Williams Industries, Wood Frame Upholstered Furniture Division, Morristown, TN; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 26, 2005, applicable to workers of Falcon Products, Inc., Shelby Williams Industries, Wood Frame Upholstered Furniture Division, Morristown, Tennessee. The notice was published in the **Federal Register** on October 31, 2005 (70 FR 62347).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of wood frame upholstered furniture. The subject firm originally named Falcon Products, Inc. was renamed Commercial Furniture Group, Inc. in November 2005. The company reports that some workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Commercial Furniture Group, Inc., Morristown, Tennessee.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Falcon Products, Inc., Shelby Williams, Wood Frame Upholstered Furniture Division who were adversely affected by increased imports.

The amended notice applicable to TA-W–57,691A is hereby issued as follows:

All workers of Falcon Products, Inc., currently known as Commercial Furniture Group, Inc., Shelby Williams Industries, Wood Frame Upholstered Furniture Division, Morristown, Tennessee, who became totally or partially separated from employment on or after August 8, 2004, through September 26, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4850 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–57,691]

Falcon Products, Inc., Currently Known as Commercial Furniture Group, Inc.; Shelby Williams Industries, Metal Chair Division, Including On-Site Leased Workers of Staff Mark, Morristown, Tennessee; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on September 26, 2005, applicable to workers of Falcon Products, Inc., Shelby Williams Industries, Metal Chair Division, including on-site leased workers of Staff Mark, Morristown, Tennessee. The notice was published in the **Federal Register** on October 31, 2005 (70 FR 62346).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of metal chairs. The subject firm was renamed Commercial Furniture Group, Inc. in November 2005. The company reports that some workers wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Commercial Furniture Group, Inc., Morristown, Tennessee.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Falcon Products, Inc., Shelby Williams, Metal Chair Division who were adversely affected by a shift in production to China.

The amended notice applicable to TA–W–57,691 is hereby issued as follows:

All workers of Falcon Products, Inc., currently known as Commercial Furniture Group, Inc., Shelby Williams Industries, Metal Chair Division, Morristown, Tennessee, including on-site leased workers of Staff Mark, who became totally or partially separated from employment on or after August 8, 2004, through September 26, 2007, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 21st day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4854 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–58,911]

International Business Machines Corporation (IBM); San Jose, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on February 27, 2006, in response to a worker petition filed by the state workforce office on behalf of a worker at IBM, San Jose, California.

The Department has determined the worker on whose behalf the petition was filed was not an employee of IBM, San Jose, California. Consequently, further investigation would serve no purpose and the investigation has been terminated.

Signed at Washington, DC, this 17th day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4856 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–59,035]

Newstech PA, LP; Northampton, Pennsylvania; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 15, 2006 in response to a petition filed by a company official on behalf of workers of Newstech PA, LP, Northampton, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 17th day of March 2006.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E6–4857 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[ETA Handbook No. 391]

Proposed Collection; Unemployment Compensation for Federal Employees (UCFE) Program Forms Comment Request

ACTION: Notice, requests for comments.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration, Office of Workforce Security is soliciting comments concerning the proposed extension of the collection for the ETA Handbook No. 391. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice or by accessing: *http://www.doleta.gov/Performance/guidance/OMBControlNumber.cfm.*

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before June 5, 2006.

ADDRESSES: Quinn Watt, U.S. Department of Labor, Employment and Training Administration, Room S–4231, 200 Constitution Avenue, NW., Washington, DC 20210, Phone: (202) 693–3483 (This is not a toll-free number), Fax: (202) 693–3975, e-mail: *Watt.Quinn@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Chapter 5 U.S.C. 8506 states that ''Each agency of the United States and each wholly or partially owned instrumentality of the United States shall make available to State agencies which have agreements, or the Secretary of Labor, as the case may be, such information concerning the Federal service and Federal wages of a Federal employee as the Secretary considers practicable and necessary for the determination of the entitlement of the Federal employee to compensation under this subchapter.'' The information shall include the findings of the employing agency concerning—

(1) Whether or not the Federal employee has performed Federal service;

(2) The periods of Federal Service;

(3) The amount of Federal wages; and

(4) The reason(s) for termination of Federal service.

The law (5 U.S.C. 8501, *et seq.*) requires State Workforce Agencies (SWAs) to administer the UCFE (Unemployment Compensation for Federal Employees) program in accordance with the same terms and provisions of the paying state's unemployment insurance law which apply to unemployed claimants who worked in the private sector. SWAs must be able to obtain certain information (wage, separation data) about each claimant filing claims for UCFE benefits to enable them to determine his/her eligibility for benefits. The Department of Labor has prescribed forms to enable SWAs to obtain this necessary information from the individual's Federal employing agency. Each of these forms is essential to the UCFE claims process and the frequency of use varies depending upon the circumstances involved. The UCFE forms are: ETA–931, ETA–931A, ETA–933, ETA–934, ETA–935, ETA–936, ETA–939, and ETA 8–32.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• enhance the quality, utility, and clarity of the information to be collected; and

• minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

Type of Review: Regular.

Agency: Employment and Training Administration.

Title: ETA Handbook No. 391 (Unemployment Compensation for Federal Employees).

OMB Number: 1205–0179.

Agency Form Number: ETA Handbook No. 391.

Recordkeeping: 3 years.

Affected Public: State Government.

Total Respondents: 53.

Average Time per Response: Varies with each form.

Estimated Total Burden Hours: 208.00 hours.

Total Burden Cost (capital/startup): There are no capital startup burden costs.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 10, 2006.

Cheryl Atkinson,

Administrator, Office of Workforce Security.

[FR Doc. E6–4853 Filed 4–3–06; 8:45 am]

BILLING CODE 4510–30–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Addendum to Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. This is the third notice for public comment; the first was published in the **Federal Register** at 70 FR 75227; the second was published at 71 FR noting one comment was received. This notice is to acknowledge a second comment received on February 16, 2006. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION: *Comment:* On February 16, NSF received a comment from the Bureau of Economic Analysis (BEA) requesting consideration of several additional items to add to both the academic and the FFRDC survey forms. These items were as follows: R&D expenditures that are not separately budgeted by academic institutions, foreign sources of R&D funding as well as the expenditure amounts that are passed through to foreign performers, receipts universities receive from the sale of R&D, Federal funding of R&D divided into the categories suggested by the *Frascati Manual* (Section 6.3.2, item 397), separate reporting for research software purchases, and R&D expenditures used to create software.

Response: NSF recognizes the importance of these additional items to BEA and other stakeholders. Although NSF does not plan to add these items to the survey forms for the 2006 fiscal year, many of these are critical new indicators of R&D in the 21st century and deserve further investigation when planning the survey's future. Therefore, each of these items will be included for consideration in survey workshops with institutional respondents, in order to determine the best ways of obtaining these data with minimal respondent burden.

Dated: March 30, 2006.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 06–3210 Filed 4–3–06; 8:45 am]

BILLING CODE 7555–01–M

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: DOE/NRC Form 742,

''Material Balance Report;'' NUREG/BR–0007, ''Instructions for the Preparation and Distribution of Material Status Reports;'' and DOE/NRC Form 742C, ''Physical Inventory Listing.''

2. Current OMB approval numbers: 3150–0004 and 3150–0058.

3. How often the collection is required: DOE/NRC Forms 742 and 742C are submitted annually following a physical inventory of nuclear materials.

4. Who is required or asked to report: Persons licensed to possess specified quantities of special nuclear or source material.

5. The number of annual respondents:
DOE/NRC Form 742: 180 licensees.
DOE/NRC Form 742C: 180 licensees.

6. The number of hours needed annually to complete the requirement or request:
DOE/NRC Form 742: 900 hours.
DOE/NRC Form 742C: 1,080 hours.

7. Abstract: Each licensee authorized to possess special nuclear material totaling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, are required to submit DOE/NRC Forms 742 and 742C. In addition, any licensee authorized to possess 1,000 kilograms of source material is required to submit DOE/NRC Form 742. The information is used by NRC to fulfill its responsibilities as a participant in US/IAEA Safeguards Agreement and various bilateral agreements with other countries, and to satisfy its domestic safeguards responsibilities.

Submit, by June 5, 2006, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F21, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–5 F52, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at *INFOCOLLECTS@NRC.GOV.*

Dated at Rockville, Maryland, this 28th day of March 2006.

For the Nuclear Regulatory Commission.

Brenda Jo Shelton,

NRC Clearance Officer, Office of Information Services.

[FR Doc. E6–4861 Filed 4–3–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittee on Reliability and Probabilistic Risk Assessment (PRA) will hold a meeting on April 20–21, 2006, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 20, 2006—8:30 a.m. until the conclusion of business
Friday, April 21, 2006—8:30 a.m. until 12 Noon

The Subcommittee will review the PRA for General Electric's next generation simplified boiling water reactor, the ESBWR. The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and industry regarding this matter. The Subcommittee will gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Members of the public desiring to provide oral statements and/or written comments should notify the Designated Federal Official, Mr. Eric A. Thornsbury, (Telephone: 301–415–8716) five days prior to the meeting, if possible, so that appropriate arrangements can be made. Electronic recordings will be permitted.

Further information regarding this meeting can be obtained by contacting the Designated Federal Official between 7:30 a.m. and 4:15 p.m.(ET). Persons planning to attend this meeting are urged to contact the above named individual at least two working days prior to the meeting to be advised of any potential changes to the agenda.

Dated: March 29, 2006.

Michael R. Snodderly,

Acting Branch Chief, ACRS/ACNW.

[FR Doc. E6–4860 Filed 4–3–06; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of April 3, 10, 17, 24, May 1, 8, 2006.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of April 3, 2006

Monday, April 3, 2006—

3:55 p.m. Affirmation Session (Public Meeting) (Tentative).
a. USEC, Inc. (American Centrifuge Plant); Geoffrey Sea appeal of LBP–05–28 (Tentative).
b. USEC, Inc. (American Centrifuge Plant)—Appeal of LBP–05–28 by Portsmouth/Piketon Residents for Environmental Safety and Security (PRESS) (Tentative).
c. Hydro Resources, Inc.—Petition for Review and Partial Initial Decision on Phase II Cultural Resource Challenges (Tentative).

Week of April 10, 2006—Tentative

There are no meetings scheduled for the Week of April 10, 2006.

Week of April 17, 2006—Tentative

There are no meetings scheduled for the Week of April 17, 2006.

Week of April 24, 2006—Tentative

Monday, April 24, 2006—

2 p.m. Meeting with Federal Energy Regulatory Commission (FERC), FERC Headquarters, 888 First St., NE., Washington, DC 20426, Room 2C (Public Meeting). (Contact: Mike Mayfield, (301) 415–3298).

This meeting will be Webcast live at the Web address—*http://www.ferc.gov.*

Wednesday, April 26, 2006—

1 p.m. Discussion of Management Issues (Closed-Ex. 2).

Thursday, April 27, 2006—

1:30 p.m. Meeting with Department of Energy (DOE) on New Reactor Issues (Public Meeting).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of May 1, 2006—Tentative

Tuesday, May 2, 2006—

9:30 a.m. Briefing on Status of Emergency Planning Activities—Morning Session (Public Meeting) (Contact: Eric Leeds, (301) 415–2334).

1 p.m. Briefing on Status of Emergency Planning Activities—Afternoon Session (Public Meeting).

These meetings will be Webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, May 3, 2006—

9 a.m. Briefing on Status of Risk-Informed, Performance-Based Regulation (Public Meeting) (Contact: Eileen McKenna, (301) 415–2189).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of May 8, 2006—Tentative

There are no meetings scheduled for the Week of May 8, 2006.

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Deborah Chan, at 301–415–7041, TDD: 301–415–7100, or by e-mail at *DLC@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301 415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: March 31, 2006.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. 06–3258 Filed 3–31–06; 11:56 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53563; File No. SR–Amex–2005–125]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto Relating to Dual Listing

March 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 5, 2005, the American Stock Exchange LLC (''Amex'' 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 Amex. On March 21, 2006, Amex filed Amendment No. 1. 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

Amex proposes to amend (i) Sections 140 and 141 of the Amex Company Guide and the Amex Fee Schedule to reduce the listing fees for companies listed on another securities market that dual list on the Amex, and (ii) Amex Rule 118 to (a) include in the scope of the Rule securities listed on the Nasdaq Capital Market (formerly referred to as the Nasdaq SmallCap Market,)[3] (''NCM'') and (b) accommodate the dual listing of securities listed on the NCM and the Nasdaq National Market (''NNM'').[4] NNM and NCM are tiers of The Nasdaq Stock Market, which is operated by The Nasdaq Stock Market, Inc. (NNM and NCM are collectively referred to as ''Nasdaq.'') In addition, the Exchange proposes minor, technical changes to Amex Rules 7, 24, 109, 115, 126, 128A, 131, 135A, 156, 170, 190 and 205, and Sections 142 and 950 of the Company Guide to reflect the proposed changes to Amex Rule 118. The text of the proposed rule change is available on the Amex's Web site at *http://www.amex.com*, the Office of the Secretary, Amex, 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 Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex 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

In order to encourage the listing on Amex of companies already listed on another market, the Exchange proposes to reduce the listing fees applicable to such dual listing issuers and to make appropriate rule changes to accommodate the listing and trading on Amex of issuers whose securities are also listed on Nasdaq.

Specifically, the Exchange proposes to amend (i) Sections 140 and 141 of the Company Guide and the Fee Schedule to reduce the initial and annual listing fees for companies that dual list on Amex, and (ii) Amex Rule 118 to expand the scope of the Rule to cover NCM securities and also to accommodate the dual listing of Nasdaq securities. The Exchange will make an independent determination of whether dual listing issuers satisfy all applicable listing requirements and will require such issuers to meet all applicable Amex listing standards on a continuous basis. Ultimately, the Exchange would

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52489 (September 21, 2005), 70 FR 56948 (September 29, 2005)(SR–NASD–2005–108).

[4] The instant proposed rule change is similar to rules of the Nasdaq and PCX Equities, Inc. (''PCXE'')(now known as NYSE Arca Equities, Inc.), which address the dual listing of securities. Nasdaq Rules 4510 and 4520 waive Nasdaq listing fees for New York Stock Exchange listed companies that dual list on Nasdaq. PCXE's Schedule of Fees and Charges for Exchange Services sets forth reduced listing fees for dual listed securities, and PCXE Rule 1.1(aa) defines ''Nasdaq Security'' as any security designated as an eligible security pursuant to the UTP Plan (as defined below) that is either listed on PCXE or as to which UTP (as defined below) have been granted.

encourage dual listed issuers to transfer their listings to Amex.

(i) *Fees.* The Exchange proposes to amend Section 140 (Original Listing Fees) and Section 141 (Annual Listing Fees) of the Company Guide and the Fee Schedule to provide for reduced fees for issuers listed on other markets that also list on Amex. The discounted listing fees for companies already listed on another market are proposed as an incentive to companies to compare the services and quality of Amex market without having to pay full listing fees on both markets. In addition to providing an opportunity to compare the services and quality of the Amex market with their current market, Amex believes that dual listing on Amex with its auction system should benefit investors and shareholders by increasing liquidity, reducing execution time, and narrowing spreads. Amex believes the comparison between executions on Amex and on the other markets will enable companies to assess the benefit of an Amex listing.

Amex believes that charging reduced fees to dual listed issuers is warranted for a number of reasons. Listed companies are already familiar with the regulatory and compliance requirements of a listing regime. The Exchange will conduct a full and independent review of each dual listed issuer's compliance with Amex listing standards, however, the probability that an application from an issuer seeking to dually list will raise regulatory and other compliance issues is lower than for issuers not already listed elsewhere. The Exchange believes that the review of listing applications of dually listed companies will in most cases be less time-consuming and present fewer issues than the review of an application from an issuer not already listed on another market despite the fact that both reviews will be subject to the same degree of regulatory scrutiny. Also, companies listed on another market will already have paid initial listing fees and will be subject to continued listing fees; Amex believes that a reduction in the fees the Exchange charges will encourage these companies to apply for a listing on Amex, which will, in turn, promote competition among markets consistent with Section 11A(a)(1)(C)(ii) of the Act.[5]

Currently, initial listing fees range from $40,000 to $65,000 depending on the issuer's aggregate total shares outstanding. In addition, there is a one-time, non-refundable application processing fee, which is $5,000, for companies that do not have a stock or warrant issue listed on the Amex. For companies that dually list on Amex, the Exchange proposes to charge 50% of the applicable initial listing fee and application processing fee.[6] As a result, for dual listed companies, the maximum initial listing fee, including the application processing fee, would be $35,000 instead of $70,000. As noted above, the Exchange believes that applications from issuers already listed on another U.S. market are likely to present fewer regulatory and compliance issues based on their prior experience as a listed company and therefore a lower fee is warranted.

Dual listed companies will be required to meet all applicable Amex listing standards on a continuing basis. Annual fees currently range from $16,500 to $34,000, depending on the issuer's aggregate total shares outstanding. The Exchange proposes to charge 50% of the annual fee for a period of five years from the date of initial listing for companies that dually list on Amex. If, during the five-year period, a dual listing issue subsequently lists exclusively on Amex, the Exchange will assess the standard annual fee starting in the first full calendar year following the change to an exclusive listing. At the end of the five-year period, Amex will assess, on a pro-rated basis, the standard annual fee for the balance of the then current calendar year. Thereafter, Amex will assess the standard annual fee.

The Exchange believes that it is appropriate to charge dually listed issuers an annual fee to cover the cost of issuer services, including regulatory oversight, but that reduced annual fees for dual listed issuers are appropriate as it would be inequitable to charge dually listed issuers the full annual fee as they are also paying these fees to another market. The Exchange believes that such a reduction serves as an incentive to issuers, which by listing on a second market are taking on another set of regulations, to compare listing markets. It also reflects the fact that dually listed issuers are already subject to regulation by another market and, the Exchange believes, are likely to raise fewer regulatory issues and therefore require less staff time on an ongoing basis.

(ii) *Amex Rules and Trading Operations.* While Amex rules do not specifically contemplate dual listings, with respect to companies listed on another registered national securities exchange, no changes to the rules, or to trading operations, are required. Securities listed on national securities exchanges (other than Nasdaq) are designated as national market system securities under the Consolidated Quotation Service (''CQ'') and Consolidated Tape Association (''CTA'') national market system plans, just as are other Amex-listed securities, so the dual listing on Amex of securities listed on such exchanges does not conflict with existing Amex trading rules or operations. Nasdaq securities, on the other hand, are subject to a different set of trading rules from those designated as national market system securities under the CQ and CTA plans.[7] Amex proposes changes to certain of its rules to clarify how trading and reporting of transactions in Nasdaq securities would be accomplished.

Amex Rule 118 (Trading in Nasdaq National Market Securities) currently provides for the trading of NNM securities pursuant to unlisted trading privileges (''UTP''), in accordance with provisions of the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''UTP Plan''); however, Amex Rule 118 does not currently include NCM securities. Amex proposes to amend the definition of NNM securities in Amex Rule 118 so that it will now include (i) NCM securities and (ii) NNM and NCM securities that are listed on the Amex. As a result, the same provisions applicable to NNM securities traded on a UTP basis on Amex will cover NCM securities traded on a UTP basis on Amex and NNM and NCM securities with dual listings on Amex including Amex Rules 1, 3, 7, 24, 115, 118, 126, 170, 190 and 205, and Sections 142 and 950 of the Company Guide. For example, Amex Rule 7 governing short sales will not apply to dually listed NNM or NCM securities.

The Exchange also proposes minor, technical changes to Amex Rules 7, 24, 109, 115, 126, 128A, 131, 135A, 156, 170, 190 and 205, and Sections 142 and 950 of the Company Guide to reflect the revised definition of NNM securities and changes to Rule 11Ac1–1 under the

[5] 15 U.S.C. 78k–1(a)(1)(C)(ii).

[6] The $40,000 initial listing fee, including the application processing fee, currently applicable to non-U.S. companies listed on foreign stock exchanges, will not be affected by the proposed rule change.

[7] Based on the January 13, 2006 Commission release regarding Nasdaq's registration as a national securities exchange, Nasdaq anticipates commencing operations as an exchange on April 1, 2006. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006)(10–131). Nasdaq has indicated that the trading rules regarding its quotation and trading systems will remain essentially the same following such registration as a national securities exchange.

Act.[8] For example, the Exchange proposes to amend Commentary .02 to Amex Rule 115 to remove the reproduced text of Rule 11Ac1–1 under the Act.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of Sections 6(b)(4)[10] and 6(b)(5) of the Act,[11] in particular, in that it is designed to provide an equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using the Exchange's facilities, and 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 regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers, or to regulate by virtue of any authority conferred by the Act matters not related to the purpose of the Act or the administration of the Exchange.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex believes the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change will enhance competition by allowing issuers listed on other markets to add a listing on Amex without being required to pay fees that are duplicative of the fees already paid to the other market.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

[8] *See* Securities Exchange Act Release No. 51808 (June 9, 2005); 70 FR 37496 (June 29, 2005)(S7–10–04). 17 CFR 242.602.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] 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 Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. SR–Amex–2005–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2005–125. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–125 and should be submitted on or before April 25, 2006.[12]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Nancy M. Morris,

Secretary.

[FR Doc. E6–4828 Filed 4–3–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53561; File No. SR–Amex–2005–103]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, 3 and 4 Thereto Allowing Issuers of Listed Equity Securities, Structured Products, and Exchange Traded Funds a Right To Request a New Specialist

March 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 2005, the American Stock Exchange LLC (''Amex'' 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 Amex. On January 26, 2006, Amex filed Amendment No. 1 to the proposed rule change.[3] On January 30, 2006, Amex filed Amendment No. 2 to the proposed rule change.[4] On February 17, 2006, Amex filed Amendment No. 3 to the proposed rule change.[5] On March 6, 2006, Amex filed Amendment No. 4 to

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed further changes to Amex Rule 27(e) and (f) and made revisions to the purpose section of the proposed rule change.

[4] In Amendment No. 2, the Exchange made revisions to the purpose section of the proposed rule change to discuss changes to the text of Amex Rule 27(f) made in Amendment No. 1.

[5] In Amendment No. 3, the Exchange proposed further changes to Amex Rule 27(e) and (f) and made revisions to the purpose section of the proposed rule change.

the proposed rule change.[6] 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 amend Amex Rule 27 to give issuers of listed equity securities and structured products, as well as exchange traded fund (''ETF'') sponsors, a right to request a new specialist.

The text of the proposed rule change is available on the Amex's Web site (*http://www.amex.com*), the Office of the Secretary, Amex, and at the Commission's Public Reference Room. The text of the proposed rule change also appears below. Proposed new language is *italicized;* proposed deletions are in [brackets].

Rule 27. Allocations Committee

(a)–(d) No change.

(e) (*i*) If the issuer of an [listed] equity security *to be initially listed on the Exchange* chooses to participate in the allocation process, the Allocations Committee shall prepare a list of qualified specialists based on the criteria set forth in paragraph (b). In the case of an equity security, *Exchange Traded Fund or Structured Product,* the list shall consist of five specialists. [In the case of an Exchange Traded Fund or Structured Product, the list shall consist of five specialists.] The issuer may request that one or more specialists be placed on the list of eligible specialists. The Allocations Committee, however, is not obligated to honor such requests. Specialists that are subject to a preclusion on new allocations as a result of a disciplinary proceeding or action by the Performance Committee only are eligible for allocations of ''related securities'' as described in Commentary .05 of this Rule. The issuer may ask to meet with representatives of the specialists units on the list.

The issuer shall select its specialist from the list within five business days of receiving the list by providing the Exchange with a letter signed by person of Secretary rank or higher indicating the issuer's choice of specialist. In the case of an Exchange Traded Fund or Structured Product, the selection may be made by a senior officer of the sponsor or issuer who has been authorized to make such selection. If the issuer does not make its selection in a timely manner, the Allocation Committee may select the specialist as provided in paragraph (b) of this Rule. *This procedure only applies to issuers of equity securities, and sponsors of Exchange Traded Funds and Structured Products that initially list on the Exchange.*

[The security shall remain with its initial specialist for at least 120 days. After that time, but during the first 12 months after listing, the issuer or sponsor may request that the security be reallocated should it become dissatisfied with its specialist. This is the case whether or not the issuer or sponsor has participated in the selection process. The issuer or sponsor is expected to furnish an explanation for the basis for its dissatisfaction, and if after counseling the issuer or sponsor and the specialist such change is still desired, the Exchange shall reallocate the security within 30 days. In any such reallocation, the Exchange shall follow the allocation procedures described in this paragraph (e) unless the issuer or sponsor requests the Allocations Committee to select the specialist without any issuer or sponsor input under the procedures described in paragraph (b) of this Rule.]

(ii) (a) The issuer of any listed equity security or Structured Product or the Exchange Traded Fund sponsor, may, at any time after 120 days from the start of trading on the Exchange, file a written notice (''Notice'') with the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, signed by the issuer's or sponsor's chief executive officer, requesting a change of specialist unit for ''good cause,'' as defined below. The issuer or sponsor is afforded one opportunity to do so. The Notice shall indicate the specific issues prompting this request, and what steps, if any, have been taken to try to address them before the filing of the Notice. The officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, shall provide copies of the Notice to the Chief Regulatory Officer (''CRO'') and the Committee on Floor Member Performance.

(b) ''Good cause,'' for the purposes of (e)(ii)(a), shall consist of the failure of the specialist to make competitive markets; the failure of the specialist unit to risk capital commensurate with the type of security; the failure of the specialist unit to assign competent personnel to the stock; or any statements made publicly by the specialist unit that substantially denigrate the security. The Committee on Floor Member Performance shall make any determination that ''good cause'' does not exist, as defined herein. Such a determination shall be made prior to the commencement of an Issuer or Sponsor Change of Specialist Mediation (''Mediation''). In this circumstance the issuer or sponsor may appeal the decision of the Committee on Floor Member Performance to the Amex Adjudicatory Council. If the decision of the Committee on Floor Member Performance is upheld, there shall be no Mediation, and the security shall not be reallocated.

(iii) The officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, shall notify the subject specialist unit that Mediation is being commenced pursuant to this provision, and shall provide the specialist with a copy of the Notice. Within two weeks, the specialist unit may submit a written response to either the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable. The officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, shall provide copies of any such written response to the CRO, and the Committee on Floor Member Performance. The date the specialist submits a response shall be referred to herein as the ''Specialist Response Date.'' If the specialist does not submit a response, there shall be no Mediation, and the Allocation Committee shall be convened to reallocate securities pursuant to paragraph (b) of this Rule.

(iv) The CRO shall review the Notice and any specialist response, and may request a review of the matter by the Regulatory Oversight Committee (''ROC'') of the Exchange's Board of Directors. In addition, the Committee on Floor Member Performance shall review the Notice and any specialist response. The Mediation process described hereunder may continue during the CRO's reviews, however, where a review by the ROC has been requested, no change of specialist unit may occur until the ROC makes a final determination that it is appropriate to permit such change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or is in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. The ROC may request a statement from the issuer or

[6] In Amendment No. 4, the Exchange proposed minor technical changes to the text of Amex Rule 27(e) and (f).

sponsor confirming that the request does not stem in whole or in part from the specialists' refusal or failure to engage in any wrongful action. Notwithstanding the CRO, ROC and/or Committee on Floor Member Performance reviews of any matter raised during the process described herein, the Amex Division of Regulation and Compliance (including Listing Qualifications) and/or the NASD Amex Division may at any time take any regulatory action that it may determine to be warranted.

(v) The Exchange shall facilitate a mediation of the issues that have arisen between the issuer or sponsor and the specialist unit. The Exchange shall appoint a committee consisting of at least one floor broker, one senior floor official, one upstairs governor, and two independent governors for each Mediation (''the Mediation Committee'').

(vi) As soon as practicable after the Specialist Response Date, the Mediation Committee shall commence to meet with representatives of the issuer or sponsor and the specialist unit in an attempt to mediate the matters indicated in the Notice.

(vii) Any time after the filing of the Notice, the issuer or sponsor may file with the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace, as applicable, a written notice, signed by the issuer's or sponsor's chief executive officer, that it is concluding the Mediation because it wishes to continue with the same specialist unit.

(viii) After the expiration of one month from the Specialist Response Date, subject to the conclusion of any review by the CRO and ROC, the issuer and sponsor may file with the officer in charge of Equities Administration or the officer in charge of the Exchange Traded Fund Marketplace a written notice, signed by the issuer's or sponsor's chief executive officer, that it wishes to proceed with the change of specialist unit. Subject to paragraph (c) above, as soon as practicable thereafter, the security shall be put up for allocation following the procedures described in paragraph (b) of this Rule.

(f) The Allocations Committee shall be convened to reallocate securities when (1) the Committee on Floor Member Performance directs reallocation, (2) a specialist requests to be relieved of a particular security for good cause, *(3) an issuer or sponsor files a written notice requesting a change of specialist unit and the Mediation Committee orders reallocation pursuant to paragraph (e)(viii) of this Rule, or an issuer or sponsor files a written notice requesting a change of specialist unit and the specialist unit does not submit a response,* or [(3)] *(4)* a specialist's registration in a security is canceled due to disciplinary action. Whenever the Allocations Committee reallocates a security for the reasons stated in (1) through [(3)] *(4)* of this paragraph, the Allocations Committee shall follow the procedures described in paragraph (b) of this Rule. The Allocations Committee also shall be convened to reallocate securities when [(4)] *(5)* a specialist dissolves or recombines, [(5)] *(6)* a specialist has been determined to be in such financial or operating condition that it cannot be permitted to continue to specialize in one or more of its specialty securities with safety to investors, its creditors or other members, or [(6)] *(7)* a specialist has become subject to the pre-borrowing requirement of Rule 203(b)(3) of Regulation SHO under the Securities Exchange Act of 1934 with respect to one of its specialty securities or, in the case of an options specialist, with respect to the underlying security. The Allocations Committee shall follow the procedures described in paragraphs (g) or (h) of this Rule, as appropriate, whenever it reallocates securities for the reasons stated in [(4)] *(5)* through [(6)] *(7)* of this paragraph.

(g)–(i) No change.

* * * Commentary

No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change, as amended, and discussed any comments it received on the proposed rule change, as amended. The text of these statements may be examined at the places specified in Item IV below. The Amex 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 Amex proposes to set forth procedures in Amex Rule 27, whereby issuers of equity securities, structured products and ETF sponsors may request a new specialist.

Current Amex Rule 27

Amex Rule 27(e) currently gives the issuer of an equity security or a structured product and the sponsor of an ETF a one-time right to request a reallocation to a different specialist unit within one (1) year from the original listing. The Exchange believes that the one-year restriction on this right does not provide an adequate amount of time for issuers to reach an informed opinion regarding a specialist. Moreover, the one-year limit does not address dissatisfaction linked to fundamental changes in a specialist unit due to transfers of specialist books or changes in a unit.

Proposed Amex Rule 27

Amex proposes in Amex Rule 27(e)(ii) that at any time after 120 days from the start of trading of an issue, an issuer or sponsor may request a specialist reassignment by filing a written notice (''Notice'') with the officer in charge of Equities Administration or the officer in charge of the ETF Marketplace, as applicable, indicating the specific issues prompting the request and the steps previously taken to attempt to address them. The issuer or sponsor may make this request for ''good cause.'' Amex proposes to define ''good cause'' as the failure of the specialist to make competitive markets; the failure of the specialist unit to risk capital commensurate with the type of security; the failure of the specialist unit to assign competent personnel to the securities; or any statements made publicly by the specialist unit that substantially denigrate the security.

Further, the Amex proposes that the officer in charge of Equities Administration or the officer in charge of the ETF Marketplace, as applicable, will provide copies of the Notice to the Chief Regulatory Officer of the Exchange (''CRO'') and to the Committee on Floor Member Performance. In addition, the officer in charge of Equities Administration or the officer in charge of the ETF Marketplace, as applicable, will notify the subject specialist unit that mediation is being commenced with respect to the request for reassignment, and will provide the specialist with a copy of the Notice. The specialist unit may submit a written response to the officer in charge of Equities Administration or the officer in charge of the ETF Marketplace within two (2) weeks, which response will be provided to the CRO and the Committee on Floor Member Performance. If the specialist unit does not submit a response during this two-week time period, however, there will be no

further assessment by the CRO or Committee on Floor Member Performance, and ultimately no mediation. The Allocations Committee will be convened to reallocate securities pursuant to Amex Rule 27(b).

The Exchange proposes in Amex Rule 27(e)(iv) that the CRO will review the Notice and any specialist response, and may request a review of the matter by the Regulatory Oversight Committee (''ROC'') of the Exchange's Board of Governors. In addition, the Committee on Floor Member Performance will review the Notice and any specialist response. The Committee on Floor Member Performance will make any determination that ''good cause,'' as proposed to be defined in Amex Rule 27(e)(ii)(b), does not exist prior to the commencement of the mediation. A Committee on Floor Member Performance determination that ''good cause'' does not exist will preclude the commencement of mediation. In this circumstance, the security will not be reallocated and the issuer or sponsor may request an appeal of the decision of the Committee on Floor Member Performance to be heard by the Amex Adjudicatory Council.[7] If the Committee on Floor Member Performance decision is upheld, then the security will not be reallocated.

Proposed Amex Rule 27(e)(v) provides that the Exchange will facilitate mediation of the issues that have arisen between the issuer or sponsor and the specialist unit, which may be conducted pending the outcome of the CRO's and, if applicable, the ROC's review of the request. However, as set forth in proposed Amex Rule 27(e)(iv), where a review by the ROC has been requested, no change of specialist unit may occur until the ROC makes a final determination that it is appropriate to permit such change. In making such determination, the ROC may consider all relevant regulatory issues, including without limitation whether the requested change appears to be in aid or furtherance of conduct that is illegal or violates Exchange rules, or in retaliation for a refusal by a specialist to engage in conduct that is illegal or violates Exchange rules. Moreover, the Amex proposes that, notwithstanding review by the CRO, ROC and/or Committee on Floor Member Performance of any matter raised during the process described herein, the Amex Division of Regulation and Compliance (including Listing Qualifications) and/or the NASD Amex Division may at any time take any regulatory action that it may determine to be warranted. The Amex represents that reassignment may not occur without prior notice that the CRO has decided not to refer the matter to the ROC or that the ROC has determined that the change is appropriate.

The Exchange proposes a committee consisting of at least one (1) floor broker, one (1) senior floor official, one (1) upstairs governor, and two (2) independent governors for each mediation (''the Mediation Committee''). The Mediation Committee will meet with representatives of the issuer or sponsor and the specialist unit in an attempt to mediate the matters indicated in the Notice. During the course of the mediation, the issuer or sponsor may conclude the mediation if it determines that it wishes to continue with the same specialist unit. In the alternative, after the expiration of one month from the time of the specialist's response, subject to the conclusion of any review by the CRO and ROC, the issuer or sponsor may file written notice with the officer in charge of Equities Administration or the officer in charge of the ETF Marketplace, as applicable, signed by the issuer's or sponsor's chief executive officer, that it wishes to proceed with the change of specialist unit. The new specialist unit will be selected by the Allocations Committee pursuant to Amex Rule 27(b).

Finally, the Exchange proposes to amend Amex Rule 27(f) to provide that, in addition to the circumstances provided for in the existing rule, the Allocations Committee will be convened to reallocate securities when an issuer or sponsor files a written notice requesting a change of specialist unit and the Mediation Committee orders reallocation pursuant to proposed paragraph (e)(viii) of Amex Rule 27, or an issuer or sponsor files a written notice requesting a change of specialist unit and the specialist unit does not submit a response.

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the provisions of Section 6(b) of the Act,[8] in general, and with Section 6(b)(5) of the Act,[9] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange did not receive any written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, as amended; or

B. Institute proceedings to determine whether the proposed rule change, as amended, should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, 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–2005–103 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Amex–2005–103. 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

[7] *See* Article II, Section 7(a) of the Amex Constitution.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Amex–2005–103 and should be submitted on or before April 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4829 Filed 4–3–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53558; File No. SR–CBOE–2006–28]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change and Amendment No. 1 Thereto To Clarify the Application of Certain Exchange Rules to the Trading of Options on Exchange-Traded Fund Shares

March 28, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 16, 2006, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 27, 2006, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Exchange filed the proposed rule change as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[4] and Rule 19b–4(f)(6) thereunder,[5] 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 Exchange proposes to make amendments to clarify the application of certain Exchange rules to the trading of options on exchange-traded fund (''ETF'') shares.

The text of the proposed rule change, as amended, is available on the Exchange's Web site (*http://www.cboe.com*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below and is 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 currently trades, among other things, options on ETFs. In conjunction with a recent review of Exchange rules, this filing proposes to make amendments to clarify the application of certain Exchange rules to the trading of ETF options.

First, this filing proposes to make certain clarifying changes to CBOE Rule 6.3. CBOE Rule 6.3 pertains to trading halts and provides generally that Exchange Floor Officials may halt trading in any security in the interests of maintaining a fair and orderly market. Though the rule has general applicability to all securities traded on the Exchange and authorizes trading halts in any such security, certain of the factors identified in the rule that may be considered in making a decision to halt trading vary depending on the particular type of Exchange traded security while other factors apply generally to all securities.

For example, the rule currently references factors for considering halts in the case of (i) a stock option, (ii) any security other than an option, and (iii) an index warrant or an index UIT interest and also references general, non-security type specific factors pertaining to rotations and unusual conditions or circumstances.[6] The rule is being amended to change the references in the list of factors from particular types of securities (such as ''stock options'') to more general references (such as ''an option on a security'').

Additionally, the Exchange is proposing to add similar clarifying language in Interpretation .04 of CBOE Rule 6.3, which addresses trading halts on the Exchange when a regulatory halt in an underlying stock has been declared in the primary market (a ''regulatory halt''). Since such regulatory halts may be declared for securities other than stock options, such as ETF options, Interpretation .04 is being amended to clarify that, in general, a halt on the Exchange can be made when there is a regulatory halt in the underlying security. This revision makes clear Interpretation .04's applicability to stock options, ETF options, and any other such options for which there is an underlying security.

Second, this filing proposes to amend CBOE Rule 7.4, which rule pertains to certain obligations of Order Book Officials (''OBOs''). Specifically, CBOE Rule 7.4(a)(2) describes what types of orders shall ordinarily be accepted by an OBO and certain OBO responsibilities pertaining to the processing of orders that are submitted

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange made minor clarifying and technical changes to the proposed rule change.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6).

[6] The existing rule text provides that ''[a]mong the factors that may be considered in making [a determination to halt trading] are whether: (i) In the case of a stock option, trading in the underlying security has been halted or suspended in the primary market, (ii) in the case of a stock option, the opening of such underlying security has been delayed because of unusual circumstances, (iii) in the case of any security other than an option, (A) the opening of such security has been delayed due to order imbalances, (B) the Exchange has been advised that the issuer of the security is about to make an important announcement affecting such issue, or (C) trading in such security has been halted or suspended in the primary market for such security. (iv) In the case of an index warrant or an index UIT interest, trading in index options has been halted pursuant to the provisions of Rule 24.7, (v) the extent to which the rotation has been completed or other factors regarding the status of the rotation, or (vi) other unusual conditions or circumstances are present.'' CBOE Rule 6.3(a).

through the Intermarket Options Linkage (''Linkage Orders''). This current rule states that for those index option classes on the Exchange's Hybrid Trading System (''Hybrid'') that are not assigned a Designated Primary Market-Maker (''DPM''), the OBO shall be responsible for (i) routing Principal Acting as Agent (P/A) orders and Satisfaction orders to other markets based on prior written instructions that must be provided by the Lead Market-Maker (''LMM'') to the OBO and (ii) handling all Linkage Orders or portions of Linkage Orders received by the Exchange that are not automatically executed.

The Exchange currently has some options on ETFs that are not assigned to a DPM and that trade on Hybrid. One example is the DIAMOND (DIA) options. The intent of CBOE Rule 7.4 has always been that the responsibilities of the OBO is not only for index options classes on Hybrid that are not assigned a DPM but also for ETF options classes on Hybrid that are not assigned a DPM. However, the rule is currently unclear in making this point. For this reason, the Exchange is proposing that in CBOE Rule 7.4(a)(2), ''ETF options'' be added to the rule's current language to clarify that an OBO's responsibilities pertaining to the process of Linkage Orders applies for both (i) index options classes and (ii) ETF option classes, that are on Hybrid and that are not assigned a DPM.

Third, this filing proposes to amend CBOE Rule 8.15, which governs the LMM and Supplemental Market-Maker (''SMM'') appointment process in non-Hybrid classes, to make the list of factors considered in selecting LMMs and SMMs consistent with the language in the Exchange rule governing LMM appointments in Hybrid classes. Specifically, the current factors in CBOE Rule 8.15(a)(1) that are considered in selecting LMMs and SMMs in non-Hybrid classes include: Adequacy of capital, experience in trading index options, presence in the trading crowd, adherence to Exchange rules and ability to meet certain other obligations.

Similarly, current CBOE Rule 8.15A governs the factors that are considered in selecting LMMs in Hybrid classes.[7] The current factors in CBOE Rule 8.15A(a)(1) include: Adequacy of capital, experience in trading index options or options on ETFs, presence in the trading crowd, adherence to Exchange rules and ability to meet certain other obligations. The factors used in selecting LMMs and SMMs for both Hybrid and non-Hybrid classes are the same except for the additional factor of experience in trading options on ETFs for Hybrid classes.

This filing proposes to amend CBOE Rule 8.15 to add experience in trading ''options on ETFs'' as an additional factor used in selecting LMMs and SMMs in non-hybrid classes. Currently, options on ETFs are traded on both Hybrid and non-Hybrid classes. For this reason, the Exchange is proposing to make CBOE Rule 8.15 consistent with the factors used in CBOE Rule 8.15A.

2. Statutory Basis

By proposing to make certain amendments to clarify the application of certain Exchange Rules as they pertain to the trading of options on ETF shares, the Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change 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

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended, does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the Exchange has given the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change or such shorter time as designated by the Commission, the proposed rule change, as amended, has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

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–CBOE–2006–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2006–28. 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

[7] SMMs do not exist in Hybrid.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). The Commission notes that the Exchange satisfied the pre-filing five-day notice requirement.

[12] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change, as amended, under Section 19(b)(3)(C) of the Act, the Commission considers the period to commence on March 27, 2006, the date on which the Exchange filed Amendment No. 1. *See* 15 U.S.C. 78s(b)(3)(C).

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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2006–28 and should be submitted on or before April 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4799 Filed 4–3–06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53564; File No. SR–NASD–2006–038]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Proposed Amendments to NASD Rule 1013 To Adopt a Standardized New Member Application Form (Form NMA)

March 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 3, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. NASD has designated the proposed rule change as constituting a ''non-controversial'' rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to amend Rule 1013 (New Member Application and Interview) to adopt a standardized new member application form, Form NMA, to be used by all new applicants applying for membership to NASD. The proposed rule change also makes several technical changes to NASD Rules 1013 and 1014. The proposed new form is available at NASD, the Commission, and at *http://www.nasd.com.* Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in [brackets].

* * * * *

1013. New Member Application and Interview

(a) Filing of Application

(1)—No Change.

(2) Contents

An Applicant shall submit an application using NASD Form NMA. The application shall include:

(A) Through (Q) No Change.

(R) [a Web CRD entitlement request form] *an NASD Entitlement Program Agreement and Terms of Use* and *an NASD Member Firm Account Administrator Entitlement Form* [a Member Contact Questionnaire user access request form].

(3) Electronic Filings

Upon approval of the Applicant's [Web CRD entitlement request form] *NASD Member Firm Account Administrator Entitlement Form,* the Applicant shall submit its Forms U4 for each Associated Person who is required to be registered under NASD Rules, any amendments to its Forms BD or U4 and any Form U5 electronically via Web CRD. [Upon approval of the Applicant's membership, the Applicant shall submit any amendments to its Member Contact Questionnaire electronically.]

(4) through (5) No Change.

(b) Membership Interview

(1) through (7) No Change.

* * * * *

1014. Department Decision

(a). Standards for Admission

(1) through (5) No Change.

(6) The communications and operational systems that the Applicant intends to employ for the purpose of conducting business with customers and other members are adequate and provide reasonably for business continuity in each area set forth in Rule 1013(a)(2)([F]*E*)(xii);

(7) through (14) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD staff has been working to make its membership application process more efficient and less burdensome for both new applicants and the staff. Applying for NASD membership is an intensive process requiring considerable attention to detail as well as a substantial time commitment. NASD Rule 1013 (New Member Application and Interview) identifies the requirements for submitting a new member application for NASD membership, including a listing of the necessary documents and a requirement that the applicant submit a ''substantially complete'' application.[5] Pursuant to NASD Rule 1013(a)(4), NASD can reject an application that is not substantially complete.

Although NASD Rule 1013 contains a listing of the requirements for a new member application submission, NASD continues to receive incomplete or inadequate membership applications. Such applications often require NASD staff to serve requests for significant additional information or documentation to the applicant and require a great deal of NASD staff time and resources to process appropriately. Applications initially submitted with inadequate or incomplete information result in increased processing times, which can have the effect of significantly delaying when an applicant can begin conducting business as a member of NASD.

To address these issues, NASD is proposing to amend NASD Rule 1013 to

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19–b4(f)(6). NASD gave the Commission written notice of its intent to file this proposed rule change on February 8, 2006.

[5] *See* NASD Rule 1013(a)(4).

include a requirement to use New Member Application Form (''Form NMA'') to submit any applications for NASD membership. Form NMA will not establish new or additional content requirements, which are already set forth in NASD Rule 1013, but rather, will be a means to assist new member applicants in the preparation of a complete application package. Form NMA will be organized according to the 14 individual standards for membership enumerated in NASD Rule 1014, and will list all required exhibits, forms and supporting documentation required in an application submission.

Additionally, Form NMA will identify certain information as mandatory or required submissions in the initial application. If such ''mandatory'' information is not provided in the initial application submission, the application will be deemed not ''substantially complete'' pursuant to NASD Rule 1013(a)(4) and will be rejected.[6]

By requiring member applicants to use the prescribed Form NMA, NASD expects to streamline the application process by creating one unified application process and clearly outlining the information that must be submitted to process the application. Additionally, using the prescribed form will expedite the application review and approval process and will also lessen the burden on NASD staff reviewing the membership application by making the process of reviewing applications for completeness more efficient.

Once the proposed rule change becomes effective and operative, NASD will make Form NMA available to applicants as part of NASD's *New Member Application Package* and through NASD's Web site. Applicants will be required to submit Form NMA, along with required exhibits, as an original, signed paper form. Additionally, NASD staff intends to develop systems that will allow applicants to submit Form NMA electronically via Web CRD®.

Finally, NASD is making several technical changes. Specifically, NASD is deleting NASD Rule 1013's references to the Web CRD entitlement request form and Member Contact Questionnaire user access request form and, where appropriate, replacing those references with the forms' respective new titles—NASD Entitlement Program Agreement and Terms of Use and NASD Member Firm Account Administrator Entitlement Form. NASD is also changing an incorrect cite in NASD Rule 1014(a)(6) from NASD Rule 1013(a)(2)(F)(xii) to NASD Rule 1013(a)(2)(E)(xii).

This proposed rule change is effective upon filing. NASD will announce the implementation date of the proposed rule change in a *Notice to Members* to be published no later than 60 days following Commission notice of the filing of the rule change for immediate effectiveness. The implementation date will be 30 days from the publication of the *Notice to Members.*

2. Statutory Basis

NASD believes that the proposed rule change is consistent with Section 15A of the Act,[7] in general, and furthers the objectives of Section 15A(b)(6) of the Act,[8] in particular, which requires, among other things, that NASD rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The proposed rule change amends NASD Rule 1013 to require new member applications to be submitted using Form NMA. The proposed rule change does not propose any new or additional content requirements for member applications.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2006–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–038. 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 NASD.

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

[6] NASD can deem an application to be not ''substantially complete'' for other reasons. Such a determination is made based on the facts and circumstances of the application, the information and documentation requirements of NASD Rule 1013, the nature and complexity of the application, and the nature and extent of the missing or incomplete documentation.

[7] 15 U.S.C. 78*o*–3.

[8] 15 U.S.C. 78*o*–3(b)(6).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

should submit only information that you wish to make available publicly. All submissions should refer to the File Number SR–NASD–2006–038 and should be submitted on or before April 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4821 Filed 4–3–06; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53562; File No. SR–NASD–2006–005]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Expand the Scope of NASD Rule 2440 and Interpretive Material 2440 Relating to Fair Prices and Commissions To Apply to All Securities Transactions

March 29, 2006.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 19, 2006, the National Association of Securities Dealers, Inc. (''NASD'') 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 NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD proposes to expand the scope of NASD Rule 2440 (Fair Prices and Commissions) and Interpretive Material (''IM'') 2440 relating to fair prices and commissions to apply to all securities transactions, whether executed over-the-counter (''OTC'') or on an exchange. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

2440. Fair Prices and Commissions

In [''over-the-counter''] *securities* transactions, whether in ''listed'' or ''unlisted'' securities, if a member buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit; and if he acts as agent for his customer in any such transaction, he shall not charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefor.

IM–2440. Mark-Up Policy

The question of fair mark-ups or spreads is one which has been raised from the earliest days of the Association. No definitive answer can be given and no interpretation can be all-inclusive for the obvious reason that what might be considered fair in one transaction could be unfair in another transaction because of different circumstances. In 1943, the Association's Board adopted what has become known as the ''5% Policy'' to be applied to transactions executed for customers. It was based upon studies demonstrating that the large majority of customer transactions were effected at a mark-up of 5% or less. The Policy has been reviewed by the Board of Governors on numerous occasions and each time the Board has reaffirmed the philosophy expressed in 1943. Pursuant thereto, and in accordance with Article VII, Section 1(a)(ii) of the By-Laws, the Board has adopted the following interpretation under Rule 2440.

It shall be deemed a violation of Rule 2110 and Rule 2440 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission which is not reasonable.

(a) through (b) No change.

(c) Transactions to Which the Policy is Applicable.

The policy applies to all securities[handled in the over-the-counter market], whether oil royalties or any other security, in the following types of transactions:

(1) through (5) No change.

(d) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 2440 generally requires NASD members, in any OTC transaction with or for a customer, to charge only fair commissions or charges, and to buy or sell securities only at fair prices.[3] Specifically, NASD Rule 2440 provides, in part, that a member is required to buy or sell a security at a fair price to customers, ''taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit * * *'' and if the member acts as agent, the member will not ''charge his customer more than a fair commission or service charge, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense of executing the order and the value of any service he may have rendered by reason of his experience in and knowledge of such security and the market therefore.'' The related Mark-Up Policy, IM–2440, provides additional guidance on mark-ups and fair pricing of securities transactions with customers and states that it is inconsistent with just and equitable principles of trade under NASD Rule 2110 for a member to enter into any transaction with a customer in any security at any price not reasonably related to the current market price of the security or to charge a commission that is not reasonable.

NASD Rule 2440 and IM–2440 apply only to OTC transactions. There is no NASD rule that specifically addresses commissions or mark-ups (and mark-downs) for non-OTC transactions (*i.e.*, exchange transactions). Although the language of NASD Rule 2440 and IM–2440 specifically limits their application

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* NASD Rule 2440.

to OTC transactions, NASD has taken the position that a broker-dealer charging excessive compensation in a transaction with a customer executed on an exchange violates NASD Rule 2110, which requires that a member must, in the conduct of its business, ''observe high standards of commercial honor and just and equitable principles of trade.'' [4]

To further clarify members' obligations to charge fair commissions and mark-ups (or mark-downs), NASD is proposing to amend NASD Rule 2440 and IM–2440 to apply these provisions expressly to all securities transactions, whether they occur in the OTC market or on an exchange.[5] NASD believes that commission and mark-up (mark-down) requirements should be uniform and not vary based solely on where the transaction occurs. Therefore, a member that charges unfair and excessive commissions or mark-ups (mark-downs) in any customer transaction, whether it is an OTC or exchange transaction, would violate NASD Rule 2440 and IM–2440.[6]

Should the Commission approve the proposed rule change, NASD will implement the proposed rule change upon SEC approval. NASD will announce the approval in a *Notice to Members* to be published no later than 30 days following Commission approval.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[7] which requires, among other things, that NASD rules be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and, in general, protect investors and the public interest. NASD believes that the proposed rule change will deter members from charging their customers unfair, unreasonable, or excessive mark-ups or commissions for effecting securities transactions, and will thereby promote investor protection.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received.

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 NASD consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. 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–NASD–2006–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASD–2006–005. 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 NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASD–2006–005 and should be submitted on or before April 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4822 Filed 4–3–06; 8:45 am]

BILLING CODE 8010–01–P

[4] *See* NASD Rule 2110. *See also Atlanta-One, Inc.* v. *SEC*, 100 F.3d 105, 107 n.1 (9th Cir. 1996), which states ''[a]lthough [Rule 2440 and IM–2440] deals with the appropriate level of compensation in retail transactions in the over-the-counter market, the [rule] provides guidance by analogy as to appropriate commissions for exchange transactions.''

[5] Currently, NASD Rule 2440 and IM–2440 do not apply to transactions in municipal securities and exempt securities, and this would not be changed by the proposal. *See* NASD Rule 0116. *See also* Sections 3(a)(12) and 3(a)(29) of the Act. It is important to note, however, that Municipal Securities Rulemaking Board (''MSRB'') Rule G–30, Prices and Commissions, applies to transactions in municipal securities, and requires a municipal securities dealer engaging in a transaction with a customer, as a principal, to buy or sell securities at an aggregate price that is ''fair and reasonable,'' or, as an agent, to charge a commission or service charge that is not more than a ''fair and reasonable amount.'' *See* MSRB Rule G–30.

[6] The proposed amendments would expand the scope of NASD Rule 2440 and IM–2440 to include all securities transactions with or for a customer only. The proposal would not alter the fact that NASD Rule 2440 and IM–2440 do not apply to member-to-member transactions.

[7] 15 U.S.C. 78*o*–3(b)(6).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53568; File No. SR–NFA–2006–01]

Self-Regulatory Organization; National Futures Association; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Interpretive Notice to Compliance Rule 2–9

March 29, 2006.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (''Exchange Act''),[1] and Rule 19b–7 under the Exchange Act,[2] notice is hereby given that on February 27, 2006, National Futures Association (''NFA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change described in

[1] 15 U.S.C. 78s(b)(7).

[2] 17 CFR 240.19b–7.

Items I, II, and III below, which Items have been prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. NFA also has filed the proposed rule change with the Commodity Futures Trading Commission (''CFTC'').

NFA, on February 27, 2006, requested that the CFTC make a determination that review of the proposed rule change is not necessary. By letter dated March 8, 2006, the CFTC notified NFA of its determination not to review the proposed rule change.[3]

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Exchange Act[4] makes NFA a national securities association for the limited purpose of regulating the activities of NFA members (''Members'') who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[5] NFA's Interpretive Notice titled ''Compliance Rule 2–9: Enhanced Supervisory Requirements'' (''Interpretive Notice'') applies to all Members, including Members registered under Section 15(b)(11), who meet the criteria specified in the Interpretive Notice.

The proposed rule change, which would modify the Interpretive Notice, would exempt certain associated persons (''APs'') from being counted in the calculation for determining whether a Member is required, pursuant to NFA Compliance Rule 2–9(b) (discussed below), to adopt the enhanced supervisory procedures described in the Interpretive Notice. In particular, the proposed rule change would exclude from the calculation the individuals who meet all of the following criteria:

- The AP has only worked for one Disciplined Firm;[6]
- The AP has not worked for a Disciplined Firm in more than ten years;
- The AP has not worked for a Member that has been subject to a sales practice action by NFA or the CFTC since leaving the Disciplined Firm;
- The AP has not been personally subject to a disciplinary action by NFA or the CFTC; and
- The AP has been an NFA Member or Associate Member for at least eight of the preceding ten years.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These 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

NFA Compliance Rule 2–9, titled ''Supervision,'' provides in paragraph (b) that the NFA's Board of Directors (''Board'') may require Members that meet specific criteria established by the Board, relating to the employment history of their APs, to adopt supervisory procedures specified by the Board for the supervision of telemarketing. The Interpretive Notice describes these enhanced supervisory procedures and provides that a Member would be required to undertake these procedures if its sales force included a specified number of APs who have previously worked at Disciplined Firms. The Interpretive Notice and an enabling provision of NFA Compliance Rule 2–9(b) provide that affected Members may petition the Telemarketing Procedures Waiver Committee (''Waiver Committee'') for relief from the enhanced supervisory procedures.

From time to time, the Board has amended the Interpretive Notice's numerically-based criteria to exempt certain APs who have worked at Disciplined Firms from having to be counted for purposes of determining whether a Member that hires them is required to adopt the enhanced supervisory procedures. According to NFA, these exempted APs, based upon their history, are not likely to pose a risk to the public.[7]

APs who may not pose a risk to the public remain in the population of APs who could trigger enhanced supervisory procedures. For example, a prospective AP who worked at one Disciplined Firm for more than sixty days a number of years ago but who otherwise had an unblemished personal and employment history in the industry would currently be afforded relief only if the firm seeking to hire the AP applied for a waiver. NFA's Waiver Committee often takes these individual factors into consideration when deciding whether to grant a waiver to a firm.

Without an exemption, these individuals may not ever reach the Waiver Committee. Employers, and small firms in particular, may be wary of hiring these individuals merely because their hiring might trigger enhanced supervisory procedures and require the firm to apply for a waiver. In addition, some firms are simply loath to hire an individual who would be counted on their staff as having come from a Disciplined Firm even if hiring them would not trigger enhanced supervisory procedures.

NFA performed an analysis of registration and disciplinary data and found that a significant number of currently active APs who have long tenures in the industry meet the criteria proposed for the exemption. Specifically, applying the proposed criteria would exempt 82 currently active APs, who are employed by 67 Member firms, from being counted as APs who had worked at a Disciplined Firm for purposes of determining whether their current sponsor or any prospective sponsors would trigger an obligation to undertake the enhanced supervisory procedures.

NFA believes that adding these exemptions will reduce the burden on the membership while still imposing enhanced supervision on firms that cause concern. Exempting APs who worked at a single Disciplined Firm more than ten years ago, have since been employed by compliant Members, and have good personal compliance histories could help to make the Waiver Committee more efficient since an increased number of non-problematic

[3] *See* Letter from Lawrence B. Patent, Deputy Director, CFTC, to Thomas W. Sexton, III, Esq., General Counsel, NFA (Mar. 8, 2006).

[4] 15 U.S.C. 78o–3(k).

[5] 15 U.S.C. 78o(b)(11).

[6] For purposes of the Interpretive Notice, a Disciplined Firm is defined as one that meets the following three criteria: (1) The firm has been formally charged by either the CFTC or NFA with deceptive telemarketing practices or promotional material; (2) those charges have been resolved; and (3) the firm has been permanently barred from the industry as a result of those charges. In addition, a Disciplined Firm is defined to include any broker-dealer that, in connection with sales practices involving the offer, purchase, or sale of any security futures product, as defined in Section 1a(32) of the CEA has been expelled from membership or participation in any securities industry self-regulatory organization or is subject to an order of the SEC revoking its registration as a broker-dealer. See Interpretive Notice, p. 4.

[7] For example, in 2003, the Interpretive Notice was amended to exempt APs who had worked at Disciplined Firms for less than sixty days more than ten years ago. Securities Exchange Act Release No. 47533 (Mar. 19, 2003); 68 FR 14733 (Mar. 26, 2003). Last year the Board amended the Interpretive Notice to reduce this period from ten years to five years, while retaining the requirement that the individual must have worked at such a firm for less than sixty days. Securities Exchange Act Release No. 52808 (Nov. 18, 2005); 70 FR 71347 (Nov. 28, 2005).

firms and individuals will be removed from the waiver process.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the Commodity Exchange Act (''CEA''). In fact, it will lessen the burden on competition by exempting additional firms and individuals from the enhanced supervision requirement.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA did not publish the rule change to the membership for comment. NFA did not receive comment letters concerning the rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

NFA submitted, on February 27, 2006, the proposed amendments to the Interpretive Notice regarding NFA Compliance Rule 2–9 to the CFTC for approval. NFA invoked the ''ten-day'' provision of Section 17(j) of the CEA, stating that it intended to make the proposed amendments effective ten days after receipt of the proposals by the CFTC, unless the CFTC determined to review the proposed amendments for approval and notified NFA of this determination. By letter dated March 8, 2006, the CFTC notified NFA of its determination not to review the proposed rule change.[9] The proposed rule change has become effective on March 8, 2006.

Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Exchange Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Exchange 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–NFA–2006–01 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR-NFA–2006–01. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NFA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File No. SR–NFA–2006–01 and should be submitted on or before April 25, 2006.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4830 Filed 4–3–06; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78o–3(k).

[9] *See* Letter, *supra* note 3.

[10] 15 U.S.C. 78s(b)(1).

[11] 17 CFR 200.30–3(a)(73).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–53565; File No. SR–NYSE–2005–86]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 Thereto To Conform NYSE Rules 123C and 476A With NYSE Rule 80A

March 29, 2006.

On December 7, 2005, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend: (a) NYSE Rule 123C (Market on the Close Policy and Expiration Procedures); and (b) the Supplementary Material to NYSE Rule 476A (Imposition of Fines for Minor Violation(s) of Rules), to conform such rules with the current provisions of NYSE Rule 80A (Index Arbitrage Trading Restrictions). On February 9, 2006, the Exchange filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 24, 2006.[3] The Commission received no comments regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,[5] because the proposal promotes transparency and accuracy of the rules of the Exchange for Exchange members by making clarifying changes to NYSE Rule 123C and conforming NYSE Rules 123C and 476A with the provisions of NYSE Rule 80A. A proposed rule change that is reasonably designed to make the Exchange's rules more consistent and transparent should help protect investors and the public interest.

The Commission further believes that the proposal is consistent with Sections 6(b)(1) and 6(b)(6) of the Act,[6] which

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 53327 (February 16, 2006), 71 FR 9629.

[4] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] 5 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(1) and 78f(b)(6).

require that the rules of an exchange enforce compliance with, and provide appropriate discipline for, violations of Commission and Exchange rules. The Commission notes that the proposed rule change clarifies the list of Exchange rule violations that are subject to disciplinary fines pursuant to NYSE Rule 476A. In addition, because existing NYSE Rule 476A provides procedural rights to a person fined for any violation of an Exchange rule that is determined to be minor in nature to contest the fine and permits disciplinary proceedings on the matter, the Commission believes NYSE Rule 476A, as amended by this proposal, provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.[7]

Finally, the Commission finds that the proposal is consistent with the public interest, the protection of investors, or otherwise in furtherance of the purposes of the Act, as required by Rule 19d–1(c)(2) under the Act[8] which governs minor rule violation plans. The Commission believes that the proposed change to NYSE Rule 476A will strengthen the Exchange's ability to carry out its oversight and enforcement responsibilities as a self-regulatory organization in cases where full disciplinary proceedings are unsuitable in view of the minor nature of the particular violation.

In approving this proposed rule change, the Commission in no way minimizes the importance of compliance with NYSE rules and all other rules subject to the imposition of fines under the minor rule violation plan of the Exchange. The Commission believes that the violation of any self-regulatory organization's rules, as well as Commission rules, is a serious matter. However, the Exchange's minor rule violation plan under NYSE Rule 476A provides a reasonable means of addressing rule violations that do not rise to the level of requiring formal disciplinary proceedings, while providing greater flexibility in handling certain violations. The Commission expects that NYSE will continue to conduct surveillance with due diligence and make a determination based on its findings, on a case-by-case basis, whether a fine of more or less than the recommended amount is appropriate for a violation under the minor rule violation plan or whether a violation requires formal disciplinary action under NYSE Rule 476.

[7] 15 U.S.C. 78f(b)(7) and 78f(d)(1).

[8] 17 CFR 240.19d–1(c)(2).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[9] and Rule 19d–1(c)(2) under the Act,[10] that the proposed rule change (SR–NYSE–2005–86), as amended, be, and hereby is, approved and declared effective.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Nancy M. Morris,

Secretary.

[FR Doc. E6–4823 Filed 4–3–06; 8:45 am]

BILLING CODE 8010–01–P

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 240.19d–1(c)(2).

[11] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(44).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed the Week Ending March 17, 2006

The following Agreements were filed with the Department of Transportation under the sections 412 and 414 of the Federal Aviation Act, as amended (49 U.S.C. 1382 and 1384) and procedures governing proceedings to enforce these provisions. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2006–24193.
Date Filed: March 14, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC12 Mid Atlantic-Middle East, Geneva & Teleconference, 16 February–17 February 2006 (Memo 0248).

Minutes: TC12 North/Mid/South Atlantic-Middle East, Geneva & Teleconference, 16–17 February 2006, (Memo 0252).

Fares: TC12 North/Mid/South Atlantic-Middle East, Geneva & Teleconference, 16–17 February 2006 (Memo 0136).

Intended effective date: April 1, 2006.

Docket Number: OST–2006–24205.
Date Filed: March 14, 2006.
Parties: Members of the International Air Transport Association.
Subject: TC12 South Atlantic-Middle East, Geneva & Teleconference, 16–17 February 2006 (Memo 0250).

Minutes: TC12 North/Mid/South Atlantic-Middle East, Geneva & Teleconference, 16–17 February 2006 (Memo 0252).

Fares: TC12 North/Mid/South Atlantic-Middle East, Geneva & Teleconference, 16–17 February 2006 (Memo 0137).

Intended effective date: 1 April 2006.

Docket Number: OST–2006–24206.
Date Filed: March 15, 2006.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 476, TC12 Passenger Tariff Coordination Conference, North Atlantic-Middle East between USA and Jordan

Intended effective date: April 1, 2006.

Docket Number: OST–2006–24211.
Date Filed: March 15, 2006.
Parties: Members of the International Air Transport Association.
Subject: Mail Vote 481—Resolution 010h, TC3 Japan, Korea-South East Asia, Special Passenger Amending Resolution between Japan and China (excluding Hong Kong SAR and Macao SAR).

Intended effective date: March 26, 2006.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–4836 Filed 4–3–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 17, 2006

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2006–24190.
Date Filed: March 14, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 4, 2006.
Description: Application of ACM AIR CHARTER Luftfahrtgesellschaft (''ACM AIR CHARTER''). requesting a foreign air carrier permit authorizing it to provide charter foreign air transportation of persons, property and

mail between any point or points in Germany and any point or points in the United States; and between any point or points in the United States and any point or points in a third country or countries, provided that, except with cargo charters, such service constitutes part of a continuous operation, with or without a change of aircraft, that includes air service to Germany for the purpose of carrying local traffic between Germany and the United States; and other charter between third countries and the United States. ACM AIR CHARTER requests that its application be decided on the basis of written submissions and the Streamlined Licensing Procedures Notice.

Docket Number: OST–2006–24223.
Date Filed: March 16, 2006.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 6, 2006.

Description: Application of Partner Aviation Enterprises d/b/a Empire Airways requesting authority to engage in scheduled passenger operations as a commuter air carrier and proposes to operate casino charter flights between Republic Airport in Farmingdale, NY and Atlantic City International Airport in Atlantic City, NJ, using BAE Jetstream 31 type aircraft.

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. E6–4839 Filed 4–3–06; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Denial of petition for a defect investigation.

SUMMARY: This notice sets forth the reasons for the denial of a petition submitted by Mr. Brad Lamb, Executive Director, North Carolina Consumers Council (NCCC) to NHTSA's Office of Defects Investigation (ODI). The petition was received on December 2, 2005. The petitioner requests, pursuant to 49 U.S.C. 30162, that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with respect to the performance of the head lamp assemblies on model year (MY) 2004 Pontiac Grand Prix vehicles. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's resources on the issue raised by the petition does not appear to be warranted. The agency has accordingly denied the petition. The petition is herein after identified as DP05–010.

FOR FURTHER INFORMATION CONTACT: Mr. Leamon H. Strickland, Vehicle Integrity Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–5201.

SUPPLEMENTARY INFORMATION: On December 2, 2005, ODI received a petition submitted by Mr. Brad Lamb, Executive Director of the North Carolina Consumers Council, requesting an investigation of an alleged defect evidenced by shake or bounce of the head lamps installed on MY 2004 Pontiac Grand Prix vehicles (subject vehicles), a condition that may potentially distract the operators of other motor vehicles being approached or followed by the subject vehicles. The petition alleges that this condition may be exhibited when the subject vehicles are being driven on smooth as well as rough road surfaces. The petition states that as a result of this problem, the manufacturer redesigned the head lamp bracket and issued a procedure to dealers for retrofit of the revised bracket on early models of the subject vehicles to correct this problem. The petition also identifies and lists 33 non-duplicative reports regarding the alleged defect in the subject vehicles that are contained in the ODI consumer complaint database.

In October 2003, ODI discovered that its consumer letter database contained six consumer complaints regarding this matter, and initiated a routine screening review of the matter. The review included road tests of six randomly selected subject vehicles in order to qualitatively assess the potential safety implications of the condition. The evaluation concluded that the problem appeared to be more apparent on those subject vehicle models equipped with the ''sport'' suspension system, designed with more rigidity than the standard suspension system. The review also found that the condition was more noticeable when the subject vehicles were driven on rough road surfaces. The details of this initial review were presented to and evaluated by a panel of ODI engineers and managers, who decided that the issue did not rise to the level of a potential safety-related matter that should be formally investigated.

The current petition prompted an additional and contemporary ODI review of the matter. ODI has confirmed that its consumer complaint database now contains the 33 consumer complaints cited by the petition, plus an additional three complaints, *i.e.*, a total of 36 complaints. These complaints, however, contain no allegations or reports of accidents or compromise to control of the subject vehicles, or of compromise to driver control of other vehicles resulting from head lamp bounce or shake in the subject vehicles. It is noted, however, that in one instance a driver being followed by a subject vehicle reported thinking that he was being signaled, and stopped alongside the roadway with no additional consequence. ODI estimates that approximately 180,000 of the subject vehicles were sold for use in the United Stares.

ODI has also reviewed Early Warning Reports submitted by the manufacturer for any evidence of additional reports of this problem through field reports or other documentation generated by the manufacturer's evaluations. Some relevant product evaluation reports were identified but in each case the concern was reported to be limited to operation of the subject vehicles on rough road surfaces, and none of these reports noted compromise to safe operation to the subject vehicles or to any other vehicles.

On November 23, 2004, the manufacturer issued a Technical Service Bulletin (TSB) on this condition to authorized dealers of the subject vehicles. The TSB prescribed a procedure for the installation of revised bracket and associated hardware to improve securement of the headlamp assembly to the vehicle.

The subject MY 2004 vehicles were first sold to the public beginning approximately in September 2003, and carried a standard 36-month/36,000-mile warranty. All of the subject vehicles are still within the 36 month limit of the original warranty, and that coverage continues unless the mileage limits have been exceeded. Therefore, any vehicle that developed the headlight shake condition has been eligible for repair at no cost to the owner by simply returning it to an authorized dealer; this eligibility is still in effect for those vehicles for which the mileage limits have not been surpassed. The repairs covered under the provisions of the warranty would typically involve installation of the revised headlamp bracket using the procedures outlined in the TSB issued in November 2004.

ODI's review disclosed that the first of the 36 consumer complaints was dated October 2003, and that the vehicle involved has been eligible for repair under the warranty provisions for

approximately 15 months. Unless the mileage limit of warranty coverage has been exceeded, that vehicle is still eligible for warranty repair. ODI further noted that 34 of the 36 consumer complaints were submitted prior to issuance of the manufacturer's TSB. Only two consumer complaints have been submitted since the TSB was issued, and the most recent was dated July 2005. It is clear that consumer complaints regarding the alleged defect have exhibited a declining trend.

ODI concludes that no evidence has been identified to suggest that headlamp shake in the subject vehicles constitutes significantly more than a nuisance, and that no potential safety-related implications of this condition have been demonstrated.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of the alleged defect as defined by the petitioner at the conclusion of the investigation requested in the petition. Therefore, and in view of the need to prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Daniel C. Smith,

Associate Administrator for Enforcement.

[FR Doc. E6–4815 Filed 4–3–06; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 233X)]

Union Pacific Railroad Company—Abandonment Exemption—in Woodson County, KS

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR part 1152, Subpart F—*Exempt Abandonments* to abandon its Durand Industrial Lead, a 1.55-mile line of railroad, between milepost 385.45 and milepost 387.00, near Yates Center in Woodson County, KS. The line traverses United States Postal Service Zip Code 66783.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line that would have to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.–Abandonment–Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 28, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 10, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 3, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by March 29, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: March 17, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–4804 Filed 4–3–06; 8:45 am

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,200. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–33 (Sub-No. 175X)]

Union Pacific Railroad Company—Abandonment Exemption—in Hamilton County, IA

Union Pacific Railroad Company (UP) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its Ellsworth Industrial Lead, a 3.2-mile line of railroad, between milepost 0.0, near Jewell, and milepost 3.2, at Ellsworth in Hamilton County, IA. The line traverses United States Postal Service Zip Codes 50075 and 50130.

UP has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line that would have to be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49

CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.–Abandonment–Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 28, 2006, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by April 10, 2006. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 18, 2006, with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to UP's representative: Mack H. Shumate, Jr., Senior General Attorney, Union Pacific Railroad Company, 101 North Wacker Drive, Room 1920, Chicago, IL 60606.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP has filed environmental and historic reports that address the effects, if any, of the abandonment on the environment and historic resources. SEA will issue an environmental assessment (EA) by April 3, 2006. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by March 29, 2007, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: March 17, 2006.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E6–4811 Filed 4–3–06; 8:45 am]

BILLING CODE 4915–01–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each OFA must be accompanied by the filing fee, which is currently set at $1,200. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–25

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–25, Qualifying Gasification Project Program.

DATES: Written comments should be received on or before June 5, 2006 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Larnice Mack at Internal Revenue Service, room 6512, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3179, or through the Internet at *(Larnice.Mack@irs.gov)*.

SUPPLEMENTARY INFORMATION: *Title:* Qualifying Gasification Project Program.

Notice Number: 1545–2002.

Abstract: This Notice establishes the qualifying gasification project program under section 48B of the Internal Revenue Code. The notice provides the time and manner for a taxpayer to apply for an allocation of qualifying gasification project credits.

Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of currently approved collection.

Affected Public: Business or other-for-profit organizations.

Estimated Number of Respondents: 20.

Estimated Time per Respondent: 51 minutes.

Estimated Total Annual Reporting Burden Hours: 1,700.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 16, 2006.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. E6–4806 Filed 4–3–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 30, 2006, at 11 a.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, May 30, 2006, at 11 a.m., Central time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: March 27, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–4807 Filed 4–3–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, May 9, 2006, at 9:30 a.m. central time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 297–1619.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, May 9, 2006, at 9:30 a.m. central time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1619 for additional information.

The agenda will include the following: Various IRS issues.

Dated: March 27, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–4808 Filed 4–3–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be conducted via teleconference. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, May 3, 2006, at 1 p.m., eastern time.

FOR FURTHER INFORMATION CONTACT: Barbara Toy at 1–888–912–1227, or 414–297–1611.

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 Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Wednesday, May 3, 2006, at 1 p.m. eastern time via a telephone conference call. If you would like to have the Joint Committee of TAP consider a written statement, please call 1–888–912–1227 or 414–297–1611, or write Barbara Toy, TAP Office, MS–1006–MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or FAX to 414–297–1623, or you can contact us at *http://www.improveirs.org.* Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Barbara Toy.

Ms. Toy can be reached at 1–888–912–1227, or 414–297–1611, or by FAX at 414–297–1623.

The agenda will include the following: monthly committee summary report, discussion of issues brought to the joint committee, office report, and discussion of next meeting.

Dated: March 27, 2006.

John Fay,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E6–4809 Filed 4–3–06; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, May 22, 2006, 9 a.m. to 3 p.m., and Tuesday, May 23, 2006, 8 to 11:30 a.m., Central Time.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1–888–912–1227, or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Monday, May 22, 9 a.m. to 3 p.m., and Tuesday, May 23, 8 a.m. to 11:30 a.m., Central Time, at Wilkerson, Guthmann & Johnson, LTD., 55 East 5th Street, Suite 1300, St. Paul, MN 55101. You can submit written comments to the panel by faxing to (414) 231–2363, or by mail to Taxpayer Advocacy Panel, 211 West Wisconsin Avenue, Milwaukee, WI, 53203–2221, or you can contact us at *http://www.improveirs.org.* This meeting is not required to be open to the public, but because we are always interested in community input, we will accept public comments. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 231–2360 for more information.

The agenda will include the following: Various IRS issues.

Dated: March 27, 2006.

Bernard Coston,

Director, Taxpayer Advocacy Panel.

[FR Doc. E6–4810 Filed 4–3–06; 8:45 am]

BILLING CODE 4830–01–P

Corrections

Federal Register

Vol. 71, No. 64

Tuesday, April 4, 2006

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC85

Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)—Fixed and Floating Platforms and Structures and Documents Incorporated by Reference

Correction

In rule document 05–14038 beginning on page 41556 in the issue of Tuesday, July 19, 2005 make the following corrections:

§250.900 [Corrected]

1. On page 41575, in §250.900(b), in the table, in the first column, in the second entry, in the first line ''modification'' was misspelled.

2. On the same page, in the same section, in the same table, in the same column, in the same entry, in the second line ''including'' should read ''includes''.

3. On the same page, in the same section, in the same table, in the same column, in the same entry, in the third line ''approval'' should read ''approved''.

[FR Doc. C5–14038 Filed 4–3–06; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Tuesday,
April 4, 2006

Part II

Environmental Protection Agency

40 CFR Parts 260, 261 et al.
Resource Conservation and Recovery Act Burden Reduction Initiative; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260, 261, 264, 265, 266, 268, 270, and 271

[RCRA–2001–0039: FRL–8047–3]

RIN 2050–AE50

Resource Conservation and Recovery Act Burden Reduction Initiative

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA), in accordance with the goals of the Paperwork Reduction Act (PRA), is promulgating changes to the regulatory requirements of the Resource Conservation and Recovery Act (RCRA) hazardous waste program to reduce the paperwork burden these requirements impose on the states, EPA, and the regulated community. EPA has estimated that the total annual hour savings under the final rule ranges from 22,000 hours to 37,500 hours per year. The total annual cost savings under the final rule ranges from approximately $2 million to $3 million. This rulemaking will streamline our information collection requirements, ensuring that only the information that is actually needed and used to implement the RCRA program is collected and the goals of protection of human health and the environment are retained.

DATES: This final rule is effective on May 4, 2006.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–RCRA–1999–0031. All documents in the docket are listed on the *http://www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the RCRA Docket, EPA/DC, EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the RCRA docket is (202) 566–0270.

FOR FURTHER INFORMATION CONTACT: Elaine Eby, Waste Minimization Branch, Hazardous Waste Minimization and Management Division, Office of Solid Waste (5302W), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8449, fax number: (703) 308–8443, e-mail address: *eby.elaine@epa.gov.*

SUPPLEMENTARY INFORMATION:

General Information

A. Does This Action Apply to Me?

This rule applies to entities regulated under the Resource Conservation and Recovery Act, including manufacturing, transportation, utilities, the waste treatment industry, and the mineral processing industry. This list is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. To determine whether your facility, company, or business is regulated by this action, you should carefully examine 40 CFR parts 260 through 273. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

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I. Statutory Authority

The U.S. Environmental Protection Agency (EPA) regulates the generation and management of hazardous waste under 40 CFR parts 260 through 273 using the authority of the Resource Conservation and Recovery Act of 1976 (RCRA), as amended, 42 U.S.C. 6901 *et seq.*

II. Background, Purpose, and Summary of Today's Action

As part of its hazardous waste regulations, EPA has established recordkeeping and reporting requirements that allow the Agency to enforce and ensure compliance with these regulations. In the Paperwork Reduction Act (PRA) 44 U.S.C. 3501, et seq, Congress directs all federal agencies to become more responsible and publicly accountable for reducing the burden of federal paperwork on the public. ''Burden'' is defined as 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 (44 U.S.C. 3502(2))t

Over the past five years, EPA has continued to assess and evaluate the need for the many recordkeeping and reporting requirements found in the RCRA hazardous waste program. In the course of this effort, we have identified numerous opportunities to eliminate or streamline RCRA requirements, while continuing to fulfill our mission of protecting human health and the environment.

Today's final rule changes a number of the regulatory requirements found in 40 CFR parts 260 through 271. These changes will bring about burden reductions to both the regulated community and the regulators and is a direct result of our consultations with a number of state experts on potential burden reduction ideas, as well as public input through two Notices of Data Availability and a Proposed Rulemaking.[1]

The regulatory changes contained in the Burden Reduction final rule will have no practical impact on the many protections that EPA has established over the years for human health and the environment. At the same time, this rule strives to relieve stakeholders of the burden of nonessential paperwork. The final rule clarifies certain requirements and eliminates or simplifies other requirements. We have eliminated paperwork requirements if they entail information that is obscure, inconsequential, or infrequently submitted to or used by regulators. Note, however, that the final rule does not curtail the right of regulatory agencies to request any information desired. Waste handlers must continue to keep on-site records of their waste management activities and make them available to regulators when requested. As such, the rule does not limit regulators' or the public's ability to learn what is happening at a facility.

To effectively present the large number of regulatory changes we are finalizing, we have divided these changes into ten categories or groups of changes; they are: (1) The amount of time records must be kept; (2) certification by a professional engineer; (3) option to follow the Integrated Contingency Plan Guidance; (4) option to follow the Occupational Safety and Health Administration (OSHA) regulations for emergency training; (5) clarifications and elimination of obsolete regulatory language; (6) elimination of selected recordkeeping and reporting requirements; (7) decreased self-inspection frequency for selected hazardous waste management units; (8) selected changes to the requirements for record retention and submittal of records; (9) changes to the requirements for document submittal; and (10) reduced frequency for report submittals. A summary of the major components of the final rule is presented in Table 1.

The preamble discussion follows the set of categories presented above (see also Table 1, ''Summary of the Major Components and a Description of the Regulatory Changes Being Promulgated in Today's Burden Reduction Final Rule''). Within each category, we present the changes we are promulgating, along with a discussion of the comments received and our resolution of the major issues or concerns. At the conclusion of each section, we present comparative tables showing both the current regulatory requirement and the new requirement for the affected group, *i.e.*, generators; permitted hazardous waste treatment, storage, and disposal facilities; and interim status treatment, storage, and disposal facilities. Interim status regulations at 40 CFR Part 265 provide for the continued operation of an existing facility that meets certain conditions until final administrative disposition of the owner and operator permit application is made. Regulations for permit applications are found in 40 CFR part 270 and general standards for permitted facilities are found in 40 CFR part 264.

[1] The Notices of Data Availability were published in the **Federal Register** on June 18, 1999 (64 FR 32859) and October 29, 2003 (68 FR 61662). The Proposed Rulemaking was published in the **Federal Register** on January 17, 2002 (67 FR 2518).

TABLE 1.—SUMMARY OF THE MAJOR COMPONENTS AND A DESCRIPTION OF THE REGULATORY CHANGES BEING PROMULGATED IN TODAY'S BURDEN REDUCTION FINAL RULE

Regulatory change	Description of regulatory change
The amount of time records must be kept	Many of the recordkeeping requirements for treatment, storage and disposal facilities (TSDFs) mandate record retention for the life of the facility. In this final rule, we have reduced the length of time waste handlers must retain certain records on site to three years or five years for hazardous waste combustion units (e.g., operating record requirements at 40 CFR 264.73 and 265.73). We have also increased the record retention time for a selected number of documents for interim status facilities in cases where the notification requirement has been eliminated.
Certification by a professional engineer	Numerous regulations require generators and TSDFs to obtain an independent, qualified, registered, professional engineer's certification, as specified. We have changed certain RCRA certification requirements by taking out the terms ''independent'' and ''registered.''
Option to follow the Integrated Contingency Plan Guidance	Large Quantity Generators (LQGs) and TSDFs must have contingency plans to minimize hazards to human health and the environment from fires, explosions, or any unplanned release of hazardous waste to the environment. We have modified our RCRA regulations to indicate that these waste handlers may consider developing one comprehensive contingency plan based on the Integrated Contingency Guidance. This guidance provides a mechanism for consolidating the multiple contingency plans that waste handlers have to prepare to comply with various government regulations.
Option to follow Occupational Safety and Health Administration (OSHA) regulations for emergency training.	LQGs and TSDFs must train their employees in emergency procedures. We have modified the RCRA regulations to allow waste handlers to have the option of complying with either the RCRA or OSHA requirements for emergency response procedures.
Clarifications and elimination of obsolete regulatory language	We are modifying specified regulatory language by and eliminating obsolete terms and/or rewording language to make it clearer. We are also providing regulatory clarifications to several LDR requirements.
Elimination of selected recordkeeping and reporting requirements	We have eliminated certain recordkeeping and reporting requirements in the RCRA regulations in order to eliminate submission of duplicative information and/or reporting unnecessary burden to waste handlers.
Decreased inspection frequency for hazardous waste management units.	Under many RCRA inspection requirements, we specify a frequency at which waste handlers must inspect their frequency for facility and equipment. We have reduced the self-inspection frequency for hazardous waste tank systems from daily to weekly, under certain conditions. In addition, EPA is allowing facilities in the National Performance Track Program to reduce their inspection frequencies, under certain conditions, up to monthly, on a case-by-case basis, for tank systems, containers, containment buildings, and areas subject to spills.
Selected changes to the requirements for record retention and submittal of records.	We are modifying certain requirements under which waste handlers must keep records on-site and submit these same records to EPA. We are specifying certain records that waste handlers need to keep only on-site.
Changes to the requirements for document submittal	We have eliminated several requirements to reduce the number of documents that are submitted to the Agency document for review.
Reduced frequency for report submittal	We have reduced the submittal frequency of certain documents (e.g., from semi-annual to annual).

III. What Burden Reduction Changes Are We Making?

A. Changes to the Amount of Time Records Must Be Kept

As a precautionary measure in promulgating the hazardous waste requirements in 1980, we mandated the retention of many kinds of records until facility closure, resulting in a tremendous volume of stored paperwork. Our experience in implementing the RCRA program has shown that this retention time is excessive, and a priority item for reduction.

1. We Are Reducing the Retention Time for Certain Information Kept in a Facility's Operating Record

We are changing a number of the operating record requirements under §§ 264.73 and 265.73 to reduce the record retention time to three years. Among other things, we are modifying the retention time limit for records on waste analyses; certain monitoring, testing and analytical data; waste determinations; selected certifications; and notifications.

We believe that these changes establish a more reasonable record retention time than the requirement to keep this information until closure of the facility.[2] The three-year record retention period is sufficient to enable regulators to monitor industry compliance and take enforcement actions as needed. In any event,

[2] Record retention times for all Agency programs vary, but in numerous instances have retention times shorter than the life of the facility. For example, the National Primary Drinking Water Regulations require records retention times of one, five, and twelve years (depending on the record). The National Emission Standards for Hazardous Air Pollutants, Subpart FF—National Emission Standards for Benzene Waste Operations requires a two-year records retention time.

§§ 264.74(b) and 265.74(b) require the retention period of any records to be extended automatically during the course of any unresolved enforcement action regarding the facility, or as requested by the Administrator.

We are not modifying the retention limit for records that contain the following information: (1) Description and quantity of each hazardous waste received and what was done with it; (2) location of each hazardous waste; (3) closure estimates; or (4) quantities of waste placed in land disposal units under an extension to the effective date of any land disposal restriction. The retention of this information is necessary to ensure protection of human health and the environment through the life of the facility, and until closure of the facility.

We believe that these changes will not affect the government's or the public's ability to know what is happening at a hazardous waste facility because a basic set of compliance information will still be available in the facility's records. The Agency will have access to the facility's operating record, which will contain many of the documents previously submitted to the Agency. Although the public does not generally have access to the facility's operating record, the Agency Director can require permitted facilities to establish and maintain a publicly accessible information repository at any time (see § 270.30 (m)). Similarly, facilities that are applying for permits may be required to establish and maintain an information repository. (See 124.33.)

In today's rule, we are also amending the regulatory language proposed for maintaining these records. In the proposed rule, we used the language, ''maintain for three years after entry into the operating record.'' A commenter pointed out that some records, such as laboratory analytical results, stand alone in the laboratory records and are not actually ''entered into the operating record.'' We recognize that this is an important distinction and are changing the regulatory language from the proposal to say ''maintain for three years'' instead of ''maintain for three years after entry into the operating record.'' Also, a commenter pointed out that since monitoring and ground-water clean up is a multi-year or multi-decade task, these records should be kept until closure of the facilities. We agree, and are changing § 264.73(b)(6) and § 265.73(b)(6) accordingly.

We also received comments stating that we should not reduce our record retention requirements, because any particular record might be useful at some future point. This could be said of any requirement. In the Paperwork Reduction Act, Congress instructed us to set a higher standard for imposing an information collection requirement. We believe that information must have a demonstrable value. Based on our experience, we believe that we have identified those records that have the greatest potential impact on the protection of human health and the environment. Such records must be maintained until closure of the facility.

We also received questions in response to the proposed rule asking whether facilities must keep existing records, once generated and stored, until the date that was initially established for their disposal, even though we are changing that date with this rule. It would be burdensome for facilities to have two different sets of recordkeeping requirements, and difficult for EPA and the states to enforce a phase-out of recordkeeping. Therefore, we believe it is appropriate to maintain consistency and retain records until the date established by today's rule (or if the date is unchanged by this rule, to the original date (i.e., until closure of the facility)). Therefore, facilities may dispose of existing records consistent with today's rule, once the retention date established by today's rule becomes effective.

2. We Are Increasing the Retention Time for Certain Information Kept in an Interim Status Facility's Operating Record

In response to comments received, EPA is amending § 265.73(b)(6) and creating a new § 265.73(b)(15) to require retention in the operating record until closure of the facility, the ground-water quality assessment plans required under § 265.90 and § 265.93(d)(2), and ground-water quality assessment reports required under § 265.93(d)(5). Under today's rule, these plans are no longer required to be submitted to the Regional Administrator. Accordingly, EPA has decided that, in order to ensure protection of health and the environment, these records need to be available and, therefore, has amended the regulation to require that the information be maintained in the operating record until closure of the facility. EPA believes today's changes would result in no more burden to facility owners or operators for storage, since it is likely that any report submitted to the Agency would also be kept on-site by the facility. In other words, there would be no increase in burden over what is already being done.

3. We Are Establishing a Five-Year Record Retention Time for Information Kept on the Operation of Incinerators, Boilers, and Industrial Furnaces

Owners and/or operators of boilers and industrial furnaces (BIFs) are subject to compliance-related recordkeeping regulations. For example, BIFs must conduct emission tests to demonstrate compliance with the RCRA emission standards (such as certification of compliance tests), performance tests for their continuous emissions monitors, and retain these test reports on-site until closure of the facility. As a result of the emissions tests, BIFs also establish enforceable operating limits that must be achieved on a daily basis (such as hourly rolling average feed rate limits). BIFs are also required to record the daily operating data in their operating record for compliance purposes and make them available for inspection.

In the October 29, 2003 NODA (68 FR 61662), we solicited comment on amending the current record retention requirement for incinerator monitoring, testing and analytical data, from ''for the life of the facility'' to three years. We took this action because we had overlooked incinerators in the original proposal and maintain that their record retention requirements should be consistent with those for BIFs. This change for incinerators was supported by a majority of the commenters; however, some pointed out that the recordkeeping requirements for incinerators and BIFs should be consistent with those that the Agency promulgated on October 12, 2005 (70 FR 59402) for incinerators and the majority of BIFs under the Clean Air Act (CAA).[3]

We agree with these commenters and have decided for reasons of consistency with the CAA requirements, to finalize a five year record retention time for incinerators and BIFs. We are also promulgating the five year record retention time for BIFs (such as sulfur recovery furnaces) that will not be subject to the recently promulgated MACT standards.

One commenter that opposed any change to the record retention time stated that incinerators should keep all their data points for the life of the facility. The commenter asserted that the only information that a state inspector has to use during a violation are the data on the incinerator's parametric monitoring. They argued

[3] The Clean Air Act requires the Agency to develop rules to reduce Hazardous Air Pollutant emissions. The rules require the application of strict air emission controls based on performance of best technologies, the overall approach usually being referred to as maximum achievable control technology, or MACT.

that, in no case, should record retention be reduced if there are outstanding enforcement, non-compliance or legal issues pending.

For reasons cited earlier, we believe that modifying the record retention period for incinerators and BIFs to five years is appropriate. Regarding the commenter's point that records should be retained if there is an outstanding enforcement, non-compliance or legal action pending, the regulations already provide for this and nothing in today's rule would amend this provision. See §§ 264.74 and 265.74 which state:

> The record retention period for all records required under this part is extended automatically during the course of any unresolved enforcement action regarding the facility or as requested by the Administrator.

The following tables show the new retention times by facility for selected records. We have also included the recordkeeping requirements found in: (1) Section 264.73, Operating record; (2) Section 264.347, Monitoring and inspections; (3) Section 265.73, Operating record; (4) Section 266.102(e)(10), Permit standards for burners; and (5) Section 266.103(d) and (k), Interim status standards for burners.

TABLE 2.—REVISED RECORD RETENTION TIMES FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Record summary	Current retention time New retention time as amended by the burden reduction rule
264.73(b)(1)	Description and quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage or disposal at the facility.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(2)	The location of each hazardous waste within the facility and the quantity at each location.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(3)	Records and results of waste analyses and waste determinations.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(4)	Summary reports and details of all incidents that require implementing the contingency plan.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(5)	Records and results of inspections	Maintain for three years. No change in requirement.
264.73(b)(6)	Monitoring, testing, or analytical data corrective action	Maintain until closure of the facility. Maintain for three years, except for records and results pertaining to ground-water monitoring and cleanup, which must be maintained until closure of the facility.
264.73(b)(7)	For off-site facilities, notices to generators as specified in § 264.12(b).	Maintain until closure of the facility. Maintain for three years.
264.73(b)(8)	All closure cost estimates for disposal facilities, all post-closure cost estimates.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(9)	Waste minimization certification	Maintain until closure of the facility. Maintain for three years.
264.73(b)(10)	Records of the quantities and date of placement for each shipment of hazardous waste place in land disposal units under an extension to the effective date of any land disposal restriction granted.	Maintain until closure of the facility. No change in regulatory requirement.
264.73(b)(11)	For off-site treatment facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(12)	For on-site treatment facility, notices and certifications	Maintain until closure of the facility. Maintain for three years.
264.73(b)(13)	For off-site land disposal facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(14)	For on-site land disposal facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(15)	For off-site storage facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
264.73(b)(16)	For on-site storage facility, notices and certifications	Maintain until closure of the facility. Maintain for three years.
264.73(b)(17)	Records required under § 264.1(j)(13)	Maintain until closure of the facility. Maintain for three years.
264.73(b)(18)	Monitoring, testing or analytical data where required by § 264.347.	Maintain until closure of the facility. Maintain for five years.
264.73(b)(19)	Certification as required by § 264.196(f)	No specified requirement. Maintain until closure of the facility.
264.347(d)	For incinerators: monitoring and inspection data	Maintain until closure of the facility. Maintain for five years.
266.102(e)(10)	For burners: recordkeeping	Maintain until closure of the facility. Maintain for five years.

TABLE 3.—REVISED RECORD RETENTION TIMES FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Summary record	Current retention time New retention time as amended by the burden reduction rule
265.73(b)(1)	Description and quantity of each hazardous waste received and the method(s) and date(s) of its treatment, storage or disposal at the facility.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(2)	The location of each hazardous waste within the facility and the quantity at each location.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(3)	Records and results of waste analyses and waste determinations.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(4)	Summary reports and details of all incidents that require implementing the contingency plan.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(5)	Records and results of inspections	Maintain for three years. No change in regulatory requirement.
265.73(b)(6)	Monitoring, testing, or analytical data and corrective action.	Maintain until closure of the facility. Maintain for three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills which must be maintained until closure of the facility.
265.73(b)(7)	All closure cost estimates for disposal facilities, all post-closure cost estimates.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(8)	Records of the quantities and date of placement for each shipment of the hazardous waste place in land disposal units under an extension to the effective date of any land disposal restriction granted.	Maintain until closure of the facility. No change in regulatory requirement.
265.73(b)(9)	For off-site treatment facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(10)	For on-site treatment facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(11)	For off-site land disposal facility, notices and certifications from the generator.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(12)	For on-site land disposal facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(13)	For off-site storage facility, notices and certifications from generator.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(14)	For on-site storage facility, notices and certifications.	Maintain until closure of the facility. Maintain for three years.
265.73(b)(15)	Monitoring, testing, or analytical data, and corrective action where required by §§ 265.90, 265.93(d)(2), and 265.93(d)(5) of this part and certifications as required by § 265.196(f).	Maintain until closure of the facility. No change in regulatory requirement.
266.103(d)	*Periodic Recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.	Every three years. Every five years.
266.103(k)	Interim status standards for burners: recordkeeping.	Maintain until closure of the facility. Maintain for five years.

B. Changes to the Professional Engineer Certification Requirements

Throughout the RCRA regulations, there are various requirements for the services of an independent, qualified, registered, professional engineer to certify the effectiveness of the design and operation of various hazardous waste management units. We proposed to add Certified Hazardous Materials Managers (CHMMs) as professionals qualified to make selected certifications. This proposed change was a result of comments received on our June 18, 1999 NODA (64 FR 32859). In response to this proposal, the Agency received significant comment, primarily requesting that we expand the category of persons allowed to provide the various certifications. Commenters argued that we were being arbitrary in proposing to allow only two professional disciplines (i.e., CHMMs and professional engineers) to certify hazardous waste management operations. Conversely, professional engineers strongly opposed the proposed change in the regulatory requirements. They suggested that

CHMMs were not qualified to certify the design, construction, and structural integrity of hazardous waste management units.

In addition, numerous states opposed the change on the grounds that their state laws allow only licensed engineers to make these certifications. State comments also pointed out that state licensing boards can investigate complaints of negligence or incompetence, on the part of professional engineers, and may impose fines and other disciplinary actions such as cease-and-desist orders or license revocation. According to commenters, similar controls do not exist for other professions. This personal liability of the professional engineer is one of the reasons why state commenters supported the idea that RCRA certifications should only be done by licensed professional engineers.

Other commenters suggested that, rather than deciding which professions are qualified to make certifications, we should establish an environmental professional performance standard based on membership in a recognized professional organization. In response to these comments, we solicited comment in our October 29, 2003 NODA to allow professionals accredited by organizations meeting the American Society for Testing and Materials (ASTM) E1929–98, Standard Practice for the Assessment of Certification Programs for Environmental Engineers: Accreditation Criteria to conduct a limited number of certifications, including: (1) Section 264.573(a)(4)(ii)(g), Drip Pads, Design and operating requirements; (2) Section 265.443(a)(4)(ii)(g), Drip Pads, Design and operating requirements; (3) Section 264.574(a), Drip Pads, Inspections; (4) Section 265.444(a), Drip Pads, Inspections; and (5) Section 266.111(e)(2), Boilers and Industrial Furnaces, Direct transfer equipment—requirements prior to meeting secondary containment requirements.[4]

Comments to the change described in the NODA were mixed. Some commenters supported this change in qualifications for selected certifications, while a number of states and professional organizations still strongly opposed allowing anyone other than a professional engineer to perform these certifications. While the Agency believes that added flexibility to the RCRA regulations is a goal worth pursuing, in this case, we are persuaded by the arguments presented by states with regard to these certifications and are not going forward with these changes at this time. Certifications for drip pads involve certifying engineering designs, drawings, plans and other engineering details, involving structural and hydraulic and other functions. As such, we believe that while there may be professionals other than professional engineers qualified to make these certifications, it is imperative that the goals of human health and the environmental protection are maintained. In reviewing the comments, we are not convinced that all environmental professionals certified by the ASTM standard would be qualified to perform these engineering evaluations. To this end, we are not going forward with allowing the changes to the drip pad certification requirements that would allow environmental professionals recognized by a certification program that is compliant with ASTM E–1929–98 Standard Practice for the Assessment of Certification Programs for Environmental Professionals: Accreditation Criteria.

Although the Agency was not persuaded that ASTM board certified environmental professionals, including CHMMs, should be allowed to make the required RCRA certifications that were the subject of this rulemaking, the Agency wants to make it clear that facilities are still permitted to utilize qualified professionals who may not be professional engineers in performing the analyses that underlie these certifications. Facilities can potentially lower their costs by utilizing the flexibility to employ others as part of the certification requirement. For example, as part of the closure and post closure requirements, some CHMMs may be qualified to make certain determinations associated with these certifications to determine whether operations at the site will minimize hazards.

The Agency is sympathetic to the large number of comments by the CHMMs and other environmental professionals about unnecessary restrictions in the marketplace. However, EPA is retaining the professional engineering certification, in part, to allay state concerns about the need to monitor and control the activities of personnel that are now subject to state licensure control. Given, however, additional experience by the Agency with the utilization of other environmental professionals, EPA may re-examine this issue in the future.[5]

1. We Are Removing the ''Independent'' and ''Registered'' Requirements for Selected Certifications

Some commenters to the proposed rule suggested that we change the certification requirements by amending the qualifications required for the certification from ''independent, qualified, registered, professional engineer'' to ''qualified professional engineer.'' That is, the commenters suggested it was not necessary for the professional engineer to be independent or registered. Commenters argued that the term ''qualified professional engineer'' retains the most important components of the requirement: (1) That the engineer be *qualified* to perform the task; and (2) that she or he be a professional engineer (following a code of ethics and the potential of losing his/her license for negligence).

In the October 29, 2003 NODA (68 FR 61662), EPA also solicited comment on changing the qualifications for who can certify the design, operation and closure of specific hazardous waste management units from ''independent, qualified, registered, professional engineer'' to ''qualified professional engineer.'' We solicited comment on eliminating the requirement that the certifier be ''independent,'' reasoning that we could rely on the professional standards of the certifier to ensure accurate certifications. This could potentially save expenses for companies with in-house engineers, since they would not have to hire outside consultants. State commenters strongly argued that the word ''independent'' should be retained because an independent review and certification avoids any potential of conflict of interest. Commenters stated that an employee of a facility would more likely have a biased approach to review and certification, and that state agencies would have less confidence in the accuracy and quality of review and

[4] After publication of the October 29, 2003 NODA, (see 68 FR 61662), EPA determined that the certification required by § 266.111(e)(2) had to be made by August 21, 1992. As such the Agency is not pursuing a change to this requirement in today's rulemaking, obviously because the date has passed.

[5] For example, in the All Appropriate Inquiries (AAI) rule published on November 1, 2005, (70 CFR 66070) EPA sets standards for CERCLA liability protection by establishing criteria that prospective property owners must use in the inquiries they conduct into the previous ownership, uses, and environmental conditions of a property prior to acquiring the property. The AAI rule differs from the RCRA burden reduction rule in that AAI does not in any way require the environmental professional to render any judgment or opinion regarding RCRA or CERCLA compliance or liability. AAI requirements include research activities and a site investigation similar to a Phase I environmental site assessment. It does not include compliance evaluation or an assessment of engineering or technical requirements (which may inherently require the expertise of an engineer or geologist).

certification. Furthermore, the commenters argued that the public would have reduced confidence in the accuracy and meaning of the engineering review and certification if it was conducted by an employee of the facility. The public would more likely suspect a conflict of interest and demand a more rigorous review by state agencies. Commenters also noted that a similar change, regarding whether to retain the term ''independent'' for professional engineers certifying closure, was proposed by EPA on March 19, 1985 (50 FR 11074). After receiving public comment, a final rule was issued on May 2,1986 with the term ''independent'' retained. In the preamble to the May 2, 1986 final rule, we stated that, because certification of final closure is the final step in the closure process and triggers the release of the owner or operator from financial responsibility requirements for closure and third party liability coverage requirements, we believed that the certification should be made by a person who is least subject to pressures to certify to the adequacy of a closure that, in fact, is not in accordance with the approved closure plan. Commenters also noted that in the October 9, 1991 **Federal Register**, EPA addressed concerns regarding proposed language that would have allowed a ''qualified party'' to perform closure and post closure certification. In that FR notice, we stated on page 51103:

> The Agency agrees with commenters that objective closure and post-closure certifications are essential for avoiding any potential conflicts of interest and ensuring protection of human health and the environment and that more specific requirements concerning the qualification of the certifying party are necessary to ensure the adequacy of the certification. We, therefore, are requiring in this final rule that certifications be obtained from independent, registered, professional engineers (i.e., registered professional engineers not in the employ of the owner or operator), consistent with requirements under subtitle C and other federally mandated certification programs (e.g., Clean Water Act grants).

Upon further analysis and reflection, we have decided to delete the independent qualification for certification made by a professional engineer. EPA continues to believe that this proposed modification retains the most important requirements: That the engineer is *qualified* to perform the task and is a professional engineer (i.e., licensed to practice engineering under the title Professional Engineer.) We believe that a professional engineer, regardless of whether he/she is independent is able to give fair and technical review because of the programs established by the state licensing boards. It is not clear to us that an in-house engineer faces a greater economic temptation than an independent engineer seeking to cultivate an ongoing relationship with a client. This is a central mission of state licensing boards. If certifications are provided when the facts do not warrant certification, the professional engineer is subject to penalties, including the loss of license and the possibility of fines. Furthermore, we are convinced that the change to the certification requirements will allow facilities to reduce burden without compromising environmental safety by using in-house expertise. Professional engineers employed by a facility are more familiar with its own particular situation and are in a position to provide more on-site review and oversight of the activity being certified.

We also solicited comment on removing the term ''registered,'' explaining that based on our understanding of the term ''registered'' (one who is licensed by a state) the terms ''registered,'' ''licensed'' and ''professional'' mean the same thing in the case of certifying the design, operation and closure of hazardous waste management units. Thus, using the terms ''registered'' and ''professional'' when defining the qualification of an engineer, in this context, is redundant. While the majority of the comments supported the change, agreeing that the term ''registered'' appears to be redundant and could be removed, several commenters were opposed to making the change. These commenters argued that the word ''registered'' is necessary to prevent confusion in the field, particularly among generators, that a license or registration is required. The Agency is unconvinced by this argument and maintains that the use of ''registered'' and ''professional'' as qualifications for engineers making these certifications is redundant and should be simplified.

As a final matter, we unintentionally failed to identify eight additional certification requirements that are part of this regulatory change, i.e., each contains one or a combination of the terms: independent, registered and/or professional when describing the qualifications of the engineer. These certifications include: (1) Section 264.193(h)(4)(i)(2), Tank Systems, Containment and detection of releases; (2) Section 265.193(h)(5)(i)(2), Tank Systems, Containment and detection of releases; (3) Section 264.554(c)(2), Staging Piles; (4) Section 264.1101(c)(2), Containment Buildings, Design and operating standards; (5) Section 265.1101(c)(2), Containment Buildings, Design and operating standards; (6) Section 270.14(a), Permit Application, Content of part B. General requirements; (7) Section 270.17(d) Permit Application, Specific part B information requirements for surface impoundments; and (8) Section 270.26(c)(15), Permit Application, Special part B information requirements for drip pads. EPA believes today's changes provide consistency to the certification requirements, i.e., removing the terms independent and registered. As such, we are finalizing these eight additional certification changes.

2. We Are Also Changing the Closure and Post-Closure Certification Requirements

In the October 29, 2003 NODA (68 FR 61662), we also solicited comment on amending the qualifications for selected closure and post-closure certifications to ''qualified professional engineer.'' These certifications included: (1) Section 264.115, Closure and Post-Closure, Certification of closure; (2) Section 265.115, Closure and Post-Closure, Certification of closure; (3) Section 264.120, Closure and Post-Closure, Certification of completion of post-closure care; (4) Section 265.120, Closure and Post-Closure, Certification of completion of post-closure care; and (5) Section 264.280(b), Land Treatment, Closure and post-closure care.

During the development of today's final rule, we discovered that we incorrectly stated the required qualifications for engineers providing the closure and post-closure certifications, and we failed to identify one additional certification, § 265.280(e) Land Treatment, Closure and post-closure care, and six cross-reference citations to the original closure and post-closure certifications. These cross-references are: (1) Section 264.143(i), Financial Assurance for Closure, Release of the owner or operator from the requirements of this section; (2) Section 265.143(h), Financial Assurance for Closure, Release of the owner or operator from the requirements of this section; (3) Section 264.145(i), Financial Assurance for Post-Closure, Release of the owner or operator from the requirements of this section; (4) Section 265.145(h), Financial Assurance for Post-Closure, Release of the owner or operator from the requirements of this section; (5) Section 264.147(e), Liability Requirements, Period of coverage; and (6) Section 265.147(e), Liability Requirements, Period of coverage.

We incorrectly stated, in both the proposed rule and the October 29, 2003

NODA (68 FR 61662), the regulatory requirements for these certifications. In both these notices, we stated that the regulatory language for closure and post-closure certifications require an ''independent, qualified, registered, professional engineer'' to make the certifications. This is incorrect. The regulatory language for these certifications does not include the word ''qualified;'' the certifications language states that the certification must be made by an ''independent, registered, professional engineer.'' Hence our proposed regulatory change to ''qualified professional engineer'' for these certifications was inaccurate and inconsistent with our other proposed certification requirements. In our view, this error was minor and does not change our position regarding the redundancy of using both ''registered'' and ''professional,'' when defining the necessary certification qualifications. This error also does not change our position that all certifications should be conducted by a ''qualified professional engineer'' i.e., one that is qualified to perform the task and is a professional engineer (licensed/registered by the state and following a code of ethics and the potential of losing his/her license for negligence). As such, we are today amending all the closure and post-closure certification requirements to require qualified professional engineers to certify closure and post-closure.

Tables 4 and 5 identify the certifications that we are amending in today's rule for permitted and interim status treatment, storage and disposal facilities as needing a qualified (as in ''qualified to perform the task'') professional engineer.[6]

TABLE 4.—PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES NEEDING RCRA CERTIFICATIONS BY A QUALIFIED PROFESSIONAL ENGINEER

CFR section	New RCRA certification requirement (i.e., dropping ''registered'')
264.115	Closure and Post-Closure. Certification of closure.
264.120	Closure and Post-Closure. Certification of completion of post-closure care.
264.143(i)	Financial Assurance for Closure. Release of the owner or operator from the requirements of this section.
264.145(i)	Financial Assurance for Post-Closure. Release of the owner or operator from the requirements of this section.
264.147(e)	Liability Requirements. Period of coverage.
264.191(a), (b)(5)(ii)	Tank Systems. Assessment of existing tank system's integrity.
264.192(a), (b)	Tank Systems. Design and installation of new tank systems or components.
264.193(h)(4)(i)(2)	Tank Systems. Containment and detection of releases.
264.196(f)	Tank systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
264.280(b)	Land Treatment. Closure and post closure care.
264.554(c)(2)	Staging Piles.
264.571(a),(b),(c)	Drip Pads. Assessment of existing drip pad integrity.
264.573(a)(4)(ii)	Drip Pads. Design and Operating Requirements.
264.573(g)	Drip Pads. Design and Operating Requirements.
264.574(a)	Drip Pads. Inspections.
264.1101(c)(2)	Containment Buildings. Design and operating standards.
270.14(a)	Permit Application. Content of part B. General requirements.
270.16(a)	Permit Application. Specific part B information requirements for tank systems.
270.26(c)(15)	Permit Application. Specific part B information requirements for drip pads.

TABLE 5.—INTERIM STATUS TREATMENT, STORAGE AND DISPOSAL FACILITIES NEEDING RCRA CERTIFICATIONS BY A QUALIFIED PROFESSIONAL ENGINEER

CFR section	New RCRA certification requirement (i.e., dropping ''registered'')
265.115	Closure and Post-Closure. Certification of closure.
265.120	Closure and Post-Closure. Certification of completion of post-closure care.
265.143(h)	Financial Assurance for Closure. Release of the owner or operator from the requirements of this section.
265.145(h)	Financial Assurance for Post-Closure. Release of the owner or operator from the requirements of this section.
265.147(e)	Liability Requirements. Period of coverage.
265.191(a), (b)(5)(ii)	Tank Systems. Assessment of existing tank system's integrity.
265.192(a), (b)	Tank Systems. Design and installation of new tank systems or components.
265.193(h)(5)(i)(2)	Tank Systems. Containment and detection of releases.
265.196(f)	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.
265.280(e)	Land Treatment. Closure and post closure care.
265.441(a), (b),(c)	Drip Pads. Assessment of existing drip pad integrity.
265.443(a)(4)(ii)	Drip Pads. Design and Operating Requirements.
265.443(g)	Drip Pads. Design and Operating Requirements.
265.444(a)	Drip Pads. Inspections.
265.1101(c)(2)	Containment Buildings. Design and operating standards.
270.14(a)	Permit Application. Content of part B. General requirements.
270.16(a)	Permit Application. Specific part B information requirements for tank systems.
270.26(c)(15)	Permit Application. Special part B information requirements for drip pads.

[6] In §§ 264.192(b) and 265.192(b), certifications may also be done by an independent, qualified installation inspector. Similarly, in § 264.280(b), this certification may be done by an independent, qualified soil scientist, in lieu of a qualified professional engineer.

C. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities Have an Option of Following the Integrated Contingency Plan Guidance

We are amending §§ 264.52(b) and 265.52(b) of the RCRA regulations to provide owners and operators of hazardous waste treatment, storage, and disposal facilities the option of developing one contingency plan. EPA recommends that the plan be based on the integrated contingency plan guidance.[7] This guidance provides an excellent set of considerations for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. The use of a single plan per facility will eliminate the confusion for facilities that must decide which of the contingency plans is applicable to a particular emergency. In addition, a single plan will provide ''first responders'' (e.g., firemen) with a mechanism for complying with multiple regulatory requirements. The adoption of a standard plan should ease the burden of coordination with local emergency planning committees.

Today's rule clarifies our regulations (see §§ 264.52 and 265.52) by specifically authorizing combined plans, as well as clarifying that when modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

D. Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities Have an Option To Follow the RCRA or the Occupational Safety and Health Administration (OSHA) Standards for Emergency Response Training

We are revising §§ 264.16 and 265.16 to eliminate redundant emergency response training requirements under OSHA and RCRA regulations while still ensuring protectiveness.

EPA and the Occupational Safety and Health Administration (OSHA) have both promulgated regulations addressing worker activities and training at hazardous waste management facilities. While EPA's hazardous waste regulations focus on facility operations, worker training, OSHA focuses on worker safety. Both agencies require worker training.

While we were conducting our own review of potential overlaps between EPA and OSHA regulations, the Government Accountability Office[8] published in October 2000 a study on the issue. GAO suggested that the overlap in emergency training requirements diminishes the efficiency of the facility and creates unnecessary compliance costs. The GAO study pointed out that OSHA's regulations have specific training requirements for RCRA-permitted facilities to teach hazardous waste workers how to respond to emergencies under 29 CFR 1910.120(p). With the support of the GAO findings, EPA proposed to eliminate the RCRA emergency response training requirements in favor of the OSHA requirements.

While we received comments in support of the proposal, other commenters expressed particular concern that two of the RCRA emergency response training requirements are not covered in OSHA's requirements. (1) understanding key parameters for automatic waste feed cut-off systems; and (2) how to respond to ground-water contamination incidents. These commenters believe that the deletion of these two requirements would endanger the environment and human health in the area of RCRA facilities, in that adhering only to the OSHA requirements would mean that workers would not be trained in these areas.

This, however, is not EPA's intention. The final rule has been written to ensure that RCRA facilities are not required to provide separate training. We also note that facilities exempted from RCRA emergency response training would still have to comply with §§ 264.16(a)(1) and 265.16(a)(1), which state: ''Facility personnel must successfully complete a program of classroom instruction or on-the-job-training that teaches them to perform their duties in a way that ensures the facility's compliance with the requirements of this part.''

OSHA's 29 CFR 1910.120 regulations require that employees understand and be able to perform the standard operating procedures that are part of their daily work. OSHA's 29 CFR 1910.38 Emergency Action Plan requirements include mandated training in procedures to be followed by employees who operate critical plant operations (such as responding to ground-water contamination incidents) during a spill or other emergency.

Other commenters opposed the proposal because OSHA's 29 CFR 1910 requirements are not as comprehensive as the RCRA requirements regarding the universe of facilities. Specifically, they stated that OSHA's regulations are not required for all hazardous waste generators (e.g., conditionally exempt small quantity generators under § 261.5 and small quantity generators under § 262.34) and certain treatment, storage, disposal facilities (e.g., municipal, state and federal owned and operated facilities.) We agree, and facilities not subject to OSHA training requirements would have to comply with the RCRA training requirements.

To ensure that all facilities are covered and that there are no gaps in the emergency response training requirements, we are providing flexibility by allowing facilities to eliminate redundant emergency response training requirements under RCRA and OSHA requirements (as opposed to the proposed rule's approach of requiring facilities to follow only the OSHA regulations). For example, if a facility can meet all of the RCRA emergency response training requirements through an OSHA training course, we would consider the facility in compliance with the regulation. On the other hand, if a facility cannot meet the emergency response training requirements through an OSHA training course, then it would be incumbent upon that facility to address any gaps (for example, if OSHA did not include automatic waste feed cut-off training, there would not be a problem as long as appropriate training occurs, such as combustor staff receives this training as part of its RCRA training.) Facilities not subject to OSHA training requirements would have to comply with the RCRA training requirements. We believe that this is a reasonable accommodation for all facilities.

Generators and owners/operators of treatment, storage, and disposal facilities should work with the appropriate permitting and/or enforcement authority to ensure that the approach they take in developing an emergency response training program is in compliance with the requirements of §§ 264.16 and 265.16.

[7] In 1996, EPA, in conjunction with the Department of Transportation, the Department of the Interior, and the Department of Labor, issued the Integrated Contingency Plan Guidance. This guidance provides a mechanism for consolidating the multiple contingency plans that facilities have to prepare to comply with various government regulations. Owners and operators of hazardous waste facilities can develop one contingency plan based on this Guidance. The Integrated Contingency Plan can be found at 61 FR 28641, June 5, 1996 or on the Internet at *http://yosemite.epa.gov/oswer/ceppoweb.nsf/content/serc-lepc-publications.htm.*

[8] Formerly the United States General Accounting Office.

E. We Are Clarifying Selected Requirements Under RCRA's Land Disposal Restrictions and Eliminating Obsolete Regulatory Language

1. We Are Clarifying the Regulatory Language on the Land Disposal Restrictions Generator Waste Determination

We proposed eliminating § 268.7(a)(1) that requires, among other things, that generators conduct a waste determination for purposes of complying with the Land Disposal Restrictions (LDRs). Section 268.7(a)(1) requires generators to determine if hazardous waste must be treated prior to land disposal. This determination can be made either through testing or using the generator's knowledge of the waste's properties and constituents. We suggested that a combination of two other requirements provided the same safeguards as § 268.7(a)(1), making it redundant. First, a determination of whether a waste is hazardous is required by 40 CFR 262.11, which says that generators of solid waste must determine whether a waste is hazardous. Second, § 264.13(a)(1) requires treatment, storage, and disposal facilities (TSDFs) to perform a general waste analysis to determine ''all of the information which must be known to treat, store, or dispose of the waste in accordance with this Part and Part 268 of this chapter''. We suggested that these other determinations are sufficient to assure that a waste is properly characterized for achieving compliance with the LDRs.

Some commenters supported deleting this waste analysis requirement, stating, generally, that they supported the Agency's efforts to reduce redundant testing requirements. We agree with these comments with respect to reducing redundant testing requirements and are adding a cross reference in § 268.7(a)(1) to § 262.11, in order to clarify that these two generator waste analysis functions can be performed concurrently, thus avoiding redundant waste analysis.

Commenters who opposed deleting the generator LDR waste analysis requirement, however, were persuasive in their argument that the deletion of § 268.7(a)(1) would not really result in burden reduction. Rather, it would merely shift the burden from the generator to the TSDF. While TSDFs have a separate LDR waste analysis requirement under § 264.13(a)(1), they often rely—at least in part—on determinations or information provided by the generator.

Commenters further asserted that if TSDFs have to assume full responsibility for the LDR waste analysis requirement, it would be more expensive overall, because generators can use their knowledge of the waste in determining how LDRs apply to a waste, while the TSDF would not have that background and would have to perform much more extensive waste analysis.

We agree with these comments, and have determined that we need to maintain the LDR generator waste analysis requirement of § 268.7(a)(1). Thus, today's rule, rather than eliminating paragraph § 268.7(a)(1), amends paragraph § 268.7(a)(1), to avoid duplication and clarify that the two generator waste analysis functions can be performed concurrently. However, in order to provide maximum flexibility to generators, we also are clarifying that if a generator does not want to determine, based on waste analysis or knowledge of the waste, whether the waste must be treated, he may assume that he is subject to the full array of LDR requirements. The generator then must send the waste to a RCRA-permitted hazardous waste treatment facility where the treatment facility must make the determination when the waste has met the treatment standards of LDR (possibly even upon receipt as generated.) A conforming change is also being made to the notification in § 268.7(a)(2) for such cases.

2. We Are Clarifying the Regulatory Language on the Land Disposal Restrictions Characteristic Waste Determination Requirement

We proposed to eliminate the separate waste analysis requirement (§ 268.9(a)) for generators of characteristic hazardous wastes under the land disposal restrictions, in order to parallel the proposed changes to § 268.7(a)(1) that are discussed above.

Some commenters supported deleting this waste analysis requirement, stating, generally, that they supported the Agency's efforts to reduce redundant testing requirements. We agree with these comments with respect to reducing redundant testing requirements and are adding a cross reference in § 268.9(a) to § 262.11, in order to clarify that these two generator waste analysis functions can be performed concurrently, thus avoiding redundant waste analysis.

Commenters who opposed deleting the generator LDR waste analysis requirement, however, were persuasive in their argument that the deletion of § 268.9(a) would not really result in burden reduction. Rather, it would merely shift the burden from the generator to the TSDF. While TSDFs have a separate LDR waste analysis requirement under § 264.13(a)(1), they often rely—at least in part—on determinations or information provided by the generator. Commenters further asserted that if TSDFs have to assume full responsibility for the LDR waste analysis requirement, it would be more expensive overall, because generators can use their knowledge of the waste in determining how LDRs apply to a waste, while the TSDF would not have that background and would have to perform much more extensive waste analysis. We agree with these comments, and have determined that we need to maintain the LDR generator waste analysis requirement of § 268.9(a). Thus, today's rule, rather than eliminating paragraph § 268.9(a), amends paragraph § 268.9(a), to avoid duplication and clarify that the two generator waste analysis functions can be performed concurrently.

3. We Are Removing Obsolete Regulatory Language

We are deleting seventeen RCRA requirements because they are no longer applicable or have an expiration date that has passed. Except as noted below, we received no negative comments on these proposed changes.

In the proposed rule, we suggested amending §§ 264.193(a) and 265.193(a), arguing that the language was obsolete. However, the proposal inadvertently deleted paragraphs (1) and (5) of §§ 264.193(a) and 265.193(a). These paragraphs specify what tanks are required to have secondary containment, and in the case of tanks managing newly regulated waste, how soon secondary containment must be provided. We are correcting this mistake by finalizing the deletion of only §§ 264.193 (a)(2),(3), and (4) and 265.193(a)(2), (3), and (4) and clarifying the requirements in §§ 264.193(a)(5) and 265.193(a)(5). Tables 6, 7, and 8 summarize the changes being finalized today.

TABLE 6.—REGULATORY CLARIFICATION BEING MADE FOR LAND DISPOSAL RESTRICTIONS TESTING, TRACKING, AND RECORDKEEPING REQUIREMENTS FOR GENERATORS, TREATERS, AND DISPOSAL FACILITIES

CFR section	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
268.7(a)(1)	(a) Requirements for generators: (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, § 268.45, or § 268.49. This determination can be made in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in ''Test Methods of Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, as referenced in § 260.11 of this chapter, depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contamination with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this part in addition to any applicable requirements in this section. (a) Requirements for generators: (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, § 268.45, or § 268.49. This determination can be made concurrently with the hazardous waste determination required in § 262.11 of this chapter, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in ''Test Methods of Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, incorporated by reference (see § 260.11 of this chapter), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of § 264.13 of this chapter and § 268.7(b) of this part.) In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this part in addition to any applicable requirements in this section.
268.7(a)(2)	If the waste or contaminated soil does not meet the treatment standards: With the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column ''268.7(a)(2)'' of the Generator Paperwork Requirements Table in 268.7(a)(4). No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file. If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column ''268.7(a)(2)'' of the Generator Paperwork Requirements Table in 268.7(a)(4). (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state ''This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.'') No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.
268.9(a)	(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (Part 261, Subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (Part 261, Subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

TABLE 6.—REGULATORY CLARIFICATION BEING MADE FOR LAND DISPOSAL RESTRICTIONS TESTING, TRACKING, AND RECORDKEEPING REQUIREMENTS FOR GENERATORS, TREATERS, AND DISPOSAL FACILITIES—Continued

CFR section	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
	(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. This determination may be made concurrently with the hazardous waste determination required in § 262.11 of this chapter. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (Part 261, Subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (Part 261, Subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

TABLE 7.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory requirement as amended by the Burden Reduction Rule
264.193(a)(2)	Tank Systems: Containment and detection of releases.	For all existing tank systems used to store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987. Section 264.193(a)(2) is being deleted.
264.193(a)(3)	Tank Systems: Containment and detection of releases.	For those existing tank systems of known and documented age, within two years after January 12, 1987 or when the tank system has reached 15 years of age, whichever comes later. Section 264.193(a)(3) is being deleted.
264.193(a)(4)	Tank Systems: Containment and detection of releases.	For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later. Section 264.193(a)(4) is being deleted.
264.251(c)	Waste Piles: Design and operating requirements.	The owner or operator of each new waste pile unit on which construction operating commences after January 29, 1992, each lateral expansion of a waste pile unit on which construction commences after July 29, 1992, and each replacement of an existing waste pile unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners. ''Construction commences'' is as defined in section 260.10 under ''existing facility''. The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.
264.314(a)	Land fills: Special requirements for bulk and containerized liquids.	Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985. Section 264.314(a) is being deleted.
264.314(b)	Landfills: Special requirements for bulk and containerized liquids.	Effective May 8, 1995, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.
264.314(f)	Land Fills: Special requirements for bulk and containerized liquids.	Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that: The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:
264.1100	Containment Buildings. Applicability.	The requirements of ths subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. These provisions will become effective on February 18, 1993, although owner or operator may notify the Regional Administrator of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit: The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit:

TABLE 7.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory requirement as amended by the Burden Reduction Rule
264.1101(c)(2)	Containment Buildings. Design and Operating Standards.	Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. Obtain and keep on-site a certification by a qualified professional engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

TABLE 8.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory requirement as amended by the Burden Reduction Rule
265.193(a)(2)	Tank Systems: Containment and detection of releases.	For all existing tank systems used to and store or treat EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027, within two years after January 12, 1987. Section 265.193(a)(2) is being deleted.
265.193(a)(3)	Tank Systems: Containment and detection of releases.	For those existing tank systems of known and documentable age, within two years after January 12, 1987, or when the tank system has reached 15 years of age, whichever comes later. Section 265.193(a)(3) is being deleted.
265.193(a)(4)	Tank Systems: Containment and detection of releases.	For those existing tank systems for which the age cannot be documented, within eight years of January 12, 1987; but if the age of the facility is greater than seven years, secondary containment must be provided by the time the facility reaches 15 years of age, or within two years of January 12, 1987, whichever comes later. Section 265.193(a)(4) is being deleted.
265.314(a)	Land Fills: Special requirements for bulk and containerized liquids.	Bulk or non-containerized liquid waste or waste containing free liquids may be placed in a landfill prior to May 8, 1985. Section 265.314(a) is being deleted.
265.314(b)	Land Fills: Special requirements for bulk and containerized liquids.	Effective May 8, 1995, the placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited. The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.
265.314(g)	Land Fills: Special requirements for bulk and containerized liquids.	Effective November 8, 1985, the placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that: The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:
265.1100	Containment Buildings. Applicability.	The requirements of ths subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. These provisions will become effective on February 18, 1993, although owner or operator may notify the Regional Administrator of his intent to be bound by this subpart at an earlier time. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit: The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA § 3004(k) provided that the unit:
265.1101(c)(2)	Containment Buildings. Design and Operating Standards.	Obtain certification by a qualified registered professional engineer that the containment building design meets the requirements of paragraphs (a) through (c) of this section. For units placed into operation prior to February 18, 1993, this certification must be placed in the facility's operating record (on-site files for generators who are not formally required to have operating records) no later than 60 days after the date of initial operation of the unit. After February 18, 1993, PE certification will be required prior to operation of the unit. Obtain and keep on-site a certification by a qualified professional engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

TABLE 8.—OBSOLETE REGULATORY LANGUAGE BEING DELETED FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language
		New regulatory requirement as amended by the Burden Reduction Rule
265.221(a)	Surface Impoundments: Design and operating requirements.	The owner or operator of each new surface impoundment unit on which construction commences after January operating 29, 1992, each lateral expansion of a surface impoundment unit on which construction commences after July 29, 1992, and each replacement of an existing surface impoundment unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with § 264.221(c), unless exempted under § 264.221 (d), (e), or (f) of this chapter. ''Construction commences'' is as defined in § 260.10 under ''existing facility''. The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with § 264.221(c), unless exempted under § 264.221(d), (e), or (f) of this chapter.
265.301(a)	Land Fills: Design and operating requirements.	The owner or operator of each new and operating landfill unit on which construction commences after January 29, 1992, each lateral expansion of a landfill unit on which construction commences after July 29, 1992, and each replacement of an existing landfill unit that is to commence reuse after July 29, 1992 must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal systems, in accordance with § 264.301 (d), (e), or (f) of this chapter. ''Construction commences'' is as defined in § 260.10 under ''existing facility.'' The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal system, in accordance with § 264.301 (d), (e), or (f) of this chapter.

F. We Are Eliminating Selected Recordkeeping and Reporting Requirements That We Believe Provide Duplicative Information to EPA

1. We Are Eliminating the Requirement for Facilities To Notify That They Are in Compliance After a Release

We received comments that both supported and opposed the elimination of the notifications required by §§ 264.56(i) and 265.56(i). These notifications require the facility owner or operator to notify the Regional Administrator and appropriate state and local authorities after an emergency action has taken place, and that the facility is in compliance with §§ 264.56(h) and 265.56(h), respectively. Sections 264.56(h) and 265.56(h) require the facility emergency coordinator to ensure that no wastes that may be incompatible with the released material is treated, stored, or disposed of until cleanup procedures are completed, and that emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed. Several commenters generally supported the elimination of these notification provisions. Other commenters were opposed to eliminating these provisions because they thought that it was prudent for the regulatory agency to receive notification that a facility was ready to again manage hazardous waste after emergency measures were implemented and releases were cleaned up.

We have decided to finalize the elimination of this notification provision. The Regional Administrator and appropriate state and local authorities will still be getting a report 15 days after the emergency incident (as required in §§ 264.56(j) and 265.56(j)). This report will specify the details of the incident that required implementation of the contingency plan. In most cases, the incident is likely to be relatively minor, and operations may even be ready for resumption with the 15 days. The actions to be taken (*i.e.*, not handling incompatible waste and cleaning emergency equipment) are straightforward and it is not clear what value a simple notification would add. On the other hand, in major incidents the state would likely send personnel on-site and would be in a position to ensure that an appropriate response was taken before operations resumed. Therefore, we have decided to eliminate this notification requirement.

2. We Are Eliminating the Requirement for Facilities To Notify of Their Intent To Burn F020, F021, F022, F023, F026, and F027 Wastes

We proposed to eliminate the notification of intent to burn hazardous dioxin/furan wastes listed as F020, F021, F022, F023, F026 and F027. We viewed this as an unnecessary requirement because the facility is already permitted to burn these wastes, and there are already regulatory standards governing how the waste is burned.

Commenters generally supported our proposed change. Therefore, we are removing the notification requirement.

We inadvertently proposed to remove the entire paragraph (a)(2) of § 264.343. We are merely removing the last sentence that referred to the notification of intent to burn listed dioxin/furan wastes.

3. We Are Eliminating the Requirement for Facilities To Notify if They Employ or Discontinue Use of the Alternative Valve Standard

The regulations in Subpart BB of RCRA deal with air emission standards for equipment leaks. They apply to owners and operators of facilities that treat, store, or dispose of hazardous waste with equipment that contains or

contacts hazardous waste with organic concentrations of at least 10 percent by weight. We proposed to eliminate the requirement for submitting notifications to the Regional Administrator with regard to the implementation of the alternative standards for valves in gas/vapor service or in light liquid service. Under the current regulations in §§ 264.1061(b)(1), (d) and 265.1061(b)(1) and (d), if an owner or operator decides to either: (1) Implement the alternative standard or (2) discontinue the use of the alternative standard, a written notification must be sent to the Regional Administrator. In the proposed rule, we stated that these notifications were an unnecessary requirement because §§ 264.1061(b)(2) and 265.1061(b)(2) require performance tests to be conducted (upon designation, annually, and as requested by the Regional Administrator) and their results kept on site once a decision is made to use the alternative valve standard. Several commenters disagreed with our position and suggested that facilities need to notify regulators when they elect to use alternative standards. Commenters further stated that without knowledge of the specification that facilities are using, regulators may not be able to effectively administer the standards and that this information may be required for regulators to address various permitting, compliance and enforcement actions at the facility. We remain unconvinced that these notifications are an essential element in our regulatory compliance regime. While we understand the commenters concerns, we believe that sufficient information and data will be available to the regulatory authority to monitor compliance with an alternative standard without these notifications.

4. We Are Eliminating the Requirement for Facilities To Notify if They Are Using Alternative Valve Work Practices

We proposed to eliminate the requirement to submit a notification to the Regional Administrator before implementing one of the alternative work practices specified in §§ 264.1062(b)(2) and (3) and 265.1062(b)(2) and (3). Under the current regulations, an owner or operator may elect to comply with one of two alternative work practices specified in the regulations. These alternatives are: (1) After two consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may begin to skip one of the quarterly leak detection periods (*i.e.*, monitor for leaks once every six months) for the valves; or (2) after five consecutive quarterly leak detection periods with the percentage of valves leaking equal to or less than 2 percent, an owner or operator may be begin to skip three of the quarterly leak detection periods (*i.e.*, monitor for leaks once every year) for the valves.

The majority of the commenters agreed with the proposal. One commenter, however, argued that some technical review by the Agency should be warranted to approve this alternative standard. Upon review of the comment, we are unconvinced that the implementation of this alternative work practice needs technical review or oversight by the regulated authority. The alternative work practices described in the regulations are straightforward and the results of the leak detection periods will be maintained in the facility files as required under the recordkeeping requirements found in § 264.1064. Therefore, we are eliminating the need for these notifications.

TABLE 9.—RECORDKEEPING AND REPORTING REQUIREMENTS BEING DELETED FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL, FACILITIES

CFR section	Regulatory requirement
Deletion to 264.56	Contingency Plan and Emergency Procedures. Emergency Procedures.
264.56(i)	Notify Regional Administrator that facility is in compliance with § 265.56(h) (which requires that no waste that may be incompatible with the released material will be treated, stored, or disposed until cleanup is completed, and emergency equipment is made ready for use again) before resuming operations.
Deletion to 264.343	Incinerators. Performance standards.
264.343(a)(2)	Submit notification of intent to burn hazardous wastes F020, F021, F022, F023, F026, and F027.
Deletions to 264.1061	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
264.1061(b)(1)	Submit notification to implement the alternative valve standard
264.1061(d)	Submit notification to discontinue the alternative valve standard.
Deletion to 264.1062	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service; skip period leak detection and repair.
264.1062(a)(2)	Submit notification to implement alternative work practices for valves.

TABLE 10.—RECORDKEEPING AND REPORTING REQUIREMENTS BEING DELETED FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement
Deletion to 265.56	Contingency Plan and Emergency Procedures. Emergency Procedures.
265.56(i)	Notify Regional Administrator that facility is in compliance with § 265.56(h) (which requires that no waste that may be incompatible with the released material will be treated, stored, or disposed until cleanup is completed, and emergency equipment is made ready for use again) before resuming operations.
Deletions to 265.1061	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service: percentage of valves allowed to leak.
265.1061(b)(1)	Submit notification to implement the alternative valve standard.
265.1061(d)	Submit notification to discontinue the alternative valve standard.
Deletion to 265.1062	Air Emission Standards for Equipment Leaks. Alternative standards for valves in gas/vapor service or in light liquid service; skip period leak detection and repair.
265.1062(a)(2)	Submit notification to implement alternative work practices for valves.

G. We Are Permitting Decreased Inspection Frequency for Certain Hazardous Waste Management Units

RCRA regulations require generators and treatment, storage and disposal facilities to self-inspect their facilities to ensure that they are in compliance. The regulations include both facility-wide and unit- and equipment-specific inspection standards. Some of RCRA's regulations specify the inspection frequency.

Self-inspections are a vital component of an effective regulatory system. We recognize however, that the frequency of inspections has been a concern, and that in most cases (particularly where alternative approaches are employed) facilities are able to carry out formal inspections less frequently without sacrificing human health and environmental protection.

The Agency proposed a reduction in tank self-inspection frequency from daily to weekly for large quantity generator tanks and treatment, storage and disposal facilities. We also solicited comment on allowing further reduced inspection frequencies, on a case-by-case basis (as approved by the Regional Administrator or the state Director, as the context requires, or an authorized representative), for containers, containment buildings, and tanks. However, this proposal required that these inspections occur at least monthly. In proposing these changes, we suggested that decreased inspection frequencies should be based on factors such as: (1) A demonstrated commitment by facility management to sound environmental practices; (2) achievement of good management practices over the history of the facility—that is, having a record of sustained compliance with environmental laws and permit requirements; (3) a demonstrated commitment to continued environmental improvement; (4) a demonstrated commitment to public outreach and performance reporting; (5) the installation of automatic monitoring devices at the facility; and (6) the risk posed by the waste managed in the unit.

Many commenters supported the change from a daily to weekly inspection frequency for tanks. Commenters pointed out that the integrity and safety of hazardous waste tanks would not be compromised by reducing the daily inspection requirement to a weekly frequency. Several other commenters pointed out that hazardous waste storage tanks, which have secondary containment, are even more protectively designed than process tanks which handle the same chemicals. Other commenters, however, did not support any decrease in inspection frequency because of concerns that if inspection frequencies were decreased, the amount of time between a leak and its discovery would increase.

With regard to extending even further the inspection frequency, to at least once each month on a case-by-case basis, we received comments from the states expressing concern over the added administrative burden in implementing case-by-case changes to inspection frequencies.

Based on the comments from the proposed rule, we reconsidered whether to make case-by-case reduced inspections available to all generators because of the burden it might impose on authorized states to evaluate compliance with the criteria. In the October 29, 2003 NODA (68 FR 61662), we proposed reduced inspection frequencies, granted on a case-by-case basis, only for members of the National Environmental Performance Track Program, stating that, at a minimum, we believe that providing relief is appropriate for companies that are demonstrated ''good performers.'' [9]

In the NODA, we also clarified that the reduced inspection frequency for tanks was intended to apply not just to the tanks, but to the complete tank systems, which include piping, pumps, valves and other associated equipment, also known as ancillary equipment (see §§ 264.193(f) and 265.193(f)). We also asked for comment on expanding the change to include tanks, not only at large quantity generator sites, but small quantity generator sites as well (see § 265.201(c)). Furthermore, we solicited comment on extending the reduced inspection frequencies, granted on a case-by-case basis, to areas subject to spills (see §§ 264.15(b)(4) and 265.15(b)(4)). We solicited comment on whether to grant this relief only to members of the National Environmental Performance Track Program in that we believe the risk from this change would be minimal at facilities that have met the requirements to be accepted into this program.

1. We Are Establishing Weekly Inspections for Certain Hazardous Waste Tank Systems at Permitted and Interim Status Facilities and at Large Quantity Generator Sites

We are changing the self-inspection frequencies for tank systems from daily to weekly at permitted and interim status treatment, storage and disposal facilities, as well as for large quantity generator (LQG) tank systems that are operated under certain conditions. Changing inspections for small quantity generator (SQG) tanks is discussed in section III.G.2 of this preamble. Tank system, as defined in § 260.10, means a hazardous waste storage or treatment tank and its associated ancillary equipment and containment system. The requirements for permitted, interim status, and LQG tank systems appear in §§ 264 and 265, subpart J. Daily inspections enable tank systems, subject to subpart J, to comply with the §§ 264.193(c) and 265.193(c) requirements to detect leaks and spills within 24 hours.

Our rule reduces inspections for: (1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and (2) the construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). Reduced inspections will be allowed when either of two conditions are met: (1) Tank owners and operators employ leak detection equipment; or (2) in the absence of leak detection equipment, tank owners and operators employ established workplace practices that ensure that when any leaks or spills occur, they will be promptly identified, and promptly remediated. Owners and operators choosing one of these options to reduce inspection frequencies should document the option selected in their operating record. If the option selected is ''established workplace practices,'' the owner and/or operator should document those practices in the facility's operating record.

Leak detection equipment must meet the respective requirements of §§ 264.193(c)(3) and 265.193(c)(3). It should be designed to alert facility personnel promptly to the presence of any leaks or spills (e.g., alarm systems) so that emergency and/or remedial action can be taken. (The existing subpart J tank regulations require secondary containment systems to be

[9] The National Environmental Performance Track Program is a voluntary EPA program that recognizes and rewards private and public facilities that demonstrate strong environmental performance beyond current requirements. The program is based on the premise that government should complement its existing programs and regulations with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing cost and spurring innovation. For more information and a closer look at the activities and accomplishments of Performance Track members to date, as well as member's goals for future achievements, please refer to the program Web site at *http://www.epa.gov/performancetrack.*

designed and operated to detect releases within 24 hours.) Leak detection systems were described in the proposed rule (67 FR 2527). But, while subpart J requires releases to be detected within 24 hours, the regulations do not specify the method of leak detection systems that must be used. For example, some facilities use daily visual inspections as a method of leak detection for their aboveground tanks, which is an acceptable practice. However, under the current tank system regulations, absent daily visual inspections, leak detection equipment that promptly notifies facility personnel of leaks or spills, must be used.

In the absence of leak detection equipment, established workplace practices must ensure that when any leaks or spills occur, they will be promptly identified and promptly remediated in compliance with §§ 264.193(c)(3) and (4) and 265.193(c)(3) and (4). When we say ''established workplace practices,'' we mean practices that are documented and that describe how the facility is operated. (An example of established workplace practices could be the presence of an Environmental Management System that includes plans and practices to ensure that any releases are promptly identified, contained, and cleaned up.) Established workplace practices will most likely be put in place in situations, like that described by a state commenter, where aboveground tanks without leak detection exist and daily visual monitoring is the most common method of leak detection used. In cases such as these, lacking leak detection equipment, owners or operators would need to use workplace practices to identify releases, if they choose to reduce their inspection frequency.

A number of commenters noted that reducing inspection frequencies of §§ 264.195 and 265.195 should only be done if secondary containment is equipped with leak detection that notifies response personnel if releases occur. We partially agree with the commenters; however, as noted earlier, the rule also allows the facility operator to institute work practices to ensure prompt detection of a release. For example, if the tank system is in an area frequented by employees, where releases will be immediately obvious, all employees might be trained to watch for releases and report them. In other situations, an employee might be assigned to check secondary containment on a daily basis without conducting a full tank system ''inspection.''

We received several comments from industry that the current daily inspection requirements are a large burden for the regulated community, and that weekly inspections would provide welcome relief. One commenter noted that the majority of printers that have tanks for collecting hazardous waste have small tanks and they are generally located indoors. Any release from the tank would be detected almost immediately and the extension of mandatory inspection frequency would greatly reduce the administrative burden associated with using these types of collection tanks. In this case, the facility might not have leak detection equipment, but standard work practices might require all employees to notify appropriate facility personnel if they observe a release from the tanks. Given the nature of the facility described by the commenter, this would likely constitute a work practice sufficient to ensure prompt detection of a release. Conversely, we also received other industry comments suggesting that while they liked the flexibility of the reduced inspections, they offered that they probably would not reduce their own inspection frequency.

A state commenter argued that a basic principle of RCRA is prevention, including preventing a major release from a waste management unit and that the proposed rule appears primarily guided by a desire to project an image of providing a ''burden reduction'' for the regulated community, while disregarding prevention mechanisms. The commenter further stated that the chance of a release occurring and going undetected is greatly increased by allowing for weekly inspections of tank systems. The commenter believes the current requirement for daily inspections of tank systems provides a reasonable means to detect and minimize release of hazardous waste in a timely manner and the commenter further stated that the requirement for daily inspection of tank systems has not been a significant burden on the regulated community. We question this commenter's conclusion. By requiring owners and operators who wish to change the self-inspection frequencies for tanks, to use either leak detection or work place practices, we believe it is unlikely that releases from tanks will go undetected. The use of either leak detection systems or established workplace practices should assure that releases are promptly detected, and that the appropriate personnel are notified so that releases can be stopped and cleaned up. According to § 264.196, upon detection of a leak, either through the leak detection system or visual observation, the owner or operator of the tank system must immediately stop the flow of hazardous waste, determine and rectify the cause of the leak, remove the waste, and contain releases to the environment.

It is important to note that we are not changing the existing requirement, found in § 264.195(a)(2) and § 265.195(a)(3)), that data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) must be inspected at least once each operating day to ensure that the tank system is being operated according to its design. We believe that this requirement is necessary in order to ensure compliance with § 264.193(c) and § 265.193(c), which require the detection of leaks and spills within 24 hours. In addition, keeping this requirement supports the new reduced inspection requirements that we are putting in place today, by providing further information about any releases that may occur.

As a final matter, several commenters to the proposed rule suggested changing the inspection frequencies for ancillary equipment, specifically citing §§ 264.193(f) and 265.193(f). (These requirements specify that ancillary equipment must have secondary containment, except in four instances, each involving daily visual inspections for leaks.) While most commenters provided little information to support making the change, one commenter did argue that if the proposed changes to §§ 264.195 and 265.195 were finalized, the existing provisions in §§ 264.193(f) and 265.193(f), if not also changed, would be inconsistent.

As background, the October 29, 2003 NODA requested comment on expanding the proposed rule to include ancillary equipment at LQG and SQG sites. The NODA referenced the regulations at §§ 264.193(f) and 265.193(f), suggesting making the change would be consistent with our intent, as discussed in the proposed rule. Because today's rule changes the inspection frequencies for tank systems provided with secondary containment, where leak detection equipment or workplace practices are used, as discussed previously, any ancillary equipment associated with such tank systems would, therefore, be eligible for reduced inspections.

We considered allowing ancillary equipment without secondary containment, as described at §§ 264.193(f)(1)–(4) and 265.193(f)(1)–(4), to be visually inspected weekly instead of daily. While most of the commenters supported this change,

upon further analysis we now conclude that expanding the rule to include ancillary equipment without secondary containment is not consistent with how the final rule addresses reduced inspection frequency for tank systems. The proposed rule discussed reducing inspection frequencies for tanks and tank systems because of, among other reasons, the presence of secondary containment. Allowing ancillary equipment without secondary containment to change from daily visual inspections to weekly visual inspections would not be consistent with our approach. We are including regulatory language in §§ 264.194(d) and 265.195(c) to say that ancillary equipment that is not provided with secondary containment, as described in §§ 264.193(f)(1)–(4), must be inspected at least once each operating day.

We would like to note that there are instances where tanks and tanks systems are located within buildings, and where the building itself provides secondary containment. In cases where ancillary equipment is located inside a building that has been determined to provide secondary containment, and either leak detection systems or established workplace practices exist to identify leaks and spills, then the regulatory criteria are met and that ancillary equipment may be inspected weekly. For example, in a case where ancillary equipment inside a building does not have double walls or leak detection, this ancillary equipment would still be eligible for weekly inspections if the building serves as secondary containment, and if the area is frequented by employees whereby releases will be immediately obvious and the employees will promptly identify and remediate leaks and spills.

In cases involving buildings serving as secondary containment, authorized states necessarily have the ultimate authority to make the determination that secondary containment requirements are met (taking into account all relevant site-specific considerations).

2. We Are Establishing Weekly Inspections for SQG Hazardous Waste Tank Systems With Secondary Containment

While the previous discussion addressed changes in the inspection frequency for certain tank systems at permitted and interim status facilities, and LQG sites, today's rule also changes the inspection frequency for certain tank systems at SQG sites. The requirements for SQG tanks are found in 40 CFR 265.201(b).[10]

Under the current regulations, generators of between 100 and 1,000 kg/mo accumulating hazardous waste in tanks must inspect at least once each operating day, if applicable; (1) discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems); (2) data gathered from monitoring equipment (*e.g.*, pressure and temperature gauges); and (3) the level of waste in the tank. In addition, at least weekly, generators must also inspect: (1) The construction materials of the tank to detect corrosion or leaking of fixtures or seams; and (2) the construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation).

While § 265.201 does not require SQGs to be equipped with secondary containment, nor leak detection, under today's rule, SQG tank system owners and operators who wish to reduce their inspection frequency may do so if these tank systems are provided with secondary containment with either leak detection equipment or established workplace practices that ensure prompt detection of releases, as described above for other tank systems. Owners and operators choosing one of these options to reduce inspection frequencies should document the option selected in their operating record. If the option selected is ''established workplace practices,'' the owner and/or operator should document those practices in the facility's operating record.

In the proposal, we received comments suggesting that we expand the proposed reduction in tank self-inspection frequency to include tanks located at small quantity generator sites (see § 265.201(c)) and ancillary equipment (see § 265.193(f)[11]). This change would affect only three of the five SQG inspection requirements: for discharge control equipment (§ 265.201(c)(1)); data gathered from monitoring equipment (§ 265.201(c)(2)); and monitoring the level of waste in the tank (§ 265.201(c)(3)), since the last two inspection requirements (§§ 265.201(c)(4) and (c)(5)) are already done on a weekly basis. We stated in the NODA that changing these inspection frequencies would be consistent with our intent to establish weekly inspections for all tank systems.

One state commenter argued that tanks can and frequently do fail abruptly and with little or no warning, losing most or all of their contents in a very short period of time and if the rule were promulgated as proposed, it might be a week or longer before leaks of any size were discovered and remediation begun. The commenter further reasoned that for those tanks without secondary containment (e.g., SQGs), waiting such a long time for remediation efforts may lead to extensive environmental damage. We acknowledge the commenter's concerns and support the rapid remediation of leaks; we believe that the controls we are promulgating today will adequately prevent such an occurrence, even for SQGs.

One commenter did state that, although he did not object to allowing small quantity generators reduced tank inspection frequencies, he noted that reducing inspection frequencies will not provide any additional reduction in the recordkeeping/reporting burden for small quantity generators who are not subject to §§ 264.15 and 265.15 and are not required to maintain a schedule or a record of inspections. We agree that § 265.201 does not require SQGs to record inspections. Burden reduction would come from the time saved (person-hours) from reduced inspections.

Several states were not in favor of reduced inspection frequency for small quantity generators. One commenter stated that EPA has not provided any data that suggest that the reduced frequency of tank inspections is as protective as the intent of the current standard which as stated in 51 FR 25454, July 14, 1986 is to ''* * * enable the detection of releases or potential

[10] The requirements for SQG tanks were finalized on March 24, 1986 (51 FR 10146), and with the July 14, 1986 final tank regulations (51 FR 25422), codified at § 265.201. Discussion in the March 1986 rule explains how the SQG requirements were developed, as distinct from the requirements for tanks at LQG sites. The rule states: ''Congress anticipated reducing administrative requirements, such as reporting and recordkeeping, as a means to reduce impacts on the 100–1000 kg/mo generators. Thus, EPA proposed to relieve these generators of some Part 262 standards that are administrative in nature, while retaining all existing technical standards. The relief was only provided to generators who accumulate on-site for the statutorily prescribed periods, because, given that the amount of waste accumulated would necessarily be limited, the relative risk from releases of such waste would be less than that from the unlimited amounts of waste accumulated by off-site facilities.'' (51 FR 10149).

[11] While the Agency solicited comment on reducing the inspection frequency for ancillary equipment for SQGs, the referenced regulation, § 265.193(f) does not apply to tank systems at SQG sites, only the requirements found in § 265.201(c) apply to SQG tank systems. Therefore, the Agency is not pursuing changes to § 265.193(f) that would affect SQGs. As discussed above, the regulatory changes we are making today apply to SQG tank systems, which include ancillary equipment.

releases at the earliest possible time.'' Another commenter further argued that reduced tank inspection frequency should not be afforded to small quantity generators unless their tank systems are upgraded to meet additional standards and that currently SQGs only have to inspect their tank systems for proper operations controls daily. SQGs are not required to do any type of additional leak detection, except for the weekly requirements already in place. Since SQGs are not required to provide secondary containment, the operating day inspections assist in protecting from a release or potential release. Other commenters argued that if SQGs wish to receive this reduced inspection frequency, they should comply with the same secondary containment requirements as large quantity generators and install an automated leak detection equipment that alerts a person designated to respond. We agree, in part, with the commenters. SQG tanks historically have less stringent requirements than LQGs, permitted, and interim status tanks. But, while existing SQG tanks are not required to have secondary containment, in order to enjoy reduced inspection frequencies under today's rule, tanks must have secondary containment with leak detection, or have secondary containment and workplace practices in use that promptly identify leaks and spills.

3. We Are Allowing Members of the National Environmental Performance Track Program To Apply for an Adjustment to the Frequency of Inspections for Certain Hazardous Waste Units and Areas

In addition to allowing a change in the inspection frequency for selected tank systems, we also proposed to allow on a case-by-case basis, less frequent self-inspections for tank systems, container storage areas, and containment buildings. Under our current regulations, container storage areas and containment buildings must be inspected weekly. (See §§ 264.174, 265.174, 264.1101(c)(4), and 265.1101(c)(4).)

Based on comments received on the proposal, we reconsidered whether to make such a change available to all generators because of the burden it would impose on authorized states to evaluate compliance with the criteria. As stated in the October 29, 2003 NODA (68 FR 61662), we believe that providing relief is appropriate for companies that are demonstrated ''good performers'' and we solicited comment on limiting this provision to member companies of the National Environmental Performance Track Program, as well as extending reduced inspection frequencies, granted on a case-by-case basis, to areas subject to spills (see § 264.15(b)(4)).

In today's rule we are finalizing this provision—the ability to file a case-by-case application for further reduced self-inspection frequencies—to facilities that are members of the National Environmental Performance Track Program. Performance Track member facilities are provided the opportunity to reduce self-inspections of tank systems, containers, containment buildings, and areas subject to spills to a frequency of at least once each month.

Performance Track members must apply to the regulatory agency for approval before implementing a reduced inspection frequency schedule.[12] The Performance Track facility must submit an application to the regulatory authority identifying itself as a member of the National Environmental Performance Track Program and request a reduction in self inspection frequency. For those members that are also permitted treatment, storage and disposal facilities, the application must be in the form of a Class 1 permit modification with prior approval. The Performance Track member facility must request reduced inspections, for no less than once each month, for any of the waste management units identified in today's rule (including tank systems, containers, containment buildings, and areas subject to spills). (Only one application per Performance Track member facility is required.) After the application is received, the Director has 60 days to approve or deny the application, in writing. The Director also may choose to extend this 60 day deadline, if more time is needed to review the application (e.g., in the case where an on-site inspection is needed or a more in-depth analysis of the application is warranted.) If the application is approved, the notification will identify the management units approved for reduced frequency of inspections, as well as the time interval between inspections (at a minimum of one inspection each month.) This notice must be placed in the facility's operating record.

The Performance Track member facility should consider the application approved after 60 days if the Director does not: (1) Deny the application, in writing; or (2) notify, in writing, the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in their application and keep a copy of the application in the facility's operating record.

It is expected that Performance Track facilities would have an EMS providing sufficient oversight to prevent and detect leaks and spills. In addition, facilities that applied for Performance Track would have conducted an Environmental Management System (EMS) Independent Assessment.[13] The assessment must determine whether the facility regularly monitors and measures its key operations that can have a significant impact on the environment, and records this information. Therefore, through the use of EMSs and workplace practices, we would expect Performance Track facilities to be able to prevent and detect leaks and spills. Providing Performance Track member facilities with the option for reduced inspection frequencies does not mean we are reducing the requirements for the owner or operator to detect leaks and spills; providing reduced inspection for Performance Track member facilities acknowledges that these facilities have established controls and procedures to prevent releases and to respond promptly if and when they occur. The Agency believes it is important to recognize the difference in the need for oversight of facilities that are top environmental performers which have developed comprehensive environmental management systems and who have a track record of effective self-oversight.

Any Performance Track member facility that discontinues its membership in Performance Track or is terminated from the program must immediately notify the Director, in writing of its change in status (i.e., they are no longer a Performance Track member facility). These facilities must revert back to the ''non-Performance

[12] In the proposed rule (67 FR at 2527), the Agency made reference to a commenter's suggestion that inspection frequency changes should be self-implementing. The example given by the commenter outlined an option where an inspection schedule should be deemed approved if EPA does not specifically deny the request in writing within 30 days. At that time, we stated that one of our principle objectives for this burden reduction change, was to ensure that the regulatory agencies made the decision to decrease inspection frequencies and as such, we were not considering self-implementing alternatives. While we still maintain that regulatory agencies should make these decisions on a case-by-case basis, upon further consideration, we believe it is also important to streamline the application process by establishing a timetable for application/permit modification review.

[13] For more information on the Independent Assessment Criteria for EMSs, see *http://www.epa.gov/performancetrack/ind_assessment.htm.*

Track member'' inspection frequency within seven calendar days. The facility must place in their operating record a dated copy of this notification. In cases where the Performance Track member is a permitted TSDF, the Agency is requiring that the permit modification to allow the reduced inspection frequency contain a ''sunset'' clause, in case the facility's membership in Performance Track ends. If written without a ''sunset'' clause, an approved permit modification allowing a reduced inspection frequency could otherwise ''shield'' the facility from violation if it ceases to be a Performance Track member. Therefore, we are requiring that the Class 1 modification request contain specific language stating that the reduced frequency is for as long as the facility remains a Performance Track member. The language must say that if the facility ceases to be a Performance Track member facility, it must revert to the ''non-Performance Track'' inspection frequency within seven calendar days after membership in Performance Track ends.

Sections a. through d. below discuss in more detail the Agency's basis for decisions on inspection frequency for areas subject to spills, containers, tank systems, and containment buildings at Performance Track member facilities.

a. *Performance Track: Reduced Inspection Frequency for Areas Subject to Spills.* The general inspection requirements of §§ 264.15 and 265.14, require that areas subject to spills, such as loading and unloading areas, must be inspected daily, while in use. These inspections are to identify malfunctions and deterioration, operator errors, and discharges which may be causing—or be leading to—(1) a release of hazardous waste constituents to the environment, or (2) a threat to human health. In response to a comment in the 2002 proposal, the October 29, 2003 NODA (68 FR 61662) considered reducing inspection frequencies, granted on a case-by-case basis, for areas subject to spills. We also solicited comment on whether to grant this relief only to Performance Track member facilities, stating that the risk from this change is minimal at facilities that have met the requirements to be accepted into the Performance Track Program. We received two comments on this issue; one commenter supported the proposal, and one did not . The commenter that opposed the proposal provided no explanation or justification for its position. The supporting commenter stated that activities that may cause spills ''usually allow for the spills to be easily detected and quickly cleaned up. More frequent inspections are unlikely to result in quicker spill detection.''

In general, we do not believe that such a change to the regulation is appropriate for all facilities, for the reasons laid out above. However, we believe the risk from this change is minimal at facilities that have met the requirements to be accepted into the National Environmental Performance Track Program. Therefore, we have decided to extend inspection frequencies for no less than once each month, at areas subject to spills, but only for facilities that are members of the National Environmental Performance Track Program that have received prior approval from the regulatory agency.

b. *Performance Track: Reduced Inspection Frequency for Containers.*

Sections 264.174 and 265.174 require owners or operators to inspect, at least weekly, areas where containers holding hazardous waste are stored, looking for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors. We proposed to allow case-by-case decreased inspection frequencies for containers.

The October 29, 2003 NODA (68 FR 61662) addressed comments received on the 2002 proposal. Based on the comments from the proposal, the NODA reconsidered whether to make case-by-case reduced self-inspections available to all generators because of the burden it might impose on authorized states to evaluate compliance with the criteria. That is, making such a change available to all generators would likely impose a substantial burden on the states or EPA in order to evaluate whether an applicant facility met the criteria. Such a burden is clearly in opposition to the intent of today's rule. Finally, the Agency stated clearly that ''at a minimum, we believe that providing relief is appropriate for companies that are demonstrated good performers.'' (68 FR 61665.)

The Agency received comments on this issue that supported the application of this provision to Performance Track members. Other comments stated that this provision should be made available to all facilities with a demonstrated record of good compliance, with some type of demonstrated top performance, or by meeting the proposed criteria.

The Agency considered all comments received on this issue and has decided to finalize a reduced self-inspection requirement to §§ 264.174 and 265.174 available only to members of the National Environmental Performance Track Program. The reason for this decision is that case-by-case determinations for all hazardous waste facilities would significantly increase the burden associated with providing this benefit to all facilities. Performance Track member facilities may apply to their regulatory agency for a reduction in self-inspection frequency, for no less thanonce each month, for containers and for areas where containers holding hazardous waste are stored.

c. *Performance Track: Reduced Inspection Frequency for Tank Systems.* Today, we are changing the self-inspection frequencies for tank systems from daily to no less than once each month for tank systems, granted on a case-by-case basis, for members of the National Environmental Performance Track Program when operating under certain conditions.[14] This includes Performance Track member facilities that are either permitted TSDFs, interim status TSDFs, large quantity generators (LQGs), and/or small quantity generators (SQGs).

Today's rule allows Performance Track member facilities to apply to the regulatory agency for reduced tank system self-inspection frequency, of no less than once each month when either of two conditions are met: (1) When tank owners and operators employ leak detection equipment, or (2) when in the absence of leak detection equipment, owners and operators of tank systems employ workplace practices that ensure that when any leaks or spills occur, they will be promptly identified and remediated. Performance Track member facilities choosing one of these options to reduce inspection frequencies, should identify the option selected as part of its application to the regulatory agency.

Small quantity generator (SQG) tank systems are subject to separate requirements, found in 40 CFR 265.201. Today's rulemaking also allows National Environmental Performance Track members to apply to the regulatory agency for reduced self-inspection frequencies for SQG tank systems under § 265.201(b) when they meet either one of the two conditions described above.

d. *Performance Track: Reduced Inspection Frequency for Containment*

[14] As previously discussed, we intended to include a broad applicability for tank systems in our proposed rule; however, the proposal did not clearly address the point. We clarified in the October 29, 2003 NODA (68 FR 61662) that the proposal was meant to apply not just to the tanks, but to the complete tank systems (i.e., ancillary equipment). Complete tank systems were defined as including piping, pumps, valves and other associated equipment. Commenters were generally supportive of this change. Therefore, we are applying this provision to complete tank systems, except to ancillary equipment without secondary containment as described at §§ 264.193(f)(1)–(4) and 265.193(f)(1)–(4).

Buildings. We proposed to allow case-by-case decreased inspection frequencies for containment buildings. As stated generally above, the intent was to offer this provision only to the safest and best performing facilities. In the October 29, 2003 NODA (68 FR 61662), we solicited comment on whether to limit the reduced inspection frequency for containment buildings to member facilities of the National Environmental Performance Track Program. Again, for the same reasons stated above, we decided to limit §§ 264.1101 and 265.1101 to Performance Track member facilities.

TABLE 11.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT PERMITTED HAZARDOUS WASTE FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
260.10	Hazardous Waste Management System: Definitions.	No regulatory definition currently exists. Performance Track member facility means a facility which has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.
264.15(b)(4)	General Facility Standards: General Inspection Requirements.	The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that may inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable.
264.15(b)(5)	General Facility Standards: General Inspection Requirements.	No regulatory language currently exists. Performance Track member facilities that choose to reduce their inspection frequency must: (i) Submit a request for a Class I permit modification with prior approval to the Director. The modification request must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. The modification request must also specify, in writing, that the reduced inspection frequency will apply for as long as the facility is a Performance Track member facility, and that within seven calendar days of ceasing to be a Performance Track member, the facility will revert to the non-Performance Track inspection frequency. Inspections must be conducted at least once each month. (ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the request is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) deny the application; or (2) notify the Performance Track member facility of an extension to the 60 day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its request for a Class I permit modification and keep a copy of the application in the facility's operating record. (iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in the operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.
264.174	Use and Management of Containers: Inspections.	At least weekly, the owner or operator must inspect areas where containers are stored, looking for leaking containers, and for deterioration of containers and the containment system caused by corrosion or other factors.

TABLE 11.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT PERMITTED HAZARDOUS WASTE FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
264.195	Tank Systems: Inspections	At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures described in § 264.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused corrosion or other factors. (b) The owner or operator must inspect at least once each operating day: (1) Above ground portions of the tank system, if any to detect corrosion or releases of waste: (2) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). [**Note:** Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.] (b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; (c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day: (1) Above ground portions of the tank system, if any to detect corrosion or releases of waste: (2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wetspots, dead vegetation). (d) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility. (e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5). (f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1)–(4), must be inspected at least once each operating day. [**Note:** Section 264.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 264.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a leak. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.]
264.1101(c)(4)	Containment Buildings: Design and Operating Standards.	Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. Inspect and record in the facility's operating record, at least once every seven days, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5) of this part.

TABLE 12.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT INTERIM STATUS FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
260.10	Hazardous Waste Management System: Definitions.	No regulatory definition currently exists. Performance Track member facility means a facility that has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.
265.15(b)(4)	General Facility Standards: General Inspection Requirements.	The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or any operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058 and 265.1084 through 265.1090 of this part, where applicable. The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058 and 265.1084 through 265.1090 of this part, where applicable.
265.15(b)(5)	General Facility Standards: General Inspection Requirements..	No regulatory language currently exists. Performance Track member facilities that choose to reduce their inspection frequency must: (i) Submit an application to the Director. The application must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. Inspections must be conducted at least once each month. (ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the application is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) deny the application; or (2) notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and keep a copy of the application in the facility's operating record. (iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in the operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calender days.
265.174	Use and Management of Containers: Inspections.	The owner or operator must inspect areas where containers are stored, at least weekly, looking for leaks and for deterioration caused by corrosion or other factors. At least weekly, the owner or operator must inspect areas where containers are stored, except Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.
265.195	Tank Systems: Inspections.	(a) The owner or operator must inspect, where present, at least once each operating day: (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) Above ground portions of the tank system, if any to detect corrosion or releases of waste; (3) Data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design; and

TABLE 12.—DECREASED INSPECTION FREQUENCIES FOR HAZARDOUS WASTE MANAGEMENT UNITS AT INTERIM STATUS FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
		(4) The construction materials and the area immediately surrounding the externally accessible portion of the tanks system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). **Note:** Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release. (a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design. (b) Except as noted under paragraph (c) of this section, the owner or operator must inspect at least once each operating day: (1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass systems, and drainage systems) to ensure that it is in good working order; (2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and (3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation). (c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (b)(1)–(3) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility. (d) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5). (e) Ancillary equipment that is not provided with secondary containment, as described in § 265.193(f)(1)–(4), must be inspected at least once each operating day. **Note:** Section 265.15(c) requires the owner or operator to remedy any deterioration or malfunction he finds. Section 265.196 requires the owner or operator to notify the Regional Administrator within 24 hours of confirming a release. Also, 40 CFR part 302 may require the owner or operator to notify the National Response Center of a release.
265.1101(c)(4)	Containment Buildings: Design and Operating Standards.	Inspect and record in the facility's operating record, at least once every seven days, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. Inspect and record in the facility's operating record, at least once every seven days, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

TABLE 13.—DECREASED INSPECTION FREQUENCIES FOR SMALL QUANTITY GENERATOR HAZARDOUS WASTE MANAGEMENT UNITS

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
265.201(c)	Tank Systems: Special requirements for generators of between 100 and 1,000 kg/mo that accumulate hazardous waste in tanks.	(c) Generators of between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present: (1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order; (2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day, to ensure that the tank is being operated according to its design;

TABLE 13.—DECREASED INSPECTION FREQUENCIES FOR SMALL QUANTITY GENERATOR HAZARDOUS WASTE MANAGEMENT UNITS—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
		(3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3); (4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and (5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). (c) Except as noted in paragraph (d) of this section, generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks must inspect, where present: (1) Discharge control equipment (e.g., waste feed cutoff systems, by-pass systems, and drainage systems) at least once each operating day, to ensure that it is in good working order; (2) Data gathered from monitoring equipment (e.g., pressure and temperature gauges) at least once each operating day, to ensure that the tank is being operated according to its design; (3) The level of waste in the tank at least once each operating day to ensure compliance with § 265.201(b)(3); (4) The construction materials of the tank at least weekly to detect corrosion or leaking of fixtures or seams; and (5) The construction materials of, and the area immediately surrounding, discharge confinement structures (e.g., dikes) at least weekly to detect erosion or obvious signs of leakage (e.g., wet spots or dead vegetation). (d) Generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (c)(1)–(5) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility. (e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

H. We Are Making Selected Changes to the Requirements for Record Retention and Submittal of Records

EPA is modifying certain requirements for hazardous waste handlers who keep records on site and submit these same records to EPA. We will now require waste handlers only to keep these selected records on site.

EPA believes that many of the various notices required do not add much in protection and some are simply redundant. We believe that reporting to EPA on the majority of the day-to-day functions of a facility does not need to occur. Because a basic set of compliance information will still be kept in the facility's operating record, we believe the regulatory agency has an ample opportunity for effective oversight.

1. We Are Removing the Requirement To Submit a One-Time Notification for Recycled Wood Wastewaters and Spent Wood-Preserving Solutions and Clarifying an Unintentional Elimination Made in the Proposal

Currently under 40 CFR 261.4(a)(9), spent wood preserving solutions and wastewaters from wood preserving processes are excluded from classification as a solid waste if they are reclaimed and reused for their original intended purpose, and if five conditions specified in subparagraphs (iii)(A) through (iii)(E) are met. Paragraph (E) required that the plant owner or operator submit a one-time notification that the plant intends to claim the exclusion.[15] Paragraph (E) also requires the owner or operator to maintain a copy of the notification on-site for no less than three years. Finally, paragraph (E) explains that the exclusion applies only so long as the plant meets all of the conditions, and sets forth procedures for what to do to retain the exclusion if the facility goes out of compliance with a condition.

The proposed rule (see 67 FR 2521) was to reduce the burden on wood preservers/treaters by eliminating the requirement to submit the one-time notification. The proposal stated that the requirement is unnecessary and has limited use for regulators. However, the change to the regulations specified in the regulatory text of the proposal unintentionally eliminated the entire paragraph (E) of 40 CFR 261.4(a)(9),(iii)

[15] The four other conditions found in 40 CFR 261.4(a)(9)(iii)(A)–(D) are: (A) The wood preserving wastewaters and spent wood preserving solutions are reused on-site at water borne plants in the production process for their original intended purpose; (B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both; (C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise be determined to prevent such releases; and (D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standard in part 265, subpart W of this chapter, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste.

thus eliminating the one-time notification requirement and also eliminating the two other requirements in that paragraph: (1) The requirement to maintain the notification on-site for three years, and (2) the implementation discussion for compliance with the conditions.

Three state commenters did not agree with the proposal. These commenters argued that the notification is useful for identifying facilities that are claiming the exclusion, identifying potential problems before they occur, allowing the regulating agency to verify compliance, and workload planning. Several state commenters, however, agreed with the proposal to eliminate the requirement to submit the notification. Based on their comments, these commenters appeared to understand that only the requirement to submit the one-time notification was proposed for elimination. None mentioned the requirement to retain the notification on-site or the compliance implementation procedures.

While we understand the concern of some of the commenters, we still do not believe that arguments put forth were sufficient to change the proposed approach. We believe that the submittal of this notification is unnecessary because the facilities are engaged in limited activities to return materials to their intended use in the wood treating industry. Many comparable activities occur without notification, including direct reuse of the same material. These activities will occur at generator sites subject to EPA or state inspection (and in some case at treatment, storage, and disposal facilities), so EPA or the state will have an opportunity to review the activity. Note that in the final change to the regulatory text, we are only eliminating the requirement to submit the one-time notification; we are not eliminating the requirement to keep the document on-site, or the discussion of compliance implementation procedures.

2. We Are Eliminating the Requirement for Interim Status Facilities To Submit Specific Ground-Water Monitoring Plans and Ground-Water Assessment Reports

In today's final rule, we are reducing some of the burden on interim status facilities by eliminating the need to submit specific ground-water monitoring plans and ground-water assessment reports to the Regional Administrator. These reports include: (1) Plans for an alternative ground-water monitoring system under § 265.90(d)(1) that are implemented when the owner or operator assumes (or knows) that ground-water monitoring of indicator parameters in accordance with §§ 265.91 and 265.92 would show statistically significant increases when evaluated under § 265.93(b); (2) records of the analyses and evaluations specified in the plan under § 265.93(d)(2); and (3) ground-water quality assessment reports required under § 265.93(d)(5). These plans are not being eliminated, but are to be placed in the facility's operating record until closure of the facility. We consider today's changes to be a common sense approach to reducing burden at regulated facilities without compromising environmental protection.

Numerous states objected to these proposed changes to the interim status reporting and recordkeeping requirements, asserting that the regulatory agency should continue to receive a copy of these reports to assess the effectiveness and appropriateness of the ground-water monitoring system. Other states asserted that EPA's approach places an undue burden on the regulatory authority and makes it difficult for states to fully evaluate ground water across the state.

We believe that self-implementing ground-water monitoring plans for interim status facilities can be protective of human health and the environment; we disagree with the assertion that our rationale places a burden on the regulating authority. These reports must be kept in the facility's operating record until closure of the facility and will be available for inspection when the state or EPA visits the facility. Nothing in today's rulemaking prevents the regulating authority from requesting reports from interim status facilities for ground-water quality assessment or indicator parameter concentrations.

EPA is retaining many requirements for interim status facilities. For example, we are not changing the ground-water reporting requirements of §§ 265.93(c)(1), (d)(1), (e) and (f) and 265.94(a)(2)(i), (ii) and (iii), that deal with submitting notifications of increased indicator parameter concentrations and the development and submittal of: (1) Ground-water quality assessment reports; (2) preparation and submittal of quarterly reports on drinking water suitability parameters; indicator parameter concentrations and evaluations; and (3) ground-water surface elevations. Stakeholders have convinced us of the importance of this information. Without the knowledge of the status of the facility ground-water monitoring system, it may be difficult for regulators to conduct effective inspections, address compliance issues, and address enforcement issues regarding the ground water at interim status facilities.

3. We Are Eliminating the Requirement for Interim Status Surface Impoundments, Waste Piles, and Landfills To Submit a Response Action Plan

Response action plans are generated by the owner or operator of a specified hazardous waste management unit (e.g., surface impoundment, waste pile, and/or landfill), and document actions to be taken if the action leakage rate in the unit's leak detection system has been exceeded.[16] These actions are listed in §§ 265.223, 265.259 and 265.303.[17] The Agency proposed eliminating the need to submit to the Regional Administrator response action plans for interim status surface impoundments, waste piles, and landfills. We are eliminating the submission of the response action plan to the Regional Administrator. The facility must still prepare and retain these plans on-site.

Several state commenters agreed with the proposal; however, several others did not. One commenter argued that a release from a land-based unit is a significant noncompliance and could pose serious impacts to the people and the environment, and it is important for the facility to have a clear plan in advance to respond to releases. Because of the importance of controlling these releases, it is appropriate for the response action plan to be submitted to EPA or the state permit agency. While we agree with the commenter that any release from a land-based unit is a serious matter, and that controlling these releases is of the utmost importance, we are not convinced that these plans need to be submitted to the regulatory agency. EPA is retaining all requirements to submit notices to the regulatory authority when an action leakage rate is exceeded (see §§ 265.224(b)(2) and (6); 265.259(b)(2) and (6); and 265.303(b)(2) and (6)); we

[16] The action leakage rate is the maximum design flow rate that the leak detection system (LDS) can remove without the fluid head on the bottom liner exceeding one foot. The action leakage rate must include an adequate margin of safety to allow for uncertainties in the design (e.g., slope, hydraulic conductivity, thickness of drainage material), construction, operation, and location of the LDS, waste and leachate characteristics, likelihood and amounts of other sources of liquids in the LDS, and proposed response actions (e.g., the action leakage rate must consider decreases in the flow capacity of the system over time resulting from siltation and clogging, rib layover and creep of synthetic components of the system, overburden pressures, etc.).

[17] In the CFR there are two sections identified as § 265.223, the first titled ''Containment system'' and the second titled ''Response actions''. In today's rule we are redesignating § 265.223 titled ''Response actions'' as § 265.224.

believe that the need to submit the response action plan which merely reiterates these requirements is an overly burdensome requirement that can be removed.

4. We Are Eliminating the Requirement for Facilities To Submit a Tank System Certification of Completion of Major Repairs

We are amending the requirement for submitting to the Regional Administrator a certification of completion of major repairs to a tank system by an independent, qualified, professional engineer. This certification need only be kept on-site in the operating record through the intended life of the system. This change will eliminate the submission of duplicative information to the regulatory authority. Sections 264.196(d) and 265.196(d) already require that certain notifications be submitted that include descriptions of response actions taken or planned.

Several commenters did not support the proposed change, noting that submission of the certification helps to ensure that the regulatory authority is made aware of any potentially significant repairs that were conducted. One commenter argued that the elimination of these notices or notations in the operating record will adversely affect oversight. Another commenter argued that, while supportive of the proposed change, the certification of major repairs must be kept with the facility record, and be available for review by regulatory inspectors. We believe that information provided by the certification of major repairs is already provided through the notification mechanisms described in §§ 264.196(d) and 265.196(d), which require notification when releases occur, and a description of response actions taken or planned. While we are not eliminating the certification, we are requiring the certification be kept on site in the operating record, and we are requiring the certification be signed by a qualified professional engineer.

5. We Are Eliminating the Requirement for a Recycler To Submit a Notification and Certification

Under 40 CFR 268.7(b)(3), a treatment facility must send a one-time notice to the receiving land disposal facility with the initial shipment of waste or contaminated soil. Also, in § 268.7(b)(4), the treatment facility must submit a one-time certification with the initial shipment of waste or contaminated soil to the land disposal facility.

Under § 268.7(b)(6), however, if the wastes are recyclable materials used in a manner constituting disposal, the owner or operator of the treatment facility (i.e., the recycler) is not required to send the one-time (b)(3) notice to the receiving facility. For each shipment, however, the owner or operator of the treatment facility (i.e., recycler) must submit a (b)(4) certification and a notice with the information listed in (b)(3) to the Regional Administrator. These notifications and certifications are to assure and document that treatment standards are being met. The preamble to the proposed rule described a proposal that would reduce burden on the regulated industry by eliminating the requirement to send the notifications and certifications to EPA, and instead require that the treatment facility (i.e., recycler) place these documents in its on-site files.

Five commenters, including three states, agreed that notifying the regulatory agency is not necessary as long as the information is maintained at the facility. Only one commenter did not support the elimination of the requirement. This commenter argued that it is important to track hazardous wastes used in the manufacture of fertilizers because it believes there are problems with compliance in this industry. It believes that notification to the regulatory agency allows such tracking. We, however, do not agree with this commenter, for the reasons presented below.

Based on the majority of comments received, we are amending § 268.7(b)(6) to eliminate the requirement to submit notifications and certifications to EPA, and instead require that the information be placed in the treating/recycling facility's on-site files. All but one commenter confirmed that maintaining these records on-site provides sufficient documentation of waste treatment in these cases. We also point out that regulating agencies have a great deal of information about these facilities already since, in most cases, they would be permitted facilities. Retaining these notices on-site does not eliminate the regulating agency's knowledge of the existence of the facility. We also note that if a state has concerns about compliance in a particular use constituting disposal industry in their state, they may choose to be more stringent than the federal program, and choose to retain these notifications.

It should be noted that the preamble to the proposal incorrectly indicated that the current regulations only require one-time notifications and certifications for these materials. This is not accurate. As discussed earlier, the existing regulations actually require that certifications and notifications be sent to the regulating agency with each shipment. One commenter suggested that we change the requirement so that these notifications and certifications are only required to be prepared once and maintained in the facility's records, unless there are changes to the treatment process. The commenter pointed out that it would greatly reduce the burden for the facility if they were only required to prepare these documents once, and then again any time the treatment process changes. We agree with this commenter's point. As long as these notifications and certifications are required to be maintained in the facility's files and be available for inspection, there is no reason for the facility to prepare and maintain multiple copies for each shipment. The information will be available for inspection at all times. Whereas the proposal did address the burden of sending notifications and certifications to the regulatory agency, it did not address the burden associated with the requirement to send those documents with each waste shipment. This final rule corrects that omission. Thus, this final rule only requires facilities (i.e., recyclers) to prepare and maintain notifications and certifications with the initial shipment of waste, and then to prepare new documentation only if the waste, the treatment process, or the receiving facility changes.

6. We Are Eliminating the Requirement to Submit an LDR Notification and Certification

Under § 268.9(d), once a characteristic waste is treated so it is no longer characteristic, a one-time notification and certification of this fact have to be placed in the generator's or treater's files, and also sent to EPA or the authorized state. We proposed to eliminate the requirement to submit the notification to EPA or the authorized state (the notification and certification would continue to be required to be kept in the facility's files).

Almost all commenters supported the proposal to delete the one-time requirement that the § 268.9(d) notification and certification be sent to EPA or the authorized state. This is because the notification and the certification must be placed in the on-site files and would thus be available for inspection. However, a few commenters opposed the deletion of these submittals, stating that this information is valuable. While we agree that the information is valuable, we do not believe that submitting these documents to the regulatory agency is necessary to protect human health and the environment. For a number of years, other LDR notifications and

certifications have not been required to be submitted to the regulatory agency, but are available for inspection in the facility's on-site files. Therefore, we believe that this system of recordkeeping is sufficient and are deleting the notification and certification submission requirement as proposed.

TABLE 14.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR PERMITTED TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
264.196(f)	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.	Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Regional Administrator within seven days after returning the tank system to use. Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.[18]

[18] The reader is referred to Section III. B. of today's preamble for a discussion of the change from ''independent, qualified, registered, professional'' to ''qualified professional engineer''.

TABLE 15.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
265.90(d)(1)	Ground-Water Monitoring. Applicability.	Within one year after the effective date of these regulations, submit to the Regional Administrator a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system. Within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility.
265.90(d)(3)	Ground-Water Monitoring. Applicability.	Prepare and submit a written report in accordance with § 265.93(d)(5). Prepare a report in accordance with § 265.93(d)(5) and place it in the facility's operating record and maintain until closure of the facility.
265.93(d)(2)	Ground-Water Monitoring. Preparation, evaluation, and response.	Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop and submit to the Regional Administrator a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.
265.93(d)(5)	Ground-Water Monitoring. Preparation, evaluation, and response.	The owner or operator must make his first determination under paragraph (d)(4) of this section, as soon as technically feasible, and, within 15 days after that determination, submit to the Regional Administrator a written report containing an assessment of the ground-water quality. The owner or operator must make his first determination under paragraph (d)(4) of this section as soon as technically feasible, and prepare a report containing an assessment of the ground-water quality. This report must be placed in the facility operating record and be maintained until closure of the facility.

TABLE 15.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR INTERIM STATUS TREATMENT, STORAGE, AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
265.196(f)	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.	Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (*e.g.*, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by an independent, qualified, registered, professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be submitted to the Regional Administrator within seven days after returning the tank system to use. Certification of major repairs. If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (*e.g.*, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified professional engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record until closure of the facility.[19]
265.223(a)	Surface Impoundments. Response actions.	The owner or operator of surface impoundment units subject to § 265.221(a) must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under § 265.222. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section. (Now § 265.224(a)) The owner or operator of surface impoundment units subject to § 265.221(a) must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.
265.259(a)	Waste Piles. Response actions	The owner or operator of waste pile units subject to § 265.254 must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under § 265.255. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the action specified in paragraph (b) of this section. The owner or operator of waste pile units subject to § 265.254 must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.
265.303(a)	Landfills. Response actions	The owner or operator of landfill units subject to § 265.301(a) must submit a response action plan to the Regional Administrator when submitting the proposed action leakage rate under § 265.302. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the action specified in paragraph (b) of this section. The owner or operator of landfill units subject to § 265.301(a) must develop and keep on-site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

[19] The reader is referred to today's preamble for a discussion of the change from ''independent, qualified, registered, professional engineer'' to ''qualified professional engineer.'' We are also requiring that this certification be retained in the operating record until closure of the facility.

TABLE 16.—CHANGES TO THE REQUIREMENTS FOR RECORD RETENTION AND SUBMITTAL OF RECORDS FOR HAZARDOUS WASTE GENERATORS

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
261.4(a)(9)(iii)(E)	General. Exclusions. Materials which are not solid wastes.	Prior to operating pursuant to this exclusion, the plant owner or operator submits to the appropriate Regional Administrator or state Director a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: ''I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving wastewater and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation.'' The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur. Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: ''I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation.'' The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement. The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.
268.7(b)(6)	Land Disposal Restrictions. Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.	Where the wastes are recyclable materials used in a manner constituting disposal subject to the and provisions of § 268.20(b) regarding requirements for treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) is not required to notify the receiving facility, pursuant to paragraph (b)(3) of this section. With each shipment of such wastes, the owner or operator of the recycling facility must submit a certification described in paragraph (b)(4) of this section, and a notice which includes the information listed in paragraph (b)(3) of this section (except the manifest number) to the Regional Administrator, or his delegated representative. The recycling facility also must keep records of the name and location of each entity receiving the hazardous waste-derived product. Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b)[20] of this chapter regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (i.e., the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on-site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.
268.9(d)	Land Disposal Restrictions. Special rules regarding wastes that exhibit a characteristic.	Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generators or treaters files and sent to the EPA region or authorized state. The notification and certification that is placed in the generators or treaters files must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes. However, the generator or treater need only notify the EPA region or an authorized state on an annual basis if such changes occur. Such notification and certification should be sent to the EPA region or authorized state by the end of the calendar year, but no later than December 31. Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

[20] In the previous regulatory language, the citation referred to § 268.20(b), however, this was an error. In today's rule, we are correcting this error by referring to the correct citation which is § 266.20(b).

I. We Are Making Selected Changes to the Requirements for Document Submittal

1. We Are Streamlining the Procedure for Obtaining a Variance From Classification as a Solid Waste

A regulatory agency may grant a variance from classification as a solid waste for materials that are reclaimed and then reused as feedstock within the original production process in which the materials were generated. The regulation lists eight criteria that are to be used in determining if the request for a variance is to be granted. One of the criteria is a requirement to demonstrate the prevalence of the practice on an industry-wide basis.

The proposed rule described a proposal to eliminate the requirement that applicants for this variance submit information on the prevalence of the practice on an industry-wide basis. The Agency found that this information was less important in making the decision than the other factors and could be difficult for a facility to provide.

Four commenters agreed with the proposal to eliminate the requirement. One pointed out the difficulty of obtaining such information, particularly in the batch and speciality chemical industry. Three states also supported eliminating the requirement. Three other commenters opposed eliminating the requirement, arguing that the information is important in determining whether the reclamation process is an essential part of the production process.

While the Agency believes that this information can be useful in some cases, we also believe that such industry-wide information about these practices is not critical in demonstrating or determining that reclamation is an essential part of production. We believe that a successful demonstration can be made without this information. We also acknowledge that this information may be very difficult, and in some cases, impossible for one company to obtain. We are, therefore, eliminating the requirement in § 260.31(b)(2) that applicants provide industry-wide information.

2. We Are Streamlining the Requirements for Treatability Study Reports for Testing Facilities

Treatability studies are studies at laboratories and testing facilities in which hazardous waste is tested to evaluate the effectiveness of a treatment process. (See definition in 40 CFR 260.) Facilities conducting treatability studies are excluded from the standard hazardous waste management requirements if they comply with certain requirements described in § 261.4(f). Paragraph (9) requires the facility to submit to the regulatory agency an annual report that includes: (1) An estimate of the number of studies and the amount of waste expected to be used in treatability studies during the current year; and (2) information on the treatability studies conducted during the previous year.

We proposed to reduce burden by eliminating the requirement to submit an estimate of the number of treatability studies and amount of waste expected to be used in treatability studies in the upcoming year. The proposal explained that the requirement is duplicative because the same information is submitted in the annual report at a later date. However, the change to the regulations specified in the regulatory text of the proposal unintentionally eliminated the entire paragraph (9) of § 261.4(f), thus proposing to eliminate both the requirement to submit estimates for the current year, as well as information for the previous year.

The majority of commenters (seven) supported elimination of the estimates. They did so with the apparent understanding that only the requirement to provide estimates for the coming year was to be eliminated, and that the requirement to submit information for the previous year would remain in place. Most agreed with the proposal to eliminate the estimates based on the rationale in the preamble that the information would be provided at a later date. Two commenters did point out that eliminating all of § 261.4(f)(9) also eliminates the requirement for providing any report, including the submittal of information from the previous year.

We agree with commenters that the estimate of upcoming activities are unnecessary since the same information will be provided later in the annual report, and the information provided on past activities will be more accurate than estimates of the future. We are, therefore, eliminating the requirement in § 261.4(f)(9) to submit estimates of the number of studies and the amount of waste to be used in treatability studies for the current year, but are retaining the requirement for preparing and submitting an annual report providing information for the previous year.

3. We Are Streamlining the Requirements for Ground-Water Monitoring

As previously discussed in the October 29, 2003 NODA (68 FR 61662), hazardous waste treatment, storage, and disposal facilities must implement ground-water monitoring as a condition for receiving a RCRA permit. EPA requires a phased approach to ground-water monitoring (detection monitoring, compliance monitoring, corrective action). Ground-water monitoring systems must consist of a sufficient number of wells, properly located and constructed, and capable of ensuring that the ground-water impacts of a treatment, storage, or disposal unit can be determined. Sampling and analysis procedures must also be capable of determining both background quality of ground water and quality at the point of compliance.

If hazardous constituents are detected in ground water, more detailed monitoring may be required. In this case, a facility would need additional wells, sampling, and analysis to determine the extent and rate of contaminant migration, to determine if the ground-water protection standard is violated, and to indicate the need for, or effectiveness of, corrective action.

Detection monitoring is the first phase of ground-water monitoring, and is designed to detect a change in ground-water quality in wells surrounding a regulated unit. A potential release from the unit, or impacts from activities up gradient of the unit, may cause this change. For detection monitoring, ground-water monitoring wells are installed up-gradient of the unit and at the point of compliance. Facilities then monitor for each indicator parameter or hazardous constituent specified in the permit.

Compliance monitoring occurs when hazardous waste constituents are detected down-gradient of the unit. The permitting authority will establish hazardous constituent standards for facilities undergoing compliance monitoring.

The third phase of ground-water monitoring, corrective action, is required when hazardous constituents exceed the ground-water protection standards at the point of compliance. Once this has occurred, the owner or operator must remedy the situation by removing the hazardous constituents or treating them in place.

We are modifying the § 264.99(g) requirement that facilities performing compliance monitoring conduct an annual 40 CFR Part 264 Appendix IX (the ground-water monitoring chemical list) analysis of all monitoring wells. We are allowing, on a case-by-case basis, as authorized by a permit authority, sampling from a subset of the wells. Appendix IX analyses are costly at large facilities, and analyzing all wells does not necessarily contribute to protection of human health and the environment. This is especially the case if there are

multiple units and wells at a facility, and only one unit shows signs of contamination.

In addition, monitoring for constituents that are not likely to be found at a site is wasteful and does not increase the protection of monitoring programs. We, therefore, are also modifying § 264.98(g)(2) to give the Regional Administrator discretion on a case-by-case basis to allow sampling for a subset of the Appendix IX constituents. While this change was proposed for § 264.98(c), upon re-evaluation, we decided it is more appropriate to amend § 264.98(g)(2) and leave § 264.98(c) unchanged. Decisions on what constituents must be sampled will be based on the regulatory agencies' judgment of what amount of sampling supports the protection of human health and the environment, as well as the level of knowledge of what contaminants could be present at a site. As a commenter pointed out, this subsection prior to today did not require that all samples must be analyzed for every chemical parameter and hazardous constituent listed in Appendix IX. Today's rule eliminates ambiguity by specifically confirming that sampling for a site-specific subset of constituents is allowable.

Based on a comment we received, we also are revising § 264.98(d) to allow for alternative sampling procedures as provided in § 264.97(g)(2). Under § 264.98(d), a facility must collect at least four samples from each well at least semi-annually. This provision has resulted in sites being required to sample four times within a single monitoring event, despite the contradiction with § 264.97(g)(2) which allows for an alternate sampling procedure. To reduce some of the burden related to this sampling and reporting, we are removing the last sentence from § 264.98(d) (requiring a facility to collect at least four samples from each well at least semi-annually). We are also eliminating the last sentence in § 264.99(f) (requiring a facility to collect at least four samples from each well at least semi-annually). These changes will prevent § 264.98(d) and § 264.99(f) from unintentionally trumping the flexibility granted by § 264.97(g)(2).

Finally, based on another comment received, we are also changing the re-sampling requirements in § 264.98(g)(3) and § 264.99(g) from ''may resample within one month'' to ''may resample within one month or at an alternative site-specific time frame approved by the Administrator.'' This change allows for sampling to be based on site-specific hydrogeologic conditions. It also can be burdensome for facilities to resample wells within 30 days, because this time frame can allow, in some circumstances, insufficient time to evaluate the original data set, perform quality assurance evaluations, and re-mobilize the sampling team.

TABLE 17.—CHANGES TO THE REQUIREMENTS FOR DOCUMENT SUBMITTAL FOR VARIANCES FROM CLASSIFICATION AS A SOLID WASTE AND FOR TESTING FACILITIES REGARDING TREATABILITY STUDY REPORTS

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
260.31(b)(2)	Rulemaking Petitions. Standards and criteria for variances from classification as a solid waste.	The prevalence of the practice on an industry-wide basis. Section 260.31(b)(2) has been deleted from the regulatory text.
261.4(f)(9)	General. Exclusions. Samples undergoing treatability studies at laboratories and testing facilities.	The facility prepares and submits a report to the Regional Administrator, or state Director (if located in an authorized state), by March 15 of each year that estimates the number of studies at studies and the amount of waste laboratories and expected to be used in treatability testing studies during the current year, and facilities. includes the following information for the previous calendar year: The facility prepares and submits a report to the Regional Administrator, or state Director (if located in an authorized state), by March 15 of each year, that includes the following information for the previous calendar year:

TABLE 18.—CHANGES TO THE REQUIREMENTS FOR DOCUMENT SUBMITTAL FOR PERMITTED TREATMENT, STORAGE AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
264.98(d)	Releases from Solid Waste Management Units. Detection monitoring program.	The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit under paragraph (a) of this section in accordance with § 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during detection monitoring. The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under paragraph (a) of this section in accordance with § 264.97(g).
264.98(g)(2)	Releases from Solid Waste Management Units. Detection monitoring program.	Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of part 264 are present, and if so, in what concentration.

TABLE 18.—CHANGES TO THE REQUIREMENTS FOR DOCUMENT SUBMITTAL FOR PERMITTED TREATMENT, STORAGE AND DISPOSAL FACILITIES—Continued

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
		Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of part 264 are present, and if so, in what concentration. However, the Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents.
264.98(g)(3)	Releases from Solid Waste Management Units. Detection monitoring program.	For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds found pursuant to paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring. For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Administrator and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring.
264.99(f)	Releases from Solid Waste Management Units. Compliance monitoring program.	The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g). A sequence of at least four samples from each well (background and compliance wells) must be collected at least semi-annually during the compliance period of the facility. The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g).
264.99(g)	Releases from Solid Waste Management Units. Compliance monitoring program.	The owner or operator must analyze samples from all monitoring wells at the compliance point for all constituents contained in appendix IX of part 264 at least annually to determine whether additional hazardous constituents are present in the uppermost aquifer and, if so at what concentrations, pursuant to procedures in § 264.98(f). If the owner or operator finds appendix IX constituents in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month and repeat the appendix IX analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis and add them to the monitoring list. Annually, the owner or operator must determine whether additional hazardous constituents from appendix IX of this 264, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). To accomplish this, the owner or operator must consult with the Regional Administrator to determine on a case-by-case basis: (1) Which sample collection event during the year will involve enhanced sampling; (2) the number of monitoring wells at the compliance point to undergo enhanced sampling; (3) the number of samples to be collected from each of these monitoring wells; and, (4) the specific constituents from Appendix IX of this 264 for which these samples must be analyzed. If the enhanced sampling event indicates that appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Regional Administrator, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

J. We Are Making Selected Changes to the Requirements for Semi-Annual Reports to Annual Reports

1. We Are Changing the Requirement for a Semi-Annual Report Detailing the Effectiveness of the Corrective Action Program

Section 264.100(g) requires the owner or operator of a permitted facility to report in writing to the Regional Administrator on the effectiveness of the corrective action program. These reports must be submitted semi-annually. We are now requiring an annual report instead of a semi-annual report. While this change was not in the proposed rule, it was identified in the comments received and was discussed in the October 29, 2003 NODA (68 FR 61668). It is a change that conforms to the change we are making to § 264.113(e)(5) and was supported by a majority of the commenters.

2. We Are Changing the Requirement for a Semi-Annual Report Describing the Progress of the Corrective Action Program

We proposed lengthening the reporting frequency for corrective action effectiveness reports required by §§ 264.113(e)(5) and 265.113(e)(5). These reports are currently required to be submitted semi-annually and include a description of the progress of the corrective action program, all ground-water monitoring data, and an evaluation of the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action. We received comments, mainly from the states, on this proposed regulatory change. Several states suggested giving the regulatory agency the flexibility of establishing report submittals on a case-by-case basis. Other states suggested the reports be submitted at least annually. Still another state suggested that the semi-annual submittal of reports is preferred because it allows the state to identify inadequate monitoring systems earlier, which in turn, could save the facilities needless ground-water monitoring expenses.

After reviewing the comments submitted, we have decided to promulgate the changes as proposed. Ground-water cleanup is generally a multi-year effort. Thus, we believe that annual submittal of these reports will not jeopardize the protection of human health and the environment.

TABLE 19.—REDUCED FREQUENCY FOR SUBMITTAL OF REPORTS FOR PERMITTED TREATMENT, STORAGE AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
264.100(g)	Releases from Solid Waste Management Units. Corrective action program.	The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports semi-annually. The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports annually.
264.113(e)(5)	Closure and Post-Closure. Closure; time allowed for closure.	During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action. During the period of corrective action, the owner or operator shall provide annual reports to the Regional Administrator describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

TABLE 20.—REDUCED FREQUENCY FOR SUBMITTAL OF REPORTS FOR INTERIM STATUS TREATMENT, STORAGE AND DISPOSAL FACILITIES

CFR section	Regulatory requirement	Current regulatory language New regulatory language as amended by the Burden Reduction Rule
265.113(e)(5)	Closure and Post-Closure. Closure; time allowed for closure.	During the period of corrective action, the owner or operator shall provide semi-annual reports to the Regional Administrator that describe the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action. During the period of corrective action, the owner or operator shall provide annual reports to the Regional Administrator describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

IV. What Regulatory Requirements Will Remain in the CFR?

Commenters opposed a number of the burden reduction changes that we either proposed or noticed in our October 29, 2003 NODA. After thorough analysis of the comments, and in consultation with state representatives, we have decided (at least for the present time) to retain these regulatory requirements. Stakeholders persuaded us that these changes could delete important recordkeeping and reporting requirements that were necessary in order to protect human health and the environment. Stakeholders, particularly the states, also provided arguments as to

the importance of retaining their oversight role when dealing with leaks and spills of hazardous waste. Table 21—Regulatory Requirements That Will Remain in the CFR, identifies those proposed regulatory sections that we are not promulgating in today's rule.

For information on what commenters said regarding particular provisions and the Agency's response, the reader is referred to the following document, Response to Comments Background Document that can be found in the rulemaking docket.

TABLE 21.—REGULATORY REQUIREMENTS THAT WILL REMAIN IN THE CFR

CFR section	Regulatory requirement
261.38	Lists of Hazardous Wastes. Comparable/syngas fuel exclusion.
261.38(c)(1)(i)(A)	Submit a one-time comparable/syngas fuel notice to the permitting agency.
264/5.16	General Facility Standards. Personnel training.
264/5.16(d)(1)	Record the job title.
264/5.16(d)(2)	Record job description.
264/5.16(d)(3)	Record type and amount of training employees will be provided.
264.90	Releases From Solid Waste Management Units. Applicability.
264.90(a)(2)	Comply with the requirements of 264.101 with exceptions for surface impoundments, waste piles, land treatment unit, or landfills.
264/5.98	Releases From Solid Waste Management Units. Detection monitoring program.
264.98(c)	Conduct and maintain ground-water monitoring.
264.98(g)(1)	Prepare and submit a notification of contamination.
264.98(g)(5)(ii)	Prepare and submit an engineering feasibility plan for corrective action.
264.98(g)(6)(i)–(ii)	Prepare and submit a notification of intent to make a demonstration.
264.99	Releases From Solid Waste Management Units. Compliance monitoring program.
264.99(h)(1)	Prepare and submit a notification of exceeded concentration limits.
264.99(i)(1)–(2)	Prepare and submit a notification of intent to make a demonstration.
264/5.174	Use and Management of Containers. Inspections.
264/5.174	Inspect containers weekly.
264/5.193	Tank Systems. Leak detection systems for tanks.
264.193(c)(3)	Demonstration.
264.193 (c)(4)	Demonstration.
264/5.193(e)(3)(iii)	Demonstrate to EPA that technology and site conditions do not allow detection of release within 24 hours.
264/5.193(g)	Variance from leak detection systems for tanks.
264/5.193(h)	Variance from leak detection systems for tanks.
264.196	Tank Systems. Response to leaks or spills and disposition of leaking or unfit-to use tank systems.
264.196(d)(1)	Notify EPA of release.
264.196(d)(2)	Notify EPA of release.
264.196(d)(3)	Submit report describing release.
264/5.223	Surface Impoundments. Response actions.
264/5.223(b)(1)	Notify EPA in writing if flow rate exceeds Action Leakage Rate for any sump within 7 days.
264/5.223(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
264/5.223(b)(6)	Compile and submit information to EPA each month the Action Leakage Rate is exceeded.
264.253	Waste Piles. Response actions.
264.253(b)(1)	Notify EPA in writing of the exceedence within 7 days of the determination.
264.253(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determining leakage.
264.253(b)(6)	Compile and submit information to the EPA each month that the Action Leakage Rate is exceeded.
264.278	Land Treatment. Unsaturated zone monitoring.
264.278(g)(1)	Prepare and submit a notice of statistically significant increases in hazardous constituents below treatment zone.
264.278(h)(1)–(2)	Prepare and submit a notice of intent to make a demonstration that other sources or error led to increases below treatment zone.
264.304	Landfills. Response actions.
264.304(b)(1)	Notify EPA if Action Leakage Rate is exceeded within 7 days of determination.
264.304(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
264.304(b)(6)	Submit information to EPA each month the Action Leakage Rate is exceeded.
264.573	Drip Pads. Design and operating standards.
264.573(m)(1)(iv)	Notify EPA in writing of release.
264.573(m)(2)	Regional Administrator will make a determination and will notify owner/operator of the determination.
264.573(m)(3)	Notify EPA and certify completion of repairs.
264.1036	Air Emission Standards for Process Vents. Reporting requirements.
264.1036(a)	Notify EPA semi-annually of exceedences.
264.1065	Air Emission Standards for Equipment Leaks. Reporting requirements.
264.1065(a)	Notify EPA semi-annually of exceedences.
264/5.1101	Containment Buildings. Design and operating standards.
265.1101(c)(2)	Certify by qualified professional engineer.
264/5.1101(c)(3)(i)(D)	Notify EPA in writing of release.
264/5.1101(c)(3)(ii)–(iii)	Notify EPA and verify in writing that the cleanup and repairs have been completed after a release.
264/5.1101(c)(4)	Inspection frequency.
265.1(b)	Purpose, scope, and applicability.
265.93	Ground-Water Monitoring. Preparation, evaluation, and response.
265.93(c)(1)	Notify of increased indicator parameter concentrations.
265.93(d)(1)	Notify of increased indicator parameter concentrations.
265.93(e)	Any ground-water assessment to satisfy the requirements of § 265.93(d)(4) which is initiated prior to final closure must be completed and reported in accordance with § 265.93(d)(5).

TABLE 21.—REGULATORY REQUIREMENTS THAT WILL REMAIN IN THE CFR—Continued

CFR section	Regulatory requirement
265.93(f)	Evaluate data and if § 265.91(a) are not satisfied, immediately modify the number, location, or depth of the monitoring wells.
265.94	Ground-Water Monitoring. Recordkeeping and reporting.
265.94(a)(2)(i)	Prepare and submit a quarterly report of concentrations of values of the drinking water suitability parameters.
265.94(a)(2)(ii)	Prepare and submit a report on indicator parameter concentrations and evaluations.
265.94(a)(2)(iii)	Prepare and submit a report on ground-water surface elevations.
265.94(b)(2)	Prepare and submit a report on the results of the ground-water quality assessment program.
265.259	Waste Piles. Response actions.
265.259(b)(1)	Notify EPA in writing within 7 days of determination.
265.259(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
265.259(b)(6)	Submit information to EPA each month that the Action Leakage Rate is exceeded.
265.276	Land Treatment. Food-chain crops.
265.276(a)	Submit notification for food-chain crops at land treatment facility.
265.303	Landfills. Response actions.
265.303(b)(1)	Notify EPA if Action Leakage Rate is exceeded within 7 days of determination.
265.303(b)(2)	Submit a written assessment to the Regional Administrator within 14 days of determination of leakage.
265.303(b)(6)	Submit information to EPA each month the Action Leakage Rate is exceeded.
265.443	Drip Pads. Design and operating requirements.
265.443(m)(1)(iv)(2)	Notify EPA of release and provide written notice of procedures and schedule for cleanup.
265.443(m)(2)	Regional Administrator will make a determination and notify the owner/operator of the determination.
265.443(m)(3)	Notify Regional Administrator and certify completion of repairs.
266.103	Hazardous Waste Burned in Boilers and Industrial Furnaces. Interim status standards for burners.
266.103(b)(2)(ii)(D)	Certification of pre-compliance.
268.7	Land Disposal Restrictions. General. Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.
268.7(a)(6)	Requirement to keep in the facility's files all supporting data and waste analysis data for ''knowledge of the waste'' determinations and for testing determinations.
268.7(d)(1)	Requirement to submit to the regulatory authority one-time notifications that hazardous debris is excluded form the definition of hazardous waste.
270.17(d)	Permit Application. Specific part B information requirements for surface impoundments.

V. We Will Implement This Rule Via the Class I Permit Modification Process Without Prior Approval

Several comments on the proposed rule pointed out that implementing many of the changes in the proposal would require a Class 2 Permit modification for facilities with permits (see the following Web site for information about Permit modifications: *http://www.epa.gov/epaoswer/hotline/training/perm.pdf*). Obtaining a Class 2 Permit modification requires a substantial effort on the part of a regulated facility, which is contrary to the intent of today's rule. We believe the changes in this rule will provide no significant risk to human health or the environment, and thus, we prefer that these changes become effective as quickly as possible so that the paperwork reduction benefits from the rule can be realized.

Therefore, in our October 29, 2003 NODA, we requested comment on allowing permitted facilities to use the Class 1 permit modification procedure, with prior Agency approval, to implement the changes arising from this rulemaking. We also requested comment on whether the Class 1 permit modifications should be without prior Agency approval.

States represented by the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) requested that we use the Class 1 permit modification procedure with prior Agency approval. They expressed an interest in retaining oversight in the implementation of our burden reductions. After weighing this interest against the interest in achieving savings as soon as possible, we have decided in favor of not delaying the benefits of this rule. This is based on our judgment that, in general, the risks associated with these changes are negligible. We will allow the changes in today's rule to be implemented as Class 1 permit modifications without prior approval, except for a permit modification for reduced inspection frequency for Performance Track member facilities which will be implemented as a Class 1 permit modification with prior approval. To implement this approach, we are adding regulatory language and an entry to the permit modification classification table in Appendix I to 270.42, denoting modifications pursuant to the burden reduction rule. However, we wish to point out that, unless state law prevents it, states can be more stringent than the EPA rules if there are specific concerns with the consequences of these changes in any state. All states also can use the omnibus authority of RCRA Section 3005(c) for specific facilities where they believe there is risk due to site-specific circumstances not identified in our rulemaking process. This will allow states to retain oversight where they choose to do so.

VI. How Will Today's Regulatory Changes Be Administered and Enforced in the States?

A. Applicability of Federal Rules in Authorized States

Under section 3006 of RCRA, EPA may authorize qualified states to administer their own hazardous waste programs in lieu of the federal program within the state. Following authorization, EPA retains enforcement authority under sections 3008, 3013, and 7003 of RCRA, although authorized states have primary enforcement responsibility. The standards and requirements for state authorization are found at 40 CFR Part 271.

Prior to enactment of the Hazardous and Solid Waste Amendments of 1984 (HSWA), a state with final RCRA authorization administered its hazardous waste program entirely in lieu of EPA administering the federal program in that state. The federal requirements no longer applied in the authorized state, and EPA could not issue permits for any facilities in that state, since only the state was authorized to issue RCRA permits. When new, more stringent federal

requirements were promulgated, the state was obligated to enact equivalent authorities within specified time frames. However, the new federal requirements did not take effect in an authorized state until the state adopted the federal requirements as state law.

In contrast, under RCRA section 3006(g) (42 U.S.C. 6926(g)), which was added by HSWA, new requirements and prohibitions imposed under HSWA authority take effect in authorized states at the same time that they take effect in unauthorized states. EPA is directed by the statute to implement these requirements and prohibitions in authorized states, including the issuance of permits, until the state is granted authorization to do so. While states must still adopt HSWA related provisions as state law to retain final authorization, EPA implements the HSWA provisions in authorized states until the states do so.

Authorized states are required to modify their programs only when EPA enacts federal requirements that are more stringent or broader in scope than existing federal requirements. RCRA section 3009 allows the states to impose standards more stringent than those in the federal program (see also 40 CFR 271.1). Therefore, authorized states may, but are not required to, adopt federal regulations, both HSWA and non-HSWA, that are considered less stringent than previous federal regulations.

B. Authorization of States for Today's Rule

Today's rule affects many aspects of the RCRA program and is promulgated pursuant to both HSWA and non-HSWA statutory authority. Today's rule amends a number of provisions in the RCRA regulations which were promulgated pursuant to HSWA. These provisions include, among others, the land disposal restrictions and the regulation of air emissions from hazardous waste facilities, which were promulgated pursuant to authority in sections 3004(m) and (o) respectively, of RCRA. Therefore, the Agency is adding the rule to Table 1 in 40 CFR 271.1(j), which identifies the Federal program requirements that are promulgated pursuant to the statutory authority that was added by HSWA.

Other sections of today's rule are being promulgated pursuant to non-HSWA authority. All of the HSWA and non-HSWA requirements in today's rulemaking are equivalent to, or less stringent than, the existing provisions in the Federal regulations which they would amend. Authorized states are required to modify their program only when EPA promulgates Federal regulations that are more stringent or broader in scope than the authorized state regulations. For those changes that are less stringent or reduce the scope of the Federal program, states are not required to modify their program. This is a result of section 3009 of RCRA, which allows states to impose more stringent regulations than the Federal program. Therefore, states are not required to adopt and seek authorization for this rulemaking. EPA will implement this rulemaking only in those states which are not authorized for the RCRA program, and will implement provisions promulgated pursuant to HSWA only in those states which have not received authorization for the HSWA provision that is amended today.

Nevertheless, this rule will provide significant benefits to EPA, states, and the regulated community, without compromising human health or environmental protection. Because this rulemaking will not become effective in authorized states until they have adopted and are authorized for it, we strongly encourage states to amend their programs and seek authorization for today's rule. EPA will try to act promptly on any such requests for authorization.

VII. Statutory and Executive Reviews

A. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether a regulatory action is significant and therefore subject to OMB review and the requirements of the Executive Order. The Order defines significant regulatory action as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or 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.

Although this rule clarifies inconsistencies in the regulations and decreases burden, it is still considered a significant regulatory action under the terms of Executive Order 12866 since it addresses one of the President's priorities of reducing burden.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This rule is promulgating changes to the regulatory requirements of the RCRA hazardous waste program to reduce the paperwork burden certain requirements impose on the States, EPA, and the regulated community. EPA estimates that the reporting and recordkeeping hour burden reduction for this rule ranges from 22,000 hours to 37,500 hours. EPA also estimates that the reporting and recordkeeping cost burden reduction for this rule ranges from approximately $2 million to $3 million. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations 40 CFR parts 260, 261, 264, 265, 266, 268, 270, and 271, under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The burden reduction resulting from this rulemaking will affect the following seven existing Information Collection Requests (ICRs): OMB control number 2050–0033, Facility Groundwater Monitoring Requirements, EPA ICR number 0959.12; OMB control number 2050–0035, Hazardous Waste Generator Standards, EPA ICR number 0820.09; OMB control number 2050–0050, Hazardous Waste Specific Unit Requirements and Special Waste Processes and Types, EPA ICR number 1572.06; OMB control number 2050–0053, Identification, Listing and Rulemaking Petitions, EPA ICR number 1189.14; OMB control number 2050–0073, Boilers and Industrial Furnaces: General Hazardous Waste Facility Standards, Specific Unit Requirements and Part B Permit Application and Modifications Requirements, EPA ICR number 1361.10; OMB control number 2050–0085, Land Disposal Restrictions, EPA ICR number 1442.18; OMB control number 2050–0120, General Hazardous Waste Facility Standards, EPA ICR number 1571.07. A copy of these OMB approved Information Collection Requests (ICR) may be obtained from Susan Auby, Collection Strategies Division; U.S. Environmental Protection Agency (2822T); 1200 Pennsylvania Ave., NW., Washington, DC 20460 or by calling (202) 566–1672.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop,

acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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

C. Regulatory Flexibility Act

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

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

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule.

The final rule is specifically intended to reduce, not increase, the paperwork and related burdens of the RCRA hazardous waste program. For businesses in general, including all small businesses, the regulatory changes will reduce the labor time and other costs of preparing, keeping records of, and submitting reports to the Agency. The final rule, for example, reduces the frequency by which businesses must conduct specified recordkeeping and reporting activities (*e.g.*, decreased inspection frequency for hazardous waste tanks from daily to weekly). It also eliminates certain recordkeeping and reporting requirements altogether, *i.e.*, in cases where the documents are little used by the public or regulators. In addition, the rule eliminates redundancies between the RCRA regulations and other regulatory programs (*e.g.*, RCRA and OSHA requirements for personnel training), thereby streamlining facilities' compliance activities. Finally, the rule provides increased flexibility in how waste handlers may comply with the regulations (*e.g.*, establishment of decreased inspection frequencies for facilities in the National Performance Track Program). We have therefore concluded that today's final rule will relieve regulatory burden for all affected small entities.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) 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 must prepare a written statement for rules with Federal mandates that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgating a rule for which a written statement is needed, Section 205 of the UMRA requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation of why that alternative was not adopted.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed, under Section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments; enabling officials of affected small governments to provide meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates; and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that the final rule does not contain a federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or by the private sector, in any one year. In addition, the rule contains no regulatory requirements for small governments. Thus, the final rule is not subject to the requirements of Sections 202, 203, and 205 of the UMRA.

E. Executive Order 13132: Federalism

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.'' As defined in Executive Order 13132, ''policies that have Federalism implications'' include regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government.

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

The final rule does not have federalism implications. It will not have

substantial direct effects on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it will not impose any requirements on states or any other level of government. As explained above, the final rule eliminates or relaxes many of the paperwork requirements in the regulations. Because these changes are equivalent to or less stringent than the existing federal program, states will not be required to adopt and seek authorization for them. Thus, the requirements of Section 6 of the Executive Order do not apply to this rule.

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

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.'' As defined in Executive Order 13175, ''policies that have Tribal implications'' include regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects 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.

The final rule does not have tribal implications. It will not have substantial direct effects on Tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175. As explained above, the final rule eliminates or relaxes many of the paperwork requirements in the regulations. Thus, Executive Order 13175 does not apply to this rule.

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

Executive Order 13045 applies to any rule that may: (1) Be ''economically significant'under Executive Order 12866 (*i.e.*, a rulemaking that has an annual effect on the economy of $100 million or more or would 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), and (2) concern an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA has determined that the final rule is not subject to Executive Order 13045 because it is not an ''economically significant'' rule as defined by Executive Order 12866. EPA also expects the rule does not have a disproportionate effect on children's health. The basic reason for this finding is that the rule modifies or eliminates paperwork requirements that were deemed unnecessary or infrequently used by regulators. However, the rule preserves the technical requirements underlying these paperwork requirements. In addition, regulators continue to have access to all facility paperwork held on site, should the need arise.

In addition, EPA has reduced the inspection frequency of tank systems from each operating day to at least weekly, provided that the tank systems have full secondary containment with leak detection equipment or established workplace practices that will alert facility personnel. SQG tank systems are required to have secondary containment with leak detection equipment or established workplace practices to adopt the weekly inspections.

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

Executive Order 13211 requires EPA to prepare and submit a Statement of Energy Effects to OMB for those matters identified as significant energy actions. As defined in Executive Order 13211, a ''significant energy action'' is 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 that: (1) Is a significant regulatory action under Executive Order 12866 or any successor order and is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by OMB as a significant energy action.

The final rule does not involve the supply, distribution, or use of energy. Thus, Executive Order 13211 does not apply to this rule.

I. National Technology Transfer and Advancement Act of 1995

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

The final rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Under Executive Order 12898, as well as through EPA's April 1995 ''Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agency Report'' and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the U.S. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities.

EPA has considered the impacts of the final rule on low-income populations and minority populations and concluded that there are no disproportionately high impacts under the rule. The basic reason for this finding is that the rule modifies or eliminates paperwork requirements that were deemed unnecessary or infrequently used by regulators. However, the rule preserves the technical requirements underlying these paperwork requirements. In addition, regulators continue to have access to all facility paperwork held on site, should the need arise.

In addition, EPA has reduced the inspection frequency of tank systems from each operating day to at least weekly, provided that the tank systems have full secondary containment with leak detection equipment or workplace practices that will alert facility personnel.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective May 4, 2006.

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste Reporting and recordkeeping requirements.

40 CFR Part 261

Excluded hazardous waste, Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 264

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds.

40 CFR Part 265

Air pollution control, Hazardous waste, Insurance, Packaging and containers, Reporting and recordkeeping requirements, Security measures, Surety bonds, Water supply.

40 CFR Part 266

Energy, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

40 CFR Part 270

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Dated: March 15, 2006.

Stephen L. Johnson,

Administrator.

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

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

■ 1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

Subpart B—Definitions

■ 2. Section 260.10 is amended by adding in alphabetical order the definition of ''Performance Track member facility'' to read as follows:

§ 260.10 Definitions.

* * * * *

Performance Track member facility means a facility that has been accepted by EPA for membership in the National Environmental Performance Track Program and is still a member of the Program. The National Environmental Performance Track Program is a voluntary, facility based, program for top environmental performers. Facility members must demonstrate a good record of compliance, past success in achieving environmental goals, and commit to future specific quantified environmental goals, environmental management systems, local community outreach, and annual reporting of measurable results.

* * * * *

Subpart C—Rulemaking Petitions

§ 260.31 [Amended]

■ 3. Section 260.31 is amended by removing paragraph (b)(2) and redesignating paragraphs (b)(3) through (b)(8) as (b)(2) through (b)(7).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 4. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

Subpart A—General

■ 5. Section 261.4 is amended by revising paragraphs (a)(9)(iii)(E) and (f)(9) introductory text to read as follows:

§ 261.4 Exclusions.

(a) * * *

(9) * * *

(iii) * * *

(E) Prior to operating pursuant to this exclusion, the plant owner or operator prepares a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: ''I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation.'' The plant must maintain a copy of that document in its on-site records until closure of the facility. The exclusion applies so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the appropriate Regional Administrator or state Director for reinstatement. The Regional Administrator or state Director may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that the violations are not likely to recur.

* * * * *

(f) * * *

(9) The facility prepares and submits a report to the Regional Administrator, or state Director (if located in an authorized state), by March 15 of each year, that includes the following information for the previous calendar year:

* * * * *

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 6. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart B—General Facility Standards

■ 7. Section 264.15 is amended by revising paragraph (b)(4) (the comment to paragraph (b)(4) is unchanged), and adding paragraph (b)(5) to read as follows:

§ 264.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 264.174, 264.193, 264.195, 264.226, 264.254, 264.278, 264.303, 264.347, 264.602, 264.1033, 264.1052, 264.1053, 264.1058, and 264.1083 through 264.1089 of this part, where applicable.

* * * * *

(5) Performance Track member facilities that choose to reduce their inspection frequency must:

(i) Submit a request for a Class I permit modification with prior approval to the Director. The modification request must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. The modification request must also specify, in writing, that the reduced inspection frequency will apply for as long as the facility is a Performance Track member facility, and that within seven calendar days of ceasing to be a Performance Track member, the facility will revert to the non-Performance Track inspection frequency. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the request is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: deny the application; or notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its request for a Class 1 permit modification and keep a copy of the application in the facility's operating record.

(iii) Any Performance Track member facility that discontinues their membership or is terminated from the program must immediately notify the Director of their change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.

* * * * *

■ 8. Section 264.16 is amended by adding new paragraph (a)(4) to read as follows:

§ 264.16 Personnel training.

(a)(1) * * *

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

* * * * *

Subpart D—Contingency Plan and Emergency Procedures

■ 9. Section 264.52 is amended by revising paragraph (b) to read as follows:

§ 264.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with part 112 of this chapter, or part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this part. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance (''One Plan''). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

* * * * *

§ 264.56 [Amended]

■ 10. Section 264.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 11. Section 264.73 is amended by revising paragraphs (b) introductory text, (b)(1), (b)(2) (the comment to (b)(2) remains unchanged), (b)(6), (b)(8), and (b)(10), and by adding paragraphs (b)(18) and (b)(19) to read as follows:

§ 264.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted as follows:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by appendix I of this part. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram that shows each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility.

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and §§ 264.19, 264.191, 264.193, 264.195, 264.222, 264.223, 264.226, 264.252–264.254, 264.276, 264.278, 264.280, 264.302–264.304, 264.309, 264.602, 264.1034(c)–264.1034(f), 264.1035, 264.1063(d)–264.1063(i), 264.1064, and 264.1082 through 264.1090 of this part. Maintain in the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup which must be maintained in the operating record until closure of the facility.

* * * * *

(8) All closure cost estimates under § 264.142, and for disposal facilities, all post-closure cost estimates under § 264.144 of this part. This information must be maintained in the operating record until closure of the facility.

* * * * *

(10) Records of the quantities and date of placement for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, a petition pursuant to § 268.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. This information must be maintained in the operating record until closure of the facility.

* * * * *

(18) Monitoring, testing or analytical data where required by § 264.347 must be maintained in the operating record for five years.

(19) Certifications as required by § 264.196(f) must be maintained in the operating record until closure of the facility.

Subpart F—Releases From Solid Waste Management Units

■ 12. Section 264.98 is amended by revising paragraphs (d), (g)(2), and (g)(3) to read as follows:

§ 264.98 Detection monitoring program.

* * * * *

(d) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine whether there is statistically significant evidence of contamination for any parameter or hazardous constituent specified in the permit conditions under paragraph (a) of this section in accordance with § 264.97(g).

* * * * *

(g) * * *

(2) Immediately sample the ground water in all monitoring wells and determine whether constituents in the list of appendix IX of this part are present, and if so, in what concentration. However, the Regional Administrator, on a discretionary basis, may allow sampling for a site-specific subset of constituents from the Appendix IX list of this part and other representative/related waste constituents.

(3) For any appendix IX compounds found in the analysis pursuant to paragraph (g)(2) of this section, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Administrator and repeat the analysis for those compounds detected. If the results of the second analysis confirm the initial results, then these constituents will form the basis for compliance monitoring. If the owner or operator does not resample for the compounds in paragraph (g)(2) of this section, the hazardous constituents found during this initial appendix IX analysis will form the basis for compliance monitoring.

* * * * *

■ 13. Section 264.99 is amended by revising paragraphs (f) and (g) to read as follows:

§ 264.99 Compliance monitoring program.

* * * * *

(f) The Regional Administrator will specify the frequencies for collecting samples and conducting statistical tests to determine statistically significant evidence of increased contamination in accordance with § 264.97(g).

(g) Annually, the owner or operator must determine whether additional hazardous constituents from Appendix IX of this part, which could possibly be present but are not on the detection monitoring list in the permit, are actually present in the uppermost aquifer and, if so, at what concentration, pursuant to procedures in § 264.98(f). To accomplish this, the owner or operator must consult with the Regional Administrator to determine on a case-by-case basis: which sample collection event during the year will involve enhanced sampling; the number of monitoring wells at the compliance point to undergo enhanced sampling; the number of samples to be collected from each of these monitoring wells; and, the specific constituents from Appendix IX of this part for which these samples must be analyzed. If the enhanced sampling event indicates that Appendix IX constituents are present in the ground water that are not already identified in the permit as monitoring constituents, the owner or operator may resample within one month or at an alternative site-specific schedule approved by the Regional Administrator, and repeat the analysis. If the second analysis confirms the presence of new constituents, the owner or operator must report the concentration of these additional constituents to the Regional Administrator within seven days after the completion of the second analysis and add them to the monitoring list. If the owner or operator chooses not to resample, then he or she must report the concentrations of these additional constituents to the Regional Administrator within seven days after completion of the initial analysis, and add them to the monitoring list.

* * * * *

■ 14. Section 264.100 is amended by revising paragraph (g) to read as follows:

§ 264.100 Corrective action program.

* * * * *

(g) The owner or operator must report in writing to the Regional Administrator on the effectiveness of the corrective action program. The owner or operator must submit these reports annually.

* * * * *

Subpart G—Closure and Post-Closure

■ 15. Section 264.113 is amended by revising paragraph (e)(5) to read as follows:

§ 264.113 Closure; time allowed for closure.

* * * * *

(e) * * *

(5) During the period of corrective action, the owner or operator shall provide annual reports to the Regional Administrator describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

* * * * *

■ 16. Section 264.115 is revised to read as follows:

§ 264.115 Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of the completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan.. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under § 264.143(i).

■ 17. Section 264.120 is revised to read as follows:

§ 264.120 Certification of completion of post-closure care.

No later than 60 days after completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with

the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 264.145(i).

Subpart H—Financial Requirements

■ 18. Section 264.143 is amended by revising paragraph (i) to read as follows:

§ 264.143 Financial assurance for closure.

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

■ 19. Section 264.145 is amended by revising paragraph (i) to read as follows:

§ 264.145 Financial assurance for post-closure care.

* * * * *

(i) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Regional Administrator will notify the owner or operator that he is no longer required to maintain financial assurance for post-closure of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

■ 20. Section 264.147 is amended by revising paragraph (e) to read as follows:

§ 264.147 Liability requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

Subpart I—Use and Management of Containers

■ 21. Section 264.174 is revised to read as follows:

§ 264.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that may conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequencies, the Performance Track member facility must follow the procedures identified in § 264.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

[Comment: See §§ 264.15(c) and 264.171 for remedial action required if deterioration or leaks are detected.]

Subpart J—Tank Systems

■ 22. Section 264.191 is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

§ 264.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 264.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer, in accordance with § 270.11(d) of this chapter, that attests to the tank system's integrity by January 12, 1988.

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must include either a leak test, as described above, or other integrity examination that is certified by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter, that addresses cracks, leaks, corrosion, and erosion.

* * * * *

■ 23. Section 264.192 is amended by revising paragraph (a) introductory text and paragraph (b) introductory text to read as follows:

§ 264.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must obtain and submit to the Regional Administrator, at time of submittal of part B information, a written assessment, reviewed and certified by a qualified Professional Engineer, in accordance with § 270.11(d) of this chapter, attesting that the tank system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. The assessment must show that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection to ensure that it will not collapse, rupture, or fail. This assessment, which will be used by the Regional Administrator to review and approve or disapprove the acceptability of the tank system design, must include, at a minimum, the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified, installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tanks systems or components, must inspect the system for the presence of any of the following items:

* * * * *

■ 24. Section 264.193 is amended by:
■ a. Removing paragraphs (a)(2) through (a)(4);
■ b. Redesignating (a)(5) as (a)(2);
■ c. Revising paragraphs (a)(1), newly designated (a)(2), and (i)(2) to read as follows:

§ 264.193 Containment and detection of releases.

(a) * * *

(1) For all new and existing tank systems or components, prior to their being put into service.

(2) For tank systems that store or treat materials that become hazardous wastes, within two years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

* * * * *

(h) * * *

(4) * * *

(i) * * *

(2) For other than non-enterable underground tanks, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or develop a schedule and procedure for an assessment of the overall condition of the tank system by a qualified Professional Engineer. The schedule and procedure must be adequate to detect obvious cracks, leaks, and corrosion or erosion that may lead to cracks and leaks. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tank surfaces to be assessed. The frequency of these assessments must be based on the material of construction of the tank and its ancillary equipment, the age of the system, the type of corrosion or erosion protection used, the rate of corrosion or erosion observed during the previous inspection, and the characteristics of the waste being stored or treated.

* * * * *

■ 25. Section 264.195 is amended by:

■ a. Revising paragraph (b) (the note to paragraph (b) is unchanged);

■ b. Redesignating existing paragraphs (c) and (d), as paragraphs (g) and (h), respectively;

■ c. Adding new paragraphs (c) through (f), to read as follows:

§ 264.195 Inspections.

* * * * *

(b) The owner or operator must inspect at least once each operating day data gathered from monitoring and leak detection equipment (*e.g.*, pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

* * * * *

(c) In addition, except as noted under paragraph (d) of this section, the owner or operator must inspect at least once each operating day:

(1) Above ground portions of the tank system, if any, to detect corrosion or releases of waste.

(2) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (*e.g.*, dikes) to detect erosion or signs of releases of hazardous waste (*e.g.*, wet spots, dead vegetation).

(d) Owners or operators of tank systems that either use leak detection systems to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (c)(1) and (c)(2) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

(f) Ancillary equipment that is not provided with secondary containment, as described in § 264.193(f)(1) through (4), must be inspected at least once each operating day.

* * * * *

■ 26. Section 264.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

§ 264.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(f) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (*e.g.*, installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification must be placed in the operating record and maintained until closure of the facility.

* * * * *

Subpart L—Waste Piles

■ 27. Section 264.251 is amended by revising the introductory text to paragraph (c) to read as follows:

§ 264.251 Design and operating requirements.

* * * * *

(c) The owner or operator of each new waste pile unit, each lateral expansion of a waste pile unit, and each replacement of an existing waste pile unit must install two or more liners and a leachate collection and removal system above and between such liners.

* * * * *

Subpart M—Land Treatment

■ 28. Section 264.280 is amended by revising paragraph (b) to read as follows:

§ 264.280 Closure and post-closure care.

* * * * *

(b) For the purpose of complying with § 264.115 of this chapter, when closure is completed the owner or operator may submit to the Regional Administrator certification by an independent, qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

* * * * *

Subpart N—Landfills

■ 29. Section 264.314 is amended by:

■ a. Removing paragraph (a);

■ b. Redesignating paragraphs (b) through (f) as paragraphs (a) through (e); and,

■ c. Revising newly designated paragraphs (a) and newly designated paragraph (e) introductory text to read as follows:

§ 264.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(e) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator, or the Regional Administrator determines that:

* * * * *

Subpart O—Incinerators

■ 30. Section 264.343 is amended by revising paragraph (a)(2) to read as follows:

§ 264.343 Performance standards.

* * * * *

(a)(1) * * *

(2) An incinerator burning hazardous wastes FO20, FO21, FO22, FO23, FO26,

or FO27 must achieve a destruction and removal efficiency (DRE) of 99.9999% for each principal organic hazardous constituent (POHC) designated (under § 264.342) in its permit. This performance must be demonstrated on POHCs that are more difficult to incinerate than tetra-, penta-, and hexachlorodibenzo-p-dioxins and dibenzofurans. DRE is determined for each POHC from the equation in § 264.343(a)(1).

* * * * *

■ 31. Section 264.347 is amended by revising paragraph (d) to read as follows:

§ 264.347 Monitoring and inspections.

* * * * *

(d) This monitoring and inspection data must be recorded and the records must be placed in the operating record required by § 264.73 of this part and maintained in the operating record for five years.

Subpart S—Special Provisions for Cleanup

■ 32. Section 264.554 is amended by revising paragraph (c)(2) to read as follows:

§ 264.554 Staging piles.

* * * * *

(c) * * *

(2) Certification by a qualified Professional Engineer for technical data, such as design drawings and specifications, and engineering studies, unless the Director determines, based on information that you provide, that this certification is not necessary to ensure that a staging pile will protect human health and the environment; and

* * * * *

Subpart W—Drip Pads

■ 33. Section 264.571 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 264.571 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 264.570 of this subpart, the owner or operator must evaluate the drip pad and determine whether it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 264.573(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 264.573 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 264.573, except the standards for liners and leak detection systems, specified in § 264.573(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 264.573(b) and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 264.573. The plan must be reviewed and certified by a qualified Professional Engineer.

(c) Upon completion of all upgrades, repairs, and modifications, the owner or operator must submit to the Regional Administrator or state Director, the as-built drawings for the drip pad together with a certification by a qualified Professional Engineer attesting that the drip pad conforms to the drawings.

* * * * *

■ 34. Section 264.573 is amended by revising paragraphs (a)(4)(ii) and (g) to read as follows:

§ 264.573 Design and operating requirements.

(a) * * *

(4) * * *

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from a qualified Professional Engineer certifying that the drip pad design meets the requirements of this section.

* * * * *

■ 35. Section 264.574 is amended by revising paragraph (a) to read as follows:

§ 264.574 Inspections.

(a) During construction or installation, liners and cover systems (*e.g.*, membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (*e.g.*, holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements in § 264.573 of this subpart by a qualified Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

§ 264.1061 [Amended]

■ 36. Section 264.1061 is amended by:

■ a. Removing paragraphs (b)(1) and (d); and,

■ b. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

§ 264.1062 [Amended]

■ 37. Section 264.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

Subpart DD—Containment Buildings

■ 38. Section 264.1100 is amended by revising the introductory text to read as follows:

§ 264.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 264.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

■ 39. Section 264.1101 is amended by revising paragraphs (c)(2) and (c)(4) to read as follows:

§ 264.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

* * * * *

(4) Inspect and record in the facility's operating record, at least once every

seven days, except for Performance Track member facilities that must inspect at least once each month, upon approval by the Director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 264.15(b)(5).

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

■ 40. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6906, 6912, 6922, 6923, 6924, 6925, 6935, 6936, and 6937, unless otherwise noted.

Subpart B—General Facility Standards

■ 41. Section 265.15 is amended by revising paragraph (b)(4) and adding paragraph (b)(5) to read as follows:

§ 265.15 General inspection requirements.

* * * * *

(b) * * *

(4) The frequency of inspection may vary for the items on the schedule. However, the frequency should be based on the rate of deterioration of the equipment and the probability of an environmental or human health incident if the deterioration, malfunction, or operator error goes undetected between inspections. Areas subject to spills, such as loading and unloading areas, must be inspected daily when in use, except for Performance Track member facilities, that must inspect at least once each month, upon approval by the Director, as described in paragraph (b)(5) of this section. At a minimum, the inspection schedule must include the items and frequencies called for in §§ 265.174, 265.193, 265.195, 265.226, 265.260, 265.278, 265.304, 265.347, 265.377, 265.403, 265.1033, 265.1052, 265.1053, 265.1058, and 265.1084 through 265.1090, where applicable.

(5) Performance Track member facilities that choose to reduce inspection frequencies must:

(i) Submit an application to the Director. The application must identify the facility as a member of the National Environmental Performance Track Program and identify the management units for reduced inspections and the proposed frequency of inspections. Inspections must be conducted at least once each month.

(ii) Within 60 days, the Director will notify the Performance Track member facility, in writing, if the application is approved, denied, or if an extension to the 60-day deadline is needed. This notice must be placed in the facility's operating record. The Performance Track member facility should consider the application approved if the Director does not: (1) Deny the application; or (2) notify the Performance Track member facility of an extension to the 60-day deadline. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility's operating record.

(iii) Any Performance Track member facility that discontinues its membership or is terminated from the program must immediately notify the Director of its change in status. The facility must place in its operating record a dated copy of this notification and revert back to the non-Performance Track inspection frequencies within seven calendar days.

* * * * *

■ 42. Section 265.16 is amended by adding new paragraph (a)(4) to read as follows:

§ 265.16 Personnel training.

(a) * * *

(4) For facility employees that receive emergency response training pursuant to Occupational Safety and Health Administration (OSHA) regulations 29 CFR 1910.120(p)(8) and 1910.120(q), the facility is not required to provide separate emergency response training pursuant to this section, provided that the overall facility training meets all the requirements of this section.

* * * * *

Subpart D—Contingency Plans and Emergency Procedures

■ 43. Section 265.52 is amended by revising paragraph (b) to read as follows:

§ 265.52 Content of contingency plan.

* * * * *

(b) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with Part 112 of this chapter, or Part 1510 of chapter V, or some other emergency or contingency plan, he need only amend that plan to incorporate hazardous waste management provisions that are sufficient to comply with the requirements of this Part. The owner or operator may develop one contingency plan which meets all regulatory requirements. EPA recommends that the plan be based on the National Response Team's Integrated Contingency Plan Guidance (''One Plan''). When modifications are made to non-RCRA provisions in an integrated contingency plan, the changes do not trigger the need for a RCRA permit modification.

* * * * *

§ 265.56 [Amended]

■ 44. Section 265.56 is amended by removing paragraph (i) and redesignating paragraph (j) as paragraph (i).

Subpart E—Manifest System, Recordkeeping, and Reporting

■ 45. Section 265.73 is amended by revising the introductory text to paragraph (b), (b)(1), (b)(2) (the comment to paragraph (b)(2) is unchanged), (b)(6) (the comment to paragraph (b)(6) is unchanged), (b)(7), and (b)(8) and adding a new (b)(15) to read as follows:

§ 265.73 Operating record.

* * * * *

(b) The following information must be recorded, as it becomes available, and maintained in the operating record for three years unless noted below:

(1) A description and the quantity of each hazardous waste received, and the method(s) and date(s) of its treatment, storage, or disposal at the facility as required by Appendix I to part 265. This information must be maintained in the operating record until closure of the facility;

(2) The location of each hazardous waste within the facility and the quantity at each location. For disposal facilities, the location and quantity of each hazardous waste must be recorded on a map or diagram of each cell or disposal area. For all facilities, this information must include cross-references to manifest document numbers if the waste was accompanied by a manifest. This information must be maintained in the operating record until closure of the facility;

* * * * *

(6) Monitoring, testing or analytical data, and corrective action where required by subpart F of this part and by §§ 265.19, 265.94, 265.191, 265.193, 265.195, 265.224, 265.226, 265.255, 265.260, 265.276, 265.278, 265.280(d)(1), 265.302, 265.304, 265.347, 265.377, 265.1034(c) through 265.1034(f), 265.1035, 265.1063(d) through 265. 265.1063(i), 265.1064, and 265.1083 through 265.1090. Maintain in

the operating record for three years, except for records and results pertaining to ground-water monitoring and cleanup, and response action plans for surface impoundments, waste piles, and landfills, which must be maintained in the operating record until closure of the facility.

* * * * *

(7) All closure cost estimates under § 265.142 and, for disposal facilities, all post-closure cost estimates under § 265.144 must be maintained in the operating record until closure of the facility.

(8) Records of the quantities (and date of placement) for each shipment of hazardous waste placed in land disposal units under an extension to the effective date of any land disposal restriction granted pursuant to § 268.5 of this chapter, monitoring data required pursuant to a petition under § 268.6 of this chapter, or a certification under § 268.8 of this chapter, and the applicable notice required by a generator under § 268.7(a) of this chapter. All of this information must be maintained in the operating record until closure of the facility.

* * * * *

(15) Monitoring, testing or analytical data, and corrective action where required by §§ 265.90, 265.93(d)(2), and 265.93(d)(5), and the certification as required by § 265.196(f) must be maintained in the operating record until closure of the facility.

Subpart F—Ground-Water Monitoring

■ 46. Section 265.90 is amended by revising paragraphs (d)(1) and (d)(3) to read as follows:

§ 265.90 Applicability.

* * * * *

(d) * * *

(1) Within one year after the effective date of these regulations, develop a specific plan, certified by a qualified geologist or geotechnical engineer, which satisfies the requirements of § 265.93(d)(3), for an alternate ground-water monitoring system. This plan is to be placed in the facility's operating record and maintained until closure of the facility.

* * * * *

(3) Prepare a report in accordance with § 265.93(d)(5) and place it in the facility's operating record and maintain until closure of the facility.

* * * * *

■ 47. Section 265.93 is amended by revising paragraphs (d)(2) and (d)(5) to read as follows:

§ 265.93 Preparation, evaluation, and response.

* * * * *

(d)(1) * * *

(2) Within 15 days after the notification under paragraph (d)(1) of this section, the owner or operator must develop a specific plan, based on the outline required under paragraph (a) of this section and certified by a qualified geologist or geotechnical engineer, for a ground-water quality assessment at the facility. This plan must be placed in the facility operating record and be maintained until closure of the facility.

* * * * *

(5) The owner or operator must make his first determination under paragraph (d)(4) of this section, as soon as technically feasible, and prepare a report containing an assessment of ground-water quality. This report must be placed in the facility operating record and be maintained until closure of the facility.

* * * * *

Subpart G—Closure and Post-Closure

■ 48. Section 265.113 is amended by revising paragraph (e)(5) to read as follows:

§ 265.113 Closure; time allowed for closure.

* * * * *

(e) * * *

(5) During the period of corrective action, the owner or operator shall provide annual reports to the Regional Administrator describing the progress of the corrective action program, compile all ground-water monitoring data, and evaluate the effect of the continued receipt of non-hazardous wastes on the effectiveness of the corrective action.

* * * * *

■ 49. Section 265.115 is revised to read as follows:

§ 265.115 Certification of closure.

Within 60 days of completion of closure of each hazardous waste surface impoundment, waste pile, land treatment, and landfill unit, and within 60 days of completion of final closure, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the hazardous waste management unit or facility, as applicable, has been closed in accordance with the specifications in the approved closure plan. The certification must be signed by the owner or operator and by a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for closure under § 265.143(h).

■ 50. Section 265.120 is revised to read as follows:

§ 265.120 Certification of completion of post-closure care.

No later than 60 days after the completion of the established post-closure care period for each hazardous waste disposal unit, the owner or operator must submit to the Regional Administrator, by registered mail, a certification that the post-closure care period for the hazardous waste disposal unit was performed in accordance with the specifications in the approved post-closure plan. The certification must be signed by the owner or operator and a qualified Professional Engineer. Documentation supporting the Professional Engineer's certification must be furnished to the Regional Administrator upon request until he releases the owner or operator from the financial assurance requirements for post-closure care under § 265.145(h).

Subpart H—Financial Requirements

■ 51. Section 265.143 is amended by revising paragraph (h) to read as follows:

§ 265.143 Financial assurance for closure.

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain financial assurance for final closure of the facility, unless the Regional Administrator has reason to believe that final closure has not been in accordance with the approved closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that closure has not been in accordance with the approved closure plan.

■ 52. Section 265.145 is amended by revising paragraph (h) to read as follows:

§ 265.145 Financial assurance for post-closure care.

* * * * *

(h) *Release of the owner or operator from the requirements of this section.* Within 60 days after receiving

certifications from the owner or operator and a qualified Professional Engineer that the post-closure care period has been completed for a hazardous waste disposal unit in accordance with the approved plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required to maintain financial assurance for post-closure care of that unit, unless the Regional Administrator has reason to believe that post-closure care has not been in accordance with the approved post-closure plan. The Regional Administrator shall provide the owner or operator a detailed written statement of any such reason to believe that post-closure care has not been in accordance with the approved post-closure plan.

■ 53. Section 265.147 is amended by revising paragraph (e) to read as follows:

§ 265.147 Liability requirements.

* * * * *

(e) *Period of coverage.* Within 60 days after receiving certifications from the owner or operator and a qualified Professional Engineer that final closure has been completed in accordance with the approved closure plan, the Regional Administrator will notify the owner or operator in writing that he is no longer required by this section to maintain liability coverage for that facility, unless the Regional Administrator has reason to believe that closure has not been in accordance with the approved closure plan.

* * * * *

Subpart I—Use and Management of Containers

■ 54. Section 265.174 is revised to read as follows:

§ 265.174 Inspections.

At least weekly, the owner or operator must inspect areas where containers are stored, except for Performance Track member facilities, that must conduct inspections at least once each month, upon approval by the Director. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5) of this part. The owner or operator must look for leaking containers and for deterioration of containers and the containment system caused by corrosion or other factors.

[Comment: See § 265.171 for remedial action required if deterioration or leaks are detected.]

Subpart J—Tank Systems

■ 55. Section 265.191 is amended by revising paragraphs (a) and (b)(5)(ii) (the note to paragraph (b)(5)(ii) is unchanged) to read as follows:

§ 265.191 Assessment of existing tank system's integrity.

(a) For each existing tank system that does not have secondary containment meeting the requirements of § 265.193, the owner or operator must determine that the tank system is not leaking or is unfit for use. Except as provided in paragraph (c) of this section, the owner or operator must obtain and keep on file at the facility a written assessment reviewed and certified by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter, that attests to the tank system's integrity by January 12, 1988.

(b) * * *

(5) * * *

(ii) For other than non-enterable underground tanks and for ancillary equipment, this assessment must be either a leak test, as described above, or an internal inspection and/or other tank integrity examination certified by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter that addresses cracks, leaks, corrosion, and erosion.

* * * * *

■ 56. Section 265.192 is amended by revising paragraphs (a) introductory text and (b) introductory text to read as follows:

§ 265.192 Design and installation of new tank systems or components.

(a) Owners or operators of new tank systems or components must ensure that the foundation, structural support, seams, connections, and pressure controls (if applicable) are adequately designed and that the tank system has sufficient structural strength, compatibility with the waste(s) to be stored or treated, and corrosion protection so that it will not collapse, rupture, or fail. The owner or operator must obtain a written assessment reviewed and certified by a qualified Professional Engineer in accordance with § 270.11(d) of this chapter attesting that the system has sufficient structural integrity and is acceptable for the storing and treating of hazardous waste. This assessment must include the following information:

* * * * *

(b) The owner or operator of a new tank system must ensure that proper handling procedures are adhered to in order to prevent damage to the system during installation. Prior to covering, enclosing, or placing a new tank system or component in use, an independent, qualified installation inspector or a qualified Professional Engineer, either of whom is trained and experienced in the proper installation of tank systems, must inspect the system or component for the presence of any of the following items:

* * * * *

■ 56. Section 265.193 is amended by:

■ a. Removing paragraphs (a)(2) through (a)(4);

■ b. Redesignating (a)(5) as (a)(2);

■ c. Revising paragraphs (a)(1), newly designated (a)(2) and (i)(2) (the note to (i)(2) is unchanged) to read as follows.

§ 265.193 Containment and detection of releases.

(a) * * *

(1) For all new and existing tank systems or components, prior to their being put into service.

(2) For tank systems that store or treat materials that become hazardous wastes, within 2 years of the hazardous waste listing, or when the tank system has reached 15 years of age, whichever comes later.

* * * * *

(i) * * *

(2) For other than non-enterable underground tanks, and for all ancillary equipment, the owner or operator must either conduct a leak test as in paragraph (i)(1) of this section or an internal inspection or other tank integrity examination by a qualified Professional Engineer that addresses cracks, leaks, and corrosion or erosion at least annually. The owner or operator must remove the stored waste from the tank, if necessary, to allow the condition of all internal tanks surfaces to be assessed.

* * * * *

■ 58. Section 265.195 is amended by:

■ a. Revising paragraph (a) (the note to paragraph (a) is unchanged);

■ b. Redesignating existing paragraphs (b) and (c), as paragraphs (f) and (g), respectively; and,

■ c. Adding new paragraphs (b) through (e).

§ 265.195 Inspections.

(a) The owner or operator must inspect, where present, at least once each operating day, data gathered from monitoring and leak detection equipment (e.g., pressure or temperature gauges, monitoring wells) to ensure that the tank system is being operated according to its design.

* * * * *

(b) Except as noted under the paragraph (c) of this section, the owner or operator must inspect at least once each operating day:

(1) Overfill/spill control equipment (e.g., waste-feed cutoff systems, bypass

systems, and drainage systems) to ensure that it is in good working order;

(2) Above ground portions of the tank system, if any, to detect corrosion or releases of waste; and

(3) The construction materials and the area immediately surrounding the externally accessible portion of the tank system, including the secondary containment system (e.g., dikes) to detect erosion or signs of releases of hazardous waste (e.g., wet spots, dead vegetation).

(c) Owners or operators of tank systems that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly those areas described in paragraphs (b)(1) through (3) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(d) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

(e) Ancillary equipment that is not provided with secondary containment, as described in § 265.193(f)(1) through (4), must be inspected at least once each operating day.

* * * * *

■ 59. Section 265.196 is amended by revising paragraph (f) (the notes to paragraph (f) are unchanged) to read as follows:

§ 265.196 Response to leaks or spills and disposition of leaking or unfit-for-use tank systems.

* * * * *

(f) *Certification of major repairs.* If the owner/operator has repaired a tank system in accordance with paragraph (e) of this section, and the repair has been extensive (e.g., installation of an internal liner; repair of a ruptured primary containment or secondary containment vessel), the tank system must not be returned to service unless the owner/operator has obtained a certification by a qualified Professional Engineer in accordance with § 270.11(d) that the repaired system is capable of handling hazardous wastes without release for the intended life of the system. This certification is to be placed in the operating record and maintained until closure of the facility.

* * * * *

■ 60. Section 265.201 is amended by:

■ a. Revising the paragraph (c) introductory text;

■ b. Redesignating paragraph (d) through (f), as paragraphs (f) through (h), respectively; and,

■ c. Adding new paragraphs (d) and (e).

§ 265.201 Special requirements for generators of between 100 and 1,000 kg/mo. that accumulate hazardous waste in tanks.

* * * * *

(c) Except as noted in paragraph (d) of this section, generators who accumulate between 100 and 1,000 kg/mo of hazardous in tanks must inspect, where present:

* * * * *

(d) Generators who accumulate between 100 and 1,000 kg/mo of hazardous waste in tanks or tank systems that have full secondary containment and that either use leak detection equipment to alert facility personnel to leaks, or implement established workplace practices to ensure leaks are promptly identified, must inspect at least weekly, where applicable, the areas identified in paragraphs (c)(1) through (5) of this section. Use of the alternate inspection schedule must be documented in the facility's operating record. This documentation must include a description of the established workplace practices at the facility.

(e) Performance Track member facilities may inspect on a less frequent basis, upon approval by the Director, but must inspect at least once each month. To apply for a less than weekly inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

* * * * *

Subpart K—Surface Impoundments

■ 61. Section 265.221 is amended by revising paragraph (a) to read as follows:

§ 265.221 Design and operating requirements.

(a) The owner or operator of each new surface impoundment unit, each lateral expansion of a surface impoundment unit, and each replacement of an existing surface impoundment unit must install two or more liners, and a leachate collection and removal system above and between the liners, and operate the leachate collection and removal system, in accordance with § 264.221(c), unless exempted under § 264.221(d), (e), or (f) of this Chapter.

* * * * *

§ 265.223 [Redesignated as § 265.224]

■ 62. Section 265.223 titled ''Response actions'' is redesignated as § 265.224 and the newly designated § 265.224 is amended by revising paragraph (a) to read as follows:

§ 265.224 Response actions.

(a) The owner or operator of surface impoundment units subject to § 265.221(a) must develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

* * * * *

Subpart L—Waste Piles

■ 63. Section 265.259 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 265.259 Response actions.

(a) The owner or operator of waste pile units subject to § 265.254 must develop and keep on-site until closure of the facility a response action plan.

* * *

* * * * *

Subpart M—Land Treatment

■ 64. Section 265.280 is amended by revising paragraph (e) to read as follows:

§ 265.280 Closure and post-closure.

* * * * *

(e) For the purpose of complying with § 265.115, when closure is completed the owner or operator may submit to the Regional Administrator certification both by the owner or operator and by an independent, qualified soil scientist, in lieu of a qualified Professional Engineer, that the facility has been closed in accordance with the specifications in the approved closure plan.

* * * * *

Subpart N—Landfills

■ 65. Section 265.301 is amended by revising paragraph (a) to read as follows:

§ 265.301 Design and operating requirements.

(a) The owner or operator of each new landfill unit, each lateral expansion of a landfill unit, and each replacement of an existing landfill unit must install two or more liners and a leachate collection and removal system above and between such liners, and operate the leachate collection and removal system, in accordance with § 264.301(d), (e), or (f) of this chapter.

* * * * *

■ 66. Section 265.303 is amended by revising paragraph (a) to read as follows:

§ 265.303 Response actions.

(a) The owner or operator of landfill units subject to § 265.301(a) must develop and keep on site until closure of the facility a response action plan. The response action plan must set forth the actions to be taken if the action leakage rate has been exceeded. At a minimum, the response action plan must describe the actions specified in paragraph (b) of this section.

* * * * *

■ 67. Section 265.314 is amended by:

■ a. Removing paragraph (a);

■ b. Redesignating paragraphs (b) through (g) as paragraphs (a) through (f); and,

■ c. Revising newly designated paragraph (a), and the introductory text of newly designated paragraph (f) to read as follows:

§ 265.314 Special requirements for bulk and containerized liquids.

(a) The placement of bulk or non-containerized liquid hazardous waste or hazardous waste containing free liquids (whether or not sorbents have been added) in any landfill is prohibited.

* * * * *

(f) The placement of any liquid which is not a hazardous waste in a landfill is prohibited unless the owner or operator of such landfill demonstrates to the Regional Administrator or the Regional Administrator determines that:

* * * * *

Subpart W—Drip Pads

■ 68. Section 265.441 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 265.441 Assessment of existing drip pad integrity.

(a) For each existing drip pad as defined in § 265.440, the owner or operator must evaluate the drip pad and determine that it meets all of the requirements of this subpart, except the requirements for liners and leak detection systems of § 265.443(b). No later than the effective date of this rule, the owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated, and re-certified annually until all upgrades, repairs, or modifications necessary to achieve compliance with all the standards of § 265.443 are complete. The evaluation must document the extent to which the drip pad meets each of the design and operating standards of § 265.443, except the standards for liners and leak detection systems, specified in § 265.443(b).

(b) The owner or operator must develop a written plan for upgrading, repairing, and modifying the drip pad to meet the requirements of § 265.443(b), and submit the plan to the Regional Administrator no later than 2 years before the date that all repairs, upgrades, and modifications are complete. This written plan must describe all changes to be made to the drip pad in sufficient detail to document compliance with all the requirements of § 265.443. The plan must be reviewed and certified by a qualified Professional Engineer.

(c) Upon completion of all repairs and modifications, the owner or operator must submit to the Regional Administrator or state Director, the as-built drawings for the drip pad together with a certification by a qualified Professional Engineer attesting that the drip pad conforms to the drawings.

* * * * *

■ 69. Section 265.443 is amended by revising paragraphs (a)(4)(ii) and (g) to read as follows:

§ 265.443 Design and operating requirements.

(a) * * *

(4)(i) * * *

(ii) The owner or operator must obtain and keep on file at the facility a written assessment of the drip pad, reviewed and certified by a qualified Professional Engineer that attests to the results of the evaluation. The assessment must be reviewed, updated and recertified annually. The evaluation must document the extent to which the drip pad meets the design and operating standards of this section, except for paragraph (b) of this section.

* * * * *

(g) The drip pad must be evaluated to determine that it meets the requirements of paragraphs (a) through (f) of this section and the owner or operator must obtain a statement from a qualified Professional Engineer certifying that the drip pad design meets the requirements of this section.

* * * * *

■ 70. Section 265.444 is amended by revising paragraph (a) to read as follows:

§ 265.444 Inspections.

(a) During construction or installation, liners and cover systems (e.g., membranes, sheets, or coatings) must be inspected for uniformity, damage and imperfections (e.g., holes, cracks, thin spots, or foreign materials). Immediately after construction or installation, liners must be inspected and certified as meeting the requirements of § 265.443 by a qualified Professional Engineer. This certification must be maintained at the facility as part of the facility operating record. After installation, liners and covers must be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.

* * * * *

Subpart BB—Air Emission Standards for Equipment Leaks

§ 265.1061 [Amended]

■ 71. Section 265.1061 is amended by removing paragraphs (b)(1) and (d), and redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(1) and (b)(2).

§ 265.1062 [Amended]

■ 72. Section 265.1062 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(1) as paragraph (a).

Subpart DD—Containment Buildings

■ 73. Section 265.1100 is amended by revising the introductory text to read as follows:

§ 265.1100 Applicability.

The requirements of this subpart apply to owners or operators who store or treat hazardous waste in units designed and operated under § 265.1101 of this subpart. The owner or operator is not subject to the definition of land disposal in RCRA section 3004(k) provided that the unit:

* * * * *

■ 74. Section 265.1101 is amended revising paragraphs (c)(2) and (c)(4) to read as follows:

§ 265.1101 Design and operating standards.

* * * * *

(c) * * *

(2) Obtain and keep on-site a certification by a qualified Professional Engineer that the containment building design meets the requirements of paragraphs (a), (b), and (c) of this section.

* * * * *

(4) Inspect and record in the facility's operating record at least once every seven days, except for Performance Track member facilities, that must inspect up to once each month, upon approval of the director, data gathered from monitoring and leak detection equipment as well as the containment building and the area immediately surrounding the containment building

to detect signs of releases of hazardous waste. To apply for reduced inspection frequency, the Performance Track member facility must follow the procedures described in § 265.15(b)(5).

* * * * *

PART 266—STANDARDS FOR THE MANAGEMENT OF SPECIFIC HAZARDOUS WASTES AND SPECIFIC TYPES OF HAZARDOUS WASTE MANAGEMENT FACILITIES

■ 75. The authority citation for part 266 continues to read as follows:

Authority: 42 U.S.C. 1006, 2002(a), 3001–3009, 3014, 6905, 6906, 6912, 6921, 6922, 6924–6927, 6934, and 6937.

Subpart H—Hazardous Waste Burned in Boilers and Industrial Furnaces

■ 76. Section 266.102 is amended by revising paragraph (e)(10) to read as follows:

§ 266.102 Permit standards for burners.

* * * * *

(e) * * *

(10) *Recordkeeping.* The owner or operator must maintain in the operating record of the facility all information and data required by this section for five years.

* * * * *

■ 77. Section 266.103 is amended by revising paragraphs (d) and (k) to read as follows:

§ 266.103 Interim status standards for burners.

* * * * *

(d) *Periodic Recertifications.* The owner or operator must conduct compliance testing and submit to the Director a recertification of compliance under provisions of paragraph (c) of this section within five years from submitting the previous certification or recertification. If the owner or operator seeks to recertify compliance under new operating conditions, he/she must comply with the requirements of paragraph (c)(8) of this section.

* * * * *

(k) *Recordkeeping.* The owner or operator must keep in the operating record of the facility all information and data required by this section for five years.

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

■ 78. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

■ 79. Section 268.7 is amended by revising paragraphs (a)(1), (a)(2), and (b)(6) to read as follows:

§ 268.7 Testing, tracking and recordkeeping requirements for generators, treaters, and disposal facilities.

(a) *Requirements for generators:* (1) A generator of hazardous waste must determine if the waste has to be treated before it can be land disposed. This is done by determining if the hazardous waste meets the treatment standards in § 268.40, 268.45, or § 268.49. This determination can be made concurrently with the hazardous waste determination required in § 262.11 of this chapter, in either of two ways: testing the waste or using knowledge of the waste. If the generator tests the waste, testing would normally determine the total concentration of hazardous constituents, or the concentration of hazardous constituents in an extract of the waste obtained using test method 1311 in ''Test Methods of Evaluating Solid Waste, Physical/Chemical Methods,'' EPA Publication SW–846, (incorporated by reference, see § 260.11 of this chapter), depending on whether the treatment standard for the waste is expressed as a total concentration or concentration of hazardous constituent in the waste's extract. (Alternatively, the generator must send the waste to a RCRA-permitted hazardous waste treatment facility, where the waste treatment facility must comply with the requirements of § 264.13 of this chapter and paragraph (b) of this section. In addition, some hazardous wastes must be treated by particular treatment methods before they can be land disposed and some soils are contaminated by such hazardous wastes. These treatment standards are also found in § 268.40, and are described in detail in § 268.42, Table 1. These wastes, and solids contaminated with such wastes, do not need to be tested (however, if they are in a waste mixture, other wastes with concentration level treatment standards would have to be tested). If a generator determines they are managing a waste or soil contaminated with a waste, that displays a hazardous characteristic of ignitability, corrosivity, reactivity, or toxicity, they must comply with the special requirements of § 268.9 of this part in addition to any applicable requirements in this section.

(2) If the waste or contaminated soil does not meet the treatment standards, or if the generator chooses not to make the determination of whether his waste must be treated, with the initial shipment of waste to each treatment or storage facility, the generator must send a one-time written notice to each treatment or storage facility receiving the waste, and place a copy in the file. The notice must include the information in column ''268.7(a)(2)'' of the Generator Paperwork Requirements Table in paragraph (a)(4) of this section. (Alternatively, if the generator chooses not to make the determination of whether the waste must be treated, the notification must include the EPA Hazardous Waste Numbers and Manifest Number of the first shipment and must state ''This hazardous waste may or may not be subject to the LDR treatment standards. The treatment facility must make the determination.'') No further notification is necessary until such time that the waste or facility change, in which case a new notification must be sent and a copy placed in the generator's file.

* * * * *

(b) * * *

(6) Where the wastes are recyclable materials used in a manner constituting disposal subject to the provisions of § 266.20(b) of this chapter regarding treatment standards and prohibition levels, the owner or operator of a treatment facility (*i.e.,* the recycler) must, for the initial shipment of waste, prepare a one-time certification described in paragraph (b)(4) of this section, and a one-time notice which includes the information in paragraph (b)(3) of this section (except the manifest number). The certification and notification must be placed in the facility's on-site files. If the waste or the receiving facility changes, a new certification and notification must be prepared and placed in the on site files. In addition, the recycling facility must also keep records of the name and location of each entity receiving the hazardous waste-derived product.

* * * * *

■ 80. Section 268.9 is amended by revising paragraphs (a) and (d) introductory text to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

(a) The initial generator of a solid waste must determine each EPA Hazardous Waste Number (waste code) applicable to the waste in order to determine the applicable treatment standards under subpart D of this part. This determination may be made concurrently with the hazardous waste determination required in § 262.11 of this chapter. For purposes of part 268, the waste will carry the waste code for any applicable listed waste (40 CFR part

261, subpart D). In addition, where the waste exhibits a characteristic, the waste will carry one or more of the characteristic waste codes (40 CFR part 261, subpart C), except when the treatment standard for the listed waste operates in lieu of the treatment standard for the characteristic waste, as specified in paragraph (b) of this section. If the generator determines that their waste displays a hazardous characteristic (and is not D001 nonwastewaters treated by CMBST, RORGS, OR POLYM of § 268.42, Table 1), the generator must determine the underlying hazardous constituents (as defined at § 268.2(i)) in the characteristic waste.

* * * * *

(d) Wastes that exhibit a characteristic are also subject to § 268.7 requirements, except that once the waste is no longer hazardous, a one-time notification and certification must be placed in the generator's or treater's on-site files. The notification and certification must be updated if the process or operation generating the waste changes and/or if the subtitle D facility receiving the waste changes.

* * * * *

PART 270—EPA ADMINISTERED PERMIT PROGRAMS: THE HAZARDOUS WASTE PERMIT PROGRAM

■ 81. The authority citation for part 270 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912, 6924, 6925, 6927, 6939, and 6974.

Subpart B—Permit Application

■ 82. Section 270.14 is amended by revising paragraph (a) to read as follows:

§ 270.14 Contents of part B: General requirements.

(a) Part B of the permit application consists of the general information requirements of this section, and the specific information requirements in §§ 0.14 through 270.29 applicable to the facility. The part B information requirements presented in §§ 270.14 through 270.29 reflect the standards promulgated in 40 CFR part 264. These information requirements are necessary in order for EPA to determine compliance with the part 264 standards. If owners and operators of HWM facilities can demonstrate that the information prescribed in part B can not be provided to the extent required, the Director may make allowance for submission of such information on a case-by-case basis. Information required in part B shall be submitted to the Director and signed in accordance with the requirements in § 270.11. Certain technical data, such as design drawings and specification, and engineering studies shall be certified by a qualified Professional Engineer. For post-closure permits, only the information specified in § 270.28 is required in part B of the permit application.

* * * * *

■ 83. Section 270.16 is amended by revising paragraph (a) to read as follows:

§ 270.16 Specific part B information requirements for tank systems.

* * * * *

(a) A written assessment that is reviewed and certified by a qualified Professional Engineer as to the structural integrity and suitability for handling hazardous waste of each tank system, as required under §§ 264.191 and 264.192 of this chapter;

* * * * *

■ 84. Section 270.26 is amended by revising paragraph (c)(15) to read as follows:

§ 270.26 Special part B information requirements for drip pads.

* * * * *

(c) * * *

(15) A certification signed by a qualified Professional Engineer, stating that the drip pad design meets the requirements of paragraphs (a) through(f) § 264.573 of this chapter.

* * * * *

Subpart D—Changes to Permits

■ 85. Section 270.42 is amended by adding new paragraph (l) and by adding new entry O to the table in Appendix I to § 270.42. to read as follows:

§ 270.42 Permit modification at the request of the permittee.

* * * * *

(l) *Performance Track member facilities.* The following procedures apply to Performance Track member facilities that request a permit modification under Appendix I of this section, section O(1).

(1) Performance Track member facilities must have complied with the requirements of § 264.15(b)(5) in order to request a permit modification under this section.

(2) The Performance Track member facility should consider the application approved if the Director does not: deny the application, in writing; or notify the Performance Track member facility, in writing, of an extension to the 60-day deadline within 60 days of receiving the request. In these situations, the Performance Track member facility must adhere to the revised inspection schedule outlined in its application and maintain a copy of the application in the facility's operating record.

* * * * *

Appendix 1 To § 270.42—Classification of Permit Modification

Modifications	Class
* * * * * * *	
O. Burden Reduction	
1. Approval of reduced inspection frequency for Performance Track member facilities for:	
a. Tanks systems pursuant to § 264.195	[1] 1
b. Containers pursuant to § 264.174	[1] 1
c. Containment buildings pursuant to § 264.1101(c)(4)	[1] 1
d. Areas subject to spills pursuant to § 264.15(b)(4)	[1] 1
2. Development of one contingency plan based on Integrated Contingency Plan Guidance pursuant to § 264.52(b)	1
3. Changes to recordkeeping and reporting requirements pursuant to: §§ 264.56(i), 264.343(a)(2), 264.1061(b)(1),(d), 264.1062(a)(2), 264.196(f), 264.100(g), and 264.113(e)(5)	1
4. Changes to inspection frequency for tank systems pursuant to § 264.195(b)	1
5. Changes to detection and compliance monitoring program pursuant to §§ 264.98(d), (g)(2), and (g)(3), 264.99(f), and (g)	1

[1] Class 1 modifications requiring prior Agency approval.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

■ 86. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a) and 6926.

■ 87. Section 271.1(j) is amended by adding the following entries to Table 1 in chronological order by date of publication in the **Federal Register**, to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	**Federal Register** reference	Effective date
*	*	*	*
May 4, 2006	Office of Solid Waste Burden Reduction Project	[Insert FR page numbers]	May 4, 2006.
*	*	*	*

[FR Doc. 06–2690 Filed 4–3–06; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday,
April 4, 2006

Part III

Department of the Treasury

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 1, et al.

Administrative Changes to Alcohol, Tobacco and Firearms Regulations Due to the Homeland Security Act of 2002; Final Rule

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Parts 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30, 31, 40, 44, 45, 46, 53, 70, and 71

[T.D. TTB–44]

RIN 1513–AA80

Administrative Changes to Alcohol, Tobacco and Firearms Regulations Due to the Homeland Security Act of 2002

AGENCY: Alcohol and Tobacco Tax and Trade Bureau (TTB), Treasury.

ACTION: Final rule; Treasury decision.

SUMMARY: The Homeland Security Act of 2002 divided the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, into two separate agencies, the Bureau of Alcohol, Tobacco, Firearms and Explosives in the Department of Justice, and the Alcohol and Tobacco Tax and Trade Bureau in the Department of the Treasury. This final rule amends the Alcohol and Tobacco Tax and Trade Bureau regulations to reflect the Bureau's new name and organizational structure.

DATES: This rule is effective on March 31, 2006.

FOR FURTHER INFORMATION CONTACT: Lisa M. Gesser, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 128, Morganza, MD 20660; telephone 301–290–1460 or e-mail *Lisa.Gesser@ttb.gov.*

SUPPLEMENTARY INFORMATION:

Background

Homeland Security Act of 2002

On November 25, 2002, the President signed into law the Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135 (the Act). Effective on January 24, 2003, section 1111 of the Act transferred the ''authorities, functions, personnel, and assets'' of the Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury, to the Department of Justice, with the exception of certain enumerated authorities retained by the Department of the Treasury. The authorities retained by the Secretary of the Treasury under section 1111(c)(2) of the Act include the administration and enforcement of chapters 51 and 52 of the Internal Revenue Code, sections 4181 and 4182 of the Internal Revenue Code, and title 27 of the United States Code.

To administer the authorities retained by the Secretary of the Treasury, section 1111 of the Act also created the Tax and Trade Bureau within the Department of the Treasury. Treasury Order No. 120–01 (Revised), dated January 24, 2003, designated the Tax and Trade Bureau as the Alcohol and Tobacco Tax and Trade Bureau (TTB) and directed that the head of TTB is the Administrator who shall exercise the authorities, perform the functions, and carry out the duties of the Secretary in the administration and enforcement of the laws cited in section 1111(c)(2) of the Act.

Publication of T.D. ATF–487, OLC No. 01–03

On January 24, 2003, the Department of the Treasury and the Department of Justice jointly published in the **Federal Register** (68 FR 3744), as T.D. ATF–487 and OLC No. 01–03, a document entitled ''Reorganization of Title 27, Code of Federal Regulations.'' That document divided into two chapters the regulations contained in title 27 of the Code of Federal Regulations (CFR), entitled ''Alcohol, Tobacco Products and Firearms,'' by establishing in title 27 a new chapter II entitled ''Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice'' and placing, in that new chapter II, four existing parts and one existing subpart that concerned functions transferred by the Act to the Department of Justice. The other existing provisions were retained in chapter I of title 27, which was re-titled ''Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.''

Administrative Changes in This Final Rule

With the exception of parts 28, 31, and 41, for which nomenclature and organizational conforming changes were previously made, this final rule amends those parts retained in 27 CFR chapter I that require changes to conform them to the name and organizational structure of TTB. Specifically, we are either removing references to the former Bureau of Alcohol, Tobacco and Firearms or replacing them with the appropriate TTB references. For example, we are changing the references to the ''Bureau of Alcohol, Tobacco and Firearms,'' ''ATF,'' and ''Director'' to ''Alcohol and Tobacco Tax and Trade Bureau,'' ''TTB,'' and ''Administrator,'' respectively. We are also amending mailing addresses to reflect the Bureau's new locations.

For consistency, we are changing references to ''ATF'' forms to ''TTB'' forms even though some of our forms have not yet been updated to reflect TTB's name and organization. Any reference to a ''TTB'' form in the regulations should be considered a reference to the corresponding form having the same number preceded by ''ATF.'' We will continue to accept those ''ATF'' forms until each form is appropriately modified and existing stocks of the old form are depleted.

In this final rule, we also remove each specific title of the person having delegated authority in the texts of 27 CFR parts 19, 40, and 71 and add, in its place in each case, a reference to the ''appropriate TTB officer,'' consistent with the approach taken in the other parts of the TTB regulations. We also revise the delegation of authority sections in parts 28 and 40 to conform them to the wording of similar sections elsewhere in the regulations. We also add a new delegation of authority section to parts 19, 31, and 71, and we revise the definition of ''appropriate TTB officer'' in part 31 to conform to the wording used in other parts of the regulations.

TTB also has executed delegation orders pertaining to those parts of the TTB regulations that require delegations of the Administrator's authority. With reference to each relevant regulatory provision within the part in question, each delegation order defines the ''appropriate TTB officer'' to whom the TTB Administrator delegates authority for purposes of the part. The promulgation of a separate delegation instrument for each part will simplify the process for determining which TTB officer is authorized to perform a particular function and will facilitate any future updating of these delegation orders. The texts of the delegation orders will be published in the **Federal Register** and will be maintained on the TTB Web site (*http://www.ttb.gov*).

The administrative changes referred to above make no substantive changes to the regulations that will affect a member of the public.

Regulatory Flexibility Act

Because this final rule is not required to be preceded by a notice of proposed rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis this Executive Order requires.

Inapplicability of Prior Notice and Comment and Delayed Effective Date Procedures

Because this final rule merely makes technical or conforming nonsubstantive

amendments to the regulations to reflect the new name and organizational structure of TTB, no notice of proposed rulemaking and public comment period are required under 5 U.S.C. 553(b)(B). For the same reason, this final rule is not subject to the delayed effective date requirement of 5 U.S.C. 553(d).

Drafting Information

The principal authors of this document were Lisa M. Gesser and Joanne C. Brady, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau.

List of Subjects

27 CFR Part 1

Administrative practice and procedure, Alcohol and alcoholic beverages, Imports, Liquors, Packaging and containers, Warehouses, Wine.

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 6

Advertising, Alcohol and alcoholic beverages, Credit, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 8

Alcohol and alcoholic beverages, Trade practices.

27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

27 CFR Part 10

Alcohol and alcoholic beverages, Trade practices.

27 CFR Part 11

Alcohol and alcoholic beverages, Trade practices.

27 CFR Part 12

Imports, Labeling, Wine.

27 CFR Part 13

Administrative practice and procedure, Alcohol and alcoholic beverages, Labeling.

27 CFR Part 16

Alcohol and alcoholic beverages, Consumer protection, Health, Labeling, Penalties.

27 CFR Part 17

Administrative practice and procedure, Claims, Cosmetics, Customs duties and inspection, Drugs, Excise taxes, Exports, Imports, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Spices flavorings, Surety bonds, Virgin Islands.

27 CFR Part 18

Alcohol and alcoholic beverages, Fruits, Reporting and recordkeeping requirements, Spices and flavorings.

27 CFR Part 19

Caribbean Basin Initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 20

Alcohol and alcoholic beverages, Claims, Cosmetics, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 21

Alcohol and alcoholic beverages.

27 CFR Part 22

Administrative practice and procedure, Alcohol and alcoholic beverages, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin Initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 28

Aircraft, Alcohol and alcoholic beverages, Armed forces, Beer, Claims, Excise taxes, Exports, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

27 CFR Part 29

Alcohol and alcoholic beverages, Authority delegations, Distilled spirits, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Stills.

27 CFR Part 30

Liquors, Scientific equipment.

27 CFR Part 31

Alcohol and alcoholic beverages, Claims, Excise taxes, Exports, Packaging and containers, Reporting and recordkeeping requirements.

27 CFR Part 40

Cigars and cigarettes, Claims, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco.

27 CFR Part 44

Aircraft, Armed forces, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Tobacco, Vessels, Warehouses.

27 CFR Part 45

Cigars and cigarettes, Excise taxes, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Tobacco.

27 CFR Part 46

Cigars and cigarettes, Claims, Excise taxes, Penalties, Reporting and

recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco.

27 CFR Part 53

Arms and munitions, Electronic funds transfers, Excise taxes, Exports, Imports, Reporting and recordkeeping requirements.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 71

Administrative practice and procedure, Alcohol and alcoholic beverages, Tobacco.

Amendments to the Regulations

■ TTB amends chapter I of title 27 of the Code of Federal Regulations as follows:

PART 1—BASIC PERMIT REQUIREMENTS UNDER THE FEDERAL ALCOHOL ADMINISTRATION ACT, NONINDUSTRIAL USE OF DISTILLED SPIRITS AND WINE, BULK SALES AND BOTTLING OF DISTILLED SPIRITS

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

Authority: 27 U.S.C. 203, 204, 206, 211 unless otherwise noted.

■ 2. Amend § 1.3 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 1.3 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 3. Revise § 1.4 to read as follows:

§ 1.4 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.1, Delegation of the Administrator's Authorities in 27 CFR Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 4. Amend § 1.10 as follows:

■ a. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer''.

■ b. In the definition of ''Applicant'' remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ c. Remove the definitions of ''Appropriate ATF officer'' and ''Director'':

§ 1.10 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.1, Delegation of the Administrator's Authorities in 27 CFR Part 1, Basic Permit Requirements Under the Federal Alcohol Administration Act, Nonindustrial Use of Distilled Spirits and Wine, Bulk Sales and Bottling of Distilled Spirits.

* * * * *

§§ 1.24, 1.25, 1.27, 1.31, 1.35, 1.42, 1.50, 1.51, 1.52, 1.55, 1.56, 1.58, and 1.59 [Amended]

■ 5. Amend the above sections as follows:

Amend:	by removing:	and replacing it with:
§ 1.24, introductory text (two times)	ATF	TTB.
§ 1.25 (two times) ATF TTB	ATF	TTB.
§ 1.27	ATF	TTB.
§ 1.31 (two times)	ATF	TTB.
§ 1.35 (two times)	ATF	TTB.
§ 1.35	Director	Administrator.
§ 1.42 (three times)	ATF	TTB.
§ 1.50 (two times)	ATF	TTB.
§ 1.51 (two times)	ATF	TTB.
§ 1.52	ATF	TTB.
§ 1.55	ATF	TTB.
§ 1.56(b)	ATF	TTB.
§ 1.58	ATF	TTB.
§ 1.59, introductory text (two times)	ATF	TTB.
§ 1.59(c) (three times)	ATF	TTB.
§ 1.59(c)	Director	Administrator.

PART 4—LABELING AND ADVERTISING OF WINE

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

Authority: 27 U.S.C. 205, unless otherwise noted.

■ 7. Amend § 4.3 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 4.3 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 8. Revise § 4.4 to read as follows:

§ 4.4 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.4, Delegation of the Administrator's

Authorities in 27 CFR Part 4, Labeling and Advertising of Wine. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 9. Amend § 4.10 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 4.10 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.4, Delegation of the Administrator's Authorities in 27 CFR Part 4, Labeling and Advertising of Wine.

* * * * *

§§ 4.21, 4.23, 4.24, 4.25, 4.30, 4.33, 4.37, 4.38, 4.39, 4.40, 4.50, 4.52, 4.64, 4.91, and 4.93 [Amended]

■ 10. Amend the above sections as follows:

Amend:	by removing:	and replacing it with:
§ 4.21(b)(3)(ii) (two times)	ATF	TTB.
§ 4.21(b)(3)(iii)	ATF	TTB.
§ 4.23(c)(2), introductory text	ATF	TTB.
§ 4.23(e)	Director	Administrator.
§ 4.24(a)(1)	appropriate ATF officer	Administrator.
§ 4.24(b)(1)	appropriate ATF officer	Administrator.
§ 4.24(b)(1)	appropriate ATF officer's	Administrator's.
§ 4.24(c)(1)	appropriate ATF officer	Administrator.
§ 4.24(c)(1)	Director	Administrator.
§ 4.24(c)(3)	Director	Administrator.
§ 4.25(e)(2)	Director	Administrator.
§ 4.30(b)(1)	ATF	TTB.
§ 4.33(b)	ATF	TTB.
§ 4.37(c)	ATF	TTB.
§ 4.38(h)	ATF	TTB.
§ 4.39(a)(4)	ATF	TTB.
§ 4.39(a)(5)	ATF	TTB.
§ 4.39(d)	ATF	TTB.
§ 4.39(g)	ATF	TTB.
§ 4.39(i)(2)(iii)	ATF	TTB.
§ 4.39(i)(3)	ATF	TTB.
§ 4.39(j) (two times)	ATF	TTB.
§ 4.40(a)	ATF	TTB.
§ 4.40(b)	ATF	TTB.
§ 4.40(c)	ATF	TTB.
§ 4.50(a) (two times)	ATF	TTB.
§ 4.50(b) (two times)	ATF	TTB.
§ 4.52 (two times)	ATF	TTB.
§ 4.64(a)(4)	ATF	TTB.
§ 4.64(a)(5)	ATF	TTB.
§ 4.91, introductory text	Director	Administrator.
§ 4.93(a), introductory text	Director	Administrator.
§ 4.93(c), introductory text	Director	Administrator.
§ 4.93(d) (two times)	Director	Administrator.
§ 4.93(e)	Director	Administrator.

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

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

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

■ 12. Amend § 5.3 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 5.3 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 13. Revise § 5.4 to read as follows:

§ 5.4 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.5, Delegation of the Administrator's Authorities in 27 CFR Part 5, Labeling and Advertising of Distilled Spirits. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 14. Amend § 5.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 5.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.5, Delegation of the Administrator's Authorities in 27 CFR Part 5, Labeling and Advertising of Distilled Spirits.

* * * * *

§§ 5.22, 5.23, 5.26, 5.28, 5.33, 5.34, 5.35, 5.36, 5.38, 5.42, 5.46, 5.51, 5.55, and 5.65 [Amended]

■ 15. Amend the above sections as follows:

Amend:	by removing:	and replacing it with:
§ 5.22(k)(1)	ATF	TTB.
§ 5.22(k)(2)	ATF	TTB.
§ 5.22(l)(2)	ATF	TTB.
§ 5.23(a)(2)	Director	Administrator.
§ 5.26(b)	ATF	TTB.
§ 5.28, introductory text	ATF	TTB.
§ 5.33(g)	ATF	TTB.
§ 5.34(a)	ATF	TTB.
§ 5.35(a)	ATF	TTB.
§ 5.36(d) (two times)	ATF	TTB.
§ 5.38(b)	Director	Administrator.
§ 5.38(c)	ATF	TTB.
§ 5.42(a)(4)	ATF	TTB.
§ 5.42(a)(5)	ATF	TTB.
§ 5.42(b)(7)	ATF	TTB.
§ 5.46(d)(1)	ATF officer	TTB officer.
§ 5.51(a)	ATF	TTB.
§ 5.51(b)	ATF	TTB.
§ 5.51(c)	ATF	TTB.
§ 5.51(d)	ATF	TTB.
§ 5.55(a) (two times)	ATF	TTB.
§ 5.55(b) (two times)	ATF	TTB.
§ 5.55(c)	ATF	TTB.
§ 5.65(a)(4)	ATF	TTB.
§ 5.65(a)(5)	ATF	TTB.
§ 5.65(g)	ATF	TTB.

PART 6—''TIED-HOUSE''

■ 16. The authority citation for part 6 continues to read as follows:

Authority: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

■ 17. Revise § 6.5 to read as follows:

§ 6.5 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.6, Delegation of the Administrator's Authorities in 27 CFR Part 6, ''Tied-House''. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 6.6 [Amended]

■ 18. Amend § 6.6 as follows:

■ a. In paragraph (a) remove the word ''Director'' each place it appears and add, in its place, the word ''Administrator''.

■ b. In paragraph (b), the heading of paragraph (c), and paragraphs (c)(1), (c)(2), and (c)(3), remove the reference to ''ATF'' each place it appears and add, in its place, a reference to ''TTB''.

■ 19. Amend § 6.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 6.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.6, Delegation of the Administrator's Authorities in 27 CFR Part 6, ''Tied-House''.

* * * * *

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

■ 20. The authority citation for part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

■ 21. Amend § 7.3 as follows:

■ a. In paragraph (a), remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 7.3 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 22. Revise § 7.5 to read as follows:

§ 7.5 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are

specified in TTB Order 1135.7, Delegation of the Administrator's Authorities in 27 CFR Part 7, Labeling and Advertising of Malt Beverages. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 23. Amend § 7.10 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 7.10 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.7, Delegation of the Administrator's Authorities in 27 CFR Part 7, Labeling and Advertising of Malt Beverages.

* * * * *

§§ 7.20, 7.23, 7.24, 7.25, 7.29, 7.31, 7.41, and 7.54 [Amended]

■ 24. Amend the sections listed above as follows:

Amend:	by removing:	and replacing it with:
§ 7.20(c)(1)	ATF	TTB.
§ 7.23(b)	ATF	TTB.
§ 7.24(g)	ATF	TTB.
§ 7.25(a)(1)	ATF	TTB.
§ 7.29(a)(4)	ATF	TTB.
§ 7.29(a)(5)	ATF	TTB.
§ 7.29(d)	ATF	TTB.
§ 7.31(a)	ATF	TTB.
§ 7.31(b)	ATF	TTB.
§ 7.31(c)	ATF	TTB.
§ 7.41(a)	ATF	TTB.
§ 7.54(a)(4)	ATF	TTB.
§ 7.54(a)(5)	ATF	TTB.

PART 8—EXCLUSIVE OUTLETS

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

Authority: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

■ 26. Revise § 8.5 to read as follows:

§ 8.5 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.8, Delegation of the Administrator's Authorities in 27 CFR Part 8, Exclusive Outlets. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 8.6 [Amended]

■ 27. Amend § 8.6 as follows:

■ a. In paragraph (a), remove the word ''Director'' each place it appears and add, in its place, the word ''Administrator''.

■ b. In paragraph (b), the paragraph heading of paragraph (c), and paragraphs (c)(1), (c)(2) and (c)(3), remove the reference to ''ATF'' each place it appears and add, in its place, a reference to ''TTB''.

■ 28. Amend § 8.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 8.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.8, Delegation of the Administrator's Authorities in 27 CFR Part 8, Exclusive Outlets.

* * * * *

PART 9—AMERICAN VITICULTURAL AREAS

■ 29. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 9.3 [Amended]

■ 30. Amend paragraph (a) by removing the word ''Director'' and adding, in its place, the word ''Administrator''.

■ 31. Amend § 9.11 as follows:

■ a. Remove the definition of ''Director''.

■ b. Add, in alphabetical order, a definition of ''Administrator'' to read as follows:

§§ 9.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

PART 10—COMMERCIAL BRIBERY

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

Authority: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205; 44 U.S.C. 3504(h).

■ 33. Revise § 10.5 to read as follows:

§ 10.5 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.10, Delegation of the Administrator's Authorities in 27 CFR Part 10, Commercial Bribery. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main

Street, Room 1516, Cincinnati, OH 45202.

§ 10.6 [Amended]

■ 34. Amend § 10.6 as follows:

■ a. In paragraph (a) remove the word ''Director'' each place it appears and add, in its place, the word ''Administrator''.

■ b. In paragraph (b), the heading of paragraph (c), and paragraphs (c)(1), (c)(2) and (c)(3), remove the reference to ''ATF'' each place it appears and add, in its place, a reference to ''TTB''.

■ 35. Amend § 10.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 10.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.10, Delegation of the Administrator's Authorities in 27 CFR Part 10, Commercial Bribery.

* * * * *

PART 11—CONSIGNMENT SALES

■ 36. The authority citation for part 11 continues to read as follows:

Authority: 15 U.S.C. 49–50; 27 U.S.C. 202 and 205.

■ 37. Revise § 11.5 to read as follows:

§ 11.5 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.11, Delegation of the Administrator's Authorities in 27 CFR Part 11, Consignment Sales. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 11.6 [Amended]

■ 38. Amend § 11.6 as follows:

■ a. In paragraph (a) remove the word ''Director'' each place it appears and add, in its place, the word ''Administrator''.

■ b. In paragraph (b) remove the reference to ''ATF'' each place it appears and add, in its place, a reference to ''TTB''.

■ 39. Amend § 11.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:.

§ 11.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.11, Delegation of the Administrator's Authorities in 27 CFR Part 11, Consignment Sales.

* * * * *

PART 12—FOREIGN NONGENERIC NAMES OF GEOGRAPHIC SIGNIFICANCE USED IN THE DESIGNATION OF WINES

■ 40. The authority citation for part 12 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 12.1 [Amended]

■ 41. Amend § 12.1 by removing the word ''Director'' and adding, in its place, the word ''Administrator''.

§ 12.3 [Amended]

■ 42. Amend § 12.3 as follows:

■ a. In paragraph (a) remove the word ''Director'' and add, in its place, the word ''Administrator''.

■ b. In paragraphs (a) and (b), remove the reference to ''ATF'' each place it appears and add, in its place, a reference to ''TTB''.

§ 12.31 [Amended]

■ 43. Amend the introductory text of § 12.31 by removing the word ''Director'' and adding, in its place, the word ''Administrator''.

PART 13—LABELING PROCEEDINGS

■ 44. The authority citation for part 13 continues to read as follows:

Authority: 27 U.S.C. 205(e), 26 U.S.C. 5301 and 7805.

■ 45. Revise § 13.2 to read as follows:

§ 13.2 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.13, Delegation of the Administrator's Authorities in 27 CFR Part 13, Labeling Proceedings. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 46. Amend § 13.11 as follows:

■ a. In the definition of ''Applicant'' remove the reference to ''ATF F 5100.31'' and add, in its place, a reference to ''Form 5100.31''.

■ b. Remove the definitions of ''Appropriate ATF officer'', ''ATF'', and ''Director''.

■ c. In the definition of ''Distinctive liquor bottle approval,'' remove the reference to ''ATF F 5100.31'' and add, in its place, a reference to ''Form 5100.31''.

■ d. In the definitions of ''Certificate holder,'' ''Certificate of exemption from label approval,'' and ''Certificate of label approval,'' remove the reference to ''ATF F 5100.31'' and add, in its place, a reference to ''Form 5100.31''.

■ e. In the definition of ''Liquor bottle'' remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ f. Add, in alphabetical order, definitions of ''Administrator'', ''Appropriate TTB officer'', and ''TTB'' to read as follows:

§ 13.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.13, Delegation of the Administrator's Authorities in 27 CFR Part 13, Labeling Proceedings.

* * * * *

TTB. The Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

■ 47. Amend § 13.20 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 13.20 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 13.21, 13.22, 13.23, 13.25, 13.26, 13.27, 13.41, 13.42, 13.43, 13.44, 13.45, 13.51, 13.52, 13.53, 13.54, 13.61, 13.62, 13.71, 13.72, 13.74, 13.75, 13.76, 13.81 and 13.92 [Amended]

■ 48. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 13.21(a)	ATF	TTB.
§ 13.21(b) (four times)	ATF	TTB.
§ 13.22	ATF	TTB.
§ 13.23 (three times)	ATF	TTB.
§ 13.25(a) (two times)	ATF	TTB.
§ 13.25(b)	ATF	TTB.
§ 13.26(a) (two times)	ATF	TTB.
§ 13.26(b) (four times)	ATF	TTB.
§ 13.27(a) (four times)	ATF	TTB.
§ 13.27(b) (four times)	ATF	TTB.
§ 13.27(c)	ATF	TTB.
§ 13.41 (two times)	ATF	TTB.
§ 13.42	ATF	TTB.
§ 13.43(a)	ATF	TTB.
§ 13.43(b) (three times)	ATF	TTB.
§ 13.44(a)	ATF	TTB.
§ 13.44(b)	ATF	TTB.
§ 13.45(a)	ATF	TTB.
§ 13.45(b) (four times)	ATF	TTB.
§ 13.51 (three times)	ATF	TTB.
§ 13.52 (two times)	ATF	TTB.
§ 13.53	ATF	TTB.
§ 13.54(a) (two times)	ATF	TTB.
§ 13.54(b) (five times)	ATF	TTB.
§ 13.61(a)(2)	ATF	TTB.
§ 13.61(b)	appropriate ATF officer	appropriate TTB officer.
§ 13.61(b)	ATF Library	TTB public reading room.
§ 13.61(b)	650 Massachusetts Avenue, NW., Washington, DC 20226.	1310 G Street NW., Washington, DC, or by viewing the Public COLA Registry on the TTB Web site at *http://www.ttb.gov*.
§ 13.61(d) (two times)	ATF	TTB.
§ 13.62 (six times)	ATF	TTB.
§ 13.62	ATF's	TTB.
§ 13.71(a)	ATF	TTB.
§ 13.71(b) (two times)	ATF	TTB.
§ 13.72(b)	ATF	TTB.
§ 13.74 (two times)	ATF	TTB.
§ 13.75, section heading	ATF	TTB.
§ 13.75 (two times)	ATF	TTB.
§ 13.75	ATF's	TTB.
§ 13.76(a) (two times)	ATF	TTB.
§ 13.81, section heading	ATF	TTB.
§ 13.81	ATF	TTB.
§ 13.92 (two times)	ATF	TTB.

PART 16—ALCOHOLIC BEVERAGE HEALTH WARNING STATEMENT

■ 49. The authority citation for part 16 continues to read as follows:

Authority: 27 U.S.C. 205, 215, 218; 28 U.S.C. 2461 note.

■ 50. Amend § 16.10 by removing the definition of ''ATF'' and adding, in alphabetical order, a definition of ''TTB'' to read as follows:

§ 16.10 Meaning of terms.

* * * * *

TTB. The Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

§ 16.30 [Amended]

■ 51. Amend § 16.30 by removing the reference to ''ATF'' and adding, in its place, a reference to ''TTB''.

PART 17—DRAWBACK ON TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS

■ 52. The authority citation for part 17 continues to read as follows:

Authority: 26 U.S.C. 5010, 5131'5134, 5143, 5146, 5148, 5206, 5273, 6011, 6065, 6091, 6109, 6151, 6402, 6511, 7011, 7213, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 53. Amend § 17.2 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 17.2 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and

Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 17.3 [Amended]

■ 54. Amend § 17.3 as follows:

■ a. In the introductory text of paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. In paragraph (b) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ c. In paragraph (c) remove the reference to ''ATF'' each place it appears and add, in its place, a reference to ''TTB''.

■ d. In paragraph (c) remove the word ''Director'' and add, in its place, the word ''Administrator''.

§ 17.6 [Amended]

■ 55. Amend § 17.6 by removing the reference to ''ATF'' each place it appears and adding, in its place, a reference to ''TTB''.

■ 56. Revise § 17.7 to read as follows:

§ 17.7 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.17, Delegation of the Administrator's Authorities in 27 CFR Part 17, Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 57. Amend § 17.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 17.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.17, Delegation of the Administrator's Authorities in 27 CFR Part 17, Drawback on Taxpaid Distilled Spirits Used in Manufacturing Nonbeverage Products.

* * * * *

§§ 17.31, 17.32, 17.33, 17.34, 17.41, 17.42, 17.51, 17.52, 17.53, 17.54, 17.55, 17.61, 17.62, 17.71, 17.73, 17.92, 17.101, 17.106, 17.107, 17.108, 17.111, 17.112, 17.113, 17.114, 17.121, 17.122, 17.123, 17.125, 17.126, 17.127, 17.131, 17.132, 17.133, 17.134, 17.135, 17.136, 17.141, 17.142, 17.143, 17.144, 17.147, 17.151, 17.161, 17.164, 17.166, 17.167, 17.168, 17.170, 17.171, 17.182, 17.183, 17.185, and 17.187 [Amended]

■ 58. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 17.31 (two times)	ATF	TTB.
§ 17.32, section heading	ATF	TTB.
§ 17.32(a)(6)	ATF	TTB.
§ 17.33, section heading	ATF	TTB.
§ 17.34	ATF	TTB.
§ 17.41	ATF	TTB.
§ 17.42(b)	ATF	TTB.
§ 17.51(a)	ATF	TTB.
§ 17.52	ATF	TTB.
§ 17.53(a) (three times)	ATF	TTB.
§ 17.53(b)	ATF	TTB.
§ 17.54 (two times)	ATF	TTB.
§ 17.55	ATF	TTB.
§ 17.62	ATF	TTB.
§ 17.71(a) (two times)	ATF	TTB.
§ 17.73	ATF	TTB.
§ 17.92	ATF	TTB.
§ 17.101 (two times)	ATF	TTB.
§ 17.106	ATF	TTB.
§ 17.107	ATF	TTB.
§ 17.108(c)	ATF	TTB.
§ 17.111(a), introductory text (two times)	ATF	TTB.
§ 17.111(b)	ATF	TTB.
§ 17.112 (four times)	ATF	TTB.
§ 17.113	ATF	TTB.
§ 17.114	ATF	TTB.
§ 17.121(b)	ATF	TTB.
§ 17.121(d)	ATF	TTB.
§ 17.122 (four times)	ATF	TTB.
§ 17.123	ATF	TTB.
§ 17.125(a)	ATF	TTB.
§ 17.125(b) (two times)	ATF	TTB.
§ 17.126(a)	ATF	TTB.
§ 17.127	ATF	TTB.
§ 17.131, section heading	ATF	TTB.
§ 17.131	ATF	TTB.
§ 17.132(a) (two times)	ATF	TTB.
§ 17.133, introductory text	ATF	TTB.
§ 17.134 (two times)	ATF	TTB.
§ 17.135(a)(2) (two times)	ATF	TTB.
§ 17.136	ATF	TTB.
§ 17.141	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 17.142(a) (two times)	ATF	TTB.
§ 17.142(b)	ATF	TTB.
§ 17.143 (two times)	ATF	TTB.
§ 17.144	ATF	TTB.
§ 17.144	regional director (compliance)	appropriate TTB officer.
§ 17.147(a) (two times)	ATF	TTB.
§ 17.151	ATF	TTB.
§ 17.161	ATF	TTB.
§ 17.164(c)	ATF	TTB.
§ 17.166(c)	ATF	TTB.
§ 17.167(a)	ATF	TTB.
§ 17.167(b)	ATF	TTB.
§ 17.168(a)	ATF	TTB.
§ 17.170 (two times)	ATF	TTB.
§ 17.171 (two times)	ATF	TTB.
§ 17.182	ATF	TTB.
§ 17.183(a) (three times)	ATF	TTB.
§ 17.183(a) (three times)	regional director (compliance)	appropriate TTB officer.
§ 17.183(b)	ATF	TTB.
§ 17.183(c)	ATF	TTB.
§ 17.185(c)	ATF	TTB.
§ 17.187	ATF	TTB.

PART 18—PRODUCTION OF VOLATILE FRUIT-FLAVOR CONCENTRATE

■ 59. The authority citation for part 18 continues to read as follows:

Authority: 26 U.S.C. 5001, 5171–5173, 5178, 5179, 5203, 5351, 5354, 5356, 5511, 5552, 6065, 7805.

■ 60. Amend § 18.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 18.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.18, Delegation of the Administrator's Authorities in 27 CFR Part 18, Production of Volatile Fruit-Flavor Concentrate.

* * * * *

■ 61. Revise § 18.12 to read as follows:

§ 18.12 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.18, Delegation of the Administrator's Authorities in 27 CFR Part 18, Production of Volatile Fruit-Flavor Concentrate. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 18.13, 18.14, and 18.15 [Amended]

■ 62. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 18.13(a), introductory text (two times)	ATF	TTB.
§ 18.13(b) (three times)	ATF	TTB.
§ 18.14(a), introductory text (two times)	ATF	TTB.
§ 18.14(a), concluding text	regional director (compliance)	appropriate TTB officer.
§ 18.14(b) (two times)	ATF	TTB.
§ 18.15 (two times)	ATF	TTB.

■ 63. Amend § 18.16 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 18.16 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 18.17, 18.19, 18.22, 18.24, 18.27, 18.39, 18.40, 18.41, 18.42, 18.52, and 18.61 [Amended]

■ 64. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 18.17	ATF	TTB.
§ 18.19	ATF	TTB.
§ 18.22(b) (three times)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 18.24, concluding text	ATF	TTB.
§ 18.27(a), introductory text	ATF	TTB.
§ 18.39, introductory text	ATF	TTB.
§ 18.39(a) (two times)	ATF	TTB.
§ 18.40, introductory text	ATF	TTB.
§ 18.40(a) (two times)	ATF	TTB.
§ 18.41	ATF	TTB.
§ 18.42(a)	ATF	TTB.
§ 18.52(b)	ATF	TTB.
§ 18.61(a)	ATF	TTB.
§ 18.61(b)	ATF	TTB.

PART 19—DISTILLED SPIRITS PLANTS

■ 65. The authority citation for part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 66. Add a new § 19.4 to read as follows:

§ 19.4 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.19, Delegation of the Administrator's Authorities in 27 CFR Part 19, Distilled Spirits. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 67. Amend § 19.11 as follows:

■ a. Remove the definitions of ''Area Supervisor'', ''ATF bond'', ''ATF officer'', ''Director:, ''Region'', and Regional Director''.

■ b. In the definition of ''Bulk conveyance'', remove the word ''Director'' and add, in its place, the words ''appropriate TTB officer''.

■ c. In the definition of ''Liquor bottle'', remove the word ''Director'' and add, in its place, the words ''appropriate TTB officer''.

■ d. In the definition of ''Plant number'', remove the words ''regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer''.

■ e. Add, in alphabetical order, definitions of ''Administrator'', ''Appropriate TTB officer'', ''TTB'', and ''TTB bond'' to read as follows:

§ 19.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.19, Delegation of the Administrator's Authorities in 27 CFR Part 19, Distilled Spirits Plants.

* * * * *

TTB. The Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

TTB bond. The internal revenue bond as prescribed in 26 U.S.C. Chapter 51.

* * * * *

§§ 19.31, 19.32, 19.35, 19.36, 19.37, 19.38, 19.41, 19.42, 19.44, 19.46, 19.49, 19.51, 19.53, and 19.58 [Amended]

■ 68. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 19.31	regional director (compliance)	appropriate TTB officer.
§ 19.32	regional director (compliance)	appropriate TTB officer.
§ 19.35	ATF	appropriate TTB.
§ 19.36(b)	regional director (compliance)	appropriate TTB officer.
§ 19.37(b)	regional director (compliance)	appropriate TTB officer.
§ 19.38(b)	regional director (compliance)	appropriate TTB officer.
§ 19.41(a), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.41(a)(4)	ATF	TTB.
§ 19.41(b), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.42(a), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.44	regional director (compliance)	appropriate TTB officer.
§ 19.46	regional director (compliance)	appropriate TTB officer.
§ 19.49(b)(2)	regional director (compliance)	appropriate TTB officer.
§ 19.51(b), paragraph heading	ATF	TTB.
§ 19.51(b)(6)	ATF	TTB.
§ 19.51(d), paragraph heading	ATF	TTB.
§ 19.51(d)(3)	ATF	TTB.
§ 19.51(d)(4)	ATF	TTB.
§ 19.53(b)	ATF	TTB.
§ 19.53(c)	ATF	appropriate TTB.
§ 19.58(c) (two times)	Director	appropriate TTB officer.
§ 19.58(d)	regional director (compliance)	appropriate TTB officer.
§ 19.58(d)	Director	appropriate TTB officer.

§§ 19.61–19.71 [Amended]

■ 69. Remove the undesignated center heading ''Authorities of the Director'' preceding § 19.61.

■ 70. Amend § 19.61 as follows:

■ a. In paragraph (a) remove the reference to ''Director'' and add, in its place, the words ''appropriate TTB officer''.

■ b. Revise paragraph (b) to read as follows:

§ 19.61 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 19.62, 19.63, 19.65, 19.66, 19.67, 19.68, 19.70, and 19.71 [Amended]

■ 71. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 19.62, introductory text (two times)	Director	appropriate TTB officer.
§ 19.62(c)	regional director (compliance), for transmittal to the Director.	appropriate TTB officer.
§ 19.62(c) (two times)	Director	appropriate TTB officer.
§ 19.63 (three times)	Director	appropriate TTB officer.
§ 19.65 (two times)	Director	appropriate TTB officer.
§ 19.66, first sentence	Director, through the regional director (compliance), and obtain the Director's.	appropriate TTB officer and obtain.
§ 19.66, second through last sentences (three times).	Director	appropriate TTB officer.
§ 19.66, last sentence	regional director (compliance)	appropriate TTB officer.
§ 19.67(a)(2)	Director	appropriate TTB officer.
§ 19.67(a)(3)(ii)	Director	appropriate TTB officer.
§ 19.67(b)(1)	Director, through the regional director (compliance).	appropriate TTB officer.
§ 19.67(b)(2)(vi)	Director	appropriate TTB officer.
§ 19.67(c)	Director	appropriate TTB officer.
§ 19.68	Director	appropriate TTB officer.
§ 19.70	Director	appropriate TTB officer.
§ 19.71(a) (two times)	Director	appropriate TTB officer.
§ 19.71(b), first sentence	Director, through the regional director (compliance), and obtain the Director's.	appropriate TTB officer and obtain.
§ 19.71(b), second through last sentences (three times).	Director	appropriate TTB officer.
§ 19.71(c)	Director	appropriate TTB officer.
§ 19.71(c)	ATF	appropriate TTB.
§ 19.71(d)	Director	appropriate TTB officer.
§ 19.71(d)	regional director (compliance)	appropriate TTB officer.

§§ 19.72–19.79 [Amended]

■ 72. Remove the undesignated center heading ''Authorities of the Regional Director (Compliance)'' preceding § 19.72.

§§ 19.72, 19.73, 19.74, 19.75, 19.76, 19.77, 19.78, and 19.79 [Amended]

■ 73. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 19.72 (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.72	Director	appropriate TTB officer.
§ 19.73, introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.73, concluding text (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.74	regional director (compliance)	appropriate TTB officer.
§ 19.75(a), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.75(a), introductory text	ATF	TTB.
§ 19.75(a)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.75(a)(1)	ATF	appropriate TTB.
§ 19.75(a)(2)	regional director (compliance)	appropriate TTB officer.
§ 19.75(a)(2)	ATF	appropriateTTB.
§ 19.75(b)	ATF	appropriate TTB.
§ 19.75(b) (three times)	regional director (compliance)	appropriate TTB officer.
§ 19.75(c)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.75(c)(1)	ATF	TTB.
§ 19.75(d)	regional director (compliance)	appropriate TTB officer.
§ 19.75(d)	ATF	TTB.
§ 19.76	regional director (compliance)	appropriate TTB officer.
§ 19.77 (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.78	regional director (compliance)	appropriate TTB officer.
§ 19.79 (three times)	regional director (compliance)	appropriate TTB officer.

§§ 19.81–19.84 [Amended]

■ 74. Remove the undesignated center heading ''Authorities of ATF officers'' preceding § 19.81.

§§ 19.81, 19.82, 19.83, 19.84, 19.86, 19.91, 19.92, 19.96, 19.98, 19.99, 19.132, 19.133, 19.134, 19.151, 19.152, 19.153, 19.155, 19.156, 19.157, 19.158, 19.161, 19.162, 19.163, 19.167, 19.168, 19.184, 19.185, 19.187, 19.190, 19.193, 19.201, 19.202, 19.203, 19.204, 19.205, 19.206, 19.211, 19.231, 19.236, 19.237, 19.247, 19.250, 19.252, 19.273, 19.274, 19.277, 19.279, 19.281, 19.282, 19.311, 19.319, 19.326, 19.327, 19.329, 19.342, 19.347, 19.353, 19.378, 19.382, 19.385, 19.386, 19.395, 19.401, 19.402, 19.453, 19.454, 19.456, 19.460, 19.461, 19.464, 19.485, 19.487, 19.506, 19.507, 19.508, 19.510, 19.519, 19.522, 19.523, 19.524, 19.525, 19.533, 19.538, 19.539, 19.540, 19.561, 19.562, 19.563, 19.581, 19.585, 19.588, 19.593, 19.594, 19.597, 19.604, 19.633, 19.634, 19.637, 19.638, 19.641, 19.643, 19.645, 19.681, 19.687, 19.691, 19.701, 19.721, 19.723, 19.724, 19.725, 19.731, 19.732, 19.741, 19.750, 19.761, 19.768, 19.770, 19.773, 19.774, 19.778, 19.791, 19.792, 19.822, 19.823, 19.824, 19.903, and 19.904 [Amended]

■ 75. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 19.81 (two times)	ATF	appropriate TTB.
§ 19.82 (two times)	ATF	appropriate TTB.
§ 19.82	regional director (compliance)	appropriate TTB officer.
§ 19.83 (two times)	ATF	appropriate TTB.
§ 19.84	ATF	appropriate TTB.
§ 19.86 (three times)	ATF	appropriate TTB.
§ 19.91(a)	regional director (compliance)	appropriate TTB officer.
§ 19.91(a)	ATF	appropriate TTB.
§ 19.91(a)	Director	appropriate TTB officer.
§ 19.91(b)	regional director (compliance)	appropriate TTB officer.
§ 19.92(b)(10)	regional director (compliance)	appropriate TTB officer.
§ 19.96(b)(1) (two times)	Director	appropriate TTB officer.
§ 19.96(c)(2)	regional director (compliance)	appropriate TTB officer.
§ 19.96(c)(2)(iii)	ATF	appropriate TTB.
§ 19.96(d)	Director	appropriate TTB officer.
§ 19.98, introductory text	ATF	appropriate TTB.
§ 19.98(c)	regional director (compliance)	appropriate TTB officer.
§ 19.99(c)	regional director (compliance)	appropriate TTB officer.
§ 19.132	Director	appropriate TTB officer.
§ 19.133(b)	regional director (compliance)	appropriate TTB officer.
§ 19.134(a)(2)	regional director (compliance)	appropriate TTB officer.
§ 19.134(c)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.134(c)(2)	regional director (compliance)	appropriate TTB officer.
§ 19.134(d)	regional director (compliance)	appropriate TTB officer.
§ 19.151(c) (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.152, concluding text (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.153(b)	regional director (compliance)	appropriate TTB officer.
§ 19.155	ATF	appropriate TTB.
§ 19.156	regional director (compliance)	appropriate TTB officer.
§ 19.157(a)(7)	regional director (compliance)	appropriate TTB officer.
§ 19.158(f)	regional director (compliance)	appropriate TTB officer.
§ 19.158(f), concluding text (three times)	regional director (compliance)	appropriate TTB officer.
§ 19.161, introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.161(c)	regional director (compliance)	appropriate TTB officer.
§ 19.162	regional director (compliance)	appropriate TTB officer.
§ 19.163, introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.163(f)	regional director (compliance)	appropriate TTB officer.
§ 19.167(c)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.167(d)	regional director (compliance)	appropriate TTB officer.
§ 19.167(d)	ATF	appropriate TTB.
§ 19.168(b)(2)	ATF	appropriate TTB.
§ 19.184	regional director (compliance)	appropriate TTB officer.
§ 19.185 (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.187(a)	Director	appropriate TTB officer.
§ 19.190	regional director (compliance)	appropriate TTB officer.

Amend:	by removing:	and replacing it with:
§ 19.193(a)	regional director (compliance) through the area supervisor.	appropriate TTB officer.
§ 19.193(b)(3)	regional director (compliance)	appropriate TTB officer.
§ 19.193(c)	area supervisor	appropriate TTB officer.
§ 19.201(a)	regional director (compliance)	appropriate TTB officer.
§ 19.202(a) (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.202(b)	regional director (compliance)	appropriate TTB officer.
§ 19.202(c)	ATF	TTB.
§ 19.203(a)	regional director (compliance)	appropriate TTB officer.
§ 19.203(b), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.203(d)	regional director (compliance)	appropriate TTB officer.
§ 19.204(a)	regional director (compliance)	appropriate TTB officer.
§ 19.204(b), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.204(d)	regional director (compliance)	appropriate TTB officer.
§ 19.205(b), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.205(c), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.205(d)	regional director (compliance)	appropriate TTB officer.
§ 19.206(b), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.206(c), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.206(d)	regional director (compliance)	appropriate TTB officer.
§ 19.211	regional director (compliance)	appropriate TTB officer.
§ 19.231 (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.236(a)	regional director (compliance)	appropriate TTB officer.
§ 19.237(a), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.237(b)	regional director (compliance)	appropriate TTB officer.
§ 19.237(b) (two times)	Director	Administrator.
§ 19.247	regional director (compliance)	appropriate TTB officer.
§ 19.250 (three times)	regional director (compliance)	appropriate TTB officer.
§ 19.252 (three times)	regional director (compliance)	appropriate TTB officer.
§ 19.273(b)(3)	regional director (compliance)	appropriate TTB officer.
§ 19.273(c)(4)	ATF	appropriate TTB.
§ 19.274(a)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.274(b)	regional director (compliance)	appropriate TTB officer.
§ 19.277(c) (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.279(a) (three times)	regional director (compliance)	appropriate TTB officer.
§ 19.279(a) (two times)	ATF	appropriate TTB.
§ 19.279(b)	ATF	appropriate TTB.
§ 19.279(b)	regional director (compliance)	appropriate TTB officer.
§ 19.281(e), concluding text	Director, through the regional director (compliance).	appropriate TTB officer.
§ 19.281(e), concluding text	Director	appropriate TTB officer.
§ 19.281(f)	regional director (compliance)	appropriate TTB officer.
§ 19.282	area supervisor or an ATF officer	appropriate TTB officer.
§ 19.282	ATF	appropriate TTB.
§ 19.282	area supervisor	appropriate TTB officer.
§ 19.311(a)	area supervisor	appropriate TTB officer.
§ 19.311(b)	area supervisor	appropriate TTB officer.
§ 19.319(a)	Director	appropriate TTB officer.
§ 19.326	Director	appropriate TTB officer.
§ 19.327	ATF	appropriate TTB.
§ 19.329	regional director (compliance)	appropriate TTB officer.
§ 19.342(b)	regional director (compliance)	appropriate TTB officer.
§ 19.342(c)	ATF	appropriate TTB.
§ 19.347	area supervisor	appropriate TTB officer.
§ 19.353	regional director (compliance)	appropriate TTB officer.
§ 19.378	ATF	TTB.
§ 19.382	regional director (compliance)	appropriate TTB officer.
§ 19.382	area supervisor	appropriate TTB officer.
§ 19.385	ATF	appropriate TTB.
§ 19.386(a)(2)	regional director (compliance)	appropriate TTB officer.
§ 19.386(a)(2)	regional Director	appropriate TTB officer.
§ 19.395, concluding text (two times)	Director	appropriate TTB officer.
§ 19.401	regional director (compliance)	appropriate TTB officer.
§ 19.402(a)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.402(a)(2), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.402(a)(3), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.402(b)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.402(b)(2)	regional director (compliance)	appropriate TTB officer.
§ 19.402(c)	area supervisor	appropriate TTB officer.
§ 19.402(d)	regional director (compliance)	appropriate TTB officer.
§ 19.453(a)	regional director (compliance)	appropriate TTB officer.
§ 19.453(b)	ATF	appropriate TTB.
§ 19.454	Director	appropriate TTB officer.
§ 19.456 (two times)	regional director (compliance)	appropriate TTB officer.

Amend:	by removing:	and replacing it with:
§ 19.460(e)	Director	appropriate TTB officer.
§ 19.461(c)	ATF	appropriate TTB.
§ 19.461(c)	regional director (compliance)	appropriate TTB officer.
§ 19.464	regional director (compliance)	appropriate TTB officer.
§ 19.485(b) (two times)	ATF	TTB.
§ 19.487(a)	ATF	TTB.
§ 19.506	regional director (compliance)	appropriate TTB officer.
§ 19.507(b)	regional director (compliance)	appropriate TTB officer.
§ 19.508(b)	regional director (compliance)	appropriate TTB officer.
§ 19.510(a)	area supervisor	appropriate TTB officer.
§ 19.510(c)	regional director (compliance)	appropriate TTB officer.
§ 19.519 (three times)	regional director (compliance)	appropriate TTB officer.
§ 19.519	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 19.522(b)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.522(b)(2) (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.523(b)	regional director (compliance)	appropriate TTB officer.
§ 19.524(a)(3)	ATF	TTB.
§ 19.524(b)(1)	regional director (compliance), for each region in which taxes are paid.	appropriate TTB officer.
§ 19.524(b)(3)	regional director (compliance)	appropriate TTB officer.
§ 19.524(b)(3)	ATF	TTB.
§ 19.524(c)(1) (three times)	ATF	TTB.
§ 19.524(e)	regional director (compliance)	appropriate TTB officer.
§ 19.524(e)	ATF	TTB.
§ 19.525(a)	ATF	TTB.
§ 19.525(a)	ATF Officer	appropriate TTB officer.
§ 19.533	regional director (compliance)	appropriate TTB officer.
§ 19.538(a)(1), introductory text	Director	Administrator.
§.539	Director	appropriate TTB officer.
§ 19.540(c)(2)(ii)	Director	appropriate TTB officer.
§ 19.540(c)(2)(ii)(B)	regional director (compliance)	appropriate TTB officer.
§ 19.561(b)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.561(c)	regional director (compliance)	appropriate TTB officer.
§ 19.562(a)(2)	area supervisor	appropriate TTB officer.
§ 19.562(a)(3)	regional director (compliance)	appropriate TTB officer.
§ 19.562(b)	area supervisor	appropriate TTB officer.
§ 19.562(c)	area supervisor	appropriate TTB officer.
§ 19.562(d)	area supervisor	appropriate TTB officer.
§ 19.562(e)	regional director (compliance)	appropriate TTB officer.
§ 19.563(a) (five times)	regional director (compliance)	appropriate TTB officer.
§ 19.563(b) (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.581(b) (three times)	Director	appropriate TTB officer.
§ 19.585	Director	appropriate TTB officer.
§ 19.588(b)	ATF	appropriate TTB.
§ 19.593(c)	regional director (compliance)	appropriate TTB officer.
§ 19.594(a)	regional director (compliance)	appropriate TTB officer.
§ 19.597(b)	regional director (compliance)	appropriate TTB officer.
§ 19.597(c)	Director	appropriate TTB officer.
§ 19.604	Director	appropriate TTB officer.
§ 19.633(a) (two times)	ATF	TTB.
§ 19.633(a)	Director	appropriate TTB officer.
§ 19.633(b), introductory text	ATF	TTB.
§ 19.633(b), introductory text	Director	appropriate TTB officer.
§ 19.633(b), concluding text (two times)	ATF	TTB.
§ 19.633(b), concluding text	Director's	appropriate TTB officer's.
§ 19.634	regional director (compliance)	appropriate TTB officer.
§ 19.637	Director	appropriate TTB officer.
§ 19.638	regional director (compliance)	appropriate TTB officer.
§ 19.641(a)	ATF	appropriate TTB.
§ 19.643(c)(1)	Director	appropriate TTB officer.
§ 19.643(c)(3)	Director	appropriate TTB officer.
§ 19.645(e)	ATF	appropriate TTB.
§ 19.645(e)	regional director (compliance) of each region where a label code is used.	appropriate TTB officer.
§ 19.681(d)	ATF	TTB.
§ 19.687	ATF	TTB.
§ 19.691(b)	regional director (compliance)	appropriate TTB officer.
§ 19.701(a)	regional director (compliance)	appropriate TTB officer.
§ 19.701(c)	ATF	appropriate TTB.
§ 19.701(e)	regional director (compliance)	appropriate TTB officer.
§ 19.721(d)	ATF	TTB.
§ 19.723(a)	ATF	appropriate TTB.
§ 19.723(b)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.723(c)(1)	regional director (compliance)	appropriate TTB officer.

Amend:	by removing:	and replacing it with:
§ 19.723(d)(3)	ATF	appropriate TTB.
§ 19.724(a), introductory text	Director, through the regional director (compliance).	appropriate TTB officer.
§ 19.724(a)(2)	Director	appropriate TTB officer.
§ 19.724(b)	Director	appropriate TTB officer.
§ 19.725(a), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.725(b)	regional director (compliance)	appropriate TTB officer.
§ 19.731(b)(2)(iii), introductory text	ATF	appropriate TTB
§ 19.731(c)(3)	regional director (compliance)	appropriate TTB officer.
§ 19.732(f)	regional director (compliance)	appropriate TTB officer.
§ 19.741(d)	regional director (compliance)	appropriate TTB officer.
§ 19.750(b), introductory text	ATF	appropriate TTB.
§ 19.761	ATF	appropriate TTB.
§ 19.768, introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.770(a)(2)	ATF	TTB.
§ 19.770(a)(6)(i)	ATF	TTB.
§ 19.773, introductory text	ATF	appropriate TTB.
§ 19.773(b)	regional director (compliance)	appropriate TTB officer.
§ 19.774(e)	ATF	appropriate TTB.
§ 19.778(b)	ATF	TTB.
§ 19.778(d)	Director	appropriate TTB officer.
§ 19.778(e)	regional director (compliance)	appropriate TTB officer.
§ 19.791	regional director (compliance)	appropriate TTB officer.
§ 19.792(a)	regional director (compliance)	appropriate TTB officer.
§ 19.792(c)	regional director (compliance)	appropriate TTB officer.
§ 19.822, introductory	regional director (compliance)	appropriate TTB officer.
§ 19.822, concluding text	regional director (compliance)	appropriate TTB officer.
§ 19.823	regional director (compliance)	appropriate TTB officer.
§ 19.824	regional director (compliance)	appropriate TTB officer.
§ 19.903, introductory text (two times)	Director	appropriate TTB officer.
§ 19.903(c)	regional director (compliance), for transmittal to the Director.	appropriate TTB officer.
§ 19.903(c) (two times)	Director	appropriate TTB officer.
§ 19.903(c)	ATF	appropriate TTB.
§ 19.904, introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.904(c) (four times)	regional director (compliance)	appropriate TTB officer.
§ 19.904(c)	ATF	appropriate TTB.

§§ 19.907 [Amended]

■ 76. In § 19.907, remove the definitions of ''ATF officer,'' ''Director,'' ''Region,'' and ''Regional director (compliance).''

§§ 19.910, 19.911, 19.912, 19.913, 19.914, 19.915, 19.916, 19.917, 19.918, 19.919, 19.921, 19.930, 19.945, 19.950, 19.955, 19.967, 19.970, 19.980, 19.982, 19.987, 19.988, 19.1001, 19.1005, and 19.1006 [Amended]

■ 77. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 19.910	regional director (compliance)	appropriate TTB officer.
§ 19.911, introductory text (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.912(a), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.912(a)(2)	ATF	appropriate TTB.
§ 19.913(a), paragraph heading	regional director (compliance)	appropriate TTB officer.
§ 19.913(a)(1) (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.913(a)(2) (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.913(b), paragraph heading and text (three times).	regional director (compliance)	appropriate TTB officer.
§ 19.913(c)	regional director (compliance)	appropriate TTB officer.
§ 19.914(a), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.915(a), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.916(b)(1)	regional director (compliance)	appropriate TTB officer.
§ 19.916(c)	ATF	appropriate TTB.
§ 19.917	regional director (compliance)	appropriate TTB officer.
§ 19.918 (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.919 (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.921(c)	regional director (compliance)	appropriate TTB officer.
§ 19.930(a)(1)(ii)	regional director (compliance)	appropriate TTB officer.
§ 19.930(b), introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.930(b)(4)	regional director (compliance)	appropriate TTB officer.
§ 19.945, introductory text	regional director (compliance)	appropriate TTB officer.

Amend:	by removing:	and replacing it with:
§ 19.950, introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.950(f)	regional director (compliance)	appropriate TTB officer.
§ 19.955	regional director (compliance)	appropriate TTB officer.
§ 19.967, introductory text	regional director (compliance)	appropriate TTB officer.
§ 19.970 (two times)	regional director (compliance)	appropriate TTB officer.
§ 19.970 (four times)	ATF	TTB.
§ 19.980(a)	regional director (compliance)	appropriate TTB officer.
§ 19.980(a)	Director	appropriate TTB officer.
§ 19.980(a)	ATF	appropriate TTB.
§ 19.982(c)(1)	ATF	appropriate TTB.
§ 19.982(c)(3)	regional director (compliance)	appropriate TTB officer.
§ 19.987	regional director (compliance)	appropriate TTB officer.
§ 19.987	ATF	appropriate TTB.
§ 19.988	regional director (compliance)	appropriate TTB officer.
§ 19.1001(a)	area supervisor	appropriate TTB officer.
§ 19.1001(c)	regional director (compliance)	appropriate TTB officer.
§ 19.1005(a)	Director	appropriate TTB officer.
§ 19.1005(b)	Director	appropriate TTB officer.
§ 19.1005(b)	at no cost upon request from the ATF Distribution Center, 7943 Angus Court, Springfield, VA 22153.	by accessing the TTB Web site (*http://www.ttb.gov*).
§ 19.1006 (two times)	Director	appropriate TTB officer.
§ 19.1006	ATF	appropriate TTB.

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

■ 78. The authority citation for part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

■ 79. Amend § 20.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. In the definition of ''Bulk conveyance'' remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ c. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 20.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.20, Delegation of the Administrator's Authorities in 27 CFR Part 20, Distribution and Use of Denatured Alcohol and Rum.

* * * * *

■ 80. Revise § 20.20 to read as follows:

§ 20.20 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.20, Delegation of the Administrator's Authorities in 27 CFR Part 20, Distribution and use of Denatured Alcohol and Rum. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 81.Amend § 20.21 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 20.21 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 20.22, 20.23, 20.24, 20.25, 20.27, 20.28, 20.37, 20.38a, 20.40, 20.40a, 20.41, 20.42, 20.43, 20.44, 20.45, 20.48, 20.50, 20.51, 20.56, 20.57, 20.60, 20.61, 20.62, 20.63, 20.64, 20.68, 20.91, 20.92, 20.100, 20.103, 20.111, 20.117, 20.132, 20.133, 20.134, 20.144, 20.147, 20.161, 20.163, 20.164, 20.166, 20.170, 20.178, 20.181, 20.182, 20.190, 20.191, 20.202, 20.204, 20.205, 20.211, 20.213, 20.234, 20.235, 20.244, 20.245, 20.246, 20.252, 20.261, 20.262, 20.263, 20.265, and 20.267 [Amended]

■ 82. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 20.22(a)(1) (two times)	ATF	TTB.
§ 20.22(a)(2), paragraph heading	ATF	TTB.
§ 20.22(a)(2), introductory text	ATF	TTB.
§ 20.22(a)(3)	ATF	TTB.
§ 20.22(b)(1)	ATF	TTB.
§ 20.22(b)(2), paragraph heading	ATF	TTB.
§ 20.22(b)(2), introductory text	ATF	TTB.
§ 20.22(b)(3)	ATF	TTB.
§ 20.22(c) (two times)	ATF	TTB.
§ 20.23	ATF	TTB.
§ 20.24	ATF	TTB.
§ 20.25	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 20.27 (two times)	ATF	TTB.
§ 20.28(a) (three times)	ATF	TTB.
§ 20.28(b)	ATF	TTB.
§ 20.37	ATF	TTB.
§ 20.38a(a) (two times)	ATF	TTB.
§ 20.38a(b), paragraph heading	ATF	TTB.
§ 20.38a(b)(6)	ATF	TTB.
§ 20.38a(c)(1)	ATF	TTB.
§ 20.38a(c)(2) (two times)	ATF	TTB.
§ 20.38a(d), paragraph heading	ATF	TTB.
§ 20.38a(d)(3)	ATF	TTB.
§ 20.38a(d)(4)	ATF	TTB.
§ 20.40(a)	ATF	TTB.
§ 20.40(b)	ATF	TTB.
§ 20.40(c)	ATF	TTB.
§ 20.40a(a)	ATF	TTB.
§ 20.40a(b)(2) (two times)	ATF	TTB.
§ 20.40a(d)	ATF	TTB.
§ 20.41(c), introductory text	ATF	TTB.
§ 20.42(a)(11) (two times)	ATF	TTB.
§ 20.42(b)	ATF	TTB.
§ 20.43(a), introductory text	ATF	TTB.
§ 20.43(a)(2)	ATF	TTB.
§ 20.43(b)	ATF	TTB.
§ 20.44, introductory text (two times)	ATF	TTB.
§ 20.45(c)(1)	ATF	TTB.
Undesignated center heading between §§ 20.45 and 20.48.	ATF F 5150.9	Form 5150.9.
§ 20.48(b) (two times)	ATF	TTB.
§ 20.48(c)	ATF	TTB.
§ 20.50	ATF	TTB.
§ 20.51, introductory text (two times)	ATF	TTB.
§ 20.56(a)(1)	ATF	TTB.
§ 20.56(b)	ATF	TTB.
§ 20.56(c)(1)	ATF	TTB.
§ 20.56(c)(3)	ATF	TTB.
§ 20.57(b)(1)	ATF	TTB.
§ 20.57(b)(2)	ATF	TTB.
§ 20.60	ATF	TTB.
§ 20.61	ATF	TTB.
§ 20.62	ATF	TTB.
§ 20.63(a)	ATF	TTB.
§ 20.63(b)	ATF	TTB.
§ 20.64	ATF	TTB.
§ 20.68(a), introductory text	ATF	TTB.
§ 20.91(a) (two times)	ATF	TTB.
§ 20.91(a)	an ATF ruling	a TTB ruling.
§ 20.91(c)	ATF	TTB.
§ 20.92(a)	ATF	TTB.
§ 20.92(b)	ATF	TTB.
§ 20.92(c), introductory text	ATF	TTB.
§ 20.100(a), introductory text	ATF	TTB.
§ 20.100(b)	ATF	TTB.
§ 20.100(b)	Bureau of Alcohol, Tobacco and Firearms	Alcohol Tobacco Tax and Trade Bureau.
§ 20.103	ATF	TTB.
§ 20.111(a) (two times)	ATF	TTB.
§ 20.111(a)	an ATF ruling	a TTB ruling.
§ 20.111(b) (two times)	ATF	TTB.
§ 20.117(d)(2)(iv)	ATF	TTB.
§ 20.132(c)	ATF	TTB.
§ 20.133(a), introductory text	ATF	TTB.
§ 20.133(b)	ATF	TTB.
§ 20.134(b)(1)(ii)	ATF	TTB.
§ 20.134(c)	ATF	TTB.
§ 20.144	ATF	TTB.
§ 20.147(b)	ATF	TTB.
§ 20.161(c)(3)	ATF	TTB.
§ 20.163(c)(2)	ATF	TTB.
§ 20.164(e)	ATF	TTB.
§ 20.166	ATF	TTB.
§ 20.170	ATF	TTB.
§ 20.178(a), introductory text	imformation	information.
§ 20.178(c)(1)	ATF	TTB.
§ 20.181(a)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 20.182(a)	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 20.190 (two times)	ATF	TTB.
§ 20.191	ATF Publication	TTB Publication.
§ 20.191	from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 21153.	as provided in § 20.21(b).
§ 20.202(a)	ATF	TTB.
§ 20.204(b)	ATF	TTB.
§ 20.205(f)	ATF	TTB.
§ 20.211(b)	ATF	TTB.
§ 20.213(a)	ATF	TTB.
§ 20.213(b) (two times)	ATF	TTB.
§ 20.234(b)(3)	ATF	TTB.
§ 20.235(c)	ATF	TTB.
§ 20.244	ATF	TTB.
§ 20.245	ATF	TTB.
§ 20.246	ATF	TTB.
§ 20.252(a)	ATF	TTB.
§ 20.252(b)	ATF	TTB.
§ 20.261 (two times)	ATF	TTB.
§ 20.262(c)	ATF	TTB.
§ 20.262(d)	ATF	TTB.
§ 20.263(c)	ATF	TTB.
§ 20.263(d)	ATF	TTB.
§ 20.265(a), introductory text	ATF	TTB.
§ 20.265(b)	ATF	TTB.
§ 20.267(a) (two times)	ATF	TTB.
§ 20.267(c)	ATF	TTB.

PART 21—FORMULAS FOR DENATURED ALCOHOL AND RUM

■ 83.The authority citation for part 21 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5242, 7805.

■ 84.Amend § 21.2 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 21.2 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 21.3 and 21.5 [Amended]

■ 85. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 21.3(b) (two times)	ATF	TTB.
§ 21.3(c) (two times)	ATF	TTB.
§ 21.3(d)	ATF	TTB.
§ 21.5, introductory text (two times)	ATF	TTB

■ 86. Revise § 21.7 to read as follows:

§ 21.7 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.21, Delegation of the Administrator's Authorities in 27 CFR Part 21, Formulas for Denatured Alcohol and Rum. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 87. Amend § 21.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 21.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.21, Delegation of the Administrator's Authorities in 27 CFR Part 21, Formulas For Denatured Alcohol And Rum.

* * * * *

§§ 21.21, 21.31, 21.33, 21.34, 21.56, 21.65, 21.91, 21.123, and 21.141 [Amended]

■ 88. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 21.21(b) (two times)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 21.21(c)	ATF	TTB.
§ 21.31(b)	ATF	TTB.
§ 21.31(c)	ATF	TTB.
§ 21.33(c)	ATF	TTB.
§ 21.34(c)	ATF	TTB.
§ 21.56(a) (two times)	ATF	TTB.
§ 21.65(a) (three times)	ATF	TTB.
§ 21.91	ATF	TTB.
§ 21.123	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 21.141, Footnote No. 2	ATF	TTB.

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

■ 89. The authority citation for part 22 continues to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

§ 22.11 [Amended]

■ 90. Amend § 22.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 22.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.22, Delegation of the Administrator's Authorities in 27 CFR Part 22, Distribution and Use of Tax-Free Alcohol.

* * * * *

■ 91. Revise § 22.20 to read as follows:

§ 22.20 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.22, Delegation of the Administrator's Authorities in 27 CFR Part 22, Distribution and Use of Tax-Free Alcohol. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 92. Amend § 22.21 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 22.21 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 22.22, 22.23, 22.24, 22.25, 22.26, 22.36, 22.38, 22.39, 22.40, 22.41, 22.42, 22.43, 22.44, 22.45, 22.50, 22.51, 22.57, 22.58, 22.61, 22.62, 22.63, 22.64, 22.68, 22.102, 22.103, 22.111, 22.113, 22.122, 22.124, 22.125, 22.142, 22.154, 22.161, 22.162, 22.164, 22.171, 22.174, 22.175, and 22.176 [Amended]

■ 93. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 22.22(a)(1) (two times)	ATF	TTB.
§ 22.22(a)(2), paragraph heading	ATF	TTB.
§ 22.22(a)(2), introductory text	ATF	TTB.
§ 22.22(a)(3)	ATF	TTB.
§ 22.22(a)(4)	ATF	TTB.
§ 22.22(b)(1)	ATF	TTB.
§ 22.22(b)(2), paragraph heading	ATF	TTB.
§ 22.22(b)(2), introductory text	ATF	TTB.
§ 22.22(b)(3)	ATF	TTB.
§ 22.22(c) (two times)	ATF	TTB.
§ 22.23	ATF	TTB.
§ 22.24(a)	ATF	TTB.
§ 22.24(b)	ATF	TTB.
§ 22.25 (two times)	ATF	TTB.
§ 22.26(a) (three times)	ATF	TTB.
§ 22.26(b)	ATF	TTB.
§ 22.36	ATF	TTB.
§ 22.38(a) (two times)	ATF	TTB.
§ 22.38(b), paragraph heading	ATF	TTB.
§ 22.38(b)(6)	ATF	TTB.
§ 22.38(c)(1)	ATF	TTB.
§ 22.38(c)(2) (two times)	ATF	TTB.
§ 22.38(d), paragraph heading	ATF	TTB.
§ 22.38(d)(3)	ATF	TTB.
§ 22.38(d)(4)	ATF	TTB.
§ 22.39(a)	ATF	TTB.
§ 22.39(b)	ATF	TTB.
§ 22.39(c)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 22.40(a)	ATF	TTB.
§ 22.40(b)(2) (two times)	ATF	TTB.
§ 22.40(d)	ATF	TTB.
§ 22.41(b), introductory text	ATF	TTB.
§ 22.42(a)(11) (two times)	ATF	TTB.
§ 22.42(b)	ATF	TTB.
§ 22.43(a), introductory text	ATF	TTB.
§ 22.43(a)(2)	ATF	TTB.
§ 22.43(b)	ATF	TTB.
§ 22.44, introductory text (two times)	ATF	TTB.
§ 22.45(c)(1)	ATF	TTB.
Undesignated center heading between §§ 22.45 and 22.48.	ATF F 5150.9	Form 5150.9.
§ 22.50	ATF	TTB.
§ 22.51, introductory text	ATF	TTB.
§ 22.57(a)(1)	ATF	TTB.
§ 22.57(b)	ATF	TTB.
§ 22.57(c)(1)	ATF	TTB.
§ 22.57(c)(3)	ATF	TTB.
§ 22.58(b)(1)	ATF	TTB.
§ 22.58(b)(2)	ATF	TTB.
§ 22.61	ATF	TTB.
§ 22.62	ATF	TTB.
§ 22.63	ATF	TTB.
§ 22.64(b)	ATF	TTB.
§ 22.68, introductory text	ATF	TTB.
§ 22.102(c), introductory text	ATF	TTB.
§ 22.103	ATF	TTB.
§ 22.111(c)(3)	ATF	TTB.
§ 22.113(a)	ATF	TTB.
§ 22.113(c)	ATF	TTB.
§ 22.122(a)	ATF	TTB.
§ 22.124(b)	ATF	TTB.
§ 22.125(c)	ATF	TTB.
§ 22.142(a)(1)	ATF	TTB.
§ 22.142(a)(2) (two times)	ATF	TTB.
§ 22.142(c) (two times)	ATF	TTB.
§ 22.142(d)	ATF	TTB.
§ 22.154(b)(3)	ATF	TTB.
§ 22.155(a) (two times)	area supervisor	appropriate TTB officer.
§ 22.161(a)	ATF	TTB.
§ 22.161(d)	ATF	TTB.
§ 22.162	ATF	TTB.
§ 22.164(a)	ATF	TTB.
§ 22.171(a)	ATF	TTB.
§ 22.174	ATF	TTB.
§ 22.175	ATF	TTB.
§ 22.176	ATF	TTB.

PART 24—WINE

■ 94. The authority citation for part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 95. Amend § 24.10 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 12.10 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.24, Delegation of the Administrator's Authorities in 27 CFR Part 24, Wine.

* * * * *

■ 96. Revise § 24.19 to read as follows:

§ 24.19 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.24, Delegation of the Administrator's Authorities in 27 CFR Part 24, Wine. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 97. Amend § 24.20 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 24.20 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 24.21, 24.22, 24.25, 24.26, 24.27, 24.28, 24.29, 24.30, 24.31, 24.32, 24.35, 24.36, 24.37, 24.40, 24.41, 24.50, 24.52, 24.53, 24.54, 24.55, 24.60, 24.62, 24.65, 24.66, 24.69, 24.70, 24.75, 24.77, 24.80, 24.81, 24.82, 24.86, 24.87, 24.91, 24.96, 24.103, 24.105, 24.106, 24.107, 24.108, 24.109, 24.110, 24.111, 24.112, 24.113, 24.115, 24.116, 24.117, 24.120, 24.123, 24.124, 24.125, 24.127, 24.131, 24.135, 24.136, 24.137, 24.140, 24.141, 24.145, 24.146, 24.148, 24.150, 24.154, 24.155, 24.157, 24.159, 24.165, 24.166, 24.167, 24.169, 24.170, 24.176, 24.183, 24.191, 24.197, 24.230, 24.231, 24.235, 24.236, 24.237, 24.242, 24.245, 24.246, 24.247, 24.248, 24.249, 24.250, 24.257, 24.259, 24.260, 24.265, 24.266, 24.267, 24.268, 24.271, 24.272, 24.273, 24.275, 24.276, 24.277, 24.278, 24.279, 24.291, 24.292, 24.293, 24.294, 24.295, 24.296, 24.300, 24.303, 24.304, 24.308, 24.313, 24.314, 24.316, and 24.323 [Amended]

■ 98. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 24.21(a), introductory text (two times)	ATF	TTB.
§ 24.21(b)	ATF	TTB.
§ 24.21(c) (two times)	ATF	TTB.
§ 24.22(a), introductory text (three times)	ATF	TTB.
§ 24.22(b) (two times)	ATF	TTB.
§ 24.22(c)	ATF	TTB.
§ 24.25(a), introductory text	ATF	TTB.
§ 24.25(b)	ATF	TTB.
§ 24.25(c) (four times)	ATF	TTB.
§ 24.25(d)	ATF	TTB.
§ 24.26	ATF	TTB.
§ 24.27	ATF	TTB.
§ 24.28	ATF	TTB.
§ 24.29	ATF	TTB.
§ 24.30 (two times)	ATF	TTB.
§ 24.31 (two times)	ATF	TTB.
§ 24.32	ATF	TTB.
§ 24.35 (two times)	ATF	TTB.
§ 24.36	ATF	TTB.
§ 24.37	ATF	TTB.
§ 24.40	ATF	TTB.
§ 24.41 (three times)	ATF	TTB.
§ 24.50(b)	ATF	TTB.
§ 24.52(a)	ATF	TTB.
§ 24.52(b)	ATF	TTB.
§ 24.53(a)	ATF	TTB.
§ 24.53(b), paragraph heading	ATF	TTB.
§ 24.53(b)(6)	ATF	TTB.
§ 24.53(c)(1)	ATF	TTB.
§ 24.53(c)(2) (two times)	ATF	TTB.
§ 24.53(d), paragraph heading	ATF	TTB.
§ 24.53(d)(3)	ATF	TTB.
§ 24.53(d)(4)	ATF	TTB.
§ 24.54(b)	ATF	TTB.
§ 24.54(c)	ATF	TTB.
§ 24.55(a)	ATF	TTB.
§ 24.60	ATF	TTB.
§ 24.62 (two times)	ATF	TTB.
§ 24.65(a), introductory text	ATF	TTB.
§ 24.65(b), introductory text (two times)	ATF	TTB.
§ 24.65(c), introductory text	ATF	TTB.
§ 24.66(a)	ATF	TTB.
§ 24.69(a), introductory text	ATF	TTB.
§ 24.69(b)	ATF	TTB.
§ 24.70 (two times)	ATF	TTB.
§ 24.75(f)	ATF	TTB.
§ 24.77(b) (three times)	ATF	TTB.
§ 24.77(c)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 24.77(d) (three times)	ATF	TTB.
§ 24.77(e) (two times)	ATF	TTB.
§ 24.80 (two times)	ATF	TTB.
§ 24.81 (four times)	ATF	TTB.
§ 24.82	ATF	TTB.
§ 24.86 (three times)	ATF	TTB.
§ 24.87 (five times)	ATF	TTB.
§ 24.91, introductory text	ATF	TTB.
§ 24.91(c)	ATF	TTB.
§ 24.96(a)	ATF	TTB.
§ 24.103 (four times)	ATF	TTB.
§ 24.105 (three times)	ATF	TTB.
§ 24.106 (two times)	ATF	TTB.
§ 24.107	ATF	TTB.
§ 24.108	ATF	TTB.
§ 24.109, introductory text	ATF	TTB.
§ 24.109(k) (three times)	ATF	TTB.
§ 24.110(c)(1)	ATF	TTB.
§ 24.110(d) (two times)	ATF	TTB.
§ 24.111 (two times)	ATF	TTB.
§ 24.112	ATF	TTB.
§ 24.113	ATF	TTB.
§ 24.115	ATF	TTB.
§ 24.116 (two times)	ATF	TTB.
§ 24.117	ATF	TTB.
§ 24.120	ATF	TTB.
§ 24.123	ATF	TTB.
§ 24.124	ATF	TTB.
§ 24.125(c)	ATF	TTB.
§ 24.127	ATF	TTB.
§ 24.131 (three times)	ATF	TTB.
§ 24.135(b)(1)	ATF	TTB.
§ 24.135(b)(4)	ATF	TTB.
§ 24.135(c) (two times)	ATF	TTB.
§ 24.135(d) (two times)	ATF	TTB.
§ 24.135(e)	ATF	TTB.
§ 24.136(d)	ATF	TTB.
§ 24.137(a)	ATF	TTB.
§ 24.137(b)(1)	ATF	TTB.
§ 24.137(b)(3)	ATF	TTB.
§ 24.137(c)	ATF	TTB.
§ 24.140(a) (two times)	ATF	TTB.
§ 24.140(b)(3)	ATF	TTB.
§ 24.140(b), concluding text	ATF	TTB.
§ 24.140(c)	ATF	TTB.
§ 24.141	ATF	TTB.
§ 24.145	ATF	TTB.
§ 24.146(a)	ATF	TTB.
§ 24.146(b) (two times)	ATF	TTB.
§ 24.146(c)	ATF	TTB.
§ 24.148(b)	ATF	TTB.
§ 24.150 (two times)	ATF	TTB.
§ 24.154	ATF	TTB.
§ 24.155(a), introductory text	ATF	TTB.
§ 24.155(b)	ATF	TTB.
§ 24.155(b) (two times)	Director	Administrator.
§ 24.157 (three times)	ATF	TTB.
§ 24.159 (three times)	ATF	TTB.
§ 24.165	ATF	TTB.
§ 24.166 (five times)	ATF	TTB.
§ 24.167(a)	ATF	TTB.
§ 24.169	ATF	TTB.
§ 24.170(a)	ATF	TTB.
§ 24.170(b)	ATF	TTB.
§ 24.176(b) (two times)	ATF	TTB.
§ 24.183	ATF	TTB.
§ 24.191	ATF	TTB.
§ 24.197	ATF	TTB.
§ 24.230	ATF	TTB.
§ 24.231	ATF	TTB.
§ 24.235(b)	ATF	TTB.
§ 24.235(b)	area supervisor	appropriate TTB officer.
§ 24.236	ATF	TTB.
§ 24.237	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 24.242(a), introductory text	ATF	TTB.
§ 24.242(b), paragraph heading	ATF	TTB.
§ 24.242(b) (two times)	ATF	TTB.
§ 24.242(c)(1), introductory text	ATF	TTB.
§ 24.242(c)(2) (four times)	ATF	TTB.
§ 24.245	ATF	TTB.
§ 24.246(a)(1)	ATF	TTB.
§ 24.247, introductory text	ATF	TTB.
§ 24.248, introductory text	ATF	TTB.
§ 24.249(a)	ATF	TTB.
§ 24.249(b) (two times)	ATF	TTB.
§ 24.249(c)	ATF	TTB.
§ 24.250(a)	ATF	TTB.
§ 24.250(b)(9)	ATF	TTB.
§ 24.250(c)	ATF	TTB.
§ 24.250(d) (two times)	ATF	TTB.
§ 24.257(c)(2)(i)	Director	Administrator.
§ 24.259(c)	ATF	TTB.
§ 24.260	ATF	TTB.
§ 24.265	ATF	TTB.
§ 24.266(a)	ATF	TTB.
§ 24.267	ATF	TTB.
§ 24.268 (three times)	ATF	TTB.
§ 24.272(b)(1)	ATF	TTB.
§ 24.272(b)(3)	ATF	TTB.
§ 24.272(c)(1)	ATF	TTB.
§ 24.272(e) (two times)	ATF	TTB.
§ 24.275(a), introductory text	ATF	TTB.
§ 24.275(a), concluding text	ATF	TTB.
§ 24.275(b)(1)	ATF	TTB.
§ 24.276	ATF	TTB.
§ 24.277(a)	ATF	TTB.
§ 24.278(f) (two times)	ATF	TTB.
§ 24.278(h)	ATF	TTB.
§ 24.279(a) (four times)	ATF	TTB.
§ 24.291(c)	ATF	TTB.
§ 24.292(b)	ATF	TTB.
§ 24.293(b) (two times)	ATF	TTB.
§ 24.294(a) (four times)	ATF	TTB.
§ 24.294(b)	ATF	TTB.
§ 24.295(b)	ATF	TTB.
§ 24.296(a)	ATF	TTB.
§ 24.296(b)	ATF	TTB.
§ 24.300(b) (three times)	ATF	TTB.
§ 24.300(d)	ATF	TTB.
§ 24.300(e)(3)	ATF	TTB.
§ 24.303(d)	ATF	TTB.
§ 24.304(a), introductory text	ATF	TTB.
§ 24.304(b)	ATF	TTB.
§ 24.308(b)	ATF	TTB.
§ 24.313, introductory text (three times)	ATF	TTB.
§ 24.313(d) (two times)	ATF	TTB.
§ 24.314	ATF	TTB.
§ 24.316	ATF	TTB.
§ 24.323 (two times)	ATF	TTB.

PART 25—BEER

■ 99. The authority citation for part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

■ 100. Amend § 25.3 as follows:

■ a. In paragraph (a), remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 25.3 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 101. Revise § 25.6 to read as follows:

§ 25.6 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.25, Delegation of the Administrator's Authorities in 27 CFR Part 25, Beer. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a

request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 25.11 [Amended]

■ 102. Amend § 25.11 as follows:
■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.
■ b. In the definition of ''Barrel'', remove the reference to ''ATF'' and add, it its place, a reference to ''TTB''.
■ c. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 7.10 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.25, Delegation of the Administrator's Authorities in 27 CFR Part 25, Beer.

* * * * *

§§ 25.22, 25.23, 25.24, 25.25, 25.31, 25.42, 25.51, 25.52, 25.61, 25.62, 25.63, 25.64, 25.66, 25.68, 25.71, 25.72, 25.74, 25.75, 25.77, 25.81, 25.85, 25.91, 25.95, 25.96, 25.101, 25.103, 25.104, 25.105, 25.114, 25.117, 25.118, 25.119, 25.120, 25.125, 25.127, 25.141, 25.142, 25.144, 25.152, 25.155, 25.158, 25.165, 25.167, 25.173, 25.182, 25.184, 25.196, 25.213, 25.222, 25.223, 25.225, 25.251, 25.252, 25.272, 25.273, 25.274, 25.276, 25.277, 25.281, 25.282, 25.283, 25.284, 25.286, 25.291, 25.294, 25.297, and 25.300 [Amended]

■ 103. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 25.22	ATF	TTB.
§ 25.23(b), introductory text	ATF	TTB.
§ 25.23(c)	ATF officer through the appropriate regional director (compliance).	TTB officer.
§ 25.23(c)	ATF	TTB.
§ 25.24(a)(7)	ATF	TTB.
§ 25.25(a) (two times)	ATF F	Form.
§ 25.25(a)	appropriate ATF officer	appropriate TTB officer.
§ 25.25(b)	AFT F	Form.
§ 25.31	ATF	TTB.
§ 25.42(a), introductory text	ATF	TTB.
§ 25.42(c)	ATF	TTB.
§ 25.51(five times)	ATF	TTB.
§ 25.52(a)(1), introductory text	ATF	TTB.
§ 25.52(a)(2)	ATF	TTB.
§ 25.52(a)(3), paragraph heading	ATF	TTB.
§ 25.52(a)(3)	ATF	TTB.
§ 25.52(a)(4)	ATF	TTB.
§ 25.52(a)(5)	ATF	TTB.
§ 25.52(b)(1)	ATF	TTB.
§ 25.52(b)(2), introductory text	ATF	TTB.
§ 25.52(b)(3)	ATF	TTB.
§ 25.52(d) (two times)	ATF	TTB.
§ 25.61(a)	ATF	TTB.
§ 25.61(c)	ATF	TTB.
§ 25.62(b)	ATF	TTB.
§ 25.63 (three times)	ATF	TTB.
§ 25.64	ATF	TTB.
§ 25.66(c)(1)	ATF	TTB.
§ 25.66(d)	ATF	TTB.
§ 25.68(b)	ATF	TTB.
§ 25.71(a)(2)	ATF	TTB.
§ 25.71(b)(1)	ATF	TTB.
§ 25.72(b)(2)	ATF	TTB.
§ 25.74	ATF	TTB.
§ 25.75 (two times)	ATF	TTB.
§ 25.77	ATF	TTB.
§ 25.81(b)(1)	ATF F	Form.
§ 25.81(c)	ATF	TTB.
§ 25.81(e) (two times)	ATF	TTB.
§ 25.85	ATF	TTB.
§ 25.91(c)	ATF	TTB.
§ 25.91(d)	ATF	TTB.
§ 25.95 (two times)	ATF	TTB.
§ 25.96	ATF	TTB.
§ 25.101(a), introductory text	ATF	TTB.
§ 25.101(b)	ATF	TTB.
§ 25.103 (two times)	ATF	TTB.
§ 25.104	ATF	TTB.
§ 25.105 (two times)	ATF	TTB.
§ 25.114(a)	ATF	TTB.
§ 25.117 (two times)	ATF	TTB.
§ 25.118, section heading	ATF	TTB.
§ 25.118(f)	ATF	TTB.
§ 25.119(a)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 25.119(b) (two times)	ATF	TTB.
§ 25.120, section heading	ATF	TTB.
§ 25.120(c)	ATF	TTB.
§ 25.120(d)	ATF	TTB.
§ 25.125(a)	ATF	TTB.
§ 25.127	ATF	TTB.
§ 25.141(b)(2) (two times)	ATF	TTB.
§ 25.142(b)(2) (two times)	ATF	TTB.
§ 25.142(c)	ATF	TTB.
§ 25.144(b), introductory text	ATF	TTB.
§ 25.152(a)	ATF	TTB.
§ 25.155 (two times)	ATF	TTB.
§ 25.158(c)	ATF	TTB.
§ 25.165(b)(1)	ATF	TTB.
§ 25.165(b)(3)	ATF	TTB.
§ 25.165(c)(1)	ATF	TTB.
§ 25.165(e)	ATF officer	TTB officer.
§ 25.165(e)	an ATF Procedure	a TTB Procedure.
§ 25.167(a)	ATF	TTB.
§ 25.173(a)	ATF	TTB.
§ 25.182	ATF	TTB.
§ 25.184(d)	ATF	TTB.
§ 25.196(b)	ATF	TTB.
§ 25.213(b), introductory text (two times)	ATF	TTB.
§ 25.213(c)	ATF	TTB.
§ 25.222(a)	ATF	TTB.
§ 25.222(b)	ATF	TTB.
§ 25.223(a)	ATF	TTB.
§ 25.223(b) (five times)	ATF	TTB.
§ 25.225(b)(2) (three times)	ATF	TTB.
§ 25.251(c)	ATF	TTB.
§ 25.252(c)	ATF	TTB.
§ 25.272(a), introductory text	ATF	TTB.
§ 25.272(b)	ATF	TTB.
§ 25.272(c)	ATF	TTB.
§ 25.272(d)	ATF	TTB.
§ 25.272(e)	ATF	TTB.
§ 25.273 (two times)	ATF	TTB.
§ 25.274(a)	ATF	TTB.
§ 25.276(c) (two times)	ATF	TTB.
§ 25.277 (two times)	ATF	TTB.
§ 25.281(c)	ATF	TTB.
§ 25.282(b)	ATF	TTB.
§ 25.282(c)	ATF	TTB.
§ 25.282(d)	ATF	TTB.
§ 25.282(e), paragraph heading	ATF	TTB.
§ 25.282(e)(1)	ATF	TTB.
§ 25.282(e)(2)	ATF	TTB.
§ 25.282(f)	ATF	TTB.
§ 25.283(d)	ATF	TTB.
§ 25.284(b)	ATF	TTB.
§ 25.284(d)	ATF	TTB.
§ 25.286(a)	ATF F	Form.
§ 25.291(c)(2)(ii)	ATF	TTB.
§ 25.291(d)(3)	ATF	TTB.
§ 25.294(c)	ATF	TTB.
§ 25.297(b)(4)	ATF	TTB.
§ 25.300(a)	ATF	TTB.
§ 25.300(c)	ATF	TTB.
§ 25.300(d)(3)	ATF	TTB.

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

■ 104. The authority citation for part 26 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 105. Amend § 26.2 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 26.2 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main

Street, Room 1516, Cincinnati, OH 45202.

■ 106. Revise § 26.3 to read as follows:

§ 26.3 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.26, Delegation of the Administrator's Authorities in 27 CFR Part 26, Liquors and Articles From Puerto Rico and the Virgin Islands. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 107. Amend § 26.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Amend the definition of ''Liquor bottle'' by removing the reference to ''ATF'' and adding, in its place, a reference to ''TTB''.

■ c. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 26.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.26, Delegation of the Administrator's Authorities in 27 CFR Part 26, Liquors and Articles from Puerto Rico and the Virgin Islands.

* * * * *

■ 108. Revise § 26.37 to read as follows:

§ 26.37 Alcohol and Tobacco Tax and Trade Bureau Officers.

Appropriate TTB officers are authorized to collect internal revenue taxes on liquors and articles subject to tax, which are to be shipped to the United States.

§§ 26.40, 26.43, 26.44, 26.46, 26.47, 26.50, 26.50a, 26.51, 26.52, 26.54, 26.62a, 26.65, 26.66, 26.68a, 26.70, 26.70a, 26.71, 26.72, 26.74, 26.75, 26.76, 26.78, 26.79, 26.80, 26.81, 26.87, 26.95, 26.96, 26.104, 26.105, 26.108, 26.110, 26.112, 26.112a, 26.113, 26.116, 26.119, 26.126, 26.128, 26.165, 26.172, 26.173, 26.174, 26.193, 26.194, 26.197, 26.199, 26.199a, 26.199b, 26.199c, 26.199d, 26.199f, 26.204a, 26.205, 26.209, 26.210, 26.220, 26.221, 26.222, 26.224, 26.275, 26.276, 26.303, 26.305, 26.308, 26.309, 26.310, 26.314, 26.316, 26.318, 26.319, and 26.331 [Amended]

■ 109. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 26.40(e)	ATF	TTB.
§ 26.43	ATF	TTB.
§ 26.44(a)	ATF	TTB.
§ 26.46(a)	ATF	TTB.
§ 26.47	ATF	TTB.
§ 26.50(a)	ATF	TTB.
§ 26.50(b)	ATF	TTB.
§ 26.50a(a)	ATF	TTB.
§ 26.50a(b), introductory text	ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850.	TTB Alcohol and Tobacco Laboratory, 6000 Ammendale Road, Ammendale, MD 20705.
§ 26.50a(b)(2), introductory text	ATF	TTB.
§ 26.51(b)(2)	ATF	TTB.
§ 26.52(b)	ATF	TTB.
§ 26.52(c)	ATF	TTB.
§ 26.54	ATF	TTB.
§ 26.62a	ATF	TTB.
§ 26.65	ATF	TTB.
§ 26.66, section heading	ATF	TTB.
§ 26.66(a)	ATF	TTB.
§ 26.66(b) (three times)	ATF	TTB.
§ 26.68a (two times)	ATF	TTB.
§ 26.70	ATF	TTB.
§ 26.70a	ATF	TTB.
§ 26.71(c)	ATF	TTB.
§ 26.71(d)	ATF	TTB.
§ 26.72 (three times)	ATF	TTB.
§ 26.74 (three times)	ATF	TTB.
§ 26.75 (two times)	ATF	TTB.
§ 26.76	ATF	TTB.
§ 26.78, section heading	ATF	TTB.
§ 26.78	ATF	TTB.
§ 26.79, introductory text	ATF	TTB.
§ 26.79(a)	ATF	TTB.
§ 26.80(a) (three times)	ATF	TTB.
§ 26.80(b) (eight times)	ATF	TTB.
§ 26.81(a) (four times)	ATF	TTB.
§ 26.81(b), paragraph heading	ATF	TTB.
§ 26.81(b) (seven times)	ATF	TTB.
§ 26.81(c) (five times)	ATF	TTB.
§ 26.87	ATF	TTB.
§ 26.95(b)	ATF	TTB.
§ 26.96(a) (four times)	ATF	TTB.
§ 26.96(b), paragraph heading	ATF	TTB.
§ 26.96(b) (seven times)	ATF	TTB.
§ 26.96(c) (five times)	ATF	TTB.
§ 26.104(b)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 26.105(a) (four times)	ATF	TTB.
§ 26.105(b), paragraph heading	ATF	TTB.
§ 26.105(b) (seven times)	ATF	TTB.
§ 26.105(c) (five times)	ATF	TTB.
§ 26.108, section heading	ATF	TTB.
§ 26.110 (five times)	ATF	TTB.
§ 26.112(a)	ATF	TTB.
§ 26.112(c)(1) (two times)	ATF	TTB.
§ 26.112(c)(4)	ATF	TTB.
§ 26.112(e) (three times)	ATF	TTB.
§ 26.112a(b)(1)	ATF	TTB.
§ 26.112a(b)(3)	ATF	TTB.
§ 26.112a(c)(1)	ATF	TTB.
§ 26.112a(e)	regional director (compliance)	appropriate TTB officer.
§ 26.112a(e)	ATF	TTB.
§ 26.113(c)	ATF	TTB.
§ 26.113(d)	ATF	TTB.
§ 26.113(e)	ATF	TTB.
§ 26.116	ATF	TTB.
§ 26.119 (two times)	ATF	TTB.
§ 26.126 (three times)	ATF	TTB.
§ 26.128 (five times)	ATF	TTB.
§ 26.165(a), introductory text	ATF	TTB.
§ 26.165(a)(1)	ATF	TTB.
§ 26.172(b)	ATF	TTB.
§ 26.173(a) (two times)	ATF	TTB.
§ 26.173(c), introductory text	ATF	TTB.
§ 26.173(c)(2)(viii)	ATF	TTB.
§ 26.174(a)	ATF	TTB.
§ 26.174(e)	ATF	TTB.
§ 26.193(b)	ATF	TTB.
§ 26.194(a)	appropriate ATF officer	the appropriate TTB officer.
§ 26.194(b)	ATF	TTB.
§ 26.197	ATF	TTB.
§ 26.199, section heading	ATF	TTB.
§ 26.199	ATF	TTB.
§ 26.199a(a) (two times)	ATF	TTB.
§ 26.199b (three times)	ATF	TTB.
§ 26.199c	ATF	TTB.
§ 26.199d, introductory text	ATF	TTB.
§ 26.199d(b) (four times)	ATF	TTB.
§ 26.199f(a)	ATF	TTB.
§ 26.204a(b), introductory text	ATF National Laboratory, 1401 Research Boulevard, Rockville, MD 20850.	TTB Alcohol and Tobacco Laboratory, 6000 Ammendale Road, Ammendale, MD 20705.
§ 26.205(a)(8)(iv)	ATF	TTB.
§ 26.209	ATF	TTB.
§ 26.210(a)	ATF	TTB.
§ 26.220(a)	ATF	TTB.
§ 26.220(b)	ATF	TTB.
§ 26.221(b)(2)	ATF	TTB.
§ 26.222(b)	ATF	TTB.
§ 26.222(c)	ATF	TTB.
§ 26.224	ATF	TTB.
§ 26.275(a) (two times)	ATF	TTB.
§ 26.276 (two times)	ATF	TTB.
§ 26.303	ATF	TTB.
§ 26.305	ATF	TTB.
§ 26.308(b)	ATF	TTB.
§ 26.309(a) (two times)	ATF	TTB.
§ 26.309(c), introductory text	ATF	TTB.
§ 26.310(a)	ATF	TTB.
§ 26.310(e)	ATF	TTB.
§ 26.314(a) (three times)	ATF	TTB.
§ 26.314(b), introductory text (three times)	ATF	TTB.
§ 26.314(b), concluding text (four times)	ATF	TTB.
§ 26.316 (two times)	ATF	TTB.
§ 26.318	ATF	TTB.
§ 26.319	ATF	TTB.
§ 26.331(a), introductory text	ATF	TTB.
§ 26.331(b), introductory text (two times)	ATF	TTB.
§ 26.331, concluding text (two times)	ATF	TTB.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

■ 110. The authority citation for part 27 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

■ 111. Amend § 27.2 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 27.2 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB. Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 112. Revise § 27.3 to read as follows:

§ 27.3 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.27, Delegation of the Administrator's Authorities in 27 CFR Part 27, Importation of Distilled Spirits, Wines, and Beer. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 113. Amend § 27.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Amend the definition of ''Liquor bottle'' by removing the reference to ''ATF'' and adding, in its place, a reference to ''TTB''.

■ c. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 27.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.27, Delegation of the Administrator's Authorities in 27 CFR Part 27, Importation of Distilled Spirits, Wines, and Beer.

* * * * *

§§ 27.30, 27.58, 27.59, 27.76, 27.77, 27.136, 27.137, 27.171, 27.172, 27.175, 27.181, 27.182, 27.204, 27.206, 27.208, 27.209, and 27.221 [Amended]

■ 114. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 27.30(a)	ATF	TTB.
§ 27.58 (two times)	ATF	TTB.
§ 27.59	ATF	TTB.
§ 27.76(a)	ATF	TTB.
§ 27.76(b), introductory text	ATF National Laboratory, 1401 Research Boulevard, Attn: NBA, Rockville, MD 20850.	TTB Alcohol and Tobacco Laboratory, 6000 Ammendale Road, Ammendale, MD 20705.
§ 27.77(b), introductory text	ATF Laboratory, 1401 Research Boulevard, Rockville, MD 20850.	TTB Alcohol and Tobacco Laboratory, 6000 Ammendale Road, Ammendale, MD 20705.
§ 27.77(d) (two times)	ATF	TTB.
§ 27.136(a) (two times)	ATF	TTB.
§ 27.137 (three times)	ATF	TTB.
§ 27.171	ATF	TTB.
§ 27.172	ATF	TTB.
§ 27.175	ATF	TTB.
§ 27.181(a)	ATF	TTB.
§ 27.182(b)(1)	ATF	TTB.
§ 27.182(d)	ATF	TTB.
§ 27.204(a) (four times)	ATF	TTB.
§ 27.204(b), introductory text (three times)	ATF	TTB.
§ 27.204, concluding text (four times)	ATF	TTB.
§ 27.206 (two times)	ATF	TTB.
§ 27.208	ATF	TTB.
§ 27.209	ATF	TTB.
§ 27.221(a), introductory text	ATF	TTB.
§ 27.221(b), introductory text (two times)	ATF	TTB.
§ 27.221, concluding text (two times)	ATF	TTB.

PART 28—EXPORTATION OF ALCOHOL

■ 115. The authority citation for part 28 continues to read as follows:

Authority: 5 U.S.C. 552(a); 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805; 27 U.S.C. 203, 205; 44 U.S.C. 3504(h).

■ 116. Revise § 28.4 to read as follows:

§ 28.4 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.28, Delegation of the Administrator's Authorities in 27 CFR Part 28, Exportation of Alcohol. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

PART 29—STILLS AND MISCELLANEOUS REGULATIONS

■ 117. The authority citation for part 29 continues to read as follows:

Authority: 26 U.S.C. 5002, 5101, 5102, 5179, 5291, 5601, 5615, 5687, 7805.

■ 118. Revise § 29.42 to read as follows:

§ 29.42 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.29, Delegation of the Administrator's Authorities in 27 CFR Part 29, Stills and Miscellaneous Regulations. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 119. Amend § 29.43 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 29.43 Forms prescribed.

* * * * *

■ (b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§ 29.45 [Amended]

■ 120. Amend § 29.45 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 29.45 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.29, Delegation of the Administrator's Authorities in 27 CFR Part 29, Stills and Miscellaneous Regulations.

* * * * *

§§ 29.47, 27.49, 29.55, and 29.59 [Amended]

■ 121. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 29.47(a) (two times)	ATF	TTB.
§ 29.47(c)	ATF	TTB.
§ 29.49(a)	ATF	TTB.
§ 29.49(b)	ATF	TTB.
§ 29.49(c)	ATF	TTB.
§ 29.55(a) (two times)	ATF	TTB.
§ 29.55(c)	ATF	TTB.
§ 29.59	ATF	TTB.

PART 30—GAUGING MANUAL

■ 122. The authority citation for part 30 continues to read as follows:

Authority: 26 U.S.C. 7805.

§ 30.1 [Amended]

■ 123. Amend § 30.1(c) by removing the reference to ''ATF''.

§ 30.11 [Amended]

■ 124. Amend § 30.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. In the definition of ''Bulk conveyance'' remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ c. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 30.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.30, Delegation of the Administrator's Authorities in 27 CFR Part 30, Gauging Manual.

* * * * *

§§ 30.21, 30.24, 30.31, 30.36, 30.43, and 30.51 [Amended]

■ 125. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 30.21(c), paragraph heading	ATF	TTB.
§ 30.21(c) (five times)	ATF	TTB.
§ 30.24(a)	ATF	TTB.
§ 30.24(b)	ATF	TTB.
§ 30.31(b)	ATF	TTB.
§ 30.36	ATF	TTB.
§ 30.43	ATF	TTB.
§ 30.51	ATF official	TTB officer.

PART 31—ALCOHOL BEVERAGE DEALERS

■ 126. The authority citation for part 31 continues to read as follows:

Authority: 26 U.S.C. 5001, 5002, 5111–5114, 5116, 5117, 5121–5124, 5142, 5143, 5145, 5146, 5148, 5206, 5207, 5301, 5352, 5555, 5613, 5681, 5691, 6001, 6011, 6061, 6065, 6071, 6091, 6109, 6151, 6311, 6314, 6402, 6511, 6601, 6621, 6651, 6657, 7011, 7805.

■ 127. Amend § 31.11 as follows:

■ a. In the definition of ''Liquor bottle'', remove the word ''Administrator'' and add, in its place, the words ''appropriate TTB officer''.

■ b. Revise the definition of ''Appropriate TTB officer'' to read as follows:

§ 31.11 Meaning of terms.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.31, Delegation of the Administrator's Authorities in 27 CFR Part 31, Alcohol Beverage Dealers.

* * * * *

■ 128. Add a new § 31.43 to read as follows:

§ 31.43 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.31, Delegations of the Administrator's Authorities in 27 CFR Part 31, Alcohol Beverage Dealers. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 31.42, 31.55, 31.94, 31.131, 31.135, 31.136, 31.137, 31.138, 31.223, 31.230, 31.234, 31.236, and 31.237 [Amended]

■ 129. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 31.42	Any TTB officer	Any appropriate TTB officer.
§ 31.55(c)	to TTB officers	to appropriate TTB officers.
§ 31.94	TTB	the appropriate TTB officer.
§ 31.131	any TTB officer	any appropriate TTB officer.
§ 31.135	an TTB officer	an appropriate TTB officer.
§ 31.135	the TTB officer	the appropriate TTB officer.
§ 31.136	an TTB officer	an appropriate TTB officer.
§ 31.137	the TTB officer	the appropriate TTB officer.
§ 31.138	A TTB officer	The appropriate TTB officer.
§ 31.223	TTB officers	appropriate TTB officers.
§ 31.230(d)	TTB officers	appropriate TTB officers.
§ 31.234(a)	TTB officers	appropriate TTB officers.
§ 31.236	TTB officers	appropriate TTB officers.
§ 31.237	TTB officers	appropriate TTB officers.

PART 40—MANUFACTURE OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 130. The authority citation for part 40 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5761–5763, 6061, 6065, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6404, 6423, 6676, 6806, 7011, 7212, 7325, 7342, 7502, 7503, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 131. Amend § 40.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'', ''Associate Director (Compliance Operations)'', ''ATF'', ''ATF officer'', ''Director'', ''Regions'', and ''Regional director''.

■ b. In the definition of ''Permit number'' remove the words ''regional director (compliance)'' and add, in their place, the words ''appropriate TTB officer''.

■ c. Add, in alphabetical order, definitions of ''Administrator'', ''Appropriate TTB officer'', and ''TTB'' to read as follows:

§ 40.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.40, Delegation of the Administrator's Authorities in 27 CFR Part 40, Manufacture of Tobacco Products and Cigarette Papers and Tubes.

* * * * *

TTB. The Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury.

* * * * *

§§ 40.22, 40.33, 40.35, and 40.36 [Amended]

■ 132. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 40.22(b)(1) (four times)	ATF	TTB.
§ 40.22(b)(2)(i)	ATF	TTB.
§ 40.22(b)(2)(ii)	ATF's	TTB's.
§ 40.22(b)(2)(iii)	ATF	TTB.
§ 40.33(a) (two times)	ATF	TTB.
§ 40.33(b), paragraph heading	ATF	TTB.
§ 40.33(b)(6)	ATF	TTB.
§ 40.33(c)(1)	ATF	TTB.
§ 40.33(c)(2) (two times)	ATF	TTB.
§ 40.33(d), paragraph heading	ATF	TTB.
§ 40.33(d)(3)	ATF	TTB.
§ 40.33(d)(4)	ATF	TTB.
§ 40.35(a)	ATF	TTB.
§ 40.35(b)	ATF	TTB.
§ 40.35(c)	ATF	appropriate TTB.
§ 40.36(a)	ATF	TTB.
§ 40.36(b)(2)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 40.36(d)	ATF	TTB.

■ 133. Amend § 40.41 as follows:

■ a. In paragraph (a) remove the reference to ''Director'' and add, in its place, a reference to appropriate ''TTB officer''.

■ b. Revise paragraph (b) to read as follows:

§ 40.41 Forms prescribed.

* * * * *

■ (b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 40.42, 40.43, 40.44, 40.45, 40.46, and 40.47 [Amended]

■ 134. Amend the above sections as follows:

Amend:	by removing:	and replacing it with:
§ 40.42, section heading	ATF	Appropriate TTB.
§ 40.42 (three times)	ATF	appropriate TTB.
§ 40.43	ATF	TTB.
§ 40.44	regional director (compliance)	appropriate TTB officer.
§ 40.45, introductory text (two times)	Director	appropriate TTB officer.
§ 40.45, concluding text	regional director (compliance) for transmittal to the Director.	appropriate TTB officer.
§ 40.45, concluding text (three times)	Director	appropriate TTB officer.
§ 40.46, introductory text	Director	appropriate TTB officer.
§ 40.46, concluding text	judgment of the Director	judgment of the appropriate TTB officer.
§ 40.46, concluding text	regional director (compliance) for transmittal to the Director.	appropriate TTB officer.
§ 40.46, concluding text	Director	appropriate TTB officer.
§ 40.47	The Director may authorize	The appropriate TTB officer may authorize.
§ 40.47	regional director (compliance) for the region in which the factory is located, for his transmittal to the Director.	TTB officer.
§ 40.47 (two times)	Director	appropriate TTB officer.

■ 135. Revise § 40.49 to read as follows:

§ 40.49 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate DTTB. officers. These DTTB. officers are specified in DTTB. Order 1135.40, Delegation of the Administrator's Authorities in 27 CFR Part 40, Manufacture of Tobacco Products and Cigarette Papers and Tubes. You may obtain a copy of this order by accessing the DTTB. Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 40.62, 40.63, 40.64, 40.68, 40.69, 40.70, 40.71, 40.72, 40.73, 40.74, 40.75, 40.76, 40.101, 40.102, 40.103, 40.113, 40.131, 40.136, 40.138, 40.139, 40.140, 40.162, 40.165a, 40.166, 40.167, 40.168, 40.181, 40.184, 40.185, 40.201, 40.202, 40.212, 40.217, 40.251, 40.253, 40.254, 40.255, 40.281, 40.282, 40.283, 40.284, 40.286, 40.287, 40.301, 40.311, 40.312, 40.313, 40.331, 40.332, 40.355, 40.356, 40.357, 40.359, 40.373, 40.374, 40.375, 40.382, 40.383, 40.384, 40.385, 40.386, 40.392, 40.393, 40.394, 40.395, 40.396, 40.401, 40.405, 40.406, 40.407, 40.408, 40.410, 40.422, 40.425, 40.431, 40.433, 40.435, 40.471, 40.472, 40.473, 40.474, 40.475, 40.476, 40.477, and 40.478 [Amended]

■ 136. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 40.62	regional director (compliance) for the region in which the proposed factory officer will be located.	appropriate TTB officer.
§ 40.63	same regional director (compliance)	appropriate TTB officer.
§ 40.64	same regional director (compliance)	appropriate TTB officer.
§ 40.68 (three times)	regional director (compliance)	appropriate TTB officer.
§ 40.69, introductory text	regional director (compliance)	appropriate TTB officer.
§ 40.70	regional director (compliance)	appropriate TTB officer.
§ 40.71	regional director (compliance)	appropriate TTB officer.
§ 40.72	Director	appropriate TTB officer.
§ 40.73 (three times)	regional director (compliance)	appropriate TTB officer.
§ 40.74 (three times)	regional director (compliance)	appropriate TTB officer.
§ 40.75	regional director (compliance)	appropriate TTB officer.
§ 40.76	ATF	appropriate TTB.
§ 40.101	regional director (compliance)	appropriate TTB officer.

Amend:	by removing:	and replacing it with:
§ 40.102	regional director (compliance)	appropriate TTB officer.
§ 40.103 (two times)	regional director (compliance)	appropriate TTB officer.
§ 40.113	regional director (compliance)	appropriate TTB officer.
§ 40.131(a)	regional director (compliance)	appropriate TTB officer.
§ 40.136(b)	regional director (compliance)	appropriate TTB officer.
§ 40.136(e)	regional director (compliance)	appropriate TTB officer.
§ 40.138	regional director (compliance)	appropriate TTB officer.
§ 40.139	regional director (compliance)	appropriate TTB officer.
§ 40.140 (three times)	regional director (compliance)	appropriate TTB officer.
§ 40.162	ATF	TTB.
§ 40.162	regional director (compliance)	appropriate TTB officer.
§ 40.165a(b)(1)	regional director (compliance) for each region in which taxes are paid.	appropriate TTB officer.
§ 40.165a(b)(3)	regional director (compliance)	appropriate TTB officer.
§ 40.165a(c)(1)	ATF	TTB.
§ 40.165a(e)	regional director (compliance)	appropriate TTB officer.
§ 40.165a(e)	ATF	TTB.
§ 40.166	regional director (compliance)	appropriate TTB officer.
§ 40.167(a)	ATF	TTB.
§ 40.167(b)	ATF	TTB.
§ 40.168	regional director (compliance)	appropriate TTB officer.
§ 40.168	''Bureau of Alcohol, Tobacco and Firearms''	''Alcohol and Tobacco Tax and Trade Bureau''.
§ 40.181 (two times)	regional director (compliance)	appropriate TTB officer.
§ 40.184(b)(1)	ATF	appropriate TTB.
§ 40.185	ATF	appropriate TTB.
§ 40.201 (two times)	ATF	appropriate TTB.
§ 40.201	regional director (compliance)	appropriate TTB officer.
§ 40.202(a)	regional director (compliance)	appropriate TTB officer.
§ 40.202(b)	Associate Director (Compliance Operations), Attn: Industry Control Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.	appropriate TTB officer.
§ 40.212 (three times)	Director	appropriate TTB officer.
§ 40.217	regional director (compliance) for the region in which the products are to be repackaged.	appropriate TTB officer.
§ 40.217	regional director (compliance)	appropriate TTB officer.
§ 40.217	ATF	appropriate TTB.
§ 40.251 (two times)	regional director (compliance)	appropriate TTB officer.
§ 40.253 (four times)	regional director (compliance)	appropriate TTB officer.
§ 40.253	ATF	appropriate TTB.
§ 40.254	regional director (compliance)	appropriate TTB officer.
§ 40.255	ATF	appropriate TTB.
§ 40.255 (two times)	Regional Director (Compliance)	appropriate TTB officer.
§ 40.281	satisfaction of the regional director (compliance).	satisfaction of the appropriate TTB officer.
§ 40.281	regional director (compliance) for the region in which the tax or liability was assessed.	appropriate TTB officer.
§ 40.282	regional director (compliance) for the region in which the products were removed.	appropriate TTB officer.
§ 40.282	regional director (compliance) for the region in which the products are assembled.	appropriate TTB officer.
§ 40.282	regional director (compliance)	appropriate TTB officer.
§ 40.283	satisfactory to the regional director (compliance).	satisfactory to the appropriate TTB officer.
§ 40.283	regional director (compliance) for the region in which the tax was paid, or where the tax was paid in more than one region with the regional director (compliance) for any one of the regions in which the tax was paid.	appropriate TTB officer.
§ 40.283	action by the regional director (compliance)	action by the appropriate TTB officer.
§ 40.284 (two times)	regional director (compliance) for the region in which the factory is located.	appropriate TTB officer.
§ 40.284	satisfaction of the regional director (compliance).	satisfaction of the appropriate TTB officer.
§ 40.284	claim by the regional director (compliance)	claim by the appropriate TTB officer.
§ 40.286	regional director (compliance) for the region in which the tax was paid.	appropriate TTB officer.
§ 40.287	regional director (compliance) for the region in which the factory is located.	appropriate TTB officer.
§ 40.287 (two times)	regional director (compliance)	appropriate TTB officer.
§ 40.301	regional director (compliance)	appropriate TTB officer.
§ 40.311(a)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 40.311(a)	regional director (compliance) for the region in which the products are assembled.	appropriate TTB officer.
§ 40.312, section heading	regional director (compliance)	the appropriate TTB officer.
§ 40.312	regional director (compliance) may assign a TTB officer to.	appropriate TTB officer may assign a TTB officer to.
§ 40.313	regional director's (compliance)	appropriate TTB officer's.
§ 40.313 (two times)	regional director (compliance)	appropriate TTB officer.
§ 40.313	ATF	appropriate TTB.
§ 40.331 (two times)	regional director (compliance)	appropriate TTB officer.
§ 40.332 (three times)	regional director (compliance)	appropriate TTB officer.
§ 40.332	Director	Administrator.
§ 40.355(a)	ATF	TTB.
§ 40.355(b)(2)	regional director (compliance)	appropriate TTB officer.
§ 40.355(d)	ATF	TTB.
§ 40.356 (two times)	ATF	TTB.
§ 40.356	regional director (compliance)	appropriate TTB officer.
§ 40.357(a)(3)	ATF	TTB.
§ 40.357(b)(1)	regional director (compliance), for each region in which taxes are paid.	appropriate TTB officer.
§ 40.357(b)(3)	regional director (compliance)	appropriate TTB officer.
§ 40.357(b)(3)	ATF	TTB.
§ 40.357(c)(1) (three times)	ATF	TTB.
§ 40.357(e)	regional director (compliance)	appropriate TTB officer.
§ 40.357(e)	AFT	TTB.
§ 40.359 (four times)	ATF	TTB.
§ 40.373(a) (two times)	ATF	TTB.
§ 40.373(b), paragraph heading and introductory text.	ATF	TTB.
§ 40.373(b)(6)	ATF	TTB.
§ 40.373(c)(1)	ATF	TTB.
§ 40.373(c)(2) (two times)	ATF	TTB.
§ 40.373(d), paragraph heading	ATF	TTB.
§ 40.373(d)(3)	ATF	TTB.
§ 40.373(d)(4)	ATF	TTB.
§ 40.374(a)	ATF	TTB.
§ 40.374(b)	ATF	TTB.
§ 40.374(c)	ATF officers	the appropriate TTB officers.
§ 40.375(a)	ATF	TTB.
§ 40.375(b)(2) (two times)	ATF	TTB.
§ 40.375(d)	ATF	TTB.
§ 40.382, section heading	ATF	TTB.
§ 40.382	Any ATF officer	the appropriate TTB officer.
§ 40.382 (two times)	any ATF officer	the appropriate TTB officer.
§ 40.382	any AFT officer	the appropriate TTB officer.
§ 40.383	ATF	TTB.
§ 40.384	regional director (compliance)	appropriate TTB officer.
§ 40.385, introductory text (three times)	Director	appropriate TTB officer.
§ 40.385, concluding text	regional director (compliance) for transmittal to the Director.	appropriate TTB officer.
§ 40.385, concluding text (three times)	Director	appropriate TTB officer.
§ 40.386, introductory text	Director	appropriate TTB officer.
§ 40.386(c)	judgment of the Director	judgment of the appropriate TTB officer.
§ 40.386(c)	regional director (compliance) for transmittal to the Director.	appropriate TTB officer.
§ 40.386(c)	authorization of the Director	authorization of the appropriate TTB officer.
§ 40.392	ATF	TTB.
§ 40.393 (two times)	ATF	TTB.
§ 40.393 (three times)	regional director (compliance)	appropriate TTB officer.
§ 40.394 (two times)	regional director (compliance)	appropriate TTB officer.
§ 40.395	regional director (compliance)	appropriate TTB officer.
§ 40.396 (two times)	regional director (compliance)	appropriate TTB officer.
§ 40.401(b)	regional director (compliance)	appropriate TTB officer.
§ 40.405 (three times)	regional director (compliance)	appropriate TTB officer.
§ 40.406(b)	regional director (compliance)	appropriate TTB officer.
§ 40.406(d)	regional director (compliance)	appropriate TTB officer.
§ 40.407	ATF	TTB.
§ 40.408 (two times)	regional director (compliance)	appropriate TTB officer.
§ 40.408	ATF	appropriate TTB.
§ 40.410 (four times)	regional director (compliance)	appropriate TTB officer.
§ 40.422, introductory text	ATF	TTB.
§ 40.425	ATF	appropriate TTB.
§ 40.431, introductory text (two times)	ATF Form	TTB Form.
§ 40.431, introductory text	an ATF officer	the appropriate TTB officer.
§ 40.433	any ATF	the appropriate TTB.

Amend:	by removing:	and replacing it with:
§ 40.435	any ATF	the appropriate TTB.
§ 40.471	ATF	TTB.
§ 40.471	satisfaction of the regional director (compliance).	satisfaction of the appropriate TTB officer.
§ 40.471	regional director (compliance) for the region in which the tax or liability was assessed.	appropriate TTB officer.
§ 40.472 (three times)	ATF	TTB.
§ 40.472	regional director (compliance) for the region in which the articles were removed.	appropriate TTB officer.
§ 40.472	regional director (compliance) for the region in which the articles are assembled.	appropriate TTB officer.
§ 40.472	claim by the regional director (compliance)	claim by the appropriate TTB officer.
§ 40.473	satisfactory to the regional director (compliance).	satisfactory to the appropriate TTB officer.
§ 40.473 (three times)	ATF	TTB.
§ 40.473	regional director (compliance) for the region in which the tax was paid, or where the tax was paid in more than one region with the regional director (compliance) for any one of the regions in which the tax was paid.	appropriate TTB officer.
§ 40.473	Upon action by the regional director (compliance).	Upon action by the TTB officer.
§ 40.474 (two times)	regional director (compliance) for the region in which the factory is located.	appropriate TTB officer.
§ 40.474 (two times)	ATF	TTB.
§ 40.474	to the satisfaction of the regional director (compliance).	to the satisfaction of the appropriate TTB officer.
§ 40.474	Upon action on the claim by the regional director (compliance).	Upon action on the claim by the appropriate TTB officer.
§ 40.475	regional director (compliance)	appropriate TTB officer.
§ 40.476	ATF	TTB.
§ 40.476	regional director (compliance) for the region in which the articles are assembled.	appropriate TTB officer.
§ 40.477, section heading	regional director (compliance)	the appropriate TTB officer.
§ 40.477	regional director (compliance) may assign an ATF officer to.	appropriate TTB officer may assign a TTB officer to.
§ 40.478	regional director's (compliance)	appropriate TTB officer's.
§ 40.478	regional director (compliance)	appropriate TTB officer.
§ 40.478	ATF Form	TTB Form.
§ 40.478	ATF officer	appropriate TTB officer.

PART 44—EXPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, OR WITH DRAWBACK OF TAX

■ 137. The authority citation for part 44 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

■ 138. Amend § 44.2 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 44.2 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 139. Revise § 44.3 to read as follows:

§ 44.3 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.44, Delegation of the Administrator's Authorities in 27 CFR Part 44, Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 140. Amend § 44.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 44.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.44, Delegation of the Administrator's Authorities in 27 CFR Part 44, Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax.

* * * * *

§§ 44.33, 44.35, 44.36, 44.62, 44.66, 44.67, 44.70, 44.71, 44.72, 44.73, 44.82, 44.83, 44.84, 44.91, 44.92, 44.93, 44.104, 44.105, 44.106, 44.112, 44.121, 44.123, 44.124, 44.125, 44.127, 44.129, 44.142, 44.143, 44.145, 44.147, 44.150, 44.152, 44.153, 44.154, 44.161, 44.162, 44.184, 44.199, 44.200, 44.201, 44.202, 44.203, 44.204, 44.205, 44.206, 44.207, 44.207a, 44.208, 44.209, 44.210, 44.212, 44.213, 44.222, 44.223, 44.224, 44.225, 44.226, 44.227, 44.228, 44.229, 44.230, 44.231, 44.232, 44.242, 44.244, 44.245, 44.246, 44.257, 44.258, 44.259, 44.260, 44.261, 44.262, 44.263, 44.264, 44.264a, 44.265, 44.266, and 44.267 [Amended]

■ 141. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 44.33(a) (two times)	ATF	TTB.
§ 44.33(b), paragraph heading	ATF	TTB.
§ 44.33(b)(6)	ATF	TTB.
§ 44.33(c)(1)	ATF	TTB.
§ 44.33(c)(2) (two times)	ATF	TTB.
§ 44.33(d), paragraph heading	ATF	TTB.
§ 44.33(d)(3)	ATF	TTB.
§ 44.33(d)(4)	ATF	TTB.
§ 44.35(a) (two times)	ATF	TTB.
§ 44.35(b)	ATF	TTB.
§ 44.35(c)	ATF	TTB.
§ 44.36(a)	ATF	TTB.
§ 44.36(b)(2) (two times)	ATF	TTB.
§ 44.36(d)	ATF	TTB.
§ 44.62	ATF	TTB.
§ 44.66	ATF	TTB.
§ 44.67(a) (two times)	ATF	TTB.
§ 44.70, section heading	ATF	TTB.
§ 44.70 (three times)	ATF	TTB.
§ 44.71	ATF	TTB.
§ 44.72, introductory text (two times)	ATF	TTB.
§ 44.72(c) (four times)	ATF	TTB.
§ 44.73, introductory text	ATF	TTB.
§ 44.73(c) (three times)	ATF	TTB.
§ 44.82	ATF	TTB.
§ 44.83	ATF	TTB.
§ 44.84	ATF	TTB.
§ 44.91 (three times)	ATF	TTB.
§ 44.92 (three times)	ATF	TTB.
§ 44.93 (two times)	ATF	TTB.
§ 44.104	ATF	TTB.
§ 44.105	ATF	TTB.
§ 44.106	ATF	TTB.
§ 44.112	ATF	TTB.
§ 44.121(b)	ATF	TTB.
§ 44.123	ATF	TTB.
§ 44.124 (three times)	ATF	TTB.
§ 44.125 (two times)	ATF	TTB.
§ 44.127	ATF	TTB.
§ 44.129(a) (two times)	ATF	TTB.
§ 44.142(e)	ATF	TTB.
§ 44.143(a)	ATF	TTB.
§ 44.143(b) (two times)	ATF	TTB.
§ 44.145	ATF	TTB.
§ 44.147	ATF	TTB.
§ 44.150	ATF	TTB.
§ 44.152 (six times)	ATF	TTB.
§ 44.153	ATF	TTB.
§ 44.154 (three times)	ATF	TTB.
§ 44.161 (two times)	ATF	TTB.
§ 44.162 (three times)	ATF	TTB.
§ 44.162	Director	Administrator.
§ 44.184 (three times)	ATF	TTB.
§ 44.199 (two times)	ATF	TTB.
§ 44.200	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 44.201 (two times)	ATF	TTB.
§ 44.202	ATF	TTB.
§ 44.203	ATF	TTB.
§ 44.204	ATF	TTB.
§ 44.205(b)(3)	ATF	TTB.
§ 44.206	ATF	TTB.
§ 44.207	ATF	TTB.
§ 44.207a	ATF	TTB.
§ 44.208	ATF	TTB.
§ 44.209	ATF	TTB.
§ 44.210 (five times)	ATF	TTB.
§ 44.212	ATF	TTB.
§ 44.213 (five times)	ATF	TTB.
§ 44.222 (three times)	ATF	TTB.
§ 44.223 (two times)	ATF	TTB.
§ 44.224, section heading	ATF	TTB.
§ 44.224(a) (three times)	ATF	TTB.
§ 44.224(b)	ATF	TTB.
§ 44.224(d), paragraph heading	ATF	TTB.
§ 44.224(d) (three times)	ATF	TTB.
§ 44.224(e) (two times)	ATF	TTB.
§ 44.225 (two times)	ATF	TTB.
§ 44.226 (two times)	ATF	TTB.
§ 44.227	ATF	TTB.
§ 44.228 (two times)	ATF	TTB.
§ 44.229	ATF	TTB.
§ 44.230	ATF	TTB.
§ 44.231 (two times)	ATF	TTB.
§ 44.232 (two times)	ATF	TTB.
§ 44.242 (two times)	ATF	TTB.
§ 44.244	ATF	TTB.
§ 44.245 (three times)	ATF	TTB.
§ 44.246 (two times)	ATF	TTB.
§ 44.257 (two times)	ATF	TTB.
§ 44.258	ATF	TTB.
§ 44.259	ATF	TTB.
§ 44.260	ATF	TTB.
§ 44.261	ATF	TTB.
§ 44.262	ATF	TTB.
§ 44.263	ATF	TTB.
§ 44.264	ATF	TTB.
§ 44.264a	ATF	TTB.
§ 44.265	ATF	TTB.
§ 44.266	ATF	TTB.
§ 44.267 (two times)	ATF	TTB.

PART 45—REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES, WITHOUT PAYMENT OF TAX, FOR USE OF THE UNITED STATES

■ 142. The authority citation for part 45 continues to read as follows:

Authority: 26 U.S.C. 5703, 5704, 5705, 5723, 5741, 5751, 5762, 5763, 6313, 7212, 7342, 7606, 7805, 44 U.S.C. 3504(h).

■ 143. Amend § 45.11 as follows:

■ a. Remove the definition of ''Appropriate ATF officer''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:.

§ 45.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.45, Delegation of the Administrator's Authorities in 27 CFR Part 45, Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for Use of the United States.

* * * * *

§§ 45.21, 45.22, 45.23, and 45.24 [Amended]

■ 144. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 45.21, introductory text	ATF	TTB.
§ 45.21, introductory text	Director	appropriate TTB officer.
§ 45.21, concluding text (four times)	ATF	TTB.
§ 45.22, introductory text	ATF	TTB.
§ 45.22, concluding text (three times)	ATF	TTB.
§ 45.23, section heading	ATF	TTB.
§ 45.23 (three times)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 45.24	ATF	TTB.

■ 145. Revise § 45.26 to read as follows:

§ 45.26 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.45, Delegation of the Administrator's Authorities in 27 CFR Part 45, Removal of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, for Use of the United States. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 146. Amend § 45.27 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 45.27 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 45.34, 45.36, 45.42, and 45.51 [Amended]

■ 147. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 45.34	ATF	TTB.
§ 45.36	ATF	TTB.
§ 45.42 (three times)	ATF	TTB.
§ 45.51(d)	ATF	TTB.

PART 46—MISCELLANEOUS REGULATIONS RELATING TO TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES

■ 148. The authority citation for part 46 continues to read as follows:

Authority: 18 U.S.C. 2341–2346, 26 U.S.C. 5704, 5708, 5751, 5754, 5761–5763, 6001, 6601, 6621, 6622, 7212, 7342, 7602, 7606, 7805; 44 U.S.C. 3504(h), 49 U.S.C. 782, unless otherwise noted.

§ 46.2 [Amended]

■ 149. Amend § 46.2 as follows:

■ a. Remove the definition of ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 46.2 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

* * * * *

§§ 46.5, 46.6, 46.7, 46.8, 46.10, 46.11, 46.13, 46.14, and 46.15 [Amended]

■ 150. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 46.5(c)	ATF	TTB.
§ 46.6(c)	ATF	TTB.
§ 46.7	ATF	TTB.
§ 46.8, concluding text	ATF	TTB.
§ 46.10	ATF	TTB.
§ 46.11(b)	ATF	TTB.
§ 46.13	ATF	TTB.
§ 46.14 (two times)	ATF	TTB.
§ 46.15 (two times)	ATF	TTB.

■ 151. Revise § 46.21 to read as follows:

§ 46.21 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 152. Amend § 46.22 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 46.22 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 153. Amend § 46.72 by removing the definition of ''Appropriate ATF officer''

and adding, in its place, a definition of ''Appropriate TTB officer'' to read as follows:

§ 46.72 Meaning of terms.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

* * * * *

§§ 46.73, 46.74, 46.77, 46.78 and 46.79 [Amended]

■ 154. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 46.73	ATF	TTB.
§ 46.74	ATF	TTB.
§ 46.77	ATF	TTB.
§ 46.78, section heading	ATF	TTB.
§ 46.78	ATF	TTB.
§ 46.79 (four times)	ATF	TTB.

■ 155. Amend § 46.163 by removing the definition of ''Appropriate ATF officer'' and adding, in its place, a definition of ''Appropriate TTB officer'' to read as follows:

§ 46.163 Meaning of terms.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR Part 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

* * * * *

§§ 46.164 and 46.165 [Amended]

■ 156. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 46.164, section heading	ATF	TTB.
§ 46.164 (four times)	ATF	TTB.
§ 46.165	ATF	TTB.

■ 157. Amend § 46.192 by revising paragraph (a) to read as follows:

§ 46.192 Terms used in this subpart.

(a) *Appropriate TTB officer.* An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.46, Delegation of the Administrator's Authorities in 27 CFR 46, Miscellaneous Regulations Relating to Tobacco Products and Cigarette Papers and Tubes.

* * * * *

§ 46.210 [Amended]

■ 158. Amend § 46.210 by removing the reference to ''ATF'' and adding, in its place, a reference to ''TTB''.

■ 159. Revise § 46.231 to read as follows:

§ 46.231 How to obtain a tax return.

Form 5000.28T, Floor Stocks Tax Return for Cigarettes, is available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 160. Revise § 46.233 to read as follows:

§ 46.233 How to pay.

(a) *Check or money order.* Your payment must be in the form of a check or money order and sent with Form 5000.28T unless you are required to file by electronic fund transfer as described in paragraph (b) of this section.

(b) *Electronic fund transfer.* If you pay any other excise taxes collected by TTB by electronic fund transfer, then you must also send your payment for this floor stocks tax by an electronic fund transfer. Publication 5000.10, Payment by Electronic Funds Transfer, specifies how to make an electronic fund transfer. Publication 5000.10 is available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

§§ 46.242, 46.244, 46.251, 46.253, 46.262, 46.264, 46.271, 46.272, 46.273,and 46.274 [Amended]

■ 161. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 46.242	ATF	TTB.
§ 46.244	ATF	TTB.
§ 46.251	ATF	TTB.
§ 46.253	ATF	TTB.
§ 46.262	ATF	the appropriate TTB officer.
§ 46.264	ATF	the appropriate TTB officer.
Undesignated center heading between §§ 46.264 and 46.270.	ATF Authorities	TTB Authorities.
§ 46.271 (two times)	ATF	TTB.
§ 46.272, introductory text (two times)	ATF	TTB.
§ 46.273 (two times)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 46.274	ATF	TTB.

PART 53—MANUFACTURERS EXCISE TAXES—FIREARMS AND AMMUNITION

■ 162. The authority citation for part 53 continues to read as follows:

Authority: 26 U.S.C. 4181, 4182, 4216–4219, 4221–4223, 4225, 6001, 6011, 6020, 6021, 6061, 6071, 6081, 6091, 6101–6104, 6109, 6151, 6155, 6161, 6301–6303, 6311, 6402, 6404, 6416, 7502.

■ 163. Revise § 53.3 to read as follows:

§ 53.3 Exemption certificates.

Several provisions of this part, relating to sales exempt from manufacturers excise tax, require the manufacturer to obtain an exemption certificate from the purchaser to substantiate the exempt character of the sale. Any form of exemption certificate will be acceptable if it includes all the information required by the provisions of this part. These certificates are available as preprinted documents, which may be ordered by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202. The preprinted certificates may be reproduced as needed.

■ 164. Amend § 53.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 53.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.53, Delegation of the Administrator's Authorities in 27 CFR Part 53, Manufacturers Excise Taxes—Firearms and Ammunition.

* * * * *

■ 165. Revise § 53.20 to read as follows:

§ 53.20 Delegations of the Administrator.

The regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.53, Delegation of the Administrator's Authorities in 27 CFR Part 53, Manufacturers Excise Taxes—Firearms and Ammunition. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 166. Amend § 53.21 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 53.21 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

* * * * *

§§ 53.22, 53.23, 53.24, 53.92, 53.96, 53.115, 53.132, 53.133, 53.134, 53.135, 53.140, 53.142, 53.151, 53.152, 53.154, 53.155, 53.156, 53.157, 53.158, 53.159, 53.171, 53.172, 53.179, 53.186, and 53.187 [Amended]

■ 167. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 53.22(a)(3)	ATF	TTB.
§ 53.22(b)	ATF	TTB.
§ 53.23(a), introductory text	ATF	TTB.
§ 53.23(a), introductory text	Director	appropriate TTB officer.
§ 53.23(b) (two times)	ATF	TTB.
§ 53.24(a)(1)	ATF	TTB.
§ 53.24(d)(1)	ATF	TTB.
§ 53.92(b)(2)	ATF	TTB.
§ 53.96(b)(4)	ATF	TTB.
§ 53.115(b)	ATF	TTB.
§ 53.132(c)(2)(i)(E)	ATF	TTB.
§ 53.132(c)(2)(ii)	ATF	TTB.
§ 53.132(c)(2)(iii), paragraph heading	ATF	TTB.
§ 53.132(c)(2)(iii) (two times)	ATF	TTB.
§ 53.132(c)(2)(iii)	is available from the Bureau's Distribution Center which.	which is available as provided in § 53.21(b).
§ 53.133(d)(2)(vi)	ATF	TTB.
§ 53.133(d)(3)	ATF	TTB.
§ 53.133(d)(4), paragraph heading	ATF	TTB.
§ 53.133(d)(4) (two times)	ATF	TTB.
§ 53.133(d)(4)	is available from the Bureau's Distribution Center which.	which is available as provided in § 53.21(b).
§ 53.134(d)(2)(ii)	ATF	TTB.
§ 53.134(d)(2)(iv), paragraph heading	ATF	TTB.
§ 53.134(d)(2)(iv) (two times)	ATF	TTB.
§ 53.134(d)(2)(iv)	is available from the Bureau's Distribution Center which.	which is available as provided in § 53.21(b).
§ 53,135(c)(3), paragraph heading	ATF	TTB.
§ 53.135(c)(3) (two times)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 53.135(c)(3)	is available from the Bureau's Distribution Center which.	which is available as provided in § 53.21(b).
§ 53.140(b) (three times)	ATF	TTB.
§ 53.142(a), introductory text	ATF	TTB.
§ 53.151(a)(1)	ATF	TTB.
§ 53.151(a)(2) (four times)	ATF	TTB.
§ 53.151(a)(3)	ATF	TTB.
§ 53.151(b)(1) (four times)	ATF	TTB.
§ 53.151(b)(2)	ATF	TTB.
§ 53.152(a) (two times)	ATF	TTB.
§ 53.154(a) (two times)	ATF	TTB.
§ 53.154(b)	ATF	TTB.
§ 53.155(a)	ATF	TTB.
§ 53.155(b)	ATF	TTB.
§ 53.156(a)(1)	ATF	TTB.
§ 53.156(c)	ATF	TTB.
§ 53.157(a) (two times)	ATF	TTB.
§ 53.157(b)(1) (two times)	ATF	TTB.
§ 53.157(b)(2)(i)(A)	ATF	TTB.
§ 53.157(b)(2)(ii)(A)	ATF	TTB.
§ 53.157(b)(2)(iii)(A)	ATF	TTB.
§ 53.157(b)(2)(iv)(B)	ATF	TTB.
§ 53.157(c) (two times)	ATF	TTB.
§ 53.157(d)(3)	ATF	TTB.
§ 53.157(e)(1) (seven times)	ATF	TTB.
§ 53.157(e)(4)	may be obtained by applying for them with the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.	are available as provided in § 53.21(b).
§ 53.157(f)(1)	ATF	TTB.
§ 53.157(f)(2)	ATF	TTB.
§ 53.158(b)(1) A	TF	TTB.
§ 53.158(b)(3)	ATF	TTB.
§ 53.158(c)(1)	ATF	TTB.
§ 53.158(e) (two times)	ATF	TTB.
§ 53.159(b)(1)	ATF	TTB.
§ 53.159(c)(3), introductory text	ATF	TTB.
§ 53.159(c)(6), introductory text	ATF	TTB.
§ 53.159(d)(1)	ATF	TTB.
§ 53.159(d)(2)	ATF	TTB.
§ 53.159(g) (two times)	ATF Form 5300.27	Form 5300.27.
§ 53.159(g) (two times)	ATF Form 5300.26	Form 5300.26.
§ 53.159(g)	ATF Procedure 92–1	Procedure 92–1.
§ 53.159(g)	ATF officer	TTB officer.
§ 53.159(i)	Copies of the Federal Firearms andAmmunition Excise Tax Deposit form may be obtained by request from the ATF Distribution Center, P.O.Box 5950, Springfield, Virginia 22153–5950.	Copies of the Federal Firearms and Ammunition Excise Tax Deposit form are available as provided in § 53.21(b).
§ 53.159(j)(1)	ATF	TTB.
§ 53.159(j)(2)	ATF	TTB.
§ 53.159(k), Example 1, paragraph (1)	ATF	TTB.
§ 53.171	ATF	TTB.
§ 53.172(a)(3)(ii)(A) (two times)	ATF	TTB.
§ 53.172(a)(3)(ii)(B)	ATF	TTB.
§ 53.172(b)(2)(iii)	ATF	TTB.
§ 53.179(b)(1)(iv), paragraph heading	ATF	TTB.
§ 53.179(b)(1)(iv)	ATF	TTB.
§ 53.179(b)(1)(iv)	is available from the Bureau's Distribution Center which.	which is available as provided in § 53.21(b).
§ 53.186(a), introductory text (two times)	ATF	TTB.
§ 53.186(a)(4) (two times)	ATF	TTB.
§ 53.187(a)	ATF	TTB.

PART 70—PROCEDURE AND ADMINISTRATION

■ 168. The authority citation for part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§ 70.1 [Amended]

■ 169. Amend § 70.1 as follows:

■ a. In the introductory text of paragraph (a) remove the words ''Bureau

of Alcohol, Tobacco and Firearms'' and add, in their place, the words ''Alcohol and Tobacco Tax and Trade Bureau''.

■ b. In paragraph (a)(1) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ 170. Amend § 70.2 as follows:

■ a. In paragraph (a) remove the reference to ''ATF'' and add, in its place, a reference to ''TTB''.

■ b. Revise paragraph (b) to read as follows:

§ 70.2 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 171. Revise the heading and text of § 70.3 to read as follows:

§ 70.3 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.70, Delegation of the Administrator's Authorities in 27 CFR Part 70, Procedure and Administration. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 172. Amend § 70.11 as follows:

■ a. Remove the definitions of ''Appropriate ATF officer'' and ''Director''.

■ b. Revise the definition of ''Bureau''.

■ c. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 70.11 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.70, Delegation of the Administrator's Authorities in 27 CFR Part 70, Procedure and Administration.

Bureau. The Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

§§ 70.21, 70.22, 70.23, 70.24, 70.25, 70.26, 70.30, 70.31, 70.32, 70.33, 70.34, 70.40, 70.41, 70.42, 70.51, 70.61, 70.63, 70.64, 70.71, 70.72, 70.73, 70.74, 70.75, 70.76, 70.77, 70.81, 70.82, 70.92, 70.94, 70.95, 70.96, 70.97, 70.98, 70.100, 70.101, 70.113, 70.122, 70.123, 70.124, 70.125, 70.126, 70.144, 70.148, 70.149, 70.150, 70.151, 70.161, 70.162, 70.163, 70.164, 70.165, 70.167, 70.168, 70.169, 70.170, 70.181, 70.182, 70.183, 70.184, 70.185, 70.186, 70.187, 70.188, 70.191, 70.192, 70.204, 70.205, 70.206, 70.213, 70.222, 70.223, 70.224, 70.227, 70.231, 70.241, 70.242, 70.245, 70.251, 70.253, 70.263, 70.271, 70.281, 70.301, 70.303, 70.304, 70.306, 70.311, 70.321, 70.332, 70.333, 70.411, 70.412, 70.413, 70.414, 70.416, 70.418, 70.419, 70.432, 70.433, 70.435, 70.447, 70.450, 70.471, 70.481, 70.482, 70.483, 70.484, 70.485, 70.486, 70.504, 70.506, 70.507, 70.602, 70.606, 70.608, 70.609, 70.701, 70.702, 70.801, 70.802, and 70.803 [Amended]

■ 173. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 70.21 (two times)	ATF	TTB.
§ 70.22(a)	ATF	TTB.
§ 70.22(b) (three times)	ATF	TTB.
§ 70.23(b)	ATF	TTB.
§ 70.24(b)	ATF	TTB.
§ 70.25(a)(4)	ATF	TTB.
§ 70.26(c)(2)(ii), introductory text	Director	appropriate TTB officer.
§ 70.26(c)(2)(ii)(B)	ATF	TTB.
§ 70.30(a)	ATF	TTB.
§ 70.30(b)	ATF	TTB.
§ 70.31(a)	ATF	TTB.
§ 70.31(b) (two times)	ATF	TTB.
§ 70.31(c) (two times)	ATF	TTB.
§ 70.32	ATF	TTB.
§ 70.33, introductory text	ATF	TTB.
§ 70.34, section heading	ATF	TTB.
§ 70.34 (three times)	ATF	TTB.
§ 70.40	ATF	TTB.
§ 70.41(a)	ATF	TTB.
§ 70.41(c) (two times)	ATF	TTB.
§ 70.41(d)	ATF	TTB.
§ 70.41(f) (two times)	ATF	TTB.
§ 70.42, section heading	ATF	TTB.
§ 70.42(a)(1) (two times)	ATF	TTB.
§ 70.42(b)(1)	ATF	TTB.
§ 70.42(b)(2)	ATF	TTB.
§ 70.42(c)(1)	ATF	TTB.
§ 70.51	ATF	TTB.
§ 70.61(a)(1)(i), introductory text (two times)	ATF	TTB.
§ 70.61(a)(1)(i), introductory text	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.61(a)(1)(i)(C)	ATF	TTB.
§ 70.61(a)(1)(i)(D)	ATF	TTB.
§ 70.61(a)(2) (two times)	ATF	TTB.
§ 70.61(a)(3)	ATF	TTB.
§ 70.63(a) (two times)	ATF	TTB.
§ 70.63(b)(1)	ATF	TTB.
§ 70.64 (two times)	ATF	TTB.
§ 70.71, introductory text (three times)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 70.71(a) (two times)	ATF	TTB.
§ 70.71(b)(1)(ii) (four times)	ATF	TTB.
§ 70.71(b)(2) (two times)	ATF	TTB.
§ 70.72 (two times)	ATF	TTB.
§ 70.73	ATF	TTB.
§ 70.74(b)	ATF	TTB.
§ 70.74(b)	proper regional director (compliance) or with the Chief, Tax Processing Center.	appropriate TTB officer
§ 70.74(c)(1)	ATF	TTB.
§ 70.74(c)(2)	ATF	TTB.
§ 70.75(a), introductory text three times)	ATF	TTB.
§ 70.75(b)	ATF	TTB.
§ 70.75(c)	ATF	TTB.
§ 70.76(a) (two times)	ATF	TTB.
§ 70.76(b)(3)	ATF	TTB.
§ 70.76(c)	ATF	TTB.
§ 70.76(d)	ATF	TTB.
§ 70.77(a)(1)	ATF	TTB.
§ 70.77(a)(2)	ATF	TTB.
§ 70.77(b)(1)	ATF	TTB.
§ 70.77(b)(2)	ATF	TTB.
§ 70.81(a)	ATF	TTB.
§ 70.82	ATF	TTB.
§ 70.92(c)	ATF	TTB.
§ 70.92(d)(2)(i)	ATF	TTB.
§ 70.94(a)	ATF	TTB.
§ 70.95	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.96(a)(1)(iv)	ATF	TTB.
§ 70.96(a)(2)	ATF	TTB.
§ 70.96(a)(3)	ATF	TTB.
§ 70.96(c) (three times)	ATF	TTB.
§ 70.97(c)(2)	regional director(s) (compliance) or the Chief, Tax Processing Center.	appropriate TTB officer.
§ 70.98(b) (two times)	ATF	TTB.
§ 70.100	ATF	TTB.
§ 70.101	ATF	TTB.
§ 70.113(b)	ATF	TTB.
§ 70.122 (two times)	ATF	TTB.
§ 70.123(a)(2)	ATF	TTB.
§ 70.123(b)(1)	ATF	TTB.
§ 70.123(b)(2)	ATF	TTB.
§ 70.124 (three times)	ATF	TTB.
§ 70.125(a)	ATF	TTB.
§ 70.125(b) (two times)	ATF	TTB.
§ 70.125(c)	ATF	TTB.
§ 70.126	ATF	TTB.
§ 70.144(c)	ATF	TTB.
§ 70.148(c)(1)	ATF	TTB.
§ 70.148(c)(2), paragraph heading	ATF	TTB.
§ 70.148(c)(2) (four times)	ATF	TTB.
§ 70.149(a)(3), introductory text (two times)	ATF	TTB.
§ 70.149(b)(2)(i)(A)	ATF	TTB.
§ 70.150(a), introductory text (two times)	ATF	TTB.
§ 70.150(a)(1) (two times)	ATF	TTB.
§ 70.150(a)(2) (two times)	ATF	TTB.
§ 70.150(b)(1)	ATF	TTB.
§ 70.150(b)(2)(i) (two times)	ATF	TTB.
§ 70.150(b)(2)(ii)	ATF	TTB.
§ 70.150(b)(2)(iii) (two times)	ATF	TTB.
§ 70.150(b)(3) (two times)	ATF	TTB.
§ 70.150(b)(4) (two times)	ATF	TTB.
§ 70.150(c)(1) (four times)	ATF	TTB.
§ 70.150(c)(2) (two times)	ATF	TTB.
§ 70.150(c)(3) (two times)	ATF	TTB.
§ 70.150(d) (four times)	ATF	TTB.
§ 70.150(e)(1), introductory text	ATF	TTB.
§ 70.150(e)(2)(i), introductory text	ATF	TTB.
§ 70.150(e)(2)(i)(B)	ATF	TTB.
§ 70.151(f)(1)	A Bureau of Alcohol, Tobacco and Firearms	An Alcohol and Tobacco Tax and Trade Bureau.
§ 70.151(f)(2)	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.151(g)	ATF	TTB.
§ 70.161(a)(1) (four times)	ATF	TTB.
§ 70.161(a)(2)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 70.161(a)(4)(i)(B)	ATF	TTB.
§ 70.161(b)	ATF	TTB.
§ 70.161(c) (three times)	ATF	TTB.
§ 70.162(a)	ATF	TTB.
§ 70.162(b)	ATF	TTB.
§ 70.163(a)(2)(ii), introductory text	ATF	TTB.
§ 70.163(b)(1)	ATF	TTB.
§ 70.163(c)	ATF	TTB.
§ 70.164(b)(1), introductory text	ATF	TTB.
§ 70.164(c) (three times)	ATF	TTB.
§ 70.165	ATF	TTB.
§ 70.167(a)(1) (three times)	ATF	TTB.
§ 70.167(a)(2)(i), introductory text	ATF	TTB.
§ 70.167(a)(2)(i)(C)	ATF	TTB.
§ 70.167(a)(2)(i)(D)	ATF	TTB.
§ 70.167(a)(2)(ii)	ATF	TTB.
§ 70.167(a)(3), introductory text	ATF	TTB.
§ 70.167(a)(3)(i)	ATF	TTB.
§ 70.167(a)(3)(ii)	ATF	TTB.
§ 70.167(a)(3)(iii) (two times)		TTB.
§ 70.167(a)(3)(iv) (two times)	ATF	TTB.
§ 70.167(a)(4)	ATF	TTB.
§ 70.167(b)(1), introductory text (two times)	ATF	TTB.
§ 70.167(b)(1)(ii)	ATF	TTB.
§ 70.167(b)(1), concluding text	ATF	TTB.
§ 70.167(b)(2)(iv)	ATF	TTB.
§ 70.168(a) (two times)	ATF	TTB.
§ 70.168(b)(2)	ATF	TTB.
§ 70.168(c) (two times)	ATF	TTB.
§ 70.169 (two times)	ATF	TTB.
§ 70.170(b)	ATF	TTB.
§ 70.181(a) (two times)	ATF	TTB.
§ 70.181(b)(1) (two times)	ATF	TTB.
§ 70.181(b)(2) (two times)	ATF	TTB.
§ 70.181(c)(1)(i) (two times)	ATF	TTB.
§ 70.181(c)(1)(ii) (two times)	ATF	TTB.
§ 70.181(c)(2) (two times)	ATF	TTB.
§ 70.181(c)(3)(i), introductory text	ATF	TTB.
§ 70.181(c)(3)(i), concluding text	ATF	TTB.
§ 70.181(c)(3)(ii)	ATF	TTB.
§ 70.181(c)(4)(i)	ATF	TTB.
§ 70.181(c)(4)(ii), concluding text	ATF	TTB.
§ 70.181(c)(4)(iii)	ATF	TTB.
§ 70.181(c)(4)(iv), introductory text	ATF	TTB.
§ 70.181(c)(5), introductory text	ATF	TTB.
§ 70.181(c)(5)(ii)(B)	ATF	TTB.
§ 70.181(c)(8) (two times)	ATF	TTB.
§ 70.182(a)(1) (three times)	ATF	TTB.
§ 70.182(a)(2)(i) (two times)	ATF	TTB.
§ 70.182(a)(3) (two times)	ATF	TTB.
§ 70.182(a)(4), introductory text	ATF	TTB.
§ 70.182(a)(6)(ii)	ATF	TTB.
§ 70.182(b)	ATF	TTB.
§ 70.183(a)	ATF	TTB.
§ 70.183(b), introductory text	ATF	TTB.
§ 70.183(b)(2) (two times)	ATF	TTB.
§ 70.183(b)(3)	ATF	TTB.
§ 70.183(b)(6) (two times)	ATF	TTB.
§ 70.183(b)(7), introductory text	ATF	TTB.
§ 70.183(b)(9)(ii)	ATF	TTB.
§ 70.183(b)(11)	ATF	TTB.
§ 70.183(c)	ATF	TTB.
§ 70.183(d)	ATF	TTB.
§ 70.183(e)	ATF	TTB.
§ 70.183(f), paragraph heading	ATF	TTB.
§ 70.183(f) (three times)	ATF	TTB.
§ 70.184(a) (two times)	ATF	TTB.
§ 70.184(b), introductory text (four times)	ATF	TTB.
§ 70.184(b)(1)	ATF	TTB.
§ 70.184(b)(2)	ATF	TTB.
§ 70.184(c), introductory text	ATF	TTB.
§ 70.184(c)(1) (two times)	ATF	TTB.
§ 70.185(a)	ATF	TTB.
§ 70.185(b)	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 70.185(c)	ATF	TTB.
§ 70.186(b)(2)	ATF	TTB.
§ 70.186(c)	ATF	TTB.
§ 70.187(a) (two times)	ATF	TTB.
§ 70.187(b)	ATF	TTB.
§ 70.188 (two times)	ATF	TTB.
§ 70.191(a)	ATF	TTB.
§ 70.191(b), introductory text (two times)	ATF	TTB.
§ 70.192(a) (two times)	ATF	TTB.
§ 70.204(a), concluding text (three times)	ATF	TTB.
§ 70.205(a)(1)	ATF	TTB.
§ 70.205(a)(2)(i)	ATF	TTB.
§ 70.205(a)(2)(ii)(C)	ATF	TTB.
§ 70.205(b)(1) (four times)	ATF	TTB.
§ 70.205(b)(2) (two times)	ATF	TTB.
§ 70.205(c)(1) (three times)	ATF	TTB.
§ 70.205(e)(1)(ii), introductory text	ATF	TTB.
§ 70.205(e)(2) (six times)	ATF	TTB.
§ 70.205(e)(3) (three times)	ATF	TTB.
§ 70.205(e)(4) (two times)	ATF	TTB.
§ 70.206(a)(1)	ATF	TTB.
§ 70.206(b)(1), introductory text	ATF	TTB.
§ 70.206(b)(3)(ii) (four times)	ATF	TTB.
§ 70.206(b)(4)(ii), introductory text	ATF	TTB.
§ 70.206(b)(4)(ii)(A)	ATF	TTB.
§ 70.206(b)(4)(ii), concluding text (two times)	ATF	TTB.
§ 70.206(b)(4)(iii) (two times)	ATF	TTB.
§ 70.206(c)(1) (three times)	ATF	TTB.
§ 70.206(c)(2) (four times)	ATF	TTB.
§ 70.206(c)(3) (two times)	ATF	TTB.
§ 70.206(c)(4) (four times)	ATF	TTB.
§ 70.213	ATF	TTB.
§ 70.222(b), paragraph heading	ATF	TTB.
§ 70.222(b)	ATF	TTB.
§ 70.223(d)	ATF	TTB.
§ 70.224(a)(2)(i)	ATF	TTB.
§ 70.227 (two times)	ATF	TTB.
§ 70.231(i)(3)	ATF	TTB.
§ 70.241(a)(8) (four times)	ATF	TTB.
§ 70.241(b)	ATF	TTB.
§ 70.242(a)	ATF	TTB.
§ 70.242(c)(1) (four times)	ATF	TTB.
§ 70.242(c)(2) (seven times)	ATF	TTB.
§ 70.245, section heading	ATF	TTB.
§ 70.245(a)	ATF	TTB.
§ 70.245(c)(2)	ATF	TTB.
§ 70.245(c), concluding text	Chief, Tax Processing Center	appropriate TTB officer.
§ 70.245(d), paragraph heading	ATF	TTB.
§ 70.245(d)(1)	ATF	TTB.
§ 70.245(d)(2)	ATF	TTB.
§ 70.251(a)(2)	ATF	TTB.
§ 70.253(b)(2)	ATF	TTB.
§ 70.263(d)	ATF	TTB.
§ 70.271(d)(1)	ATF	TTB.
§ 70.281(b)(2), introductory text	ATF	TTB.
§ 70.281(b)(2)(vi)	ATF	TTB.
§ 70.281(b)(3)(v)	ATF	TTB.
§ 70.301(a)	ATF	TTB.
§ 70.303(a)	Director	Administrator.
§ 70.303(a)	Director's	Administrator's.
§ 70.303(b) (three times)	Director	Administrator.
§ 70.303(b) (two times)	Director's	Administrator's.
§ 70.303(c)	Director	Administrator.
§ 70.303(c)	Director's	Administrator's.
§ 70.304(a)	an ATF	a TTB.
§ 70.304(b)	an ATF supervisor	a TTB supervisor.
§ 70.304(b)	ATF office	TTB office.
§ 70.306(a)	ATF	TTB.
§ 70.306(b)(2)	an ATF	a TTB.
§ 70.311	ATF	TTB.
§ 70.321(a), introductory text	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.321(b)	ATF	TTB.
§ 70.332	Director	Administrator.
§ 70.333	ATF	TTB.

Amend:	by removing:	and replacing it with:
§ 70.411(b) (two times)	ATF	TTB.
§ 70.411(c), introductory text	the jurisdiction of the ATF	the jurisdiction of TTB.
§ 70.411(c), introductory text	Supplies of prescribed forms may be obtained from the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.	Forms prescribed by this part are available as provided in § 70.2(b).
§ 70.411(c)(5)	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.412(a)	ATF	TTB.
§ 70.413(a) (three times)	ATF	TTB.
§ 70.413(b)	ATF	TTB.
§ 70.414(a) (two times)	ATF	TTB.
§ 70.416 (two times)	ATF	TTB.
§ 70.418	ATF	TTB.
§ 70.419	ATF	TTB.
§ 70.432(a)	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.432(b)	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.432(c)	regional director (compliance)	appropriate TTB officer.
§ 70.433(a) (three times)	ATF	TTB.
§ 70.433(a)	regional director (compliance)	appropriate TTB officer.
§ 70.433(b)	ATF	TTB.
§ 70.435(i)	ATF	TTB.
§ 70.447 (two times)	ATF	TTB.
§ 70.481(a) (two times)	ATF	TTB.
§ 70.481(b)(2)(ii)	ATF	TTB.
§ 70.481(b)(3)(ii), introductory text	ATF	TTB.
§ 70.481(b)(4)(iii)	ATF	TTB.
§ 70.482(a), introductory text (two times)	ATF	TTB.
§ 70.482(d)(1)(i)	ATF	TTB.
§ 70.483	ATF	TTB.
§ 70.484 (two times)	ATF	TTB.
§ 70.485(a) (two times)	ATF	TTB.
§ 70.485(d)(1)	Director	Administrator.
§ 70.486 (three times)	ATF	TTB.
§ 70.504(c)(2)	ATF	TTB.
§ 70.506 (two times)	ATF	TTB.
§ 70.507(g)	ATF	TTB.
§ 70.602(a)	ATF	TTB.
§ 70.602(b)(1), introductory text	ATF	TTB.
§ 70.606, introductory text	ATF	TTB.
§ 70.608 (two times)	ATF	TTB.
§ 70.609 (three times)	ATF	TTB.
§ 70.701(a)(1)	firearms, and explosives	and firearms
§ 70.701(a)(1) (three times)	Director	Administrator.
§ 70.701(a)(1) (two times)	ATF	TTB.
§ 70.701(a)(2)	Director	Administrator.
§ 70.701(c)	Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.	Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20220.
§ 70.701(d)(1)	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.701(d)(1)	Alcohol, Tobacco and Firearms (ATF) Bulletin	Alcohol and Tobacco Tax and Trade Bureau (TTB) Bulletin
§ 70.701(d)(1)	ATF Bulletin	TTB Bulletin.
§ 70.701(d)(2), paragraph heading (two times)	ATF	TTB.
§ 70.701(d)(2)(i)(A) (two times)	ATF	TTB.
§ 70.701(d)(2)(i)(B) (three times)	ATF	TTB.
§ 70.701(d)(2)(iii)(B)	ATF	TTB.
§ 70.701(d)(2)(iii)(C) (four times)	ATF	TTB.
§ 70.701(d)(2)(iii)(D) (two times)	ATF	TTB.
§ 70.701(d)(2)(iv)(A) (three times)	ATF	TTB.
§ 70.701(d)(2)(iv)(B) (four times)	ATF	TTB.
§ 70.701(d)(2)(iv)(C) (three times)	ATF	TTB.
§ 70.702(c)	Requests for forms should be mailed to the ATF Distribution Center, 7943 Angus Court, Springfield, Virginia 22153.	Forms prescribed by this part are available as provided in § 70.2(b).
§ 70.801	Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, (202) 927–8480.	Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20220, (202) 927–8210.
§ 70.802(c)	ATF official	TTB officer.
§ 70.802(d)	ATF officer, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.	TTB officer, Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20220.
§ 70.802(e)	ATF	TTB.
§ 70.802(f)	ATF officer Programs, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.	TTB officer, Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20220.
§ 70.802(g)	the Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.	the Alcohol and Tobacco Tax and Trade Bureau, Washington, DC 20220.

Amend:	by removing:	and replacing it with:
§ 70.802(g) (two times)	Director, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226.	appropriate TTB officer.
§ 70.803(b)(1), paragraph heading	ATF	TTB.
§ 70.803(b)(1) (two times)	ATF	TTB.
§ 70.803(b)(1)	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.803(b)(2), paragraph heading	ATF	TTB.
§ 70.803(b)(2)	ATF records and ATF information	TTB records and TTB information.
§ 70.803(b)(2)	ATF officer	TTB officer.
§ 70.803(b)(2)	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.803(c), paragraph heading (two times)	ATF	TTB.
§ 70.803(c) (six times)	ATF	TTB.
§ 70.803(c)	Director	Administrator.
§ 70.803(c)	Bureau of Alcohol, Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau.
§ 70.803(d), introductory text (three times)	ATF	TTB.
§ 70.803(d)(3) (two times)	Director	Administrator.
§ 70.803(d)(3) (six times)	ATF	TTB.
§ 70.803(e), paragraph heading	ATF	TTB.
§ 70.803(e)(1) (four times)	ATF	TTB.
§ 70.803(e)(1)	Director	Administrator.
§ 70.803(e)(2) (sixteen times)	ATF	TTB.
§ 70.803(e)(2)	Director	Administrator.
§ 70.803(e)(3) (two times)	ATF	TTB.
§ 70.803(e)(4) (two times)	ATF	TTB.
§ 70.803(e)(5), introductory text	ATF	TTB.
§ 70.803(e)(5)(iii)	ATF	TTB.
§ 70.803(e)(5)(iv)	ATF	TTB.
§ 70.803(e)(5)(vi)	ATF	TTB.
§ 70.803(f) (three times)	ATF	TTB.
§ 70.803(g)	ATF	TTB.

PART 71—RULES OF PRACTICE IN PERMIT PROCEEDINGS

■ 174. The authority citation for part 71 continues to read as follows:

Authority: 26 U.S.C. 5271, 5181, 5713, 7805, 27 U.S.C. 204.

§ 71.1 [Amended]

■ 175. Amend § 71.1 by removing the words ''Bureau of Alcohol, Tobacco and Firearms'' and adding, in their place, the words ''Alcohol and Tobacco Tax and Trade Bureau''.

■ 176. Amend § 71.3 as follows:

■ a. In paragraph (a) remove the word ''Director'' and add, in its place, the words ''appropriate TTB officer''.

■ b. Revise paragraph (b) to read as follows:

§ 71.3 Forms prescribed.

* * * * *

(b) Forms prescribed by this part are available for printing through the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 177. Add a new § 71.4 in subpart A to read as follows:

§ 71.4 Delegations of the Administrator.

Most of the regulatory authorities of the Administrator contained in this part are delegated to appropriate TTB officers. These TTB officers are specified in TTB Order 1135.71, Delegation of the Administrator's Authorities in 27 CFR Part 71, Rules of Practice in Permit Proceedings. You may obtain a copy of this order by accessing the TTB Web site (*http://www.ttb.gov*) or by mailing a request to the Alcohol and Tobacco Tax and Trade Bureau, National Revenue Center, 550 Main Street, Room 1516, Cincinnati, OH 45202.

■ 178. Amend § 71.5 as follows:

■ a. In the definition of ''Attorney for the Government'' remove the words ''Director of Industry Operations'' and add, in their place, the words ''appropriate TTB officer''.

■ b. Remove the definitions of ''Director'' and ''Director of Industry Operations.''

■ c. In the definition of ''Initial decision'' remove the words the ''Director of Industry Operations'' and add, in their place, the words ''appropriate TTB officer''.

■ d. Add, in alphabetical order, definitions of ''Administrator'' and ''Appropriate TTB officer'' to read as follows:

§ 71.5 Meaning of terms.

* * * * *

Administrator. The Administrator, Alcohol and Tobacco Tax and Trade Bureau, Department of the Treasury, Washington, DC.

* * * * *

Appropriate TTB officer. An officer or employee of the Alcohol and Tobacco Tax and Trade Bureau (TTB) authorized to perform any functions relating to the administration or enforcement of this part by TTB Order 1135.71, Delegation of the Administrator's Authorities in 27 CFR Part 71, Rules of Practice in Permit Proceedings.

* * * * *

§§ 71.25, 71.26, 71.27, 71.29, 71.31, 71.35, 71.36, 71.37, 71.38, 71.45, 71.46, 71.48, 71.49, 71.49a, 71.49b, 71.55, 71.57, 71.59, 71.60, 71.61, 71.62, 71.63, 71.64, 71.65, 71.70, 71.71, 71.72, 71.73, 71.75, 71.78, 71.79, 71.80, 71.85, 71.95, 71.96, 71.97, 71.98, 71.99, 71.100, 71.105, 71.106, 71.107, 71.107a, 71.108, 71.109, 71.110, 71.115, 71.116, 71.117, 71.118, 71.126, and 71.129 [Amended]

179. Amend the above listed sections as follows:

Amend:	by removing:	and replacing it with:
§ 71.25	director of industry operations of the region in which the business of the applicant or respondent is operated or proposed to be operated.	appropriate TTB officer.
§ 71.25	Director of Industry Operations (DIO) or Director.	appropriate TTB officer. or the Administrator.
§ 71.26	Bureau of Alcohol Tobacco and Firearms	Alcohol and Tobacco Tax and Trade Bureau
§ 71.27, section heading	director of industry operations or Director	appropriate TTB officer or Administrator.
§ 71.27	on the director of industry operations	on the appropriate TTB officer.
§ 71.27	director of industry operations, or on the Director.	appropriate TTB the Director officer, or on the Administrator.
§ 71.29	Director, director of industry operations, or the administrative law judge.	Administrator, or the appropriate TTB officer.
§ 71.31	practice before the Bureau of Alcohol, Tobacco and Firearms.	practice before the Alcohol and Tobacco Tax and Trade Bureau.
§ 71.31 (two times)	director of industry operations	appropriate TTB officer.
§ 71.35 (three times)	director of industry operations	appropriate TTB officer.
§ 71.36 (four times)	director of industry operations	appropriate TTB officer.
§ 71.37 (three times)	director of industry operations	appropriate TTB officer.
§ 71.38 (two times)	director of industry operations	appropriate TTB officer.
§ 71.45	director of industry operations	appropriate TTB officer.
§ 71.46 (two times)	director of industry operations	appropriate TTB officer.
§ 71.48, introductory text	director of industry operations	appropriate TTB officer.
§ 71.49	director of industry operations	appropriate TTB officer.
§ 71.49a, introductory text	director of industry operations	appropriate TTB officer.
§ 71.49b, introductory text	director of industry operations	appropriate TTB officer.
§ 71.49b(c)	director of industry operations	appropriate TTB officer.
§ 71.55(a)	director of industry operations	appropriate TTB officer.
§ 71.57	for the office of the director of industry operations.	by the appropriate TTB officer.
§ 71.59	director of industry operations	appropriate TTB officer.
§ 71.60(a) (two times)	director of industry operations	appropriate TTB officer.
§ 71.60(b)	director of industry operations	appropriate TTB officer.
§ 71.60(b)	Director	Administrator.
§ 71.60(c)	Director	Administrator.
§ 71.60(c) (two times)	director of industry operations	appropriate TTB officer.
§ 71.61	director of industry operations	appropriate TTB officer.
§ 71.62 (two times)	director of industry operations	appropriate TTB officer.
§ 71.63	district director	appropriate TTB officer.
§ 71.64(a)	director of industry operations	appropriate TTB officer.
§ 71.64(b)	director of industry operations	appropriate TTB officer.
§ 71.64(c)	director of industry operations	appropriate TTB officer.
§ 71.65	director of industry operations	appropriate TTB officer.
§ 71.70 (four times)	director of industry operations	appropriate TTB officer.
§ 71.70	director of industry operations'	appropriate TTB officer's.
§ 71.71	director of industry operations	appropriate TTB officer.
§ 71.72 (three times)	director of industry operations	appropriate TTB officer.
§ 71.73 (two times)	director of industry operations	appropriate TTB officer.
§ 71.75	director of industry operations	appropriate TTB officer.
§ 71.78 (two times)	director of industry operations	appropriate TTB officer.
§ 71.79(b)	director of industry operations	appropriate TTB officer.
§ 71.80 (two times)	director of industry operations	appropriate TTB officer.
§ 71.85	Director, the director of industry operations	Administrator, the appropriate TTB officer.
§ 71.95	Director	Administrator
§ 71.95	directors of industry operations	the appropriate TTB officer.
§ 71.96 (two times)	Director	Administrator.
§ 71.97	Bureau of Alcohol, Tobacco and Alcohol and Firearms.	Tobacco Tax and Trade Bureau.
§ 71.98	Director's	Administrator's
§ 71.98	Bureau of Alcohol, Tobacco and Alcohol and Firearms.	Tobacco Tax and Trade Bureau.
§ 71.98	Director	Administrator.
§ 71.99	Director report the matter	Administrator report the matter.
§ 71.100	Director	Administrator.
§ 71.105	director of industry operations	appropriate TTB officer.
§ 71.106	director of industry operations	appropriate TTB officer.
§ 71.106	regional director (compliance)	appropriate TTB officer.
Undesignated center heading between §§ 71.106 and 71.107.	Action by Director of Industry Operations	Action by the Appropriate TTB Officer.
§ 71.107 (three times)	director of industry operations	appropriate TTB officer.
§ 71.107a, section heading	Director of Industry Operations' decision	Appropriate TTB officer's decision.
§ 71.107a(a), introductory text	director of industry operations	appropriate TTB officer.
§ 71.107a(a)(2)	director of industry operations'	appropriate TTB officer's.
§ 71.107a(a)(3)	director of industry operations'	appropriate TTB officer's.

Amend:	by removing:	and replacing it with:
§ 71.108(a) (three times)	director of industry operations	appropriate TTB officer.
§ 71.108(a) (two times)	Director	Administrator.
§ 71.108(a)	director of industry operations' order	appropriate TTB officer's order.
§ 71.108(b) (three times)	director of industry operations	appropriate TTB officer.
§ 71.108(b)	director of industry operations' order	appropriate TTB officer's order.
§ 71.109, section heading	Director	Administrator.
§ 71.109 (two times)	director of industry operations	appropriate TTB officer.
§ 71.109 (two times)	Director	Administrator.
§ 71.110	director of industry operations	appropriate TTB officer.
§ 71.115, section heading	Director	Administrator.
§ 71.115 (three times)	Director	Administrator.
§ 71.115 (three times)	director of industry operations	appropriate TTB officer.
§ 71.116, section heading	Director	Administrator.
§ 71.116 (four times)	Director	Administrator.
§ 71.116 (five times)	director of industry operations	appropriate TTB officer.
§ 71.117 (two times)	Director	Administrator.
§ 71.117 (two times)	director of industry operations	appropriate TTB officer.
§ 71.118	Director's decision	Administrator's decision.
§ 71.118	Director	Administrator.
§ 71.126	director of industry operations	appropriate TTB officer.
§ 71.126	Director	Administrator.
§ 71.129	director of industry operations	appropriate TTB officer.
§ 71.129	Director	Administrator.

Signed: March 7, 2006.

John J. Manfreda,

Administrator.

Approved: March 15, 2006.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 06–2954 Filed 3–31–06; 8:45 am]

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Federal Register

Tuesday,
April 4, 2006

Part IV

The President

Proclamation 7995—To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to the Products of Ukraine, and For Other Purposes

Proclamation 7996—To Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to Honduras and Nicaragua

Federal Register
Vol. 71, No. 64
Tuesday, April 4, 2006

Presidential Documents

Title 3—

The President

Proclamation 7995 of March 31, 2006

To Extend Nondiscriminatory Treatment (Normal Trade Relations Treatment) to the Products of Ukraine, and For Other Purposes

By the President of the United States of America

A Proclamation

1. Ukraine has demonstrated a strong desire to build a friendly and cooperative relationship with the United States and has been found to be in full compliance with the freedom of emigration requirements under Title IV of the Trade Act of 1974 (the ''1974 Act'') (19 U.S.C. 2431 *et seq.*).

2. Pursuant to section 2(a) of Public Law 109–205, 120 Stat. 313 (19 U.S.C. 2434), and having due regard for the findings of the Congress in section 1(a) of said law, I hereby determine that chapter 1 of title IV of the 1974 Act (19 U.S.C. 2431–2439) should no longer apply to Ukraine.

3. Section 2103(a) of the Trade Act of 2002, 19 U.S.C. 3803(a), authorizes the President, under certain circumstances, to proclaim such modification of any existing duty as the President determines to be required or appropriate to carry out an agreement entered into in accordance with section 2103(a). The United States, a major producer and exporter of multi-chip integrated circuits, applies duties to imports of multi-chip integrated circuits of less than 5 percent *ad valorem*. On January 17, 2006, the United States entered into an agreement to cut to zero applied duties on certain multi-chip integrated circuits.

4. Section 604 of the 1974 Act (19 U.S.C. 2483), as amended, authorizes the President to embody in the Harmonized Tariff Schedule (HTS) of the United States the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 2(a) of Public Law 109–205, section 2103(a) of the Trade Act of 2002, and section 604 of the 1974 Act, do proclaim that:

(1) Nondiscriminatory treatment (normal trade relations treatment) shall be extended to the products of Ukraine, which shall no longer be subject to chapter 1 of title IV of the 1974 Act.

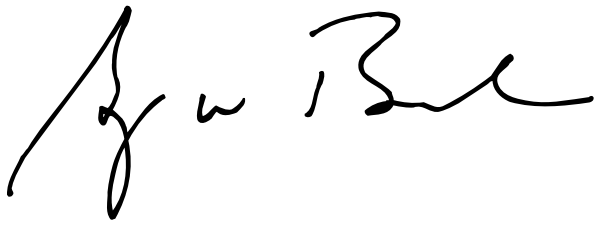
(2) The extension of nondiscriminatory treatment to the products of Ukraine shall be effective as of the date of signature of this proclamation.

(3) In order to implement the agreement on multi-chip integrated circuits, the HTS is modified to provide for application of zero duties to goods entered under tariff item 8543.89.96.

(4) The modification to the HTS made pursuant to paragraph 3 of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after April 1, 2006.

(5) All provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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



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Presidential Documents

Proclamation 7996 of March 31, 2006

To Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to Honduras and Nicaragua

By the President of the United States of America

A Proclamation

1. On August 5, 2004, the United States entered into the Dominican Republic-Central America-United States Free Trade Agreement (Agreement) with Costa Rica, the Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua (Agreement countries). The Agreement was approved by the Congress in section 101(a) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''Act'') (Public Law 109–53, 119 Stat. 462) (19 U.S.C. 4001 note).

2. Section 201 of the Act authorizes the President to proclaim such modifications or continuation of any duty, such continuation of duty-free or excise treatment, or such additional duties, as the President determines to be necessary or appropriate to carry out or apply Articles 3.3 and 3.28, and Annexes 3.3 (including the schedule of United States duty reductions with respect to originating goods) and 3.28 of the Agreement.

3. Consistent with section 201(a)(2) of the Act, each Agreement country is to be removed from the enumeration of designated beneficiary developing countries eligible for the benefits of the Generalized System of Preferences (GSP) on the date the Agreement enters into force with respect to that country.

4. Consistent with section 201(a)(3) of the Act, each Agreement country is to be removed from the enumeration of designated beneficiary countries under the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2701 *et seq.*) on the date the Agreement enters into force with respect to that country, subject to the exceptions set out in section 201(a)(3)(B) of the Act.

5. Consistent with section 213(b)(5)(D) of the CBERA, as amended by the United States-Caribbean Basin Trade Partnership Act (CBTPA) (Public Law 106–200), each Agreement country is to be removed from the enumeration of designated CBTPA beneficiary countries on the date the Agreement enters into force with respect to that country.

6. Section 604 of the Trade Act of 1974 (the ''1974 Act'') (19 U.S.C. 2483), as amended, authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of relevant provisions of that Act, or other acts affecting import treatment, and of actions taken thereunder.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to section 201 of the Act, section 301 of title 3, United States Code, and section 604 of the 1974 Act, and the Act having taken effect pursuant to section 107(a), do proclaim that:

(1) In order to provide generally for the preferential tariff treatment being accorded under the Agreement to Honduras and Nicaragua, to provide certain

other treatment to originating goods for the purposes of the Agreement, to provide tariff-rate quotas with respect to certain goods, to reflect the removal of Honduras and Nicaragua from the enumeration of designated beneficiary developing countries for purposes of the GSP, to reflect the removal of Honduras and Nicaragua from the enumeration of designated beneficiary countries for purposes of the CBERA and the CBTPA, and to make technical and conforming changes in the general notes to the HTS, the HTS is modified as set forth in Annex I of Publication 3845 of the United States International Trade Commission, entitled *Modifications to the Harmonized Tariff Schedule of the United States to Implement the Dominican Republic-Central America-United States Free Trade Agreement With Respect to Honduras and Nicaragua* (Publication 3845), which is incorporated by reference into this proclamation.

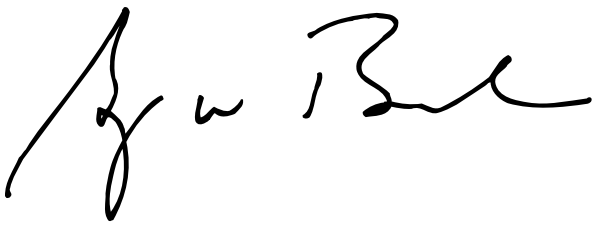
(2) In order to implement the initial stage of duty elimination provided for in the Agreement and to provide for future staged reductions in duties for originating goods for purposes of the Agreement, the HTS is modified as provided in Annex II of Publication 3845, effective on the dates specified in the relevant sections of such publication and on any subsequent dates set forth for such duty reductions in that publication.

(3)(a) The amendments to the HTS made by paragraphs (1) and (2) of this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the relevant dates indicated in Annex I and Annex II to Publication 3845.

(b) Except as provided in paragraph (3)(a) of this proclamation, this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after April 1, 2006.

(4) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

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



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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1287/P.L. 109–184

To designate the facility of the United States Postal Service located at 312 East North Avenue in Flora, Illinois, as the ''Robert T. Ferguson Post Office Building''. (Mar. 20, 2006; 120 Stat. 292)

H.R. 2113/P.L. 109–185

To designate the facility of the United States Postal Service located at 2000 McDonough Street in Joliet, Illinois, as the ''John F. Whiteside Joliet Post Office Building''. (Mar. 20, 2006; 120 Stat. 293)

H.R. 2346/P.L. 109–186

To designate the facility of the United States Postal Service located at 105 NW Railroad Avenue in Hammond, Louisiana, as the ''John J. Hainkel, Jr. Post Office Building''. (Mar. 20, 2006; 120 Stat. 294)

H.R. 2413/P.L. 109–187

To designate the facility of the United States Postal Service located at 1202 1st Street in Humble, Texas, as the ''Lillian McKay Post Office Building''. (Mar. 20, 2006; 120 Stat. 295)

H.R. 2630/P.L. 109–188

To redesignate the facility of the United States Postal Service located at 1927 Sangamon Avenue in Springfield, Illinois, as the ''J.M. Dietrich Northeast Annex''. (Mar. 20, 2006; 120 Stat. 296)

H.R. 2894/P.L. 109–189

To designate the facility of the United States Postal Service located at 102 South Walters Avenue in Hodgenville, Kentucky, as the ''Abraham Lincoln Birthplace Post Office Building''. (Mar. 20, 2006; 120 Stat. 297)

H.R. 3256/P.L. 109–190

To designate the facility of the United States Postal Service located at 3038 West Liberty Avenue in Pittsburgh, Pennsylvania, as the ''Congressman James Grove Fulton Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 298)

H.R. 3368/P.L. 109–191

To designate the facility of the United States Postal Service located at 6483 Lincoln Street in Gagetown, Michigan, as the ''Gagetown Veterans Memorial Post Office''. (Mar. 20, 2006; 120 Stat. 299)

H.R. 3439/P.L. 109–192

To designate the facility of the United States Postal Service located at 201 North 3rd Street in Smithfield, North Carolina, as the ''Ava Gardner Post Office''. (Mar. 20, 2006; 120 Stat. 300)

H.R. 3548/P.L. 109–193

To designate the facility of the United States Postal Service located on Franklin Avenue in Pearl River, New York, as the ''Heinz Ahlmeyer, Jr. Post Office Building''. (Mar. 20, 2006; 120 Stat. 301)

H.R. 3703/P.L. 109–194

To designate the facility of the United States Postal Service located at 8501 Philatelic Drive in Spring Hill, Florida, as the ''Staff Sergeant Michael Schafer Post Office Building''. (Mar. 20, 2006; 120 Stat. 302)

H.R. 3770/P.L. 109–195

To designate the facility of the United States Postal Service located at 205 West Washington Street in Knox, Indiana, as the ''Grant W. Green Post Office Building''. (Mar. 20, 2006; 120 Stat. 303)

H.R. 3825/P.L. 109–196

To designate the facility of the United States Postal Service located at 770 Trumbull Drive in Pittsburgh, Pennsylvania, as the ''Clayton J. Smith Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 304)

H.R. 3830/P.L. 109–197

To designate the facility of the United States Postal Service located at 130 East Marion Avenue in Punta Gorda, Florida, as the ''U.S. Cleveland Post Office Building''. (Mar. 20, 2006; 120 Stat. 305)

H.R. 3989/P.L. 109–198

To designate the facility of the United States Postal Service located at 37598 Goodhue Avenue in Dennison, Minnesota, as the ''Albert H. Quie Post Office''. (Mar. 20, 2006; 120 Stat. 306)

H.R. 4053/P.L. 109–199

To designate the facility of the United States Postal Service located at 545 North Rimsdale Avenue in Covina, California, as the ''Lillian Kinkella Keil Post Office''. (Mar. 20, 2006; 120 Stat. 307)

H.R. 4107/P.L. 109–200

To designate the facility of the United States Postal Service located at 1826 Pennsylvania Avenue in Baltimore, Maryland, as the ''Maryland State Delegate Lena K. Lee Post Office Building''. (Mar. 20, 2006; 120 Stat. 308)

H.R. 4152/P.L. 109–201

To designate the facility of the United States Postal Service located at 320 High Street in Clinton, Massachusetts, as the ''Raymond J. Salmon Post Office''. (Mar. 20, 2006; 120 Stat. 309)

H.R. 4295/P.L. 109–202

To designate the facility of the United States Postal Service located at 12760 South Park Avenue in Riverton, Utah, as the ''Mont and Mark Stephensen Veterans Memorial Post Office Building''. (Mar. 20, 2006; 120 Stat. 310)

S. 2089/P.L. 109–203

To designate the facility of the United States Postal Service located at 1271 North King Street in Honolulu, Oahu, Hawaii, as the ''Hiram L. Fong Post Office Building''. (Mar. 20, 2006; 120 Stat. 311)

S. 2320/P.L. 109–204

To make available funds included in the Deficit Reduction Act of 2005 for the Low-Income Home Energy Assistance Program for fiscal year 2006, and for other purposes. (Mar. 20, 2006; 120 Stat. 312)

H.R. 1053/P.L. 109–205

To authorize the extension of nondiscriminatory treatment (normal trade relations treatment) to the products of Ukraine. (Mar. 23, 2006; 120 Stat. 313)

H.R. 1691/P.L. 109–206
To designate the Department of Veterans Affairs outpatient clinic in Appleton, Wisconsin, as the ''John H. Bradley Department of Veterans Affairs Outpatient Clinic''. (Mar. 23, 2006; 120 Stat. 315)

S. 2064/P.L. 109–207
To designate the facility of the United States Postal Service located at 122 South Bill Street in Francesville, Indiana, as the Malcolm Melville ''Mac'' Lawrence Post Office. (Mar. 23, 2006; 120 Stat. 316)

S. 2275/P.L. 109–208
National Flood Insurance Program Enhanced Borrowing Authority Act of 2006 (Mar. 23, 2006; 120 Stat. 317)

H.R. 4826/P.L. 109–209
To extend through December 31, 2006, the authority of the Secretary of the Army to accept and expend funds contributed by non-Federal public entities to expedite the processing of permits. (Mar. 24, 2006; 120 Stat. 318)

S. 1184/P.L. 109–210
To waive the passport fees for a relative of a deceased member of the Armed Forces proceeding abroad to visit the grave of such member or to attend a funeral or memorial service for such member. (Mar. 24, 2006; 120 Stat. 319)

S. 2363/P.L. 109–211
To extend the educational flexibility program under section 4 of the Education Flexibility Partnership Act of 1999. (Mar. 24, 2006; 120 Stat. 320)

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